

**American Buildings Company, Inc. and United Electrical, Radio and Machine Workers of America (UE).** Cases 9-CA-9107 and 9-RC-10799

November 25, 1975

**DECISION, ORDER, AND DIRECTION  
OF SECOND ELECTION**

BY CHAIRMAN MURPHY AND MEMBERS  
FANNING AND PENELLO

On August 26, 1975, Administrative Law Judge John M. Dyer issued the attached Decision in this proceeding. Thereafter, Respondent-Employer 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,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order.<sup>3</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board in Case 9-CA-9107 adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, American Buildings Company, Inc., Jamestown, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election in Case 9-RC-10799 be, and it hereby is, set aside.

[Direction of Second Election omitted from publication.]<sup>4</sup>

<sup>1</sup> By mailgram dated October 16, 1975, Petitioner requested withdrawal of the petition in Case 9-RC-10799 and its objection to the election in that case. It indicated in the mailgram that it has filed another petition and seeks expeditious hearing on that petition. Since Petitioner has not stated any grounds justifying granting its request and Petitioner continues to seek to represent these employees, we find there is no basis for granting such a request. Accordingly, the request is hereby denied.

<sup>2</sup> 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.

<sup>3</sup> Contrary to the Chairman in her dissenting opinion, the Moorman-Brammer incident clearly had an impact at the time of the election and must have affected its results. This is not a situation where Foreman Moorman was indicating to employee Brammer that Brammer was being placed on a list because he and Union Organizers Ware and Womack had crossed the company property line or because they were distributing leaflets in the

CHAIRMAN MURPHY, dissenting:

The Board will refuse to issue remedial orders where the incidents involved are not sufficiently serious to warrant the issuance of such an order.<sup>5</sup> Here, on two occasions a foreman allegedly overstepped the bounds of permissible conduct. Neither of these incidents—even when considered together—warrants the issuance of a remedial order. Nor does either require the setting aside of the election.<sup>6</sup> I therefore dissent from my colleagues' issuance of a remedial order and their setting aside of the election.

One of the incidents occurred more than 2 weeks before the November 27, 1974, election. On that occasion Foreman Bill Murphy told employee Ernest Houser to remove a notice of a union meeting which he had taped to his shirt "before he got into trouble." The incident was witnessed by one other employee. Any possible coercive impact of this incident was completely dissipated by the fact that the wearing by employees of badges and insignia was very widespread during the remaining period—without Respondent's interference—prior to the election.

The second incident occurred 1 week after the first and at least 7 days before the election. Foreman William Moorman informed employee Robert Brammer, who was distributing leaflets in the company parking lot at the time, that Brammer was being placed on his list. There is no evidence that any other employees were aware of the incident.

Thus, Respondent committed two violations of Section 8(a)(1). The limited effect of the taped notice incident, originally affecting only two employees, was completely neutralized prior to the election by Respondent's subsequent conduct. The other incident affected only one of Respondent's approximately 155 employees. Neither incident had sufficient impact on employee rights to warrant the issuance of a remedial order. Hence, neither incident had any lingering impact at the time of the election nor could either incident have affected the outcome of the

company parking lot at the time. Rather, the credited testimony of Brammer and the testimony of the union organizers, as well as the Administrative Law Judge's findings, was that Brammer's name was on a preexisting list of union adherents. The significance of this threat is cogently described by the Administrative Law Judge where he states that it "was an attempt to scare Brammer by saying that his name was on a list presumably of union sympathizers, or others with whom the Company was prepared to deal harshly." Such a threat to the effect that the Company is maintaining a list of union adherents is bound to alarm employees and be circulated rapidly throughout the plant.

Foreman Murphy's order to employee Houser to remove a notice of a union meeting which he had taped to his shirt "before he got into trouble" was clearly a violation of Sec 8(a)(1), as found by the Administrative Law Judge. However, it is the Moorman threat which warrants the setting aside of the election and the issuance of a remedial order.

<sup>4</sup> [Excelsior footnote omitted from publication.]

<sup>5</sup> *Walgreen Co., d/b/a Globe Shopping City*, 203 NLRB 177 (1973), *Finesilver Manufacturing Company*, 165 NLRB 676 (1967); *Howell Refining Company*, 163 NLRB 18 (1967).

