

American Electro Finishing Company, Inc. and Metal Polishers, Buffers, Platers & Helpers International Union Local No. 128. Cases 20-CA-8424, 20-CA-8493, and 20-RC-11369

July 30, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND PENELLO

On February 26, 1974, Administrative Law Judge E. Don Wilson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its 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,¹ and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The facts, as more fully set forth in the Administrative Law Judge's Decision, are briefly as follows:

Respondent is a California corporation engaged in the business of metal plating and anodizing. In late March or early April 1973,² as a result of discussions concerning working conditions in Respondent's plant, the employees decided to contact the Metal Polishers, Buffers, Platers & Helpers International Union Local No. 128, hereinafter call the Union. Thereafter, on April 16, employee Thomas Adler spoke to the Union's business agent, Ray Figueroa, about organizing Respondent's employees and Figueroa agreed to meet with the employees.

On or about April 19, employee Jim Downing told Respondent's president, Floyd Robbins, that he had heard some talk about a union. Robbins replied that he could not afford union wages and would close

down if the shop went union. Thereafter, on April 23, 6 of the 10 production and maintenance employees were given substantial, unscheduled, and unannounced wage increases.

On April 24, 5 of Respondent's 10 production and maintenance employees met with Figueroa and were given authorization cards to sign and to distribute among the remaining employees at the plant. By April 29, 9 of the 10 employees in the appropriate unit had signed the cards and returned them to Figueroa.

On April 30, Figueroa, accompanied by the Union's secretary-treasurer, went to Respondent's plant and spoke to Floyd Robbins. According to the credited testimony of Figueroa, he told Robbins that the Union represented a majority of the production and maintenance employees and that he wanted to negotiate a collective-bargaining agreement covering the employees in the unit. Robbins said he would "never go union" and that "if he had to join the union he would close down his plant." When Robbins asked to see the authorization cards, Figueroa exhibited the stack of cards but refused to show him any individual cards. Figueroa did not offer to have an impartial third party examine the cards.

Later that day Figueroa told Adler that the employees should picket rather than report to work the next day in order to obtain recognition for the Union and Adler so advised the other employees.

Accordingly, on May 1, 9 of the 10 unit employees went on strike. The strike lasted until approximately May 10, when most of the employees returned to work. Along with several other employees, Adler first made an unconditional offer to return to work on May 9. As detailed in the Administrative Law Judge's Decision, Adler, despite his repeated unconditional offers to return, was not reinstated until October 2.

On July 27, a representation election was held; of the nine voters who participated, two voted for, and five against, the Union. There were two challenged ballots which were insufficient in number to affect the election results. The Union filed timely objections to conduct affecting the results of the election, which are discussed *infra*.

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

The Administrative Law Judge found and, for reasons stated by him, we agree that Respondent committed extensive violations of Section 8(a)(1) by the conduct of its president, Floyd Robbins, and its vice president, Lucille Robbins. This conduct included, *inter alia* repeated threats to close the plant if the employees selected the Union to represent them, threats to discharge striking employees, and the granting of unannounced and unscheduled pay raises to a

¹ 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 are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent has further excepted to the Administrative Law Judge's Decision on the grounds, *inter alia*, that the Administrative Law Judge was biased against Respondent, as shown by his questions of witnesses in the course of the hearing. We find nothing in the record that suggests that the Administrative Law Judge was doing anything other than attempting to inquire fully into the facts. *Grove Manufacturing Company*, 196 NLRB 280 (1972). See Sec 102.35, Board Rules and Regulations, and 5 U.S.C. § 556 (d). Accordingly, we find Respondent's assertion of bias without merit.

² All dates herein are in 1973, unless otherwise indicated.

substantial number of unit employees, all in an effort to dissuade them from joining or assisting the Union.

2. The alleged violation of Section 8(a)(3)

The Administrative Law Judge found that Respondent violated Section 8(a)(3) of the Act by refusing to reinstate employee Thomas Adler upon his unconditional offer to abandon the strike and return to work on May 9. He based this conclusions on his finding that Adler was an unfair labor practice striker, and, as such, was entitled to immediate reinstatement upon his unconditional offer to return to work.

