AMF Beaird, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 15-CA-3323 and 15-RC-3891

June 30, 1969

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, BROWN, AND JENKINS

On February 26, 1969, Trial Examiner John P. Von Rohr issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged 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. He further found that certain conduct by the Respondent interfered with and affected the results of the election of July 2, 1968, in Case 15-RC-3891 and recommended that the election be set aside and that a second election be directed. Thereafter, the Respondent, Charging Party, and the General Counsel filed exceptions and supporting briefs.

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, briefs, and the entire record in this case, and hereby adopts the findings, conclusions,[1] and recommendations of the Trial Examiner as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and hereby orders that the Respondent, AMF Beaird, Inc., Shreveport, La., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified.[2]

1. Delete the words "distribution of union literature" from paragraph 1(b) of the Trial Examiner's Recommended Order and substitute the words "solicitation and distribution of materials on behalf of the union."

2. Substitute the attached notice hereto for the notice set forth in the Trial Examiner's Decision.

IT IS FURTHER ORDERED that the election conducted on July 2, 1968, in Case 15-RC-3891, be, and it hereby is, set aside, and that Case 15-RC-3891 be, and it hereby is, remanded to the Regional Director for Region 15 for the purpose of conducting a new election at such time as he deems that circumstances permit the free choice of a bargaining representative.

[Direction of Second Election[3] omitted from publication.]

[1]The Trial Examiner found that the inauguration by the Employer of employees group meetings, wherein employees were encouraged to express their grievances and pursuant to which adjustments of them were made, was but another form of granting employee benefits during the Union's organizational and preelection campaign violative of Section 8(a)(1) Both the General Counsel and the Charging Party have urged in their exceptions that the Respondent be ordered to cease and desist from holding these group meetings with the employees We do not agree The Trial Examiner's conclusion is based upon the content and subject matter of these meetings and not upon the right of the Respondent to conduct such voluntary meetings with its employees See *Eagle-Picher Industries,* 171 NLRB No 44 Paragraph 1(a) of the Trial Examiner's Recommended Order prohibiting the granting of benefits covers this violation

The Trial Examiner further concluded that Union's Objection 3 involving the Respondent's managerial and supervisory personnel visiting the homes of employees prior to the election to discuss the Respondent's benefits and position regarding the pending election should be overruled We find it unnecessary to consider or pass upon the validity of the Trial Examiner's ruling in this regard since the remedy we have ordered would remain the same

[2]In accord with the request of the Charging Party, we shall substitute for the Notice recommended by the Trial Examiner, a Notice expressed in simple and readily understandable language *J P Stevens & Co , Inc ,* 167 NLRB No 37

[3]In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc,* 156 NLRB 1236, *N L R B* v *Wyman-Gordon Company,* 394 U S 759 Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 15 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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:

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice and to keep our word about what we say in this notice.

WE WILL NOT promise or grant you any wage raises, better insurance plans, longer vacations, better working conditions, or any other money favors, which are designed to interfere with your choice of a union.

WE WILL NOT do any of these things in an attempt to get you to reject or refuse to support International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

WE WILL NOT question you about your union activities or sympathies, or those of your fellow employees.

WE WILL NOT threaten to get back at you or retaliate against you because of your activity for the UAW.

WE SHALL NOT publish or keep in force any rule which would prevent you from soliciting or distributing materials on behalf of the union on your own time in nonworking areas of the plant.

You and all our employees are free to become members of the UAW, or to refrain from doing so.

AMF BEAIRD, INC.
(Employer)

Dated By
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions they may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70113, Telephone 504-527-6391

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOHN P. VON ROHR, Trial Examiner: This proceeding with all parties represented was heard before me in Shreveport, Louisiana, on December 3 and 4, 1968, upon a complaint issued by the General Counsel of the National Labor Relations Board, herein called the Board, for Region 15 (New Orleans, Louisiana), and on answer of AMF Beaird, Inc., herein called the Respondent or the Company, which denies the commission of any unfair labor practices. The complaint proceeding was consolidated for purposes of hearing with a representation proceeding with respect to issues raised by objections to an election.[1] The issues litigated are whether Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act, and whether or not certain objections filed by the Charging Party in the representation proceeding are meritorious. Briefs have been received from the General Counsel and the Respondent and they have been carefully considered.

