

**Aliceville Cotton Mill, Inc and United Textile Workers of America** Case 10-CA-9352

December 14, 1972

**DECISION AND ORDER**

BY MEMBERS FANNING, KENNEDY, AND  
PENELLO

On August 28, 1972, Administrative Law Judge Marion C Ladwig issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed 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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge,<sup>1</sup> and to adopt his recommended Order as modified below.

**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 Administrative Law Judge, as modified below, and hereby orders that Aliceville Cotton Mill, Inc, Aliceville, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified.

In paragraph 2(a) of the Order, after the word "Union" add "for a period of 1 year if necessary."<sup>2</sup>

<sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products Inc* 91 NLRB 544 enfd 188 F 2d 362 (CA 3). We have carefully examined the record and find no basis for reversing his findings.

The Respondent has also excepted to the Administrative Law Judge's apparent reliance as a factor in support of his credibility findings on the fact that all four of Respondent's witnesses had campaigned against the Union. Both the Board and the courts have held that the trier of the facts is not compelled to credit the testimony of a witness, even where uncontradicted, especially where the witness is highly interested. See *Sperit Sunlamp Division Cooper Hewitt Electric Co Inc* 162 NLRB 1148 1154 fn 7 I C *Sutton Handle Factory v NLRB* 255 F 2d 697 698 (CA 8).

In view of our concurrence in the Administrative Law Judge's credibility findings including his finding that employee Johnson was not told at any time that employee Noland made a threat with respect to Johnson we find it unnecessary to and do not adopt his further superfluous finding that Noland was terminated on June 25 so that any such report to Johnson would have been in June and not in the later critical period before the election.

<sup>2</sup> See *Mar Jac Poultry Company Inc* 136 NLRB 785 *Burnett Construction Company* 149 NLRB 1419, 1421 enfd 350 F 2d 57 (CA 10).

**DECISION**

**STATEMENT OF THE CASE**

MARION C LADWIG, Administrative Law Judge. This case was tried at Carrolton, Alabama, on July 20, 1972. The charge was filed by the Union on January 3, 1972, and the complaint was issued on January 24, alleging that the Company, the Respondent, on and since December 15, 1971, had refused to bargain with the Union pursuant to the November 29, 1971, certification in the earlier representation case. The General Counsel filed a motion for summary judgment with the Board on February 16, 1972, and the Board on February 22 issued a motion to show cause why the motion should not be granted. In its timely response, the Company asserted that the Union's certification was invalid because threats by union advocates before the election created "such an atmosphere of fear and violence as to make a free election impossible." On May 19, the Board denied the motion for summary judgment, being of the opinion that the Company had raised substantial and material issues as to whether the Company's proffered evidence "is sufficient to show that a general atmosphere of fear surrounding the election warranted setting it aside." The Regional Director issued a notice of hearing on May 24, 1972.

The ultimate question is whether the Company's admitted refusal to bargain violated Section 8(a)(5) and (1) of the National Labor Relations Act, or whether the refusal was justified because of an invalid certification.

Upon the entire record, including my observation of the demeanor of the witnesses, and in the absence of briefs, I make the following

**FINDINGS OF FACT**

**I JURISDICTION**

The Company, an Alabama corporation, is engaged in the manufacture of yarn and other textile products at its plant in Aliceville, Alabama, where it annually ships goods valued in excess of \$50,000 directly to customers located outside the State. The Company admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II ALLEGED UNFAIR LABOR PRACTICES**

**A Prior Proceedings**

The petition in Case 10-RC-8328 was filed on July 17, 1970, and an election (directed by the Regional Director) was conducted on September 23, 1970. The vote was 120 for and 113 against union representation, with 8 challenged ballots. The Company filed timely objections. On November 12, 1970, after an investigation of the challenges and the objections, the Regional Director issued a supplemental decision, finding the objections to be without merit, overruling five of the challenges (resulting in a revised tally of 120 votes for and 118 against union representation), and deferring ruling on the challenges to the three remaining ballots because they were cast by alleged discriminatees in

a pending unfair labor practice case discussed below The Company filed a timely request for review, excepting to the Regional Director's failure to find merit to certain ones of the Company's objections and his failure to provide a hearing The Board denied the request as not raising substantial issues warranting review

