

Alvin Metals Company and Miscellaneous Warehousemen, Drivers & Helpers, Local No. 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Cases 31-CA-3960, 31-CA-4080, and 31-RC-2552

July 31, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND PENELLO

On April 5, 1974, Administrative Law Judge Herman Corenman 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 as modified herein.

The Administrative Law Judge found and, for reasons stated by him, we agree that Respondent committed extensive and serious violations of Section 8(a)(1) by the conduct of its president, David Zeidenfeld. This conduct included, *inter alia*, threats made to assembled unit employees to close the plant if the Union came in; threats to discharge employees if they continued to push the Union; promises to grant a 50-cent-per-hour wage increase to all employees and to provide additional benefits to employees, including enrollment in the Kaiser Health Plan at company expense; and the granting of wage increases and health benefits.² In light of the flagrancy of the unfair labor practices committed during the critical preelection period, the Administrative Law Judge found that the election should be set aside. The Administrative Law Judge further found that these unfair labor prac-

tices so impaired the employees' freedom of choice as to make the holding of a second free and fair election highly unlikely or impossible and recommended issuance of a bargaining order to remedy this situation.

The Administrative Law Judge also found that Respondent violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union as the representative of its employees on and after August 29, 1973, when the Union had signed authorization cards from a majority of Respondent's employees in the appropriate unit. Because the issue in this case is whether a bargaining order should be granted as a remedy for Respondent's extensive unfair labor practices as discussed below, we have concluded, for 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 also been violated. Accordingly, we dismiss the 8(a)(5) allegations of the complaint.³

Insofar as the issue of the appropriate remedy for Respondent's violations of Section 8(a)(1) is concerned, we agree with the Administrative Law Judge that a bargaining order is necessary here to remedy these unfair labor practices. The probability of a fair election being held in the future, is negligible where, as here, Respondent has threatened the entire employee complement with discharge and plant closure if the Union comes in, and has promised and granted wage increases and additional benefits to induce employees to abandon the Union. The lingering effects of a combination of increases already granted and a serious and fully disseminated threat to close the plant cannot be doubted, and in the face of such an obvious disposition on the part of Respondent to totally disregard the strictures of our law, a free election cannot be held. In situations such as this, where it has been established that a union's majority has been dissipated by the employer's egregious unfair labor practices, a bargaining order is clearly the only appropriate remedy. We shall, therefore, set aside the election and issue a bargaining order to remedy Respondent's violations of Section 8(a)(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, Alvin Metals Co., Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Threatening to discharge employees or close

³ Member Fanning, in accord with the dissent in *Steel-Fab, supra*, would affirm the findings of the Administrative Law Judge with respect to the 8(a)(5) violations. Hence, he would have adopted, *in toto*, the rulings, findings, conclusions, and recommended Order of the Administrative Law Judge.

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

² Chairman Miller is in agreement with the Administrative Law Judge's finding that Respondent conceived and implemented the wage increase and health benefit program during the critical preelection period in violation of Sec 8(a)(1) of the Act. He does not, however, adopt the Administrative Law Judge's alternative finding that even if the plan had been legitimately conceived prior to the filing of the petition, implementation during the critical period would nevertheless have been unlawful. See Chairman Miller's dissent in *Tommy's Spanish Foods, Inc.*, 187 NLRB 235, 237-38 (1970).

down the plant for the purpose of discouraging employees from engaging in their rights guaranteed in Section 7 of the Act.

(b) Promising and granting wage increases and other fringe benefits to employees to discourage them from selecting the Union as their collective-bargaining representative.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, 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 other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent permitted by the proviso to Section 8(a)(3) of the Act.

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

(a) Post at its place of business in Los Angeles, California, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by the Company's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(b) Bargain with the Union on request as the exclusive collective-bargaining representative of its employees in the unit described below with respect to wages, hours of employment, or other terms and conditions of employment, and, if agreement is reached, reduce it to writing and sign it. The appropriate unit is:

All production and maintenance employees employed by the Respondent at its 5869 Rodeo Road, Los Angeles, California location, including shipping and receiving employees, warehousemen and truck drivers, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

(d) Nothing contained in this Order shall be construed to require the Respondent to withdraw bene-

fits previously granted.