Upon the entire record in this case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Delaware corporation with its principal office and place of business located at Shreveport, Louisiana, where it is engaged in the manufacture and sale of vessels and machinery for the oil and gas industry. During the year 1967, Respondent purchased and received materials valued in excess of $50,000, which were transported directly to its plant from points located outside the State of Louisiana. During the same period, Respondent sold products, valued in excess of $50,000, which were shipped from its plant to points and places located outside the State of Louisiana.

The Respondent concedes, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Prefatory Statement*

Relevant to the issues in this case, it is preliminarily noted that an earlier election to the one involved herein was held on September 29, 1966.[2] The results of this election were not finalized until April 19, 1968, at which time certain challenged ballots were counted and it was determined that the Union had lost the election.[3]

It is undisputed that the Union undertook a new organizing campaign among Respondent's employees on April 19, 1968, and that a number of new authorization cards were signed on this, the same day, on which the challenged ballots were counted.[4] The petition involved in the instant proceeding (Case 15-RC-3891) was filed on April 29, 1968. Pursuant to a stipulation for certification upon consent election, the election was held on July 2, 1968. The tally of ballots reflected that there were approximately 997 eligible voters and that 930 ballots were cast, of which 421 were for the Union, 501 against the Union, 7 were challenged and 1 was void.

B. *Interference, Restraint, and Coercion*

1. Interrogation of employees

In accordance with the undenied and credited testimony of the respective employees who testified, I find that the following instances of interrogation and one incident of a threat occurred during the period relevant hereto:

1. On April 21 or 22, 1968,[5] G. W. McKaskle, the general foreman on the night shift, asked employee William Wyatt, chairman of the union election committee, how many cards "they" had signed for the Union. When Wyatt replied that the Union had plenty of cards signed, McKaskle asked if the Union intended to come back for another election. Wyatt replied in the affirmative.

As noted hereinafter, it is undisputed that during the organizational campaign and prior to the election Respondent's managerial and supervisory personnel made personal visitations to the homes of employees for the purpose of discussing various Company benefits and the

[1] The complaint issued on July 17, 1968, and is based upon a charge filed on May 31, 1968. Objections to conduct affecting results of the election were filed on July 8, 1968. On September 10, 1968, the Board issued an order directing a hearing on petitioner's objections 2, 3, 5, and 7. On September 25, 1968, the Regional Director issued an order consolidating the complaint proceeding with the objections filed in the representation proceeding.

[2] Case 15-RC-3323. The petition in this proceeding was filed by the Charging Union on June 29, 1966.

[3] The certification of results of the election issued on April 25, 1968.

[4] Curly Tillery, and International Representative of the Union, testified that the 1966 campaign "never ended" inasmuch as the Union solicited employees to sign membership cards (as contrasted to authorization cards) during the period following the 1966 election and the counting of challenged ballots in 1968.

[5] Unless otherwise indicated all dates hereinafter refer to the year 1968

Company's position with respect to the pending election. In this connection, in the latter part of April, Foreman McKaskle broached Wyatt and asked if the "house calls" were doing any good. Wyatt, who was aware of the nature of the calls, responded that "they were doing some good but not enough to hurt us."

2. In latter April, Earl Hebert, a foreman, approached employee Kenneth Barnhill and asked him why the men wanted a union.

3. About May 20, Foreman McKaskle asked employee Gerald Barron why he was for the Union. When Barron gave his reasons, McKaskle stated that there must be a lot of people who worked on the same job that he (Barron) worked on who were for the Union. Then asking Barron if he had experience in the main part of the plant, McKaskle added that perhaps it would be better if Barron worked in the main plant rather than stay on his present job. During the conversation McKaskle also asked Barron how he thought the election would go.