Meanwhile, charges had been filed against the Company in July and August 1970, alleging various 8(a)(1) and (3) violations committed by the Company during the Union's 1970 organizational campaign On October 22, 1971, the Board in *Aliceville Cotton Mill, Inc.*, 193 NLRB No 136, found that the Company had violated Section 8(a)(1) by soliciting employees to persuade other employees to defect from the Union and by threatening not to bargain in good faith if the Union was successful in organizing the employees, as well as by unlawfully interrogating employees and soliciting them to inform on the union activities of other employees, by engaging in and creating the impression of union surveillance, by promising employees benefits to dissuade them from union activities, and by threatening to close the plant, withhold wage increases, or discharge employees The Board also found several 8(a)(3) violations, including the unlawful termination of employees James Cochrane, E E Miller, and J H Bonner, whose undetermined challenged ballots were delaying a final tally of ballots in the representation case

On November 2, 1971, after nearly a year's delay, the Regional Director ordered the three challenged ballots to be counted (resulting in a final tally of 123 votes for and 118 votes against union representation) The Union was certified on November 29, 1971, as the exclusive representative for "all production and maintenance employees including inspectors and packers, and the air-conditioning technician employed at the Employer's Aliceville, Alabama plant, but excluding all office clerical employees, professional employees, guards and watchmen, and supervisors as defined in the Act"

## B *Invalid Certification as Defense*

### 1 Limited supportive evidence

In seeking a hearing on its defense that the Union's certification was invalid, the Company in its response to the General Counsel's motion for summary judgment asserted that during the critical period before the election—from July 17 to September 23, 1970—there were "threats of physical injury, destruction of property, anonymous telephone calls, and anonymous notes to various employees made by union advocates and/or union agents," and that "reports of these threats, coercion and violence were widespread and discussed throughout the plant immediately preceding the election" Yet at the trial, without explanation, the Company called as witnesses only four employees, who gave only limited evidence, and much of that in summary fashion I note that all four of them had campaigned against the Union As indicated below, there are serious questions about their credibility

## a *Testimony of Billy Eaves*

### (1) Killing of dogs

Employee Eaves, who testified that he tried to get other employees not to vote for the Union, testified that on separate days, about 2 weeks before the September 23 election, one of his dogs was poisoned and another one shot When asked if he told anyone in the plant about the killings, he testified that he told Earl Ray Hemphill and James Henry Johnson (two other company witnesses who likewise campaigned against the Union) Eaves testified that he did not know who killed the dogs, but that his neighbor, union supporter Larry Braddock, said that he knew what happened to them and that something *might* happen "to the rest of them *and me too* if I didn't go and vote for the Union" (Emphasis supplied) When asked to repeat what Braddock said, Eaves testified, "He said he knows what happened to my dogs Something *might* happen *to me, too*, if I didn't go with the Union" (Emphasis supplied) Braddock testified that he lived two doors from Eaves and knew that Eaves was supposed to have some dogs, but that he did not visit Eaves very often and did not recall ever seeing Eaves' dogs He denied that he ever heard anything about the dogs being poisoned or shot, and that he said anything to Eaves about the dogs

I discredit Eaves' testimony about the purported threat for several reasons On the stand, as quoted above, Eaves repeatedly claimed that Braddock said that he knew what happened to the dogs and that something *might happen to Eaves too* (or "to the rest of them and me too") if Eaves did not vote for or "go with" the Union If such a threat had been made to Eaves' life, undoubtedly he would have remembered it when he gave a postelection affidavit to the Board agent on October 14, 1970, when the Regional Office was investigating the Company's objections Eaves' affidavit (which was introduced into evidence over the Company's objection) stated that, about 3 days before the election, Braddock told Eaves, "Billy, I know what happened to your dogs and something *will happen to the rest of them* if you don't go with the Union"—not mentioning any threat to Eaves' life (Emphasis supplied)