<sup>6</sup> *Decker Disposal, Inc.*, 171 NLRB 879, 880, fn. 1 (1968)

election. Therefore, I see no basis for setting the election aside.

Accordingly, I would dismiss the complaint in its entirety and certify the results of the election.

## DECISION

### STATEMENT OF THE CASE

JOHN M. DYER, Administrative Law Judge: On February 3, 1975,<sup>1</sup> the United Electrical, Radio and Machine Workers of America (UE), herein called the Union, Charging Party, or UE, filed a charge against American Building Company Inc., herein called the Company or Respondent, alleging various violations of the Act.

Following the Union's filing of a petition for an election, the parties executed a stipulation for certification upon consent, which was approved by the Regional Director on November 5, and an election was conducted on November 27. In a unit of employees (apparently a production and maintenance unit) which had approximately 155 eligible voters, 74 votes were cast for the Union and 76 against and there were no challenged ballots. On December 4, the Union filed objections to the election which alleged that on November 12 a union supporter was told to remove union stickers or he would be in trouble with management, that on November 19 company supervisors interfered with lawful leafletting by threatening arrest, engaging in coercive surveillance of those who were leafletting as well as those who were reporting for work, and that on that same day a company foreman told an employee that his name was on "the list" in an effort to intimidate him from engaging in protected activity. The Union also had an objection (1) relating to an alleged systematic campaign of intimidation, threats, and coercion which was withdrawn at the hearing in this matter.

On January 20, 1975, the Regional Director of Region 9, issued an order directing hearing, order transferring case to the Board, and notice of hearing in which the objections of the Union noted above were listed and the Regional Director ordered a hearing held to resolve those issues.

On March 28, 1975, said Regional Director issued a complaint and notice of hearing in the unfair labor practice case, alleging that Respondent had violated Section 8(a)(1) of the Act by various acts of its foremen, production manager, and president.

Respondent's timely answer admitted the requisite jurisdictional and commerce allegations and the status of the Union and the supervisory status of foremen and others listed in the complaint. The status of one named individual was resolved at the hearing. Respondent denied that it had committed any unfair labor practices.

I have concluded that Respondent violated Section 8(a)(1) of the Act in some of the instances alleged but not in others and that Objections 2 and 4 should be sustained and I will recommend that the election held on November 27 be set aside and rerun at an appropriate time and that an appropriate notice be posted and that other allegations to the complaint and Union's Objection 3 be dismissed.

All parties were afforded full opportunity to appear, to examine and cross-examine witnesses, and to argue orally at the hearing held in this matter on May 27 and 28, 1975. General Counsel, Respondent, and the Union have all filed briefs which have been carefully considered.

Upon the entire record in this case including my evaluation of the reliability of the witnesses based on the evidence received, the behavior of some of the witnesses during their examination and their demeanor, I make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT AND THE LABOR ORGANIZATION INVOLVED

Respondent is a Delaware corporation engaged in the manufacture of preengineered steel buildings at four locations around the country. Its plant in Jamestown, Ohio, is the only facility involved in this proceeding. During the past year Respondent sold and shipped to points directly outside the State of Ohio goods valued in excess of \$50,000.

Respondent admits and I find that it has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent admits and I find that the Union herein is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE UNFAIR LABOR PRACTICES

##### A. *Background and Undisputed Facts*

Respondent's headquarters are in Eufaula, Alabama, and Respondent President James Murphy and Vice President Richard Mullin have their offices there. Bill Taylor is the production manager of Respondent's Jamestown, Ohio, plant. At this plant Respondent has two shifts with most of the employees working on the first shift, which runs from 8 a.m. to 4:30 p.m. Approximately 50 employees work on the second shift, which begins at 7 p.m. Bill Murphy is a foreman on the first shift, while Bill Moorman, Dick Thomas, and Dale Watson are all foremen on the second shift.