4. About May 23, Foreman K. D. Morris stated to employee Curtis Allen that as a friend he would like to ask him why he, an excellent worker, was for the Union. When Allen stated that this was his privilege, Morris said that he could see that Allen was for the Union because he wore a union badge. Morris then added that he respected Allen for wearing his badge in the open rather than giving support to the Union behind his back. Morris also stated that because of his position as foreman he could not say anything about the Union one way or the other, but that he (Allen) could speak to anybody he wished.

5. In the first week of May, Foreman Harvey Reynolds called employee George Stanley into his office. First advising Stanley that he did not have to talk if he did not wish, Reynolds stated that Stanley had "changed his mind" because he wore a union sticker on his hat. He then asked what he (Stanley) had "against the Company." Stanley responded by mentioning several complaints, whereupon Reynolds stated that there were two sides to every story.

6. About May 10, Foreman Hebert came up to employee Bobbie Bryant, also an official of the Union, and asked how many men had signed up with the Union. Bryant replied that he did not know.

7. As detailed hereinafter, commencing on April 24, Respondent's president, Joseph LaBarbera, conducted a series of meetings with various groups of employees during working hours. In one of these meetings employee Bobbie Bryant challenged certain statements made by LaBarbera and said that he did not trust his word. A few days following the meeting Foreman Hayes told Bryant that he could count the days he had left with the Company on his fingers. Stating that he had been with the Company for 6 years, Bryant thereupon asked if he (Hayes) would help him out. Hayes replied, "Yes, I will help you out" . . . but at the same time motioned with his thumb toward the gate. Bryant was also interrogated by Foreman Hayes on two other occasions in the April-May period. On one occasion Hayes asked how many men had signed up for the Union. On the second occasion Hayes asked how the Union was coming along. When on the latter occasion Bryant replied that "it didn't look too good" because of LaBarbera's meetings with employees and because of the visits being made by supervisory personnel to the homes of employees, Bryant responded with the statement that "that was what the meetings were meant for."

8. About April 23, Billy Wallsworth, the manager of quality control, came up to employee Bobbie Bryant and asked why he was for the Union. Bryant gave his reasons. Wallsworth then asked how many men in the X-ray and inspection department had signed up for the Union and whether these employees had any gripes. When Bryant stated that the X-ray employees had certain gripes, Wallsworth said he would check into them and see what he could do. During the conversation Wallsworth also asked when the Union would be able to file a petition for an election.

In addition to the above incidents, which are uncontroverted, employee Bobby Bryant testified that in about the second week in May Foreman Marlin LaGrone came up with Foreman Herbert and asked how many men had signed up for the Union. Bryant said he told the foreman that he thought that they had all the men in Bay 12 signed up. Bryant testified that he was broached by Foreman LaGrone again in about the first part of June. Bryant testified that during the conversation which ensued LaGrone finally asked "Bryant, why are you for the Union?" Bryant said that he replied that the employees needed a union contract and that he then asked LaGrone why he had not been visited at his home by Company supervisory employees, as had most of the other employees. According to Bryant, LaGrone replied, "Bryant, we know when a fellow is deadset for the Union. It is no use coming by and seeing you." LaGrone testified that he spoke to Bryant about the Union on several occasions, but said that except for one occasion, the discussions were initiated by Bryant.[6] Bryant impressed me as an honest witness and I credit his testimony as aforesaid.