None of the other three company witnesses corroborated Eaves' claim that Braddock had threatened his life or his other dogs Employee Johnson was not questioned about the dogs or the purported threat Employee Johnny Smith, when called by the Company, testified that Evans "told me that he had some dogs killed" and that he "suspected the Union killed them," but that "he never did tell me why nor nothing" Employee Hemphill, the other company witness, detracted from Eaves' testimony in two respects First, Hemphill testified that Eaves said that "someone" told him that the thing that happened to the dogs "would happen to him as well as the other dogs" Inasmuch as both Hemphill and Eaves were campaigners against the Union, I consider it most likely that, if union supporter Braddock had in fact made the threat, Eaves would have identified him Secondly, when Hemphill gave his postelection affidavit on October 14, 1970 (soon after the election), he claimed that the dogs were killed much earlier, not about 2 weeks before the September 23 election as Eaves claimed His affidavit (not introduced as evidence) admittedly stated that the

dogs were killed "somewhere around the last of July or first of August"

After weighing all the conflicts in the evidence and considering Eaves' demeanor as a witness (he appeared to be attempting to ingratiate himself with the Company), I find that Eaves fabricated at least the part of his testimony in which he claimed that union supporter Braddock stated he knew what happened to the dogs and stated that something might or would happen to Eaves (and/or his remaining dogs) if Eaves did not vote for or go with the Union. Even assuming that at some time two of the dogs were for some reason killed (although there is no corroboration from any less partisan source), I find that Eaves' claim that it occurred shortly before the election (contrary to Hemphill's affidavit) was a fabrication to support the Company's contention that there was an atmosphere of fear surrounding the election. Accordingly I also discredit company witness Hemphill's testimony, given at the trial after Eaves testified, that Eaves informed him that someone had told Eaves that the thing that happened to the dogs "would happen to him as well as the other dogs." I find this also to be a fabrication.

(2) Purported threat to get him

Employee Eaves also testified, without giving any of the circumstances, that union supporter Albert Bowens told him about 2 or 3 weeks before the election that "if I didn't go with the Union someone might have to get me, if they had to get me behind my back." According to Eaves' postelection affidavit, Bowen stated, "If you don't vote for the union some of us are going to get you if we have to get you behind your back."

Employee Bowens, who impressed me as an honest, forthright witness, credibly testified that he has been married to Eaves' sister for 6 years, that they sat around the house during the election campaign and talked about the Union, "I was for it and he was against it," that there was not any bad blood between them over the Union, and that they continued to maintain social contact with each other. I credit Bowens' emphatic denial that he ever told Eaves that he would get him behind his back.

Having found employee Eaves not to be a trustworthy witness, I discredit his testimony about a threat to get him behind his back.

b *Testimony by Earl Ray Hemphill*

(1) Purported threat to leave unfinished work

Employee Hemphill, who campaigned against the Union, passing out antiunion literature, has been found above to have given fabricated testimony concerning the purported threat by employee Braddock to employee Eaves' life. It is further clear that he was not testifying candidly concerning a purported threat by union supporter Braddock to leave an excessive number of full frames for Hemphill to doff.

The Company asserted proof, in its response to the General Counsel's motion for summary judgment, that approximately "one month" prior to the election (i.e., about the latter part of August 1970) an employee, doffer

Hemphill, was told by a union advocate, doffer Braddock, "If I would sign a union card, he would leave me in good shape on that job and if I didn't sign a union card, he would leave as many frames full to be doffed as he could." Then, the Company asserted, "after his repeated refusals to sign a union card and support the union, his frames were continuously left in bad shape so that he was unable to properly perform his job."

