

Walgreen Company and Retail Clerks Union, Local 775, Retail Clerks' International Association, AFL-CIO. Case 20-CA-9619

December 9, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
PENELLO

On July 22, 1975, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and an answering 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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herewith and to adopt his recommended Order as modified herein.

The Administrative Law Judge held that the undisputed evidence established the authorization cards secured from the employees by the Union were obtained on the representation that they were for an election, to be followed by bargaining were the Union successful at the polls. Because of that representation, the Administrative Law Judge concluded that the cards did not indicate that a majority of the employees desired to be represented by the Union, only that they wished to participate in an election to determine that question.

The authorization cards on their face clearly and unequivocally authorize the Union to represent employees for the purposes of collective bargaining. With the exception of Skolnick, whose testimony was elicited in a series of leading questions, none of the employees was told that the cards were to be used solely for the purpose of obtaining an election.

There is nothing inconsistent between obtaining authorization cards in order to demonstrate sufficient employee interest in representation to warrant an election and in using the cards to demonstrate a union's majority. In fact, cards which demonstrate only employee interest in an election do not demonstrate support for a union and do not warrant an election. There is nothing in the record to suggest that the Union did not in good faith intend to secure representational rights through an election.

The Board has consistently held since *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963), that

unambiguous authorization cards will be invalidated because of misrepresentations concerning their purpose only if employees are told, or intentionally led to believe, that the sole purpose of the card is to secure an election. The Board's restatement and clarification of that position in *Levi Strauss & Co.*, 172 NLRB 732 (1968), was substantially adopted by the Supreme Court in *N.L.R.B. v. Gissel Packing Co. Inc.*, 395 U.S. 575, 584 (1969).

Nonetheless, we do not believe that a bargaining order is warranted. The interrogation of employees by a low-level supervisor whose exclusion from the unit appears to have been in doubt originally does not require a bargaining order to remedy it, nor does the single unlawful reprimand flowing from an overly broad application of an otherwise valid no-solicitation rule. The wage increase, although found to have been unlawfully motivated, was not specifically tied to the organizing campaign by the Respondent. Similar raises had been granted some 4 months earlier at the Respondent's other stores and the increases did no more than bring the employees up to the prevailing rate. Indeed, the latter point was relied on by the Respondent to explain the increases to the employees. We do not believe the increase, alone or in conjunction with the Respondent's other unfair labor practices, had an irremediable effect on the election process.

We do not discern a pattern of pervasive and egregious unfair labor practices which cannot be remedied by traditional means, nor can we say that on balance the cards better reflect the employees' desires than would a Board-conducted election. Therefore, we shall not disturb the Administrative Law Judge's Remedy and recommended Order in that respect.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that Respondent Walgreen Company, San Mateo, California, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order as so modified:

1. Insert the following as paragraph 1(e):

"(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT interrogate our employees concerning their knowledge of, or feelings about, Retail Clerks Union, Local 775, Retail Clerks International Association, AFL-CIO, or any other labor organization.

WE WILL NOT interrogate our employees concerning the identity of other employees actively aiding, supporting, or assisting the above or any other labor organization.

WE WILL NOT grant wage increases to our employees to discourage them from supporting the above or any other labor organization.

WE WILL NOT reprimand or otherwise discipline our employees for engaging in union activities on their own time.

WE WILL retract and expunge from our records the written reprimand we issued to Phil Evans on August 14, 1974, for engaging in a conversation concerning union activities while he was on his own time.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the National Labor Relations Act.

WALGREEN COMPANY

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On May 22, 1975, I conducted a hearing at San Francisco, California, to try issues raised by an amended complaint issued on April 11, 1975.¹

The complaint alleged that Walgreen Company² violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (hereinafter called the Act), by: (1) interrogating employees concerning their and other employees' union membership, activities, and sympathies; (2) promising an economic benefit to an employee to discourage him from supporting Retail Clerks Union, Local 775, Retail Clerks' International Association, AFL-CIO;³ (3) stating to an employee the Company would never sign a contract with a union; (4) granting wage increases to employees to induce them to refrain from joining, supporting, or assisting the Union; and (5) posting and enforcing an unlawful no-solicitation rule. The complaint also alleged the Company's violations of Section 8(a)(1)

and (3) adversely affected the Union's majority representative status within two separate appropriate units of the Company's employees and made the conduct of a free and fair election impossible, warranting the issuance of an order requiring the Company to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Company's employees within those units.

The Company denied it committed the acts alleged as violative of Section 8(a)(1) and (3) of the Act, denied the Union's majority representative status among its employees within the two units, and denied it committed any violation of the Act.

The issues created by the contentions of the parties are:

1. Whether the Company interrogated employees concerning their and other employees' union membership, activities, and sympathies.
2. Whether the Company promised economic benefits to an employee to discourage him from supporting the Union.
3. Whether the Company stated to an employee the Company would never sign a contract with the Union.
4. Whether the Company granted wage increases to employees to induce them to refrain from joining, supporting, or assisting the Union.
5. Whether the Company posted and enforced an unlawful no-solicitation rule.
6. Whether a bargaining order should issue in this case.

The parties appeared by counsel at the hearing and were afforded full opportunity to produce evidence, to examine and cross-examine witnesses, and to argue and file briefs. Briefs have been received from the General Counsel and the Company.

Based upon my review of the entire record, observation of the witnesses, perusal of the briefs, and research, I enter the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the Company admitted, and I find that the Company at all times pertinent was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization, as those terms are defined in Section 2(2), (5), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Company is a national retailer selling drugs and other products. This case concerns one of its retail stores at the Hillsdale Mall, San Mateo, California. At times

¹ The original charge was filed by the Union on October 4, 1974; a first amended charge was filed by the Union on November 19, 1974; the original complaint issued on November 28, 1974.

² Hereafter called the Company.

³ Hereafter called the Union.

pertinent the store employed pharmacists, sales and stock clerks, cashiers, and managerial personnel.⁴

B. Union Representation

Union activity among the Company's employees at the store commenced with the Company's hire of Phil Evans as a relief pharmacist.⁵ Evans was a member of the Union at the time he was hired. Immediately after commencing work at the store, Evans launched a campaign among the employees to stir interest in union representation. Several employees expressed an interest, so Evans arranged to meet with representatives of the Union at the mall. Two union representatives met on July 23, 1974,⁶ with Evans and company employee Leila Alexander in the Farmer's Market, a restaurant area within the mall (which is enclosed) immediately adjacent to the store. The union representatives told Evans and Alexander that, if a majority of the Company's employees would sign union authorization cards, the Union would seek an election conducted by Region 20 and, if the Union won that election, it would then seek to negotiate a contract with the Company containing substantial improvements over the employees' current rates of pay and other benefits. Evans and Alexander signed cards and gave them to Bob Russell, one of the union representatives. While the four were discussing the Union's standard area contract benefits, employee Kevin Smyth walked past. Evans called him over and the same explanation was made to Smyth. Smyth was offered a card, signed it, and gave it to Russell. The union representatives then gave a number of blank cards to Evans and requested he solicit the signatures of the balance of the employees. Evans agreed to do so.

Later the same day, Evans contacted employees Mary Dulfer, Kiyoshi Takahara, Jack Skolnick, Lisa Andreini, Ted Matsuda, and Robert Semla (the last two were pharmacists; the balance were sales employees). Evans stated to each of them, if they signed a card, this would enable the Union to secure an election and, if the Union won that election, would further enable the Union to negotiate a contract with the Company containing improved wages and other benefits. Evans furnished cards to all the employees just named and they all signed and returned them to Evans. Evans subsequently delivered the cards to Russell.

On the next day, July 24, Evans contacted employee Carol Chittenden, made the same explanation he made to the other employees, and gave Chittenden a card. Chittenden signed the card and returned it to Evans. Evans delivered that card to Russell.

On July 29, the Union filed a petition with Region 20 (Case 20-RC-12240) seeking certification as the exclusive collective-bargaining representative of the Company's pharmacists and selling employees in two separate units. The petition was supported by the cards of the employees named heretofore.⁷

⁴ The store manager was John Cox and the assistant manager was Ralph Munoa. The Company conceded at all times pertinent Cox and Munoa were supervisors and agents acting on its behalf within the meaning of the Act.

⁵ Evans testified he understood at hire (in late July 1974) that he would have the job for no more than 5 weeks as a vacation replacement for the

In early August, the Company and the Union executed an agreement for a consent election. The agreement was approved by the Regional Director for Region 20 on August 19. The Region scheduled an election for October 9.

Under the terms of the consent agreement, the election was scheduled to be held in: (1) *Voting Group A* — all pharmacists employed by the employer at its store located at 62 Hillside Mall, San Mateo, California; excluding all other employees, store manager, assistant store managers, guards, and all other supervisors as defined in the Act; (2) *Voting Group B* — all full-time and regular part-time selling and nonselling employees employed by the employer at its store located at 62 Hillside Mall, San Mateo, California; excluding pharmacists, store manager, assistant store managers, guards, and all other supervisors as defined in the Act. It was specified that the employees in *Voting Group A* (the pharmacists) would be polled on two questions; (1) whether they desired to be included with nonprofessional employees in a single unit for collective-bargaining purposes; and (2) whether they wished to be represented by the Union. It was further stipulated that the payroll period for eligibility to vote was the pay period ending August 9.

The company employees eligible to vote in the subject election consisted of the following: *Voting Group A* — R. L. Fawzi, T. Matsuda, and R. J. Semla; *Voting Group B* — L. D. Alexander, J. M. Bickel, C. H. Chittenden, R. C. Dixon, M. Dulfer, J. G. Oakley, D. L. Peterson, J. E. Skolnick, K. G. Smyth, and K. Takahara.

The parties stipulated the two units heretofore specified constituted units appropriate for the purpose of bargaining collectively within the meaning of Section 9 of the Act and I so find.

I further find that by July 31 a majority of the employees in each unit signed union authorization cards at the Union's behest for the purpose of securing an election to determine whether or not a majority of the employees within each unit desired to be represented by the Union.

C. The Alleged Unlawful Interrogations

1. Munoa — Skolnick

Skolnick testified that the day he received a union authorization card from Evans (July 23) he had the card in his hand when he saw Munoa; that he told Munoa cards were being passed around and everyone was signing them; that Munoa asked him who was passing out the cards; and that he refused to identify who was passing out the cards.

Munoa testified that on July 23 he saw a group of employees congregated behind the pharmacy counter; he went behind the counter and asked what was going on; the employees began to disperse; he repeated his question; he again received no answer and the employees dispersed to their normal work stations; Skolnick followed him out of

regular pharmacists. His employment expired pursuant to its terms in late August.

⁶ Read 1974 after all further date references omitting the year

⁷ Evans later (on July 29 and 31) secured additional authorization cards from employees Debj Peterson and Robert Dixon based upon the same representations he made to the others.

the pharmacy area and told him there were cards being passed out and that he had signed one but was going to tear it up, since he did not want to get into trouble; and that he told Skolnick to do whatever he wanted. Munoa categorically denied asking Skolnick who was passing out cards.

In his testimony Skolnick identified himself as the "number 3 man"; that is, a management trainee. He was a direct and forthright witness. His testimony that Munoa asked him who was passing out the cards is credited.

I find and conclude that by Munoa asking Skolnick who was passing out union authorization cards on July 23 the Company violated Section 8(a) (1) of the Act.

2. Munoa — Smyth

Smyth testified that a day or two after he signed a union authorization card (he signed a card on July 23), while he was at the office at the rear of the store, Munoa asked him if anything was wrong; he replied in the negative; Munoa asked him if he knew anything about the Union; he replied that union authorization cards were being passed out; and that Munoa closed the conversation by cautioning him not to spread that information around since he didn't want it to get back to the district office. Munoa denied asking Smyth what he knew about the Union.

I credit Smyth's testimony. He was a convincing witness. Munoa admittedly learned from Skolnick on July 23 that an attempt was being made to secure employee signatures to union authorization cards and it is not unreasonable that he sought to learn thereafter from Smyth whether he was one of the signatories.

I find and conclude that by Munoa's July 24 or July 25 interrogation of Smyth concerning what he knew about the Union the Company violated Section 8(a)(1) of the Act.

3. Munoa — Alexander

Leila Alexander testified that 2 days after she signed a union authorization card (she signed a card on July 23) Munoa called her to the rear of the store and asked her what bad thing was going on; she did not reply; Munoa stated he hired her and she could trust him, to tell him what she knew; and she then stated the employees were attempting to secure union representation.

Munoa testified Alexander asked to see him and he invited her to accompany him to the office in the rear of the store; that on arriving there Alexander asked him if she would be fired if she joined the Union; and that he replied she would not be fired, she had a right to join the Union. Munoa denied he asked Alexander what bad thing was happening in the store or that he told her she could trust him if she told him what it was.

I credit both Alexander and Munoa; that is, I find that, in the course of a conversation at the rear of the store on or about July 25, Munoa asked Alexander what "bad thing" was happening in the store and assured her that she could trust him; that she informed him the employees were seeking union representation; that she asked him if she

would be fired if she joined the Union; and that he assured her she would not be fired if she joined.

I further find that Munoa's question "What bad thing is happening in the store" is too vague to be classified as an interrogation concerning Alexander's union activity. I therefore find and conclude it was not violative of the Act and will recommend dismissal of those portions of the complaint so alleging.

4. Munoa — Chittenden

Carol Chittenden testified that, shortly after Cox became manager (July 26), Munoa and she had a conversation near the timeclock; Munoa asked her how she felt about the Union and she replied she didn't know.

On cross-examination, Chittenden stated she started the conversation with Munoa at the timeclock by asking Munoa if he would get mad if the employees went union.

Chittenden's testimony is uncontradicted and is credited.

I find and conclude that by Munoa's asking Chittenden around July 26 how she felt about the Union, after Chittenden asked him if he would get mad if the employees joined the Union, Munoa continued his practice of seeking to ascertain who among the employees were union supporters and the Company thereby violated Section 8(a)(1) of the Act.

5. Cox and Helm — Dixon, Alexander, and Smyth

It is alleged in the complaint that, in late September, Helm⁸ and Cox interrogated employees concerning their union membership, activities, and sympathies and, in the course of those interrogations, promised one an economic benefit to discourage him from supporting the Union and told another the Company would never sign a contract with the Union.

Leila Alexander testified that not long before the scheduled date for the election (October 9) Cox and Helm called her to meet with them at the Farmer's Market; when they sat down together, Cox and Helm asked Alexander why she was interested in union representation; she replied she was interested because several employees had been working for over a year for the Company without receiving any wage increase and she had been told when she was hired that she would receive a 25-cent increase after 3 months, but did not receive it (the only increase she received after her hire was a 10-cent increase on or about July 26, when Cox was hired as the new manager).

Robert Dixon testified he also was called to a conference with Cox and Helm at the Farmer's Market at about the same time; after he sat down, Helm asked him if he felt strongly about the Union and he replied it did not matter, he just wanted to do his job as best he could. Dixon also testified that, in the course of the conversation, Cox and Helm recited the Company's benefit package and asked him if he had any questions; Dixon asked questions concerning certain of the Company's benefits and the union benefits program; and Helm commented he hoped to see Dixon a manager some day.

⁸ It is undisputed and I find that at all times pertinent Gaylord Helm was the Company's district manager for western California and a supervisor and

agent acting upon its behalf within the meaning of the Act.

Kevin Smyth testified he was called to attend a preelection conference with Cox and Helm shortly before the scheduled election (October 9); that Helm explained the Company's benefit plans, compared those plans with the Union's benefit plans, and asked him if he had any questions regarding those plans or the election; he asked questions concerning Talbert's discharge and what contract might ensue if the Union won the election; either Cox or Helm replied that, even if the Union won the election, the Company did not have to sign any contract negotiated with the Union.

Cox and Helm testified that they interviewed practically all the employees, one at a time, immediately prior to the scheduled date for the election (October 9); that they followed a standard format in those conversations, beginning by saying an election was coming up and they wanted the employees to know the Company's wage policies and benefit package and the union benefit package, explained and compared the two, asked the employee whether the employee had any questions concerning the election or the benefit programs, and then responded to any questions. They testified they spoke to Alexander, Dixon, and Smyth; testified they followed this format in those conversations; and testified neither of them asked Alexander or Dixon why they were interested in the Union, how they felt about the Union, or questions of a like nature. They further testified they were given a booklet (which was introduced in evidence) prior to the employee conferences and following a conference with company counsel, wherein they were instructed concerning "do's and don'ts" concerning conversations with employees when a union election petition is pending.

Helm and Cox impressed me as witnesses with a clear recollection of what occurred in the employee interviews. I credit their testimony that they developed the standard format described heretofore and followed it in those interviews. I further credit their testimony that they did not question Alexander or Dixon concerning their union views or sympathies.

I therefore find and conclude that, in the course of their conversations with Alexander and Dixon, Helm and Cox did not interrogate them concerning their union membership activities and sympathies and will recommend that those portions of the complaint so alleging be dismissed.

Cox testified he did not recall Helm telling Dixon he hoped to see Dixon a manager some day, but stated they did discuss with some of the employees their goals and future with the Company; that they knew Dixon was studying business administration, and that Helm may have said to Dixon he might some day be a manager if he stayed with the Company and completed his studies.

Helm categorically denied that he offered Dixon employment as a manager, but corroborated Cox's testimony that he discussed the employees' possible future with the Company in the course of the preelection conferences and may have said in response to a statement that, if Dixon intended to stay with the Company, they hoped he would achieve the status of a manager some day.

I find that Helm expressed the hope that Dixon might achieve manager status some day if he pursued his studies

and stayed with the Company, but that this expression was insufficient to be classified as a promise of a benefit. I therefore shall recommend that those portions of the complaint so alleging be dismissed.

Cox categorically denied that either he or Helm told Smyth the Company would not sign whatever contract the Company negotiated with the Union in the event the Union won the election. He stated that Helm told Smyth that, if the Union won the election, the Company and the Union would have to sit down and negotiate with the Union concerning the differences between the company and the union benefit plans, but the Company did not have to agree to or sign any contract not in its best interests. Helm corroborated Cox's testimony.

I discredit Smyth's testimony that Cox or Helm stated the Company would not have to sign any contract the Company negotiated with the Union and find, rather, they informed Smyth that, while the Company would have to bargain with the Union over a contract and the differences between the Union's benefit plans and the Company's benefit plans, the Company did not have to agree to or sign anything not in its best interests. I therefore shall recommend that those portions of the complaint alleging that Cox or Helm threatened Smyth that the Company would not sign a contract after negotiating it with the Union be dismissed.

D. *The Alleged Unlawful Wage Increases*

On March 21, Helm sent a memorandum under the subject heading "salary rates" to the managers of all the stores under his supervision — Burlingame, Millbrae, Mountain View, Palo Alto, San Bruno, San Mateo,⁹ Santa Clara, Belmont, South San Francisco, and all San Jose stores.

In that memorandum, Helm set the following salary rates: Clerks, first 3 months, \$2.35; second 3 months, \$2.70; third 3 months, \$2.95; fourth 3 months, \$3.25; experienced, \$3.60. He set out a rate of \$2.25 for Christmas extra employees, and \$5 for pharmacist interns; and for registered pharmacists the following rates: effective immediately, \$8.30; 5/1/74, \$8.45; 11/1/74, \$8.75; 5/1/75, \$8.90; 11/1/75, \$9.15, and 5/1/76, \$9.30. He instructed the managers to place those rates in effect in accordance with the above-mentioned schedule.

Cox replaced Talbert as manager of the store on July 26, 3 days after Evans secured signed union authorization cards from practically all the employees at the store. It is undisputed that Munoa learned of the union activity almost from its outset (Munoa was solicited by Evans to sign a card) and reported the early union organizational activity to Talbert, who was then the manager at the store.

When Helm and Cox reviewed the rates of pay of the employees at the store immediately prior to Cox's assumption of his duties as Talbert's replacement, they ascertained that the rates paid to the employees the Union sought to represent (other than the pharmacists) were lower than the rates set out in the above-noted memorandum. Upon assumption of his duties, Cox immediately

⁹ The store involved in this case.

increased the rates of all employees other than pharmacists to the rates set out in the March 21, 1974, memorandum.

Cox and Helm contend they did not know about any union activity at the time they made the scheduled increases; they testified all they heard were "rumors" which they discounted.

I am skeptical of Helm and Cox's testimony that they were unaware of the union activity at the time they instituted the aforesaid increases; it seems incredible that neither Talbert nor Munoa, who were fully aware of the scope of the union campaign and the identity of the Union's chief proponent (Evans), would not inform Helm and Cox of those matters. I therefore discredit Cox and Helm's denial of any knowledge of the union campaign at the time the increases were placed into effect and further find that at least part of their reason for instituting the increases *at the time they were placed in effect* was to dilute or lessen union support among the employees.

I therefore find and conclude that the Company instituted the July 26 increases to employees other than the pharmacists in an attempt to discourage employee support of the Union and thereby violated Section 8(a)(1) of the Act.

E. *The Alleged Publication and Enforcement of an Unlawful No-Solicitation Rule*

The complaint alleges that in August the Company posted and enforced an unlawful no-solicitation rule.

1. The rule posting

It is undisputed that on August 1, shortly after supplanting Talbert as manager at the store, Cox posted two notices on the employee bulletin board, above the timeclock. Both notices were handwritten on Walgreen stationery.

One read: "solicitation by our employees for any purpose is not permitted during working time." The other read: "Walgreen's does not permit solicitation by nonemployees for any purpose anywhere on the store premises."

Approximately 10 days later, Cox took down the handwritten notices and substituted a typed notice. It was headed "*Walgreen Company No Solicitation Rules*" and stated: "*Rules for nonemployees.* Solicitation for any purpose by non-Walgreen employees is prohibited at all times in Walgreen's stores. *Rules for Employees.* Solicitation for any purpose by Walgreen's employees is not permitted during employees' working time."

The General Counsel does not contend posted rules, either handwritten or typewritten, were violative of the Act; rather, he contends the rules are unlawful because they were posted to inhibit or hinder the Union's organizational campaign among the employees during

working hours,¹⁰ while the Company freely pursued its antunion propagandizing of the employees during working hours.¹¹

The Company argues it had a right to promulgate the rules when it did in view of an employee complaint over Evans' persistent harassment in the course of his organizational efforts¹² and because employees congregated during working hours at the pharmacy, away from their work stations and at other locations, to discuss the Union.¹³ The Company contends it had a right to propagandize its employees on time it was paying for, as the Union had like opportunity on their free time.¹⁴

I find and conclude that Cox was prompted by valid business considerations in posting the rules; i.e., to assure that employees spent their paid time working for the Company and to bring a stop to Evans' harassment of a fellow pharmacist; I therefore further find that neither the rules themselves nor their posting was violative of the Act.

2. The first alleged unlawful enforcement of the rules

On August 14, following Munoa's conversation with Evans concerning Munoa's eligibility to join the Union (see sec. II,C,5 above) apparently based upon a report from Munoa concerning the conversation, Cox issued a written reprimand to Evans for violation of the employee solicitation rule. Cox testified he was well aware Evans was the inside organizer for the Union among the Company's employees and he wanted to stop employee solicitation by Evans during working hours.¹⁵

When he received the reprimand, Evans protested he was on his break at the time he talked to Munoa and that he thought Munoa was likewise taking a break, since Munoa had no business purpose for being in the pharmacy speaking to him.

I find that Cox's issuance of the August 14 reprimand to Evans over a conversation initiated by Munoa, a supervisor, while Evans was on his break¹⁶ and Munoa was exercising his prerogative as a management representative to discuss the Union during working hours, interfered with Evans' right to engage in union activity on his free time and constituted discrimination in regard to Evans' employment to discourage his union activity, thereby violating Section 8(a)(1) and (3) of the Act.

3. The second alleged unlawful enforcement of the rules

Evans testified that on another occasion in August, not long after he had received his August 14 written reprimand over the Munoa conversation, he was called to Cox's office and asked whether he told Skolnick he would receive the rate paid grocery clerks under the Union's area agreement;

ed and is credited. Cox's testimony to seeing employees gathering in groups away from their work stations is also credited.

¹⁴ Cox testified the employees had two 15-minute break periods and a 30-minute lunch period (plus time before and after work shifts) during which the Union was free to contact them.

¹⁵ See fn 10.

¹⁶ Evans' testimony to this effect is uncontradicted since Munoa did not testify concerning the incident, that testimony by Evans is credited

¹⁰ There were no rules prior to August 1 against employee solicitation during working hours.

¹¹ The evidence discloses the Company did so pursue its campaign (see findings under sec. II,C, above).

¹² Helm's uncontradicted testimony to a July 31 complaint by pharmacist Semla is credited.

¹³ Munoa's testimony to breaking up a July 23 meeting between Evans and selling employees behind the pharmacy counter during working hours, a place where selling employees were not supposed to enter, is uncontradict-

that he denied so informing Skolnick; and that Cox pointed to the no-solicitation rule posted over the employee timeclock and said, if Evans talked about the Union again or tried to get Skolnick or any other employee to join the Union, he would be discharged immediately. Evans further testified this was his first awareness of the rule, since he did not punch the timeclock (the pharmacists entered their time in a logbook), and it was a handwritten rule he was directed to look at.

Cox testified he knew that Evans was the Union's inside organizer at the store at the time he posted the original notices on August 1 and made a point of carrying the notices to Evans and showing them to him prior to posting them that date; and that at the time Evans claimed the above conversation took place (August 16 or thereafter) the typed notice had supplanted the handwritten notices on the bulletin board. Cox denied that the conversation related by Evans ever took place.

I credit Cox's denial. Evans' testimony that he was unaware of the rule before August 16 or 17, despite its original posting from August 1 in the view of employees with whom Evans was in constant contact and his receipt of a written reprimand for alleged solicitation on August 14, is incredible, and casts doubt on his testimony concerning the entire incident; Cox, on the other hand, was generally corroborated in his testimony concerning other matters and appeared straightforward in his recitation of events concerning this matter.

F. The Bargaining Order

Findings have been entered above (sec. II.B.) that two of the 3 pharmacists in the pharmaceutical unit and 9 of the 11 employees in the other unit signed union authorization cards stating that each of them "authorize Retail Clerks International Association, AFL-CIO, or its chartered local union, to represent me for the purposes of collective bargaining respecting rates of pay, wages, hours of employment or other conditions of employment in accordance with applicable law."

The General Counsel relies on the cases of *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), and *Steel-Fab, Inc.*, 212 NLRB 363, (1974), in contending that the authorization cards cited heretofore should be considered sufficient evidence of the majority representative status of the Union within the two units upon which to predicate a bargaining order, inasmuch as the Employer's unfair labor practices hereinabove found destroyed the conditions necessary for the conduct of a free and fair election.

The General Counsel ignores undisputed evidence, i.e., the testimony both of the solicitors of those cards and the signatories, that in each case the signatory signed the card after a representation was made to him the purpose of the card was to secure an NLRB election, and, in the event a majority of the employees cast ballots at that election favoring representation by the Union, the Union would then seek to bargain collectively with the Company

concerning rates of pay, wages, hours, and working conditions.

In view of those representations, I find and conclude that the representation cards, standing alone, fail to establish that by July 31 a majority of the employees in the two units desired representation by the Union.¹⁷ I find, instead, that those cards simply establish that a majority of the employees desired to participate in an election wherein, by casting a secret ballot, they could indicate whether or not they desired union representation.

I therefore conclude that a bargaining order is not warranted in this case, but, rather, a secret ballot election should be conducted under the auspices of Region 20 when the effects of the unfair labor practices set out heretofore have been dissipated.

CONCLUSIONS OF LAW

1. At all times pertinent the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization, as those terms are defined in Section 2(2), (5), (6), and (7) of the Act.

2. At all times pertinent Helm, Cox, and Munoa were supervisors of the Company acting on its behalf within the meaning of Section 2 of the Act.

3. The following constitute units appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

(a). All pharmacists employed by the Company at its store located at 62 Hillsdale Mall, San Mateo, California, excluding all other employees, store manager, assistant store managers, guards and supervisors as defined in the Act.

(b). All full-time and regular part-time selling and nonselling employees employed by the Company at its store located at 62 Hillsdale Mall, San Mateo, California, excluding store manager, assistant store managers, pharmacists, guards and supervisors as defined in the Act.

4. It was not proven by preponderance of valid evidence that the Union represented a majority of the employees within either of the aforesaid units.

5. The Company violated Section 8(a)(1) of the Act:

(a). On July 23 by Munoa's interrogation of Skolnick concerning the identity of the employee passing out union authorization cards.

(b). On July 24 or July 25 by Munoa's interrogation of Smyth concerning what he knew about the Union.

(c). On or about July 26 by Munoa's interrogation of Chittenden concerning how she felt about the Union.

(d). On July 26 by instituting wage increases to discourage employee support of the Union.

6. The Company violated Section 8(a)(1) and (3) of the Act by reprimanding Evans for participating in a conversa-

¹⁷ *Fort Smith Outerwear, Inc., and H L Friedlen Company v N L R B*, 499 F.2d 223 (CA 8, 1974), enfg. 205 NLRB 592 (1973), *Nichols-Dover, S E. Co v. N L R B*, 380 F.2d 438 (CA 2, 1967), *Engineers & Fabricators, Inc v. N L R B*, 376 F.2d 482 (CA 5, 1967), *Lake Butler Apparel Co v N L R B*, 392 F.2d 76 (CA 5, 1968), *Dayco Corp etc, v N L R B*, 382 F.2d

577 (CA 6, 1967); *Swan Super Cleaners, Inc v. N L R B*, 384 F.2d 609 (CA 6, 1967); *Dan Howard Mfg Co v N L R B*, 390 F.2d 304 (CA 7, 1968), *J Taylor Mart, Inc, d/b/a Taylor's I G A Foodliner v. N L R B*, 407 F.2d 644 (CA 7, 1969); *South California Associated Newspapers, Inc., South Bay Daily Breeze Div, v N L R B*, 415 F.2d 360 (CA 9, 1969)

tion concerning union representation with Munoa while Evans was on a break.

7. The Company did not otherwise violate the Act.

8. In the absence of clear proof that a majority of the company employees within each of the units heretofore specified designated the Union as their collective-bargaining representative, a bargaining order is not warranted.

9. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

THE REMEDY

Having found that the Company engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that the Company be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁸

Respondent Walgreen Company, San Mateo, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning the identity of employees aiding, assisting, or supporting the Union.

¹⁸ In the event no exceptions are filed as provided by Sec 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Interrogating its employees concerning their knowledge or feelings about the Union.

(c) Instituting wage increases to discourage employee support of the Union.

(d) Reprimanding or otherwise disciplining its employees for engaging in union activities outside their working hours.

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

(a) Retract and expunge from its records the written reprimand issued to Phil Evans on August 14, and so advise Evans and the Union in writing.

(b) Post at its premises at San Mateo, California, copies of the attached notice marked "Appendix."¹⁹ Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by a representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for a period of 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.

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

The complaint is dismissed insofar as it alleges violations of the Act other than those found above.

¹⁹ 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."