Turning to my conclusions as to the foregoing conduct, it might reasonably be contended that standing alone certain of the incidents described above in themselves appear innocuous. However, these incidents were not of an isolated nature and a substantial number of Respondent's supervisory employees were involved. When this is considered against the background of the other unfair labor practices found herein, I conclude and find that by interrogating its employees concerning their union activities, sympathies, and desires, Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act. Further, I find that Foreman Hayes unlawfully threatened employee Bobbie Bryant in violation of Section 8(a)(1) of the Act when, in the context of the conversation above set forth, he told Bryant that he could count the days he had left with the Company and motioned with his thumb toward the gate in response to the question asked by Bryant.[7]

2. The conferring of increased Benefits

It is undisputed that on April 30, 1968, the day following the filing of the petition by the Union in Case 15-RC-3891, President LaBarbera held a meeting with all the employees in which he announced that they were being

[6] LaGrone testified that in the middle or latter part of July he asked Bryant "how things were going." LaGrone said that when Bryant responded by saying that they had everybody in Bay 12 signed up, he (LaGrone) commented, "Well, I don't doubt that."

[7] There is nothing to reflect that Bryant acted in an insubordinate manner toward LaBarbera nor does the Respondent so contend. Further, although Billy Arnold, a bay leaderman called by the Respondent, testified that this conversation occurred in a jocular vein, this was not the impression conveyed to me by the testimony of Byrant. Insofar as Arnold's testimony concerning this conversation differs from that of Bryant's, I credit Bryant.

given an increase in wages and other benefits, the details of which are more fully set forth below. It is also undisputed that LaBarbera prefaced his detailed explanation of the benefits by telling the employees that his hands had been tied for 2 years due to the union issue, but that he was going to make these changes now "come hell or high water." In this connection Respondent witnesses conceded LaBarbera also stated "that the Union would probably try to take credit for these changes, but that this was not the case at all."[8]

A bulletin setting forth the benefits announced by LaBarbera at the April 30 meeting was mailed to the employees within a day or so following the meeting. It was also posted on the company bulletin board on May 1 and stated in its entirety as follows:

IMPORTANT ANNOUNCEMENT

The following broad improvements will be made in the AMF Beaird wage structure, hospitalization insurance, vacation, holiday pay and shop practices.

1. WAGE INCREASE—6% General Increase in place of Profit Sharing effective April 29 for hourly and May 1 for exempt. Profit Sharing checks for the first 4 months (estimated 4%) will be paid in January 1969 to all eligible employees.

2. HOSPITALIZATION INSURANCE—Improved benefits and reduction in cost.

TYPE OF BENEFIT	NOW	NEW CHANGE
Room & Board	$16.00 per day	$20.00 per day
Stay in Hospital	70 days	180 days
Maternity	$100	$200

Company will absorb one-half the cost of dependent hospitalization coverage.

OLD RATE (INCL. MAJOR MEDICAL)		NEW RATE (INCL. MAJOR MEDICAL)
One Dependent	$11.73	$8.36
More than two Dependents	$15.20	10.10

The Company will also absorb the $26,292 increase in premiums due to high experience rating.

3. INCREASED VACATIONS

PRESENTLY	NEW CHANGE
1 Week after 1 Year	No Change
2 Weeks after 5 Years	2 Weeks after 3 Years
3 Weeks after 15 Years	3 Weeks after 12 Years
	4 Weeks after 20 Years

(The only change in exempt employees vacation policy will be 4 weeks after 20 years)

The effective date for the new vacation policy will be April 29, 1967. Employees whose anniversary date is prior to the above date will be on the old vacation policy—all anniversaries occurring after this date will observe the new policy.

4. HOLIDAY INCREASE—The Company will recognize Christmas Eve as one-half paid holiday for all eligible employees.

5. SHOP PRACTICE CHANGES—The following shop practices will be put into effect as soon as possible:

A. Establish a uniform program whereby employees may make application for promotions when job vacancies occur anywhere in the plant.

B. Establish a uniform program whereby the employee's length of service will be considered as one factor for promotions and lay-offs, with the idea of promotion the best qualified or in the case of lay-off—laying off the least qualified.

C. Establish a uniform procedure for the equalization of overtime within each bay according to job qualifications.

D. Re-establish the company's policy that, except for emergencies, proper notification for week-end overtime will be given to all employees.