When called as a witness, first shift doffer Hemphill testified that between July 17 (when the petition was filed) and September 1970, employee Braddock, the doffer on the preceding third shift, was the union supporter in particular who attempted to get him to sign a union card. And when he refused to sign, "They [identified as Braddock] said that they could leave the frames full for me to start with." Hemphill then answered, "Yes" to the company counsel's question, "Did, after July 17 and before September 23 of '70, did you have a lot of frames, in fact, left full?" However, when asked to pinpoint the date of Braddock's threat, Hemphill indicated that it was about the third week in June, about a month *before* July 17—by testifying that it happened "About two weeks before vacation," and that the vacation was taken during the week of July 4. Later in Hemphill's direct testimony he answered, "No, sir," to the question, "During this time we are talking about from the filing of the petition [July 17] to the election, did you have any disagreement with Braddock other than your opposition to the Union?" He was not asked about any disagreement back in June, when Hemphill claimed the threat was made. Braddock admitted that he did leave some full frames for Hemphill, but explained that he did so because the Hemphill father and son, doffers on the first and second shift, "were working against me," leaving him as many as five to eight full frames. He testified that "If they were going to make me work I was going to make them work," that this dispute had nothing to do with the union campaign, and that it continued after the election. He denied threatening to leave frames full because Hemphill was not a union supporter.

Doffer Hemphill clearly gave conflicting and exaggerated testimony concerning the number of full frames left for him. Although testifying that he was responsible for doffing 16 frames, and "You've got" the three piecework spinners and the boss "fussing about frames being stopped," he first testified that during this period, from July 17 to September 23, 1970, "I come in every morning and would have about 10 or 12 frames stopped or ready to stop at 8 o'clock," and "That's two hours and a half behind at 8 o'clock. You stay behind two hours and a half until you doff all 16 frames." He next testified that 10 to 12 full frames were left "practically every day." He then added, "I would say four out of the six [workdays each week] there were at least that many ready," and "maybe six or eight" on the remaining days. I do not believe this. If union supporter Braddock had in fact made the purported threat to antiunion campaigner Hemphill for not signing a union card, undoubtedly Hemphill would have (which he does not claim) reported the threat to the Company at the time—and not wait until the Company was seeking grounds for setting aside the election. Also, it is inconceivable to me that the Company would have tolerated, for a 2-

month period, such an amount of downtime caused by the union supporter—whether 10 or 12 full frames from a total of 16 frames were left “every morning” or “practically every day” or two-thirds of the time. Such an uncorroborated, implausible story adversely reflects upon his trustworthiness as a witness.

I find that Hemphill’s testimony about the purported threat is another fabrication, and therefore discredit it.

(2) Other purported threats

Employee Hemphill also testified that on the night before the election, he found a note in the front seat of his car. He produced a small note, on white paper measuring slightly more than 4 inches square, with the words written in ink and small capital letters on the upper part of the note, “If you do not vote yes for the union you will get your a— whipped among other things” (the word “yes” being underscored three times). He testified that he did not recognize the writing and had no idea whom the note came from. He claimed that he showed the note to his father and also to employee Johnny Smith (another antunion campaigner), but this claim is not corroborated.

The note received in evidence does exist. But there is no proof, other than Hemphill’s word, that it was found and written before the election. (I note that the wording is similar to the message of the anonymous telephone call discussed later.) There is no evidence of any other threatening note. And even if the note were in fact written before the election, it is hard to understand how its author could believe that such a note could influence the vote of antunion campaigner Hemphill.

Having found that Hemphill fabricated testimony about two other purported threats, I find his testimony too unreliable to credit his uncorroborated claim that he received the threatening note before the election.

In addition, Hemphill testified that, about a day or so before the election, he overheard “some people down there at the mill”—he does not remember who—saying that union supporter Bowen “said that cars *could* be wrecked on the parking lot out there if the Union didn’t go in” (Emphasis supplied.) Although he positively testified that he did *not* hear Bowen say this, I note that the Company (in its above-mentioned response) asserted proof that “during the critical period, this same employee [Hemphill] heard a union advocate [Bowen] telling a group of employees in the plant that if the union won the election ‘those who opposed the union *would* have their cars wrecked in the parking lot.’” (Emphasis supplied.) There is no corroboration that employee Bowen made either version of the purported threat, or that any of the employees was talking about such a threat. I discredit Hemphill’s testimony about overhearing talk of the purported threat.