While we agree that Respondent violated Section 8(a)(3) of the Act by refusing to reinstate Adler until October 2, we do so on other grounds and, hence, find it unnecessary in the circumstances to determine whether Adler was an unfair labor practice striker. The record establishes, and we find, that Adler was denied prompt reinstatement at the end of the strike solely because of his leadership role in union activities. Thus, the record shows that, on at least one occasion during the strike, Robbins told striking employees that he would not allow Adler to return to work because he was in the forefront of union activities. On two other occasions, Robbins told employees he did not want some of the employees—notably the union activists of which Adler was one—back because they were “troublemakers.” On the basis of these facts, we find that Respondent refused to reinstate Adler until October 2 in reprisal for his activities on behalf of the Union. By such conduct Respondent violated Section 8(a)(3) of the Act. Accordingly, we shall adopt the Administrative Law Judge’s recommendation that Respondent be ordered to make Adler whole for any loss of pay and benefits he may have suffered by reason of Respondent’s unlawful discrimination against him.

3. The alleged violation of Section 8(a)(5)

The Administrative Law Judge found that Respondent violated Section 8(a)(5) of the Act by refusing to recognize and bargain with the Union at all times since April 30, when the Union demanded such bargaining and asserted its majority status on the basis of authorization cards signed by a majority of Respondent’s employees in an appropriate unit. He apparently based his conclusion on the fact that Respondent’s refusal was not grounded on a good-faith doubt of majority. For he found that, even if Respondent entertained a good-faith doubt of the Union’s majority status on April 30, it certainly could not claim such doubt on May 1, when 9 of Respondent’s 10 employees went on strike to obtain

recognition of the Union.

The defect in the Administrative Law Judge’s conclusion as to the 8(a)(5) violation is that it rests on an inquiry into Respondent’s subjective reasons for refusing to extend recognition on the basis of authorization cards. An employer’s good-faith doubt of a union’s claim to majority status is “largely irrelevant” to the determination of whether an employer has violated Section 8(a)(5) by refusing to extend recognition on the basis of a showing of card majority.³ Further, since the crucial issue in cases such as this is whether a bargaining order should be granted as a remedy of an employer’s unfair labor practices, we have concluded, for the reasons stated in our decision in *Steel-Fab, Inc.*, 212 NLRB No. 25 (1974), that it is unnecessary to determine whether Section 8(a)(5) has been violated. Accordingly, we shall dismiss the 8(a)(5) allegation of the complaint.

Insofar as the issue of the appropriate remedy for Respondent’s violations of Section 8(a)(1) and (3) is concerned, we agree with the Administrative Law Judge that a bargaining order is necessary here to remedy these unfair labor practices. It is utterly improbable that a fair election could have been held, or that such an election can be held in the foreseeable future where, as here, Respondent has threatened the entire employee complement with plant closure if the employees select the Union as their bargaining representative, has threatened to discharge the striking employees and not to rehire the leaders of the union movement, has promised and granted wage increases to employees to induce them to abandon the Union, and has refused to reinstate the leading union advocate because of his union activities. This course of conduct would, over time, convey to the employees the belief that further support of the Union would be a futility. In such circumstances, the authorization cards executed on behalf of the Union are the more reliable indicator of the employees’ desire to representation.⁴

4. The objections to the election of July 27

The Union’s objections to the election held in Case 20-RC-11369 alleged that (1) Doug Robbins, son of Floyd Robbins and acting manager of Respondent, told employees the week before the election that Respondent would shut down if employees voted for the Union, and (2) employee Tony Anderson was hired and paid on a commission basis as an inducement to

³ *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575, 594 (1969).

⁴ The parties stipulated at the hearing as to the authenticity of the nine signed authorization cards. It is not contended, and no evidence was introduced to show, that these cards did not represent the free and uncoerced expression of employees’ desires.

vote against the Union.