E. Institute a job evaluation program to study job classifications and the advisability of adjusting existing rates or adding new classifications or deleting obsolete classifications.

F. Establish a uniform procedure for shift rotation with each bay—designed to eliminate the appearance of favoritism.

[8]Quoted testimony is that of Don Williford, manager of labor relations As I deem it immaterial to a resolution of the issues herein, I need not decide a conflict in the testimony as to whether LaBarbera also told the employees that he might be violating the law by granting the wage increase and other benefits

G. Re-establish the Industrial Relations Council in such a way as to allow all employees an opportunity to serve, with the objective being an effective and meaningful tool for communications between management and the employees.

H. Establish a uniform set of qualifications for promotion to a special rate.

I. Study additional programs for the improvement of communications between management and all of our employees.

[/s/ Joe LaBarbera]

Aside from Respondent's asserted reasons for granting the above increases in wages and benefits, Respondent preliminarily points out in its brief that on April 30, the date of the announcement of the benefits, the Company had not received a copy of the petition which the Union filed on April 29. However, the Respondent does not deny, and I find, that as of April 29 it had ample information to know or suspect that a petition was filed or was about to be filed. Thus, it is undisputed that on April 29 a union handbill announcing that a petition had been filed "today" was distributed at the plant gates to the afternoon and evening shifts. Without belaboring this matter further, suffice it to note that several employees testified without contradiction that during the April 30 meeting LaBarbera mentioned that he had heard that the Union had distributed handbills stating that it had filed a petition for an election, but that he had not as yet received official word.[9]

Don Williford was hired by Respondent in September 1967 as its manager of labor relations. Williford testified that shortly thereafter George Dillard, Respondent's manager of personnel, directed him to evaluate the Company's labor relations and to make whatever suggestions for changes he deemed appropriate. Williford said that pursuant to these instructions he conducted a survey which reflected that Respondent was not competitive in wages and fringe benefits, that there was a high rate of turnover among the employees, and that certain shop practices needed modernization. This survey, he said, was completed in December 1967. Williford testified that although he felt at that time that "necessary changes" should be made, no action was taken then because Company counsel advised that it would be risky to increase wages or grant other benefits while the union issue was still pending.

Williford testified further that upon learning the results of the challenged ballot count on April 19, the personnel department submitted to President LaBarbera on April 21 a complete proposal pertaining to changes in shop practices and increases in wages and other benefits. According to Williford and Dillard, LaBarbera had a telephone conversation with the headquarters of its parent company in New York on April 29, at which time the New York office gave its approval to the proposed increases. However, LaBarbera was not called as a witness and did not testify concerning this conversation.

Upon the entire record, I am pursuaded and find that Respondent's granting of the wage increase and the substantially improved fringe benefits on April 30, 1968, was in large part designed to undermine the Union and to combat the Union's organizing efforts. In the first place, the record reflects that the granting of the April 30 increases was a substantial departure from Respondent's long standing practice of previous years. Thus, it is undisputed that in at least the last 8 years Respondent had given its employees a general wage increase in around February of each year. This was true also in 1968, for in February 1968, Respondent gave its employees a 5-percent wage increase, this approximately only 2 months prior to the increases which are at issue here.[10] Such a departure from previous practice in itself renders Respondent's motives suspect. Secondly, there is a significant inconsistency between the testimony of Williford and what LaBarbera told the employees. Thus, it will be recalled that in announcing the new benefits on April 30, LaBarbera stated that the benefits were not given previously because his hands had been tied due to the union situation for *2 or 3 years*. Williford, on the other hand, testified that it was not until the completion of a study in December 1967 that he ascertained that new benefits were necessary in order to make the company competitive. Moreover, Williford's testimony concerning the alleged necessity of making Respondent more competitive was entirely of a conclusionary nature. Respondent made no attempt to offer documentary evidence or concrete evidence in support of such testimony. In fact, Respondent did not so much as offer, by oral testimony or otherwise, any summary of the study which Williford claimed to have made between September-December 1967.[11] Finally, not to be disregarded and rendering Respondent's motives further suspect is the fact that the granting of the increase in wages and other benefits on April 30 occurred in the context of the other unfair labor practices found herein, these including coercive interrogation of employees, an unlawful no-solicitation rule, and periodic meetings with employees where additional benefits were unlawfully granted.