Hemphill’s testimony about an anonymous telephone call is discussed later.

c. Testimony by James Henry Johnson

(1) Purported threats to whip him

At the trial, employee James Henry Johnson claimed for

the first time that two union supporters, employees James “Preacher” Cochrane and Tommy Harris, threatened to whip him shortly before the election.

Johnson claimed that this happened “a couple of evenings” after he and four other antunion employees went to employee Don Noland (a leading union advocate) and “asked him to quit and get him a job with a company that already had a union.” Johnson added, “It was wrong for us to do it, I reckon.” Johnson testified that Cochrane and Harris heard about it, were “real mad,” and Harris “said that he didn’t think it was much of a man for all of us to go” to Noland, and “told me that he was as much of a man as anybody there and he could handle anybody in the plant, referring to there were five of us who talked with Don. And if I didn’t believe it, he would stop me between Geiger and Aliceville and show me and all that he would do to me if I didn’t let them alone. As close as I can get, that he would whoop me.” When testifying about this incident, Johnson appeared to be a compliant witness. He first testified that Cochrane and Harris had scabbard knives “they were making at the mill in their back pockets.” Then when asked by company counsel if they brandished the knives, Johnson changed his story, testifying, “Tommy had his in his hand. Whether he pulled it on me or not I don’t know but I took it that way.” When questioned about whether he had mentioned Cochrane and Harris in his October 14, 1970, postelection affidavit (which was not introduced as evidence), Johnson testified, “I mentioned them very strong” in it. He later conceded that there was nothing in his affidavit about the incident, but testified that it occurred about “three weeks before the election” (i.e., early September), and that Cochrane and Harris were employees at the time. He elsewhere testified that it occurred in July.

It is clear that Johnson’s conversation with Cochrane and Harris occurred weeks before the July 17 petition was filed, and not during the critical period between July 17 and the election. Cochrane and Harris (as found by the Board in the earlier complaint case) were terminated in late June. Preacher Cochrane, who impressed me favorably as a witness, credibly testified that on June 8, the day after the June 7 meeting (about which there was testimony in the earlier complaint case), Harris walked up to Johnson and asked Johnson about his and other employees’ jumping on Don Noland about organizing the Union and threatening to whip Noland. Then Harris said he would take on any one of them at any time outside the gate, and Cochrane said he would back Harris up. Neither Cochrane nor Harris had a knife, “We were going in to work.”

Thus, company witness Johnson belatedly grasped on an incident which occurred early in the campaign, over 5 weeks before the July 17 petition was filed, and falsely testified that this occurred about 3 weeks before the September 23 election, in support of the Company’s contention that threats and violence surrounded the election. From his demeanor on the stand, Johnson appeared to be more interested in supporting the Company’s cause than reporting accurately what happened. I discredit Johnson’s testimony that Cochrane and Harris threatened him during the critical period before the election.

Employee Johnson next testified that about 2 weeks after this incident, an employee (Mutt Cromwell, who did not testify) came in and reported that Don Noland "said he was going to make it rough on me" and "was going to whoop me if I didn't let everybody else alone in the Company" (Emphasis supplied.) In its response to the motion for summary judgment, the Company asserted proof that "during the critical period, the leading union adherent in the plant [Don Noland] sent word to him [Johnson], 'That he was going to whip me—if I didn't join the Union and my job would be made a lot easier if I did.'" (Emphasis supplied.) On the stand, Johnson denied that anybody approached him and attempted to get him to sign a union card during the period from July 17 through September 23. There is no contention that either version of the purported threat had been reported to the Company either before Noland's June 25 termination or before the September 23 election. I consider it most unlikely that, if such a threat by union supporter Noland actually had been reported to antiunion campaigner Johnson, we would have failed to notify the Company at the time. Because of this, as well as the significantly conflicting versions and Johnson's unreliability as a witness, I doubt his uncorroborated testimony that the purported threat was reported to him. However, even if there were such a report, it would have been in June, not in the critical period before the election as asserted by the Company.