IT IS FURTHER ORDERED that the October 29, 1973, election be, and it hereby is, set aside and that the petition in Case 31-RC-2552 be, and it hereby is, dismissed.

⁴ 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

The National Labor Relations Act gives all employees these rights:

To engage in self-organization

To form, join or help unions

To bargain collectively through a representative of their own choosing

To act together for collective bargaining or other mutual aid or protection; and

To refrain from any or all these things.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT threaten to discharge our employees or close the plant, or grant increased wages or fringe benefits for the purpose of discouraging our employees from engaging in union activity or selecting Miscellaneous Warehousemen, Drivers & Helpers, Local No. 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization, as the exclusive representative of the unit of employees found appropriate. The unit is:

All production and maintenance employees employed by us at our 5869 Rodeo Road, Los Angeles, California location, including shipping and receiving employees, warehousemen and truck drivers, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL bargain in good faith with the above-named union on request, and, if agreement is reached, reduce it to writing and sign it.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the

exercise of their right to self-organization, or to join or assist the Union, or any other labor organization, or to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

ALVIN METALS Co.
(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, Federal Building Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213-824-7351.

DECISION

STATEMENT OF THE CASE

HERMAN CORENMAN, Administrative Law Judge: A hearing in this consolidated proceeding was held at Los Angeles, California, on February 5, 1974. Charges were filed in Case 31-CA-3960 on September 5, 1973, and Case 31-CA-4080 on November 2, 1973, by Miscellaneous Warehousemen, Drivers & Helpers, Local No. 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, and a complaint issued December 20, 1973, against Alvin Metals Co., herein called Respondent or Employer. In Case 31-RC-2552, pursuant to a petition filed on August 30, 1973, and a stipulation for certification upon consent election, thereafter executed by the Union and the Employer, an election by secret ballot was conducted under the direction and supervision of the Board's Regional Director for the Region 31 on October 29, 1973. The Union filed timely objections to the election. The Regional Director directed a hearing on the Union's Objections 1, 2, and 3 to conduct affecting the election results and the Union's challenge to the ballot of Carl Johnson.¹ The issues presented in the resultant combined proceeding are whether the Respondent violated Section 8(a)(1) and (5) of the Act, and whether it improperly interfered with the election, so as to require that it be set aside. Briefs filed by the

¹ In the course of this hearing the Employer agreed that for the purposes of this case the Union's challenge to Carl Johnson's ballot should be sustained on the ground that Johnson is a supervisor within the meaning of the Act

General Counsel and the Respondent have been carefully considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent is a California corporation with its principal place of business in Los Angeles, California, where it is engaged in the nonretail sale of metal. Respondent in the course and conduct of its business operations annually sells and ships goods valued in excess of \$50,000 directly to customers located in States of the United States other than the State of California. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES

A. *The Union's Majority and its Request for Recognition*

It is conceded and is without dispute that on August 29, 1973, the Union by letter demanded recognition and bargaining as the majority representative of Respondent's employees in an appropriate unit defined as follows:

All production and maintenance employees employed by the Respondent at its 5869 Rodeo Road, Los Angeles, California location, including shipping and receiving employees, warehousemen and truck drivers, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

It is also stipulated that in the appropriate unit of nine employees on August 29, 1973, five employees had signed union authorization cards on August 24, 1973, and two more employees signed union authorization cards on August 27, 1973. It is clear and beyond dispute, and I find, that on August 29, 1973, the date of the Union's demand for recognition and bargaining, seven employees out of an appropriate unit of nine employees had designated the Union as their collective-bargaining representative. It is likewise without dispute, and I find, that the Respondent refused to recognize or bargain with the Union.

It is further stipulated and agreed, and I find, that on September 7, 1973, the Respondent effectuated an across-the-board general wage increase of 50 cents per hour to all employees in the appropriate bargaining unit, and on September 7, 1973, the Respondent enrolled certain bargaining unit employees in the Kaiser Health Plan at the Respondent's expense.

B. *The Issues*

Although it is clear that the Union lost the Board-conducted election held on October 29, 1973, the General Counsel and the Union contend that the election should be set aside because of employer conduct which interfered with and coerced the employees' free choice, and that a bargaining order should issue requiring the Respondent to bargain with the Union on request, because of alleged flagrant unfair labor practices engaged in by the Respondent which have so impaired the employees' free choice so as to make a free and fair new election impossible, thereby requiring that the union authorization cards be utilized to establish the Union's majority status.

The Respondent's position on the issues above recited is somewhat ambiguous. Thus on page 14 of Respondent's brief filed herein, Respondent's counsel concludes that, "The only appropriate way to determine the employees' sentiment regarding the Union would be to hold a second election," but in its conclusionary paragraph on page 14 and 15 of its brief, Respondent's counsel states that, "There is no substantial evidence to show that any conduct of the Employer rose to the level of unfair labor practices, or if so, that these practices were serious enough to have a decisive impact on the election and the complaint should therefore be dismissed and the objections overruled."

C. *The August 27 or 28 Plant Meeting*

On August 27 or 28, 1973, Mr. David Zeidenfeld, the Respondent's president, called a meeting in the shop of the employees when he learned² that they were unionizing chiefly because of their dissatisfaction with their rate of pay. It is established by the credible testimony of employees Roland R. Sengstock, Paul Glenn Lane, Kenneth D. Marlow, and John Wheeler that Mr. Zeidenfeld told the assembled group that there was a lot of resentment in the shop and he called the meeting to see what was the problem. He looked to Sengstock as the spokesman who said "our problem is money," "we think we should be making more money." Mr. Zeidenfeld told the group that over his wife's objections he was kind enough to hire most of the men present rather than use "Blue Collar" (a labor contract agency). Zeidenfeld told the employees not to push the Union and he told them if a union came in he would lock the doors and close up, and if the men continued to push

the Union he would discharge all employees who had been with him less than 6 months by calling them trainees. Mr. Zeidenfeld also told the assembled group that he had been planning probably toward the end of September to give all the employees a 50-cents-per-hour raise. He also told the group that he was thinking about bringing in the Kaiser Medical Plan as well as some kind of incentive or retirement plan.

The evidence clearly shows, and I find, that the rank-and-file employees had never been told by Zeidenfeld about a planned wage increase or medical plan before this August 27 (or 28) meeting.³

Mr. Zeidenfeld testified that he called the August 27 (28) meeting after he had learned from his wife that employee Kenny Marlow and some other employees were not satisfied with their wages and had grievances about that. Concerning his remarks at this August 27 (28) meeting, Mr. Zeidenfeld testified that he could not remember saying anything about closing the plant, pointing out that he had a stroke 4-1/2 years ago which had affected his memory, and explaining further that he may be a little vague in exactness and sometimes could not remember exactly what went on. At another point in his testimony, Mr. Zeidenfeld denied that he told the employees at the August 27 (28) meeting that if the Union came in or the employees did not stop pushing the Union, he would close down the plant. Zeidenfeld testified that "The only thing I might have mentioned would be with reference to my health, that if I couldn't operate because of pressures brought on me by any situation in one form or another, that this might be the method by which the close down might have been used." Mrs. Zeidenfeld, who was also present at this meeting, corroborated her husband's denial that he said in effect "that if a union came in, Alvin Metal would close the doors or lock the gates." In corroboration of her husband's testimony, she also testified that her husband told the assembled employees at this meeting "that he could not stand up under pressure, his health could not stand it and that he would have to close down the business if he was pressured by anything." However, in self-contradiction at another point in her testimony on cross-examination, Mrs. Zeidenfeld testified that her husband "resented the fact that they (the employees) had gone to outside help without coming to him"; and at another point in her testimony on cross-examination, Mrs. Zeidenfeld testified that Mr. Zeidenfeld, referring to pressure that would cause his health to break down and result in closing the plant would be, as she testified, that "he felt he wouldn't be able to work with the fellows" and "someone else trying to run the business." It is clear from this testimony that the "outsider" that the Zeidenfelds objected to was the Union to whom the employees had gone. It is clear and I find that in an effort to forestall the union drive, Mr. Zeidenfeld called the August 27 (28) meeting to satisfy the employees' grievances by announcing the 50-cent general wage increase and the Kaiser Health Plan, while at the same time warning the employees that the advent of the Union would result in job loss through discharges or plant closure.

The Zeidenfelds' claim that by board of director action

² Wheeler credibly testified that about 1 week before this August 27 (or 28) meeting, immediately after union literature appeared in the warehouse, Mr. Zeidenfeld called him into his office where he had on his desk various NLRB pamphlets. Mr. Zeidenfeld told Wheeler that he didn't know who started this or who brought the literature into the warehouse, and he told Wheeler "I cannot have a union in here. If there is a union here, a lot of people won't be working here, a lot of people here have problems." Wheeler credibly testified that Mr. Zeidenfeld looked to him for a response, and he told Zeidenfeld that he would talk to the employees and to the union man again. Wheeler called on a representative of the International Longshoreman's Union which had provided the literature. The ILWU representative told Wheeler that the Respondent wasn't large enough to bother with. In the meantime other employees had contacted the charging Union herein and had signed cards authorizing it to represent them. Mr. Zeidenfeld's testimony does not dispute the conversation between himself and Wheeler. Mr. Zeidenfeld testified that Wheeler told him on that occasion that the employees were going to see if they could get a better deal with the Teamsters.

³ Mr. Zeidenfeld testified that his meeting was called on August 28 whereas employees Sengstock, Lane, and Marlow place the meeting on August 27.

on July 31, 1973, they determined to grant a 50-cents-per-hour wage increase to be "effective on a date determined by Mr. Zeidenfeld, but in no event later than the end of the current fiscal year,"⁴ which according to Zeidenfeld's testimony ended September 30, 1973. The minutes also authorized Mr. Zeidenfeld as president to take action with respect to the Kaiser Health Plan as follows:

RESOLVED, that the President is hereby instructed to ascertain whether or not the Kaiser Foundation Health Plan was again being reopened for individual applications without minimum employee requirements. If so, the President is instructed to advise the employees of the fact and inform the employees that if they desired to file individual applications under the said Kaiser Foundation Health Plan that the Corporation would cooperate and would pay the premiums therefore during the period of employment and/or the period of employees' membership in said Kaiser Foundation Health Plan.

RESOLVED, that each of the following employees shall be entitled to a 50 cents per hour increase in their rate of pay which is set forth following each name. That said raise shall be effective on a date determined by the President, but in no event later than the end of the current corporate fiscal year.

The testimony of Mr. and Mrs. Zeidenfeld that they took the board action as reflected by the minutes of July 31, 1973, is not convincing. Inconsistencies in the testimony of the Zeidenfelds with respect to the date the minutes were prepared serve to persuade me that the action was not taken on July 31, 1973. Thus, on direct examination by Respondent's counsel, Mrs. Zeidenfeld testified positively that the minutes were prepared on July 31, by the following questions and answers:

Q. (By Mr. Hibner) Do you have knowledge whether or not these minutes were prepared on or about the date they bear?

A. (By Mrs. Zeidenfeld) Yes.

Q. Is it a fact that they were prepared to your knowledge on the 31st day of July?

A. Yes.

But at another point in her testimony, Mrs. Zeidenfeld testified that she didn't know when the minutes were prepared. The following questions and answers on cross-examination serve to make the minutes suspect:

Q. (By Mr. Smith) Going back to the minutes of this meeting on July 31st, did you testify that you had pre-

pared these minutes?

A. I did not prepare them. They were prepared by the lawyer's office.

Q. And do you know when these minutes were prepared?

A. I would assume they prepared them the same day or the next. I don't know how attorneys work in their office.

Q. So you have no direct knowledge of when these were actually prepared?

A. No.

Q. Isn't it a fact, Mrs. Zeidenfeld, that it was some weeks after this meeting that you and Mr. Zeidenfeld received copies of these minutes?

A. No, I don't recall that.

Q. Isn't it a fact that when a board agent came to you in the course of the investigation and you said that you had minutes of a meeting at which you had made this decision, that you told him that those minutes were not available and might not be until after your attorney returned from vacation, until some time in the future; is that not correct?

A. That's correct. Because he keeps all the copies in his office. We do not keep any in our office.

Q. Isn't it a fact that you did not receive these minutes until some weeks after that meeting?

A. No, that is not possible. I can't answer that because I don't know—Would you repeat that question. I don't quite understand it.

Q. I am sorry. I will go back again. Isn't it a fact that you didn't receive the minutes from this meeting until some weeks after this meeting was held?

A. I don't recall.

Excuse me. I would like to say that the minutes are not released by anyone beside Mr. Robbins and if he was on vacation, the secretary could not release the minutes to us or anyone.

Q. I understand that. Did you speak to a board agent some time in September? Do you recall? The latter part of September?

A. I believe I spoke to you.

Q. Did you state at that time that these minutes [meetings] were not available because they had not been submitted to you by your attorney?

A. I don't recall that.

Q. Do you recall whether your husband said that at that time?

A. I don't recall.

In any event, even if I were fully convinced that the Zeidenfelds took the action on July 31 as reflected by the minutes bearing that date, I would nevertheless find that Zeidenfeld's action in first announcing the 50-cent wage raise and the Kaiser hospital plan at the August 27 (28) meeting during the height of union campaign and in context with threats to discharge employees, and close down the shop if the Union came in, thereby interfered with, restrained, and coerced employees in the exercise of their Section 7 rights to engage in union activity. The announced promise of a wage increase and a medical plan coupled with

⁴ The quote is from the board of directors minutes dated July 31, 1973

a threat to close down the shop and discharge employees if a union came was obviously aimed at discouraging the employees in their union organizational efforts and therefore was violative of Section 8(a)(1) of the Act. *Kellwood Company, Ottenheimer Bros Mfg. Co.*, 170 NLRB 1638, 1641-42; *enfd.* 411 F.2d 493, 496-497 (C.A. 8, 1969); *J. C. Penney Co., Inc. v. N.L.R.B.*, 384 F.2d 479, 485-486 (C.A. 10, 1967); *The Great A & P Tea Co., Inc.*, 162 NLRB 1182, 1184-85; *Forbes Pavilion Nursing Home, Inc.*, 198 NLRB No. 113, *Scanlin Electronics, Incorporated*, 201 NLRB 888 (1973).

It follows that the effectuation of the 50-cents-per-hour wage increase to all employees in the collective-bargaining unit on September 7, 1973, and the enrollment of employees in the Kaiser Health Plan on that same date while a petition for an election had been pending with the Board since August 30, 1973, served to interfere with their Section 7 rights and their free choice in the pending election proceedings. *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405 (1964). I find that such action violated Section 8(a)(1) of the Act. In *Exchange Parts Co.* the Supreme Court said as follows:

The broad purpose of §8(a)(1) is to establish "the right of employees to organize for mutual aid without employer interference." *Republic Aviation Corp. v. Labor Board*, 324 U.S. 793, 798. We have no doubt that it prohibits not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of impinging upon their freedom of choice for or against unionization and is reasonably calculated to have that effect. In *Medo Photo Supply Corp. v. Labor Board*, 321 U.S. 678, 686, this Court said: "The action of employees with respect to the choice of their bargaining agents may be induced by favors bestowed by the employer as well as by his threats or domination." Although in that case there was already a designated bargaining agent and the offer of "favors" was in response to a suggestion of the employees that they would leave the union if favors were bestowed, the principles which dictated the result there are fully applicable here. The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

D. The September 10, 1973, Incident

With substantial corroborations from employee witnesses Paul Lane and Kenneth Marlow, employee Roland Sengstock testified credibly that on September 10, Mr. Zeidenfeld came storming up to him and asked if he had been talking to George, who is a truckdriver for Pozas Brothers, another employer. When Sengstock replied "Yes," Zeidenfeld asked what was said to George. Sengstock replied that he told George about Zeidenfeld enclosing a letter with his paycheck that Zeidenfeld didn't believe in the authorization cards that the Teamsters have and he was going to hold an election to see if the Respondent was going to have a union.

Mr. Zeidenfeld then asked what George said and Sengstock replied that George said, "You just better be careful, he might up and fire you all." At this point Mr. Zeidenfeld exclaimed, according to Sengstock's credible testimony, "You're goddamned right. I might just up and fire you off . . . that is just between you and me. You better keep your goddamned mouth shut." Then, Mr. Zeidenfeld turned to Paul Lane and Kenneth Marlow who were working 10 feet away, and said, "You two get away from each other, I'm tired of both of you talking behind my back all the time," and Zeidenfeld said to Lane, "Here I talked you out of quitting one time and even you have turned your back on me." Mrs. Zeidenfeld who was present told Mr. Zeidenfeld that he had said enough and she burst into tears and remarked to her husband that he had said enough and was in enough trouble already. Returning to his office, Mr. Zeidenfeld said to the three employees, according to Sengstock's credible testimony, "Why don't you all just get up and walk out of here and quit and leave me alone. Before I ever let the damn Union in here, I will just lock up the gates and throw you all out." I find that this last remark by Zeidenfeld constituted a threat of reprisal based on the employees union activity, and violated Section 8(a)(1) of the Act.

E. The Objections to the Election

The objections to the election at issue are:

- (1) The Employer threatened to discharge employees in order to discourage them from joining or assisting Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.
- (2) The Employer threatened to close down in order to discourage the employees from joining or assisting the Union.
- (3) The Employer promised and granted its employees higher wages and improved benefits to discourage them from supporting said Union.

As the above objections to election are similar to the unfair labor practices alleged in the complaint, and found herein to have violated Section 8(a)(1) of the Act, it is therefore recommended that the Union's objections to election should be sustained and the election results therefore vacated and set aside. *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786-87

F The Refusal to Bargain

It has been established without dispute that the Union represented a majority of Respondent's employees in an appropriate unit for the purposes of collective-bargaining with respect to wages, hours and other terms and conditions of employment. It is also established without dispute that the Union as majority representative, requested recognition and bargaining on August 29, 1973, and that Respondent refused to recognize or bargain with the Union. It is also established without dispute that on September 7, 1973, the Respondent unilaterally and without bargaining with the Union placed into effect a 50-cents-per-hour wage increase to the employees in that appropriate unit and enrolled employees in the Kaiser Health Plan on that same date.

I find that by this conduct the Respondent refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act. I further find that the aforesaid unfair labor practices herein found were so flagrant as to require that the October 29, 1973, election be set aside. I further find and conclude that the unfair labor practices engaged in by the Respondent have so impaired the employees freedom of choice as to make the holding of a second free and fair election unlikely or impossible. In view of these findings, it is appropriate to determine the employees' choice by the signed authorization cards of which the Union holds a substantial majority. I therefore conclude that it is appropriate that the Board issue an order requiring the Respondent to bargain with the Union on request as the majority representative of employees in the unit herein found appropriate. See *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969).

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES

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 burdening and obstructing commerce and the free flow of commerce.

V THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, I shall recommend that the Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact and upon the entire record in this case, I reach the following:

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threats to discharge employees and by threats to close the plant if the employees pushed the Union or if the Union came in; and by promises to grant wage increases and provide a health and medical plan to the employees to discourage union activity, and by effectuating such wage increases to discourage union activity or a vote for the Union in a pending Board election, the Respondent engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. All production and maintenance employees employed by the Respondent at its 5869 Rodeo Road, Los Angeles, California, location, including shipping and receiving employees, warehousemen and truck drivers, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Act.

5. Since on or about August 27, 1973, the Union has been designated by a majority of the employees in the appropriate unit described above, as their representative for the purposes of collective bargaining; and has been and is now the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

6. By refusing to recognize or bargain with the Union since August 29, 1973, and by unilaterally increasing wage rates and enrolling employees in the Kaiser Medical and Health Plan on or about September 7, 1973, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. The foregoing violations are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]