In view of all the foregoing, I find that Respondent violated Section 8(a)(1) of the Act by granting the wage increase and the other economic benefits noted above.

3. Meetings with groups of employees

On April 24, 1968, Respondent posted the following notice on its bulletin board:

NOTICE

In order to improve our communications throughout the plant we will conduct a series of meetings in groups of 15 to 20 people. You will be notified by your supervisor when to attend.

This is strictly on a voluntary basis, and it is to be a general discussion with management personnel.

[9]Credited and unrefuted testimony of employees L. S. McClure and T R Nelson

[10]An employer may grant wage increases during an organizational campaign provided he is not motivated in so doing by antiunion considerations As a general rule, evidence that wage increases were given pursuant to a pattern, policy, or program of periodic or regular increases is strongly indicative of legitimate economic motivation. *Aircraft Engineering Corporation*, 172 NLRB No. 218

[11]The only specific testimony by Williford was that Respondent experienced a separation rate of 463 employees in 1967.

These meetings are intended for discussion of mutual problems affecting our company — and for discussion of individual problems.

We hope that through these meetings we can come up with new ideas and suggestions for improvements.

We also hope that these meetings can be continued so that everyone will get their chance to speak out. I personally am looking forward to them, and hope that you are too.

Joseph LaBarbera

It is undisputed that pursuant to the above notice, President LaBarbera, with other employees present, began holding meetings in the conference room with groups of employees. The meetings were held on company time, lasted for approximately 1 hour, and were attended by approximately 16 employees, one from each bay. For the first month or so these meetings were held on a daily basis. Thereafter they were held usually once a week and have continued on this basis as of the time of the hearing herein.

LaBarbera opened the meetings with the explanation that "the purpose of the meeting was to improve communications" in the plant.[12] After giving an example of lack of proper communication between management and employees, LaBarbera thereupon opened the meeting for discussion, advising the employees that "he would discuss any matters that were of interest to them."[13] As the General Counsel points out in his brief, the credited and uncontroverted testimony of employee witnesses reflects that during these meetings the employees voiced all manner of complaints and suggestions, examples of which include the following: installing fans in the building to draw out heat and smoke; instituting shift seniority; moving the tool room to the machine shop; installing a fan in the cab of the switch engine; the safety advantage of using chain slings as opposed to using cables to move heavy welds; eligibility for overtime work; covering a machine to prevent water from spraying on employees; correcting unsanitary conditions around the coffee machine; instituting a practice of receiving paychecks before vacation; using uniform airhose connections for all bays; placing experienced first class welders on union melt rather than using newly hired employees for this job; explaining to employees the purpose of any layoffs; changing graveyard shift so as to begin on Sunday night; using unqualified crane operators to operate cranes; assignment of overtime work to regular operators instead of to other employees; alleged job pay discrimination between races; job evaluation program; shorter period for promotions of X-ray employees.

From the above it can be seen that many of the subjects or grievances raised by the employees clearly related to wages, hours and other terms and conditions of employment. Although Respondent perhaps did not respond favorable to every such employee complaint, it is undisputed, as Williford conceded, that Respondent "made a number of adjustments" pursuant to such complaints.[14]

Absent an unlawful purpose, an employer normally has every right to communicate with his employees with a purpose to improving plant efficiency and working conditions. However, under all the circumstances of this case, I find that Respondent's inauguration of employee meetings on April 24, 1968, wherein employees were encouraged to express their grievances and pursuant to which adjustments of them were made, was but another form of granting employee benefits during the Union's organizational and preelection campaign.[15] Significantly, the inauguration of the employee meetings occurred only 5 days after the counting of the challenged ballots. Although the new petition was not filed until April 29, the record reflects, as previously noted, that Respondent began interrogating employees as early as April 21 or 22. Accordingly, I find that Respondent was aware, or at least suspected, that a new organizing campaign had begun at the time it instituted the employee meetings.[16] Moreover, the employee group meetings continued after the filing of the petition and in fact were held on a daily basis for several weeks thereafter.