#### (2) Purported threat of fine

After falsely testifying that certain June incidents occurred months later, around the first part of September (to support the Company's defense), employee Johnson testified about another purported conversation which he claimed took place the night before the election, when he was trying to get employee James King "to vote for the Company." According to Johnson, King "said that if he didn't vote for the Union he could be fined from \$500 to \$1,000 and that they would know how he voted because the cards were marked and [terminated union advocate] Don [Noland] was sitting there." (Emphasis supplied.) Although Johnson claimed that this conversation occurred before the election, his repeated use of the past tense is some indication that if there was such a conversation, it referred to what was believed had happened on election day, and the conversation therefore occurred after the election. Johnson testified that he tried to tell King the ballots were not marked, and asked who told him this, but King would not talk any more. Upon further direct examination, Johnson claimed that King gave a fuller explanation, testifying that King explained that the ones who were supposed to be fined were the "ones that has signed union cards and that didn't vote for the Union," and that they would be fined "because they were already a member of the Union."

There was absolutely no corroboration that such a conversation took place either before or after the election, and no proof that any union representative or supporter told King or any other employee anything like this.

Having discredited Johnson's testimony that two other threats were made between July 17 and September 23 (both purported threats having concerned employee

Noland who was no longer working after July 17, having been terminated in June), having concluded from observing Johnson's demeanor on the stand that he appeared to be more interested in supporting the Company's cause than reporting accurately what happened, and in the absence of any corroboration at the trial, I discredit Johnson's testimony that his conversation with employee King, if it occurred at all, occurred before the election.

#### (3) Other testimony

Employee Johnson further testified that "a little before the election," employee Billy Hutton missed a night's work and Billy's brother, another employee, said that somebody came to his house, trying to get Billy to sign a union card, that Billy would not sign, "and his father wouldn't let him come to work because he was afraid of what Billy would do or whoever came to his house would." It appears unlikely that the Union would be seeking the employee's signature on a union card, rather than seeking a yes vote, shortly before the election. Nonetheless, this testimony is not corroborated, I consider Johnson's testimony most unreliable, and even if the father did, at some time and for some reason, direct one of his sons not to report to work one night, there is no proof that the Union or any of its supporters caused any fear on the father's part, nor any showing how this might affect any vote at the election.

Johnson was next asked on direct examination if he had heard talk in the plant about threats or anything received, and Johnson answered

A A lot of threats were received

Q Was there a general conversation in the plant?

A Yes All the time about it

TRIAL EXAMINER Could you be more specific about it?

THE WITNESS No Because if you tried to get every threat or every little threatening phone call or anything that was made you could sit up here all day And I couldn't determine you a date

The counsel then asked him about threatening telephone calls, and Johnson testified that "Several talked about them Johnny [Smith] over there, he talked about his." This is discussed later. Johnson then added, "A lot of them wouldn't talk about them because they were scared." He then testified about one employee who was upset because "They put vote yes tags on her frame."

There is no corroboration of this general testimony that there was widespread conversation in the plant about threats, that a lot of threats or threatening telephone calls were received, that "several" employees talked about threatening telephone calls, or that the employees were "scared." I discredit this general testimony as a fabrication to support the Company's defense.

#### d Testimony by Johnny Smith

##### (1) Anonymous telephone call

The only witness who testified that he received an anonymous telephone call was employee Johnny Smith who, I note, testified that he "tried to talk people out of signing" for the Union. He testified that on the night

before the election, some unknown man called and "told me if I didn't vote for the Union he would whoop my a— So, I started asking him who it was and he hung up" He also testified that the next morning, before work, he told company witnesses Earl Ray Hemphill and James Henry Johnson, who likewise were antiunion campaigners, about the call Both Hemphill and Johnson corroborated this testimony that Smith reported the call to them Although I have found Hemphill and Johnson not to be trustworthy witnesses and have discredited much of their testimony, I credit Smith's testimony that he received the anonymous call and reported it to the two other antiunion campaigners There was nothing in Smith's demeanor when so testifying to cause me to doubt this part of his testimony