Respondent's plant is laid out in an east-west direction and is at an angle to the Jamestown-Waynesville Road which runs by the eastern end of the plant. Respondent has erected a chainlink fence along its property line on that side. The fence is about 13 feet from the edge of the road. There is a 25-foot roadway entrance to the employees parking lot that angles off the Jamestown-Waynesville Road at about a 45° angle. At that point, Respondent has angled the fence inside its property where it forms a large triangle with a gate across the roadway and then turns back along the entrance road to the main road. This leaves the entrance road up to the gate and a triangular plot of land beside it unfenced. This piece of company property also has a stop sign beside the entrance road (for employees leaving the plant) which is set some 5 to 10 feet inside the property line. Although the median of the

<sup>1</sup> Unless otherwise stated all events herein took place during 1974

entrance road from the property line is about 66 feet to the plant gate, the deepest portion of the unfenced company property is about 50 feet from the property line, due to the angle of the entrance road. The employee parking lot which is lighted at night from lights on the building adjacent to the gate entrance. Apparently not all of the Company's property is fenced. The foremen and supervisory employees have their own parking lot on the other side of the building. On the south side of the building there is a large grassy plot which employees and possibly others use to play ball. Apparently there is no guard at this entrance.

According to one of the supervisors most of the employees on the second shift appeared to be against the Union. There are approximately 50 employees on the second shift, most of whom drive their own cars to the plant.

#### B. *The November 12 Notice*

Ernest Houser, a first-shift employee, had been a maintenance man with the Company approximately 3-1/2 years. On the morning of November 12, union representatives passed out leaflets at the plant gate notifying employees that there would be a meeting on the evening of November 13. Houser taped one of these notices to his shirt while in the maintenance shop and according to his testimony started out of the maintenance shop and had gotten some 5 or 10 feet beyond the door when he met Foreman Murphy. Murphy told him to take the notice off of his shirt before he got into trouble. Houser stated he went back into the maintenance area and was speaking to maintenance employee Jeff Riley when Foreman Murphy came up. Houser asked Murphy why he had to take the notice off and Murphy replied, "We aren't allowed to go to the union hall to put up notices, so you can't do it on company property." Houser took the notice off.

Employee Riley testified that Houser was still in the maintenance area when Foreman Murphy came up and told Houser to take the notice off and when Houser asked why, Murphy replied that the Company was not allowed to post notices in meeting halls and things like that. Riley was sure that Houser had not been out of the maintenance shop as far as he remembered.

Foreman Murphy testified that he was in the rigid frame department when he saw Murphy walking through that department and on through the endwall department some 150 feet from the maintenance department. He testified that Houser was walking around for some 5 to 10 minutes and that he personally observed him for 3 or 4 minutes, and that people were leaving their work to come over and read the notice on Murphy's chest. Murphy said he told Houser to take off the notice because Houser was interfering with production. Murphy was not asked and did not testify about the comment concerning the Company not being able to post notices at the union hall.

In considering the testimony concerning this incident, the version given by Houser as corroborated by Riley seems much more probable than that given by Murphy. If, as Murphy stated, Houser had been wandering in another department for some 5 to 10 minutes disrupting production, then certainly Murphy would not have stood there and allowed it for such a length of time. He would have

stopped it himself since Houser was his employee, or contacted a department supervisor about employees leaving their jobs. But according to his own version Murphy did nothing until Houser had been there some 5 to 10 minutes. He did not testify that he said anything to Houser about disrupting other employees nor was anything said in that vein when they were back in the maintenance department. Neither Houser nor Riley recalled any such statement. The one statement that they do recall, which is undenied, was that Houser could not wear the meeting notice because the Company could not post notices at the union hall.

It is clear that thereafter both union and antiunion buttons and other campaign paraphernalia were worn by the employees and antiunion banners were posted. This, however, was the first time a union notice, badge, or campaign paraphernalia had been worn in the plant by an employee. Murphy got Houser just as he was leaving the maintenance department and I do not credit Murphy's statement that he told Houser he could wear the notice at breaks and at lunch. It would seem clear that following this first action, Respondent's supervisors were informed that they could not restrict the employees from wearing badges, insignia, etc. The fact that employees later were allowed to wear badges and insignia does not cancel the coercive effect of this first statement and order to remove a union notice. Murphy's testimony appears to me to be fabricated to justify his action and I do not believe it. I find that Respondent through Foreman Murphy violated Section 8(a)(1) of the Act by ordering the removal of this notice and by his explanatory remarks. This finding also supports the Union's Objection 2, which must be sustained.

#### C. *The November 19 Leafletting Incident*

All of the testimony except that of one individual agreed that the following incident took place on November 19 at the entrance to the employee parking lot.

Robert Brammer, a first-shift employee who had worked for the Company for 4 years, accompanied Union Representatives Womack and Ware to leaflet incoming second-shift employees on the evening of November 19. The three stationed themselves outside the plant fence in the triangular area near the stop sign so they could walk on the entrance road and hand leaflets to the drivers of incoming cars.

Foreman William Moorman testified that because his wife wanted to keep the car that night, she drove into the employees entrance to let him off close to his office. When he got to the gate around 6:30 p.m., he saw Brammer and two other people near the plant gate on company property. He testified that Union Organizer Womack and the other two were about 30 feet inside the property line passing out leaflets. The night shift starts at 7 p.m. and employees arrive between 6:30 and that time, but are supposed to be clocked in and at their machines at 7 p.m. Moorman testified that this was a traffic hazard and that there had been an accident with a motor vehicle at that location, but did not say when this accident occurred. It seems clear from the context and the lack of any other mention of an accident that he was talking about an accident occurring some time prior to November 19. He did say the cars were

partially stopped on the highway and that when he got inside the plant he called the plant manager and informed him of the situation. The plant manager asked if the people were inside the company property line and Moorman said yes. Plant Manager Cane told him to remove them.

Moorman took two other night-shift foremen and a day-shift foreman who was still there, and went out to the plant gate. He said that it was then around 6:45 p.m. He stated that Womack and the two others were almost at the fence gate when they started out of the plant, but, as they walked toward the gate, the three moved back some distance but were still 25 to 30 feet inside the property line. Moorman told Womack he was on company property and would have to remove himself. Womack said he was not aware that he was on company property but did not move. He told Womack to move back close to the road and that if he did not move they would call the Jamestown police. When there was no movement, Moorman said he went back into the plant and called the police. He stated he did not watch to see if incoming cars were taking any of the leaflets.

The three supervisors who accompanied Moorman stayed inside the fence near the corner of the gate. It is not clear whether Moorman went outside the fence or spoke to Womack from inside the fence by moving down opposite him on the inside of the fence line.

Regarding employee Brammer being on company property, Respondent cited a rule which it claimed prohibited employees from loitering on company property. The rule it cited is as follows:

*"TO ALL EMPLOYEES"*

1/24/73

I HAVE NOTICED IN THE LAST FEW WEEKS SEVERAL EMPLOYEES IN THE SHOP OR ON COMPANY PROPERTY AT TIMES OTHER THAN THEIR REGULAR WORK HOURS.

IF YOU HAVE BUSINESS HERE AT TIMES OTHER THAN YOUR REPORTING FOR WORK AND DURING WORK HOURS YOU MUST USE THE FRONT OFFICE ENTRANCE OR GET WRITTEN PERMISSION FROM YOUR FOREMAN.

ALSO PARKING: YOU MUST GET PERMISSION FROM YOUR FOREMAN TO PARK ANYWHERE EXCEPT IN THE PARKING LOT.

WE ARE HAVING ENTIRELY TOO MANY PEOPLE IN THE SHOP AT TIMES OTHER THAN AT THEIR REGULAR WORK HOURS.

I WOULD RATHER NOT HAVE TO TAKE ANY FURTHER ACTION; BUT WILL IF NECESSARY.

B. TAYLOR  
PLANT MANAGER

In testifying about this rule, Moorman stated that there was congestion in the parking lot with the employees' cars and that they had a problem with personal conflicts between employees from one shift against the other shift and that company insurance did not cover persons who were not clocked in and were on company property. In its

brief, Respondent mentions that there was a problem of thievery on the company parking lot but this did not appear from Moorman's testimony. Further Moorman did not explain what problem there was with a conflict between the shifts when there were 2-1/2 hours between the end of the first shift and the start of the second shift.

Moorman's direct examination gave the impression that as soon as he finished talking to Womack and the two others he immediately went back into the plant and stayed there making a telephone call to the Jamestown police. However, during cross-examination he states that although he did go back in and telephone, he came back out and stood looking towards the gate, as he said looking for the arrival of the police. He specifically testified that there was an abuse of the company property on November 19 by Brammer in that Brammer was there on company property not during his working time and was therefore infringing upon the Company's rights because "he was engaging in an activity which was against the law on company property. He was passing out union literature."

Brammer testified that when Moorman came out and talked to them he said that they had to move away from the gate and off the Company's property. Womack said that they had a right to pass out literature and Moorman replied that they would call the police if they did not move. As he turned to leave, Moorman told Brammer that he had Brammer's name down on his list.

Organizer David Ware testified that Moorman told them they were on company property and they would have to step up towards the road. Womack said they had a right to be there under Federal law to distribute leaflets and they would move further outside the gate. Moorman said they would have to go out and stand in the road or leave the premises. Womack replied that they could not do that, that they had a right to be there and would continue to pass out leaflets. He testified that as Moorman turned to leave Moorman spoke to Brammer and said that they had his name on the list. Brammer asked what it meant and Moorman did not reply.

Womack testified that Moorman told them that they were on company property and could not pass out leaflets there and would have to leave. He replied that they had a right to pass out leaflets and if they were on company property they did not intend to be and asked where the property line began. Moorman said they would have to get up on the road. Womack said he was not going to get up on the highway, that he did not want to be hit by a car. Moorman said he did not want them around there. As he walked back in, Moorman told Brammer that he had his name on the list.

The three leafletters testified that the supervisors stood inside the plant gate and observed their passing out leaflets and that it was light enough for incoming employees to see them passing out leaflets and the foremen watching them and that none of the incoming employees took leaflets while the supervisors were standing there. The estimate of the number of cars that entered during this time runs from two up.

Moorman testified that he told Brammer that he had his name written down. He stated that Brammer was in direct violation of the company rule (quoted above) and this was

why he made that remark to Brammer. During further examination Moorman said that he had written Brammer's name down on a piece of paper he had with him to back up his memory on this rule violation but wrote no details of the "violation," only the name. He did not recall what he did with the piece of paper, saying it must have been thrown away. Finally he testified that he did not believe he had written the name down at all. No disciplinary action of any type was initiated or taken against Brammer for this "violation."

The complaint alleges two violations as to this incident: (1) that the four supervisors engaged in surveillance of the employees and union representatives in passing out union literature; and (2) that Moorman threatened employee Brammer by stating that his name was being put on the list, implying that he was being disciplined in some manner for engaging in protected union activity.

Respondent takes the position that it was not surveilling employees or the leafletting but was keeping track of whether the three men remained on company property while they were awaiting the arrival of the police to remove them from company property.

The union leafletters state that they were not on company property, although they were close to the edge or possibly a foot or two on it when the foremen first came out of the building and approached them, but they moved back to the edge of the company property, as Moorman approached them.

The complaint allegation regarding surveillance raises the question of whether the conduct of the four supervisors was purposeful or had the foreseeable effect of unlawfully spying on the giving and taking of leaflets.

Union's Objection 3 alleges that the supervisors improperly interfered with lawful leafletting, threatened to have the leafletters arrested, and surveilled them coercively.

From the fact that the police were called and did come to the plant, it is clear that the four foremen were not in the gate area watching the activities of the leafletters from the time they came out of the plant until 7 p.m. They were in the area while Moorman was talking to Womack for some 5 to 10 minutes, and it is clear that they left with Moorman when he made the phone call, and he came back outside the plant and was looking toward the gate, but was not then in the gate area.

It seems clear that the Company did not want anyone passing out leaflets on their property and sent these foremen out to see that such activity was discontinued. The fact that the police were called is further evidence that the Company was adamant about keeping people off its property in this regard.

In the peculiar circumstances here, I cannot find that Respondent's action by these four was for the purpose of surveilling the activities of its employees and the union representatives. It is clear that for some part of the time if not all the time, the leafletters were on company property, although there was no fence or sign to show people where the property line was in that area. The leafletters were for the most part in the area of the stop sign which is inside the Company's property line.

There was no concentrated effort made at surveillance since the Company did not send out their supervisors

immediately when they spotted the leafletting to attempt to inhibit employees from giving or taking leaflets by standing near the leafletters. Further, the foremen did not remain in that area during the entire time that the second shift was coming to work. Assuming that Respondent contemplated prosecuting the three leafletters for trespassing, it would have needed witnesses to state where they were and how long they remained there. What Respondent's supervisors did here was consonant with removing the leafletters from its premises and was not directed at surveillance. The fact that, while the foremen were out near the gate, their presence possibly inhibited employees from taking leaflets was an incidental effect. I conclude and find that Respondent's actions here did violate the Act and will dismiss complaint allegation 5(c).

In the same manner, although there may have been some disruption of the leafletting, I would not find that Union's Objection 3 should be upheld, since I do not find that the Company improperly interfered with the leafletting.

The rule which the Company cited was not a general rule designed to keep employees or others off its property but was a specific message to employees in 1973 regarding a situation at that time. To attempt to put Brammer's activity which was outside the plant gate in the context of this rule is stretching things much beyond the breaking point.

Respondent's attempt to explain Moorman's statement to Brammer failed completely, particularly in view of Moorman's evasive and deceptive testimony regarding writing Brammer's name down. Moorman's other testimony was somewhat deceptive when he spoke of the three as standing in the center of the road, and then said he could not remember where they stood, and at another point intimating that there was a traffic tieup, and then saying he could not remember whether a car was stopped in front of him as they came in. It is clear from the language used that this was an attempt to scare Brammer by saying that his name was on a list presumably of union sympathizers, or others with whom the Company was prepared to deal harshly. There is no other rational explanation for the remark made.

I conclude and find that Respondent by Moorman's statement to Brammer concerning his name being on a list violated Section 8(a)(1) of the Act as a nonspecific threat to him for engaging in union activities. Similarly Union's Objection 4 is supported by this evidence and must be sustained.

#### D. *The November 26 Statements*

On November 26, Company President Murphy appeared at the plant prior to the scheduled election and spoke to employees at several meetings. After the meetings he went through the plant speaking to individual employees. General Counsel's witnesses testified this was the first occasion President Murphy made such plant visits. Employees Jeffrey Riley and Ernest Houser both testified that Murphy spoke to them, telling Houser that he saw Houser had made up his mind since Houser was wearing a union hat. Murphy asked why he wanted a union and they talked about some of the things which they felt were wrong. Murphy said they did not need a union to correct

them. Both men stated that about that time Murphy said that if the Union got in they would not get a "red cent."

Murphy testified that before coming to the plant to speak to the employees on November 26, he had instructions from counsel as to what he could say and what he could not say and that prior to this time he had been involved in several union campaigns. He stated that he did have a conversation with these employees that day and this was one of the first conversations he had after making the speech. He stated he was there about 30 minutes talking to them and specifically denied saying that if the Union got in they would not get a "red cent." He stated that what he probably said was that the Union could not guarantee them anything or one red cent.

In an effort to bolster Murphy's testimony, Respondent introduced an exhibit which was a part of a series of questions and answers which were posted on company bulletin boards. In the answer was the phrase, "the Union can promise you anything but they can't guarantee you one single thing."

The Union's campaign and the Company's campaign were fairly cautious. I do not believe that Company President Murphy would have made a flat statement such as Riley and Houser state they heard. I believe that Murphy would have said that the Union could not guarantee them one "red cent." In a conversation which lasted about 30 minutes, it is very possible that one word could be misplaced by the witnesses. Considering the witnesses, the campaign which the Respondent waged, the cautious but calculated things which were stated in it, I have concluded that President Murphy did not make the statement as it was alleged in the complaint, and therefore will dismiss complaint paragraph 5(e).

#### E. *The Speech of December 9*

Vice President William Mullin was at the plant on December 9 and spoke to the employees from a prepared text. According to Mullin he gave the same speech to several groups of employees. He said that in some instances questions were asked and he gave the answers. He said one of the questions was about the Company's annual increases. He testified that as far as he could recall the question was, now that the election was over, would the Company proceed with the increases and other benefits. He testified that he told the employees that personally he could not guarantee or offer any type of incentive regarding raises but that the matter was being investigated as to what course the Company would take. He specifically stated that he did not say the annual increases would not be given. What he did say would indicate that he could not guarantee that the annual increases would be given, but that the Company was investigating the situation to see what could be done.

Ernest Houser testified that in the meeting Vice President Mullin told them that the Union had filed unfair labor practice charges against the Company and they would not get any kind of benefit increases or anything, that they could not do anything without the approval of the Board.

General Counsel's witness Riley stated that Vice President Mullin told them they could not get any wage or

benefit increases because the Union filed a petition against the election or objections against the election.

Respondent submitted as its Exhibit 7 the prepared speech which Mullin read to the employees. Both Houser and Riley appeared to corroborate that Mullin did read from a piece of paper as he was speaking to them. In the speech he stated that they had asked the NLRB to make an investigation in the plant and that they felt the investigation probably would not be completed until after the first of the year and they were confident that what they did, would be found right.

It appears to me that Houser and Riley have juxtaposed certain statements and come up with something that really was not stated by Mullin. I believe that what Mullin did state is that he would not guarantee a raise would be paid at the beginning of the year since the investigation was going on and that the Company would look into the matter and decide whether it could do something or not. Approximately a week later the plant manager in another meeting with the employees told them the Company was going to "stick its neck out" and give them the raises without going through the National Labor Relations Board. The raises were thereafter given.

The complaint states that Mullin on November 9 told the employees that they would not receive regularly granted wage increases because the Union had filed objections to the election. From the testimony it is clear that no such statement or approximation of it was made. Mullin's statement may have come close to the edge, but it did not go over the brink and the testimony of Houser and Riley is not convincing that he did.

Accordingly I cannot find that complaint allegation 5(f) has been sustained by the testimony and will dismiss this allegation.

#### F. *Objections to the Election*

On the basis of finding the two 8(a)(1) violations noted above and that Union's Objections 2 and 4 have been supported by evidence, and noting the extreme closeness of the voting in the first election and the possibility that these actions may have influenced some voters in the election, I find that the election held on November 27, 1974, should be set aside.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, and therein found to constitute unfair labor practices in violation of Section 8(a)(1) of the Act, occurring in connection with Respondent's business operations as set forth above 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.

### IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices set forth above, I recommend that it cease and

desist therefrom and take certain affirmative action designed to effectuate the policies of the Act as follows.

Having found that Respondent violated Section 8(a)(1) of the Act by threatening an employee with discipline if he did not remove union literature from his person and threatening another employee that his name was being put on a list because he was distributing union literature and since it is part of the purpose of the Act to prevent the commission of unfair labor practices, I recommend that Respondent be ordered to cease and desist from violating the Act in the same or a similar manner. On the basis of the foregoing findings and the entire record, I make the following:

#### CONCLUSIONS OF LAW

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

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

3. Respondent violated Section 8(a)(1) of the Act by unlawfully threatening an employee with discipline if he did not remove union literature from his person and threatening another employee that his name was being put on a list because he was distributing union literature.

Upon the foregoing findings of fact and conclusions of law, and entire record in this case, and pursuant to Section 10(c) of the Act, I recommend the following:

#### ORDER<sup>2</sup>

The Respondent, American Buildings Company Inc., Jamestown, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully threatening an employee with discipline if he did not remove union literature from his person and threatening another employee that his name was being put on a list because he was distributing union literature.

(b) In the same or any similar manner interfering with, restraining, or coercing employees in the exercise of rights under Section 7 of the Act.

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

(a) Post at its plant in Jamestown, Ohio, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms furnished by the Regional Director for

Region 9, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof and 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.

(b) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the election in Case 9-RC-10799 conducted on November 27, 1974, be set aside and a new election conducted at an appropriate time.

<sup>2</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 by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>3</sup> In the event that the Board's 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

Following a hearing in which the Company, the Union, and the General Counsel of the National Labor Relations Board participated and offered evidence, it has been found that we violated the Act. We have been ordered to post this notice and to abide by it.

WE WILL NOT unlawfully threaten employees with discipline if they wear union literature or insignia and will not threaten to put employees' names on a list because they distribute union literature.

WE WILL NOT in the same or any similar manner interfere with, restrain, or coerce employees in the exercise of rights under Section 7 of the Act.

AMERICAN BUILDINGS  
COMPANY, INC.