In sum, and for the reasons stated above, I find that Respondent's inauguration of the employee group meetings during the critical period herein was part of a design reasonably calculated to influence employees in the exercise of rights guaranteed them in Section 7 of the Act.[17] Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

4. The no-solicitation rule

It is undisputed that on January 1, 1968, Respondent promulgated a handbook of written rules and regulations governing the conduct of its employees. Pertinent hereto are the following rules contained therein:

9. Selling, soliciting, or collecting contributions for any purpose on Company premises unless authorized to do so by the Personnel Department.

10. Posting or removing any material on official Company bulletin boards or distributing written or printed matter of any description at any time unless specifically authorized to do so by the Personnel Department.

It is well settled that a rule which preclude employees from (1) distributing union literature while on nonworking time and in nonworking areas of the plant, and (2) engaging in solicitation while on nonworking time on company property are presumptively invalid.[18] Respondent has not overcome the presumption by showing that any circumstances justified the need for the rules set forth above. Accordingly, I find that by the promulgation and enforcement of these rules the Respondent violated Section 8(a)(1) of the Act.[19]

Apparently conceding the invalidity of the above no-solicitation, no-distribution rules, Respondent defends on the ground that these rules were changed on May 11,

[12] Testimony of Respondent witness Williford.

[13] Testimony of Williford.

[14] In view of this concession by Williford, I need not detail here the various corrective actions taken by the Respondent as testified to by employee witnesses.

[15] *Northwest Engineering Company*, 148 NLRB 1136, 1140.

[16] It will be recalled that the Union's solicitation for new cards began on April 19.

[17] *Northwest Engineering Company, supra*

[18] *Walton Manufacturing Company*, 126 NLRB 697, enfd. 289 F.2d 117 (C.A. 5); *SNC Manufacturing Company*, 174 NLRB No. 31

[19] In finding that Respondent unlawfully enforced the rules, I rely on the following (1) On June 10, 1968, employee C R Holley asked Foreman E C Green if he could distribute handbills at the gate before working hours Green refused permission, stating he (Holly) would have to obtain permission from the personnel manager (2) Also on June 10, employee Bobbie Bryant asked Supervisor LaGrone if he could distribute union literature during his own time LaGrone refused permission and referred him to the company rules which were posted on the company bulletin board As noted in *Campbell Soup Company*, 159 NLRB 74, 82, the right

1968. Assuming that the rules promulgated on May 11 corrected the invalidity of the rules previously in effect, this defense is of no avail since the unlawful rules were in effect for a substantial period during the Union's preelection campaign. *Levi Strauss & Co.*, 172 NLRB No. 57. And as the Board held in *Allen-Morrison Sign Co., Inc.*, 79 NLRB 904, 906, subsequent modification of an unlawful no-solicitation rule does not have the retroactive effect of validating its initial promulgation and does not preclude the issuance of an appropriate cease and desist order.

C. *Objections to Conduct Affecting Results of Election*

The Union's Objection 5 alleges that Respondent interfered with the election "by disseminating to its employees sample ballots containing a marking ("X") in the "NO" box contrary to Board policy." I find no merit to this objection.