The evidence does not disclose who placed the call, or give any indication whether the call was placed by someone who somehow thought that the call could influence Smith's vote, or by someone wanting a basis for setting aside the election if the Union should win See *Bush Hog, Inc v NLRB*, 420 F2d 1266, 1269 (C A 5, 1969), referring to "third parties or one of the protagonists who doubted the election outcome anonymously creat[ing] incidents and then attempt[ing] to use them to set aside the election "

Regardless of the motive of the caller, I find that this anonymous call, to one antiunion campaigner and reported to two other antiunion campaigners, did not create an atmosphere of fear, *NLRB v Golden Age Beverage Co*, 415 F2d 26, 31-32 (C A 5, 1969), and did not tend "to interfere with a free and uncoerced choice by the employees," *Home Town Foods v NLRB*, 416 F2d 392, 400 (C A 5, 1969)

## (2) Purported overheard threat

On the other hand, I do not believe employee Smith's uncorroborated testimony about overhearing a white union advocate threatening a black employee with sugar in his gas tank Smith casually testified, without giving any further details, that in the plant about 2 weeks before the election he was "talking to this attendant, Hinton fellow, sweeping the floor," that union advocate "John Thomas walked up and when he did I turned and walked off and I heard John tell this fellow that if he didn't vote for the [Union] he *might* come up with sugar in his gas tank " (Emphasis supplied ) There is no evidence, or contention, that Smith verified what was said, or made any response, or reported the matter to the Company at the time Thus, insofar as this uncorroborated testimony is concerned, antiunion campaigner Smith overheard a white union supporter intimidating a black employee, without doing anything about it—until after the election Then, as revealed by the Company's response to the motion for summary judgment, Smith did not claim after the election that Thomas said that employee Hinton *might* come up with sugar in his gas tank, as Smith claimed at the trial In the response, the Company asserted proof that the overheard statement was, "If you don't vote for the Union, your car *will* come up with sugar in the gas tank " (Emphasis supplied )

Because of the casual manner in which Smith testified about this serious threat, the unlikelihood that he would

have so testified if he had in fact overheard a black employee being intimidated to vote for the Union and had done something about it, and the significant shift in the testimony (from "will" to "might"), I discredit Smith's uncorroborated testimony about the purported threat

## 2 Contentions and concluding findings

At the close of trial, the General Counsel moved for judgment on the pleadings, contending that the Company had not sustained its burden of proof that there was an atmosphere of fear surrounding the election In its closing arguments, the Company contended that "the conduct was of such an aggravated nature as to create an atmosphere so permeated with fear and reprisal that a free choice in the election was in fact rendered impossible " The Company argued that it should be kept in mind that the persons threatened with a union fine and sugar in the gas tank (referring to uncorroborated testimony which has been discredited) were black employees being threatened by white employees, and cited "the closeness of the vote" (123 for and 118 against union representation), and the "status of the perpetrators of the threats" as well-known union supporters and campaigners It then argued that the threats "were communicated to other employees throughout the plant," that the "wholesale threats and other misconduct can neither be called de minimis nor isolated," and that the "cumulative effect of these threats" must be considered

Nowhere does the Company explain why, if there were such wholesale threats which were communicated to employees throughout the plant, the Company relied solely on the testimony of the four antiunion campaigners—much of whose testimony, as discussed above, was shifting, conflicting, unreliable, and/or uncorroborated, and given in a summary fashion or without specifics—and failed to call a single less partisan or uncommitted employee, or others, to give direct testimony of the purported threats and communication or corroborating evidence There is no basis for assuming that other evidence, if presented, would have been more credible