The Regional Director for Region 20, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, caused an investigation of the objections to be made and issued his Report on Objections, Order Consolidating Cases, and Notice of Hearing on September 12, 1973. In his report, the Regional Director recommended that Objection 1 be overruled. He further found that Objection 2, along with the allegations of violations of Section 8(a)(1) and (3) of the Act found *supra*, raised material and substantial issues of fact with respect to the election held in Case 20-RC-11369 which should be resolved by a hearing. By order dated October 2, 1973, the Board adopted the Regional Director's recommendations and ordered that the issues raised with respect to Objection 2 and "Other Acts and Conduct" be processed pursuant to his Order Consolidating Cases and Notice of Hearing. At the hearing, no evidence was adduced with respect to Objection 2 and the Administrative Law Judge inadvertently failed to discuss the objections in his Decision.

Although not specifically alleged in the objections, we find, in agreement with the Administrative Law Judge, that Respondent's violations of Section 8(a)(1) and (3), which occurred after the filing of the representation petition on May 3 and before the election date of July 27, require that the election be set aside.⁵ We further find that a fair and free election cannot be conducted in the foreseeable future because Respondent by its conduct has rendered impossible the laboratory conditions which must surround a Board-conducted election. We shall, therefore, set aside the election and, as discussed above, issue a bargaining order to remedy the unfair labor practices committed by Respondent in violation of Section 8(a)(3) and (1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, American Electro Finishing Company, Inc., Oakland, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against any of its employees because of their support for or assistance to a union or because they engage in any concerted activities protected by the Act.

(b) In any other manner interfering with, restraining, or coercing any employee in his right to join, assist, or support the Union or any other labor organization, or engage in any activity protected by the Act, or to refrain from doing so.

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

(a) Make Adler whole for any loss of earnings he may have suffered by reason of Respondent's unlawful discrimination against him in the manner set forth in the "Remedy" section of the Administrative Law Judge's Decision.

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

(c) Upon request, bargain collectively in good faith respecting wages, hours, and working conditions of its employees, with the Union as the collective-bargaining representative of all its employees in the appropriate bargaining unit.

(d) Post at its Oakland, California, facility copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS HEREBY FURTHER ORDERED that the election held on July 27, 1973, in Case 20-RC-11369 be, and it hereby is, set aside.

MEMBER FANNING, dissenting:

For the reasons set forth in my dissent in *Steel-Fab, supra*, I find no defects in the reasoning of the Administrative Law Judge and would affirm his findings in their entirety.

⁵ *Domino of California, Inc.*, 205 NLRB 1083 (1973), *Pure Chem Corporation*, 192 NLRB 681 (1971)

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall 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

WE WILL NOT in any way or manner or form discriminate against any of our employees because of their support for or assistance to Metal Polishers, Buffers, Platers & Helpers International Union Local No. 128, or any other labor organization, or because they engage in any union activities or any other activities protected by the National Labor Relations Act.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce any of our employees in their rights to join, assist, or support the above-named Union, or any other labor organization, or to engage in any other activity protected by the Act, or to refrain from so doing.

WE WILL make Tom Adler whole for any loss of earnings he may have suffered by reason of our unlawful discrimination against him in that we unlawfully refused to reinstate him pursuant to his unconditional offer to abandon the strike and return to work for us.

WE WILL bargain collectively, upon request, in good faith, with respect to the wages, hours, and working conditions of our production and maintenance employees with the above-named Union, and, if an agreement is reached, we will, on request, reduce it to writing and sign it.

AMERICAN ELECTRO FINISHING COMPANY, INC
(Employer)

Dated _____ By _____
(Representative) (Title)

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

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

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415-556-3197.

DECISION

STATEMENT OF THE CASE

E. DON WILSON, Administrative Law Judge: Based on objections filed August 3, 1973, and charges filed July 12 and August 8, 1973, by Metal Polishers, Buffers, Platers & Helpers International Union Local No. 128, herein the Union, the Regional Director for Region 20 of the National Labor Relations Board, herein the Board, issued a report on objections, and on behalf of the General Counsel of the Board, an order consolidating cases and a notice of hearing on September 12, 1973. A consolidated complaint alleged American Electro Finishing Company, Inc., herein Respondent, committed various violations of the National Labor Relations Act, as amended, herein the Act. Respondent timely denied it had violated the Act in any manner.