In *Allied Electric Products*, 109 NLRB 1270, the Board established a rule, since followed, that it would not permit the reporduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked sample on its face. On June 28, 1968, the Respondent sent a letter to its employees, attached to which was a page containing a form of a ballot. The head of the ballot states: "Do you wish to be represented for purposes of collective bargaining by," the name of the Union thereafter appearing immediately below. A YES or NO box is contained on the ballot, with an X marked in the NO box. Significantly, the Board's name does not appear anywhere on the ballot (as it does on an official ballot). Further, the ballot in question is substantially smaller than the Board's official ballot. Considering the ballot as a whole, I am amply persuaded that it does not give the appearance of an official ballot and that it quite obviously would not have the effect of creating the impression among the employees that this Agency urges a vote for the Respondent. See *Rett Electronics, Inc.*, 169 NLRB No. 168. Accordingly, I recommend that Union's Objection 5 be overruled.

The Union's Objection 3 alleges that Respondent interfered with the election "by engaging in a systematic housecalling of all of its eligible employees after work hours." At the hearing, the parties entered into the following stipulation: "Visitations to the homes of employees were made prior to the election by managerial and supervisory personnel, during which the Company's benefits and the Company's position with regard to the pending election were discussed." No further evidence was introduced concerning Objection 3. Accordingly, there being no evidence that during these visits Respondent engaged in any conduct which tended to interfere with, restrain or coerce its employees in the exercise of their Section 7 rights, I recommend that Union's Objection 3 be overruled.[20]

However, the Union's Objections 2 and 7 are based upon the Section 8(a)(1) violations heretofore found, a substantial part of which occurred after the filing of the representation petition and before the holding of the election. I find that this conduct interfered with a free and untrammeled choice in the election, and I shall therefore recommend that the election of July 2, 1968, be set aside.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I also recommend that the election, held on July 28, 1968, in Case 15-RC-3891, be set aside and that said case be severed and remanded to the Regional Director for Region 15, with instructions to conduct a new election at such time as he deems circumstances permit a free choice of a bargaining representative.

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

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.
3. By engaging in the conduct set forth in the section entitled "Interference, Restraint and Coercion," to the extent therein found, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that Respondent AMF Beaird, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Granting or promising wage increases, improved insurance plans, increased vacations, better working conditions, or other economic favors to its employees in order to interfere with their choice of a bargaining representative, or as an inducement to reject and refrain from activities in support of the International Union, United Automobile Aerospace and Agricultural

of employees to distribute literature and solicit membership for a union in nonwork areas not on company time is not dependent on permission from their employer Moreover, it is significant that in the instant case the Company promulgated and enforced an unlawful no-solicitation rule, while at the same time itself took steps to unlawfully combat the Union on company time and property (i.e., the group meetings with employees, heretofore discussed).

[20] It has never been held that visitations at homes of employees by supervisory personnel is *per se* unlawful. The Union has not filed a brief in support of its objections.

Implement Workers of America (UAW), or any other labor organization.

(b) Promulgating, publishing, or enforcing any rule proscribing or prohibiting the distribution of union literature in the plant or on company property, to the extent that such rule is applied to the nonwork time of the employees, or nonwork areas of the plant.

(c) Coercively interrogating employees concerning their union activities and sympathies or those of other employees; and threatening employees with reprisals because of their union activities or sympathies.

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

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

(a) Post at its plant in Shreveport, Louisiana, copies of the notice attached marked "Appendix." [Board's Appendix substituted for Trial Examiner's.]"[21] Copies of said notice to be furnished by the Regional Director for Region 15, shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including each of Respondent's bulletin boards. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 15, in writing, within 20 days of the receipt of this Decision, what steps the Respondent has taken to comply herewith.[22]

IT IS FURTHER RECOMMENDED that the results of the election conducted on July 2, 1968, in Case 15-RC-3891, be set aside, and that a second election be directed to be conducted by the Regional Director for Region 15 when deemed appropriate after compliance with this Recommended Order or any Order the Board may enter herein.

IT IS FURTHER RECOMMENDED that any violaltions alleged in the complaint not specifically found herein be dismissed.

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[21] 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 be 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"

[22] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 15, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"