Yaloz Mold & Die Co., Inc. *and* Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 300, International Production, Service & Sales Employees Union, Party in Interest. Cases 29-CA-7341, 29-CA-7341-2, 29-CA-7341-3, 29-CA-7949, and 29-RC-4601

May 18, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On February 9, 1981, Administrative Law Judge Joel P. Biblowitz issued the attached Decision in this proceeding. Thereafter, Local 300, International Production, Service & Sales Employees Union,[1] the Party in Interest, filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the Administrative Law Judge's rulings, findings,[2] and conclusions,[3] and to adopt his recommended Order, as modified herein.[4]

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 the Respondent, Yaloz Mold & Die Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

Insert the following as paragraph 1(c):

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

IT IS FURTHER ORDERED that the election conducted on June 13, 1979, among the Employer's employees be, and it hereby is, set aside, and that Case 29-RC-4601 be, and it hereby is, severed and remanded to the Regional Director for Region 29 for the purpose of conducting a new election at such time as he decides that the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge: This case was heard before me in Brooklyn, New York, on August 25, 26, and 27, 1980. A consolidated complaint was issued on September 24, 1979, based on charges filed on July 18 (29-CA-7341) and July 20 (29-CA-7341-2) and August 8, 1979 (29-CA-7341-3). On October 31, 1979, the Regional Director for Region 29 issued a Report on Objections, Order Consolidating Cases, and Notice of Hearing, in which he ordered that Case 29-RC-4601 be consolidated with Cases 29-CA-7341, 29-CA-7341-2, and 29-CA-7341-3, and that a hearing be held before an administrative law judge on certain of the objections filed by Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 810. On June 30, 1980, a complaint was issued in Case 29-CA-7949, based on a charge filed on April 21, 1980. On July 29, 1980, an order further consolidating cases and notice of hearing issued, in which all the above-mentioned cases were consolidated.

The allegations are that Yaloz Mold & Die Co., Inc., herein called Respondent, violated Section 8(a)(1) of the Act by threatening its employees with plant closure if they assisted or supported Local 810, and promised its employees wage increases and other benefits and improvements in their terms and conditions of employment to induce them to refrain from assisting Local 810; it is also alleged that Respondent violated Section 8(a)(1) and (2) of the Act by urging its employees to vote for Local 300, International Production, Service & Sales Employees Union, herein called Local 300, in an election to be conducted by the Board, and violated Section 8(a)(1), (2) and (3) of the Act by continuing to deduct Local 300's dues from the wages of its employees and transmitting these dues to Local 300, after the expiration of its collective-bargaining agreement with Local 300. In addition, it is alleged that Respondent violated Section 8(a)(1), (2) and (3) of the Act by its layoff and failure to recall to employment Aladino Santiago and Miguel Rosario; by its hiring new employees to replace Santiago and Rosario and conditioning their hire upon their support for Local 300; and by its layoff and failure to recall to employment Mohan Singh.

Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on July 13, 1979, at which time 33 ballots were cast for Local 300; 18 ballots were cast for Local 810; 2 ballots were cast

[1] Herein called Local 300.

[2] Local 300 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 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] In the absence of exceptions thereto, we adopt *pro forma* the Administrative Law Judge's dismissal of the allegation that Respondent violated Sec. 8(a)(1) and (2) of the Act by urging its employees to vote for Local 300 in the election conducted on July 13, 1979.

[4] We have modified the Administrative Law Judge's recommended Order to include the narrow cease-and-desist provision which he inadvertently omitted.

The Administrative Law Judge's recommended Order provides that a second election be conducted "as early as possible." In keeping with Board policy, we shall order instead that the election be held at such time as the Regional Director decides that the circumstances permit the free choice of a bargaining representative.

against the participating labor organizations; and there were 7 challenged ballots. Local 810 filed timely objections to the election. In his Report on Objections, Order Consolidating Cases, and Notice of Hearing, the Regional Director overruled certain of said objections.

On February 25, 1980, the Board issued a Decision and Order Directing Hearing on Objections and Remanding to Regional Director, in which it ordered the following objections be heard by an administrative law judge:

> 1. (a) The Employer, by its officer, agents and representatives, on or about June 1, 1979, laid off bargaining unit employees Miguel Rosario and Aladino Santiago because of their membership in and activities on behalf of Local 810. Thereafter, the employer hired replacements for the above named employees so as to avoid recalling such laid off employees prior to the holding of the election scheduled for July 13, 1979.
>
> (b) The Employer, by its officers, agents and representatives, on or about June 1, 1979 through June 20, 1979, hired replacement employees, who promised to vote for Local 300, International Production Service and Sales Employees Union, in the election to be held on July 13, 1979.
>
> 2. On or about July 2, 1979, and continuing thereafter, the employer unlawfully gave assistance and support to Local 300, International Production, Service and Sales Employees Union by:
>
> > (a) Speaking with bargaining unit employees and urging them to vote against the petitioner and to vote for Local 300, International Production, Service and Sales Employees Union;
> >
> > (b) By permitting officers, agents and representatives of Local 300, International Production, Service and Sales Employees Union to enter its premises during working hours during the week of July 11th for the purposes of campaigning with respect to the July 13th election, but excluding Local 810 from engaging in similar campaigning among bargaining unit employees within the company's premises.
>
> 3. On or about June 1, 1979, and continuing through July 13, 1979, the above named Employer, by its officers, agents and representatives, promised bargaining unit employees that they would be granted wage increases if they voted for Local 300, International Production, Service and Sales Employees Union, rather than the petitioner in the election scheduled for July 13, 1979.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation with its principal office and place of business located at 239 Java Street, Brooklyn, New York, is engaged in the manufacture, sale, and distribution of metal products, such as display cases, store fixtures, machine parts, and related products. During the past year, a period representative of its annual operations, generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Brooklyn plant goods and materials valued in excess of $50,000 directly from States other than New York State. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Respondent admits, and I find, that Local 300 is a labor organization within the meaning of Section 2(5) of the Act. As regards Local 810, Respondent admits that Local 810 satisfies the standards set forth in Section 2(5) of the Act, with one exception. That exception, as stated by counsel for Respondent, is that an employer with a collective-bargaining agreement with Local 810 wrote to Local 810 stating that Respondent had an unfair competitive advantage over it because Respondent's employees were not represented by Local 810. Respondent's position appears to be that Local 810 lost its labor organization status because it was, in some manner, acting as an agent of this employer in attempting to organize Respondent's employees. This is not even correct factually as the letter (not received into evidence because it was never properly authenticated) was written after Local 810 filed its petition herein. Regardless, I find that Local 810 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS AND ANALYSIS

In February 1979,[1] Local 810's office received a telephone call (from an individual who was never identified) mentioning Respondent's operation. John Chambers, business agent for Local 810, was given the message and went to Respondent's premises. After observing that a large number of Respondent's employees were Hispanic, he requested Luther Quinones, field representative of Local 810, to assist him in the organization of Respondent's employees. After that day, Chambers and Quinones went to Respondent's premises on a daily basis, observing and speaking with Respondent's employees on a corner about four houses from Respondent's plant; after Local 810 filed its petition in this matter, Chambers and Quinones began speaking with the employees in front of Respondent's plant.

On the