In the absence of other evidence, I have carefully scrutinized and weighed the limited evidence presented I find that there is insufficient credible evidence to support the Company's contention that there was an atmosphere of fear surrounding the election, making a free choice of the employees impossible It "must be kept in mind that the burden is on the party objecting to the conduct of the representation election to prove that there has been prejudice to the fairness of the election " *NLRB v Golden Age Beverage Co*, 415 F2d 26, 30 (C A 5, 1969) I agree with the General Counsel that the Company has not sustained that burden

Accordingly, I reject the Company's defense that the Union's November 29, 1971, certification was invalid, and grant the General Counsel's motion for judgment on the pleadings, in view of the Company's admitted refusal on and since December 15, 1971, to honor the certification and bargain with the Union

## CONCLUSIONS OF LAW

1 There was not a general atmosphere of fear surrounding the September 23, 1970, election, interfering with a free and uncoerced choice by the employees

2 By refusing on and since December 15, 1971, to bargain with the Union as the validly certified exclusive representative of its employees in an appropriate unit of all production and maintenance employees including inspectors and packers, and the air-conditioning technician employed at its Aliceville, Alabama, plant, but excluding all office clerical employees, professional employees, guards and watchmen, and supervisors as defined in the Act, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act

## THE REMEDY

In order to effectuate the policies of the Act, I find it necessary that the Respondent be ordered to cease and desist from the unfair labor practices found and from like or related invasions of the employees' Section 7 rights, and to take certain affirmative action

A majority of the unit employees having voted for union representation on September 23, 1970, the Union's November 29, 1971, certification having been delayed for about a year because of the Respondent's discriminatory termination (as found by the Board in the earlier complaint case) of three employees who voted in the election, the Respondent having refused since December 15, 1971, to bargain with the Union, asserting that it was entitled to a hearing on its contention that the certification was invalid as a result of an atmosphere of fear and violence surrounding the election, and the Respondent, after having been granted a hearing, having failed to substantiate its contention with credible evidence, thus frustrating the employees' bargaining rights for a long period of time, I find it important that this case be expedited

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended <sup>1</sup>

## ORDER

Respondent, Aliceville Cotton Mill, Inc., its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Refusing to bargain collectively with United Textile Workers of America as the exclusive representative of its employees in an appropriate unit of all production and maintenance employees including inspectors and packers, and the air-conditioning technician employed at its Aliceville, Alabama plant, but excluding all office clerical employees, professional employees, guards and watchmen, and supervisors as defined in the Act

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

2 Take the following affirmative action necessary to effectuate the policies of the Act

(a) Upon request, bargain in good faith with the Union

as the exclusive representative of the employees in the above-described appropriate unit and embody in a signed agreement any understanding reached

(b) Post at its plant in Aliceville, Alabama, copies of the attached notice marked "Appendix"<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material

(c) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith

<sup>1</sup> In the event no exceptions are filed as provided by Sec 102.46 of the Rules and Regulations of the National Labor Relations Board the findings, conclusions and recommended Order herein shall as provided in Sec 102.48 of the Rules and Regulations, be adopted by the Board and become its findings conclusions and Order, and all objections shall be deemed waived for all purposes

<sup>2</sup> In the event that the Board's Order is enforced by a Judgment of the United States Court of Appeals the words in the notice reading 'Posted by Order of the National Labor Relations Board' shall be changed to read 'Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board'

## APPENDIX

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

The National Labor Relations Board having found, after trial, that we violated Federal law by refusing to bargain with the Union following its certification as the exclusive representative of our plant employees

WE WILL bargain upon request with United Textile Workers of America and put in writing and sign any bargaining agreement we reach covering these employees

All production and maintenance employees including inspectors and packers, and the air-conditioning technician employed at our Aliceville, Alabama plant, but excluding all office clerical employees, professional employees, guards and watchmen, and supervisors as defined in the Act

ALICEVILLE COTTON MILL,  
INC  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

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

ing this notice or compliance with its provisions may be  
directed to the Board's Office, Room 701 Peachtree

Building, 730 Peachtree Street, N E, Atlanta, Georgia  
30308, Telephone 404-526-5760