Pursuant to due notice, a hearing in this matter was held before me in San Francisco, California, on December 3 and 4, 1973. The parties fully participated. General Counsel and Respondent filed briefs on January 11, 1974. They have been fully considered.

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

FINDINGS OF FACT

I RESPONDENT'S BUSINESS

Respondent is a California corporation engaged in the business of metal plating and anodizing in Oakland, California. In the past year, it provided services valued in excess of \$50,00 to companies in California, each of which met a direct standard of the Board for the assertion of jurisdiction. At all material times, Respondent has been an employer engaged in commerce within the meaning of the Act.

II THE LABOR ORGANIZATION

At all material times, the Union has been a labor organization within the meaning of the Act.

III THE UNFAIR LABOR PRACTICES ¹A. *The Issues* ²

There is no issue as to the appropriate unit which the parties agree includes all Respondent's production and

¹ Thomas C. Adler, Ray Figueroa, James Philip Downing, and Sheldon J. Schoenfeld testified for the General Counsel. I found their testimony to be forthright and honest and their testimonies as a whole were mutually consistent. The testimony of Schoenfeld was not as clear, concise, and delineative as might have been most desirable, but having closely studied it, particularly in light of the testimonies of other witnesses for General Counsel, I credit it, and note that I am aware one witness may not be as persuasive as another, considered alone, but is much more persuasive where his testimony gains support from that of others and is not in any way shown to be false. Their respective demeanors impressed me favorably. The testimony of Respondent's sole witness, Floyd Louie Robbins, shall later be considered in some detail. Noteworthy is that with no explanation Mrs. Robbins did not testify. Thus, statements attributed to her are not contradicted. Unfortunately, for Respondent, as my findings based on the credited testimony reveal, Respondent had no credible defense whatsoever. I reject Mr. Robbin's testimony as incredible especially in light of his demeanor.

² The correct name of Respondent's president is Floyd Louie Robbins. His wife's first name is Lucille.

maintenance employees at its Oakland plant. There are, among others, issues as to whether:

1. The Union at all times since the latter part of April 1973³ represented a majority of Respondent's employees in an appropriate unit

2. The Union has requested Respondent to bargain with it as such employees' representative since about April 30 and has Respondent unlawfully refused so to do

3. The employees of Respondent in the above unit did engage in an unfair labor practice strike from about May 1 until about May 9; since about April 16, Respondent, through its agents, has violated its employees' rights as guaranteed by Section 7 of the Act, by a variety of acts of unlawful interference, restraint, and coercion.

4. On various dates between May 5 and August 2, Respondent did unlawfully bargain directly with employees about hours of work, wages, and other terms and conditions of employment.

5. The aforementioned strike was caused and prolonged by Respondent's unfair labor practices.

6. On or about May 9, Respondent's employees, and particularly Tom Adler, did unconditionally ask Respondent to reinstate them and was such reinstatement unlawfully refused.

7. Assuming Respondent engaged in some or all of the activities mentioned above, Respondent, as an appropriate remedy, should be ordered to bargain with the Union as the representative of the employees in the above-mentioned appropriate unit.

8. The Union's objections to the election are valid and should they be sustained.

B. *The Facts*

Late in March or early in April, Thomas Adler and most of the employees in the appropriate unit⁴ discussed working conditions as employees of Respondent, the conversations occurring in Respondent's plant. Adler volunteered to get in touch with the Union. On April 16, Adler spoke on the phone to Ray Figueroa, a business agent of the Union. Adler stated a majority of the employees wanted the Union to represent them. Figueroa agreed to meet with the employees

About April 19 or 20 about 3 p.m., employee Jim Downing and Floyd Robbins spoke to each other at the Respondent's receiving desk. Downing said he had heard some of the "guys" were trying to get a union together. Robbins replied he would close down if the shop went union—he couldn't afford union wages and his weekly payroll for tax purposes could not exceed \$2,000. Robbins added that employee Dan Hoover had told him that employee Tom Adler and Malcolm Merkent were trying to get the Union in.⁵

In evidence as General Counsel's Exhibit 10 is a listing of various wages. On April 23, 6 employees out of 10 received substantial raises. Of these, one, Merkent, had received a

raise but 2 months earlier. Thomas received a raise on that date having been hired about 3 months earlier. Adler received his first raise after being hired some 6 months earlier. Ferling received a \$.50 raise about 1 month after his hire. Schoenfeld received a \$.75 an hour raise about 1 month after he had been cut \$ 25 per hour.⁶ Ballard received a \$.50 per hour raise 1 month after he had gotten another 50-cents-per-hour raise. There were 10 employees in the unit and 6 of them got previously unpromised, unannounced, and inexplicable raises. This was in the very midst of union activities

On the next day, April 24, 5 employees met with Figueroa at a bar.⁷ The latter told them he would have to get a majority of the employees to sign cards and then he would seek recognition by Respondent and if such were unsuccessful he would probably want the employees to picket to obtain recognition. Also mentioned was the possibility of having a Board election. Each of the 5 employees signed a card and Merkent was given extra cards to be signed by absent employees. Nine out of ten employees in the appropriate unit signed authorization cards for the Union by April 29

On April 30, Figueroa and Bob Morales, the Union's secretary-treasurer, spoke to Robbins at the latter's desk. They identified themselves as representatives of a majority of Robbins' employees and said they wanted to negotiate a collective-bargaining contract. Robbins said he would never go union and as he had said before and would say again, he would close the doors before his plant would go union. Robbins asked to see the authorization cards but Figueroa showed to him only the stack of and not the individually signed cards, because of Robbins' obvious antiunion attitude

Later that day, Figueroa told Adler to tell the employees to picket rather than report to work the next day. Adler so advised the employees.

Employees Dale Thomas and Jim Downing arrived at the plant at 7.30 in the morning of May 1. Figueroa showed up and told them they should picket rather than go to work. Downing stayed to advise other employees to that effect while Thomas and Figueroa went to have some coffee. Not long after 8 a.m. as the employees were gathered across the street from the plant, not working, Robbins appeared and shouted across to them, "All right, who wants to get fired?" There was no reply. After starting to enter the plant, Robbins addressed himself to Downing and told him he should "think twice about it."⁸

I credit the undenied testimony of Schoenfeld that on May 1 Lucille Robbins, Respondent's vice president, stood by the plant door and asked pickets why they had to bother trying to bring the Union in, adding that, if they wanted to work in a union shop, they should just go to one

A few days later while Downing was in his car across the street from the plant, Robbins came to him and asked him to come back to work saying Downing had been in Robbins' employ too long to throw it away. He added that he didn't want the other employees back because they were "trouble-

³ Hereinafter, all dates, unless otherwise stated, refer to 1973

⁴ About 10 employees

⁵ This was, of course, a "small shop"

⁶ In no way do I credit Robbins' reason for the cut

⁷ The employees were Adler, Rios, Brindley, Downing, and Merkent

⁸ None of Robbins' denials is credited by me

makers." He again said he'd close the plant if it went union and if employees wanted a union they should find other jobs because he would not permit them back in the plant. Downing replied that he'd think about it.⁹

Also, around May 4, while Ballard and Downing were picketing near the plant, Lucille Robbins told them she did not want them back and they could work for a union shop if they wished, but Respondent would shut down the shop before it would "go union." On the same day, but later, Robbins spoke to Downing and Ballard, in the latter's car, across from the plant. Robbins told them he wanted *them* to return to work but not the other employees particularly Adler and Merkent,¹⁰ since they were in the forefront of union activities. Robbins indicated to Ballard and Downing that they would receive raises should they return to work. They said they would think over Robbins' offer.

Not long later about May 8 in the late afternoon, Robbins again offered raises to Ballard and Downing, saying he would pay them for wages they had lost *that* week should they return to work on the next morning. Downing asked about the other "strikers" and Robbins replied, in effect, that he did not want those "troublemakers" back and he would not go through it again. He repeated he'd close down the plant before he would have a union.

On May 9 about 1 p.m., Mrs. Robbins came out of the office and told Downing that Mr. Robbins wanted to speak to him on the phone. Downing went to the phone in the plant. Robbins told him that, if he did not then return to work, Robbins had a permanent replacement for Downing. That was enough for Downing. He returned to work. After Downing was through work on May 9, he crossed the street to speak to Adler, Bob Brinkley, and Ballard and told them he thought they should apply for their jobs. They and Downing returned to the plant at that time. Robbins told Brinkley somebody else was already doing his job and they'd have to see how he worked out and if he didn't, Brinkley would get a call. Adler was told Robbins would call him the following day if Adler's foreman, Starkey, wanted him back. Ballard was told he could return to work.

On May 10, a new employee was hired in the anodizing department.¹¹

Adler called Robbins on May 11 as Robbins had instructed. Robbins told him to call again early the following week. On May 14, Adler phoned and spoke to Lucille Robbins asking for his job. Mrs. Robbins told him new people were doing fine and they did not need him. Adler replied he'd work for Respondent, at any time, and asked her to consider him for any opening. He told her Respondent could reach him at the phone number Respondent had for him.

On July 24, Adler received General Counsel's Exhibit 5 from Respondent allegedly "confirming" earlier offers to reinstate him.¹² It continued saying Respondent's doors had

always been open for him to return as jobs became available but Respondent could *not* offer him a job without his current address and a statement from him that he wanted a job when one became available. He was asked to advise Respondent if he had another job and did not seek reemployment. His prompt response was solicited.

Almost immediately, Adler replied by certified mail providing all information requested.¹³ His letter was returned, marked "Refused."

A N.L.R.B. election was held on July 27. The Union received two votes. Respondent received five and two votes were challenged.¹⁴

After the election, Adler spoke to Douglas Robbins, Floyd's son, at the plant about 4 p.m. Adler was told his earlier letter had been "refused" because it had been addressed to Mr. Robbins rather than the Respondent. Adler sent an identical letter to Respondent by "certified mail," but this also, within a few days, was returned to Adler, marked "Refused."

It was not until late September that Adler received from Respondent a letter stating there was a position open in the anodizing department at \$3.75 per hour. He was directed to reply by "certified mail" should he be interested. Adler followed instructions and finally Respondent permitted him to return to his job on October 2.

As noted above, I have credited the testimony of General Counsel's witnesses and note that in a number of respects it was supported by documentary evidence, in some respects undenied, and in almost every aspect the testimony of each witness found corroborative support in the testimony of at least another witness. Each of these witnesses impressed me as determined to state the facts truthfully as he remembered them. The testimony of Robbins was vague, uncertain and in many instances self-contradictory. He did not appear to me as a witness who had a genuine concern for the truth or falsity of his testimony. With respect to wage increases, he testified that those for the six on April 23 were the consequence of an extraordinary profit. He later testified Ballard and Downing got their increases because they had threatened to "quit" if they did not get the raises. Ballard had received a 50-cents-per-hour raise on April 13, and I am supposed to, but do not, believe that he threatened to quit his job unless he got a similar raise only 10 days later. Robbins testified Schoenfeld's record was so bad that his wages had been cut and his record was so bad "with absences and so forth" that he would not have pressed for a raise. Yet Robbins gave him a 75-cents-per-hour raise on April 23.¹⁵ He ended up by swearing he gave a very poor employee¹⁶ a 75-cents-an-hour raise on April 23, because he, Robbins, "felt awful good that day." He then said the raises of April 23 were given to "all *new* employees." He then, unsuccessfully, tried to duck out of that answer when confronted with facts as prepared by him. I no doubt have unduly expanded on this bit of his testimony. But I find that aside

⁹ Downing was an employee of Respondent when he testified

¹⁰ Adler had been most active in starting the Union and Merkent had been most active in obtaining signatures to union cards

¹¹ Adler had been a "racker" in the anodizing department. As I understand Robbins' testimony, James Flint was hired to do racking in the anodizing department. About the same time, Robbins hired Valenquela and Markham to take Adler's place. Robbins, however, testified Valenquela was to report on May 10, "as a chrome helper"

¹² There had been none.

¹³ G C Exh. 6.

¹⁴ The Union had nine freely signed authorization cards by April 30

¹⁵ To read his testimony at pp. 201-203 is to react most adversely to his testimony. I, of course, observed him while he was testifying and was most adversely affected by his demeanor.

¹⁶ Schoenfeld.

from his incredible denials of credited testimony that which I have just discussed at some length is typical of his testimony as a whole.

Concluding Findings With Respect to Allegations of the Complaint

I need not again go through each fact. It is enough that I conclude that, beginning April 20 when Robbins spoke to Downing, Respondent interfered with, coerced, and restrained its employees in their union activities. This was a "small shop" and I have not the slightest doubt that this virulently antiunion employer knew by at least April 30 that the Union represented a majority of its employees when it was refusing to recognize the Union as majority representative. It certainly had such knowledge on May 1 when 9 of its 10 employees were to Robbins' knowledge on strike to obtain recognition of the Union.¹⁷ Robbins, on this date emphasizing his utter disregard of his employees' statutory rights, threatened them with discharge for striking. Strikers were repeatedly told to seek work in a union shop if they wanted a union. Before and during the strike employees were told by Respondent it would shut down rather than have a union in the plant. During the strike, particular strikers were named as not being eligible for reemployment because they were "troublemakers," or had engaged in one or another form of protected union activity. Respondent engaged in a multitude of illegal activities designed only to impress its employees with the futility of seeking union representation.

Shortly after union activity began, Respondent granted substantial wage increases to a majority of its employees. Robbins' false testimony as to why these raises were given emphasizes that they were intended as the well-known carrot. I do not forget that on May 8 Downing and Ballard were offered backpay and wage increases to abandon what I find was an unfair labor practice strike and return to work then and there.

Since April 30, Respondent has unlawfully refused to recognize and bargain with the Union. In addition to its numerous violations of Section 8(a)(1) of the Act, as found above, such unlawful refusal to recognize and bargain violated Section 8(a)(5) and (1) of the Act.

Respondent violated Section 8(a)(1) of the Act by promising employees wage increases in order to induce them to cease protected union activities and by threatening them with discharge for the same reason.

While offering reinstatement to some unfair labor practice strikers in order to induce them to abandon the strike, they were told other strikers would not be reinstated because of their protected union activities. Similar other threats were repeatedly made by Robbins in violation of Section 8(a)(1) of the Act.

I have found above that Respondent granted wage increases on April 23. The record makes clear that such increases were granted as an inducement to employees to desist from protected union activities. Thereafter, other wage increases were granted for similar reasons. Robbins

made excellent use of the carrot, the stick, and the club.

Respondent, beginning after May 1 and continuing at least through August 2, ignored the employees' collective-bargaining representative and dealt directly with its employees concerning wages, hours, and other conditions of employment.

Respondent's explanations for its refusals to accept communications from Adler after the strike and before his reinstatement are spurious and were designed only to conceal the truth. Respondent, in this instance, as well as others, has unsuccessfully attempted to play games with the Board. Adler was unlawfully, at least from May 9, refused reinstatement, because he was an unfair labor practice striker.¹⁸ He, much later,¹⁹ was reinstated.

The totality of Respondent's unfair labor practices prior to the election makes it clear that no fair and unbiased and free election could have been had and the election manifestly should be set aside as permeated not with desirable freedom but rather with Respondent's invidious illegal activities such as to negate any freedom of choice by the employees in the election.

The widespread, overwhelming, and destructive nature of Respondent's unfair labor practices as hereinabove found make manifest that there is not and cannot in the foreseeable future be a climate where Respondent's employees can, without dire fear of Respondent, vote their free and honest desires as to union representation. There can be no effective remedy here which does not require Respondent to bargain in good faith with the Union which 9 out of 10 employees had freely selected by authorization cards until Respondent entered upon its most virulent and successfully destructive antiunion campaign.

It has been proven by the credible evidence that Respondent refused to reemploy Adler because he *began* "the union thing." Without question, unfair labor practice striker Adler unconditionally offered to return to work at least on or about May 9. His offer was refused, I find, because Respondent considered him the leader in the so despised union activity. Not only as of May 9 but continuing until his eventual reinstatement,²⁰ Adler proclaimed himself as ready to work for Respondent with no conditions but he was unlawfully refused reemployment.²¹ Mrs. Robbins' letter of about July 24 is found by me not only to have been self-serving but also to have been a mere "sham." The "games" played with Adler concerning his letters to Respondent are too obvious to require delineation or explication. Robbins' inconsistent, vague, and contrived testimony as to replacement(s) for Adler is rejected for being what it was. Robbins simply did not want Adler back in his employ because Adler started the union "thing" and Robbins simply would not reinstate Adler because he was a foremost union advocate. Respondent's violation of Section 8(a)(3) and (1) of the Act as to Adler is most clear to me.

The Board election herein should be set aside because

¹⁸ I do not consider Brindly because General Counsel successfully moved to amend the complaint so as to eliminate him from consideration

¹⁹ October 5

²⁰ October 2

²¹ This would be true *even if* he had been an economic striker. There is no probative evidence he was permanently replaced as of May 9

¹⁷ Which Robbins continued to refuse

Respondent so contaminated the atmosphere that the employees could not freely express their wishes in the election. I have already found that Respondent so polluted the free atmosphere which must surround a Board election that such contamination cannot be eliminated by traditional remedies. The Union had more than a majority of employees freely signed up by April 30. A fair and free election cannot be held in the foreseeable future. The wishes of the employees as expressed in their signed authorization cards are the only means left for determining their honest and free desires as to union representation. Respondent must be ordered to bargain with the Union if there is to be any effective remedy, herein, since the possibility of a "fair election" on this record significantly is less than "slight."²² Respondent has destroyed completely the reliability ordinarily to be attached to a Board election. It has made it most unlikely its employees can express their choice as to union representation with freedom from fear that they will incur Respondent's dire wrath and they will be in fear of Respondent's next antiunion move.

All production and maintenance employees of Respondent at its Oakland, California, facility, excluding all office clerical employees, guards and supervisors as defined in the Act constitute an appropriate unit for collective bargaining.

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

Having found Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action

²² N. B. This is a very small unit.

designed to effectuate the policies of the Act.

Having found that at least as of May 9 until on or about October 2, Respondent refused to reinstate Adler pursuant to his unconditional request for reinstatement because of his union and other protected concerted activities, I shall recommend that Respondent make Adler whole for any loss of pay he may have suffered by reason of Respondent's illegal discrimination against him in violation of Section 8(a)(3) and (1) of the Act, in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest on backpay computed in the manner described in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

I shall further recommend an order that Respondent bargain with the Union, upon request, with respect to the hours of employment, wages, and other working conditions of all Respondent's employees, included in the above-described appropriate bargaining unit.

Upon the basis of 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 the Act.
 2. The Union is a labor organization within the meaning of the Act.
 3. By refusing to reinstate Adler from on or about May 9 until on or about October 2, because of his union and other protected concerted activities, Respondent has violated Section 8(a)(3) and (1) of the Act.
 4. By threatening to close the plant rather than deal with the Union as bargaining representative, by granting wage increases for the purpose of discouraging union activities, by threatening unfair labor practice strikers with discharge, and by many similar and other numerous activities, Respondent has interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act.
 5. By refusing since April 30 to bargain with the Union pursuant to its request, Respondent has violated Section 8(a)(5) and (1) of the Act.
 6. The aforesaid unfair labor practices affect commerce within the meaning of the Act.
- [Recommended Order omitted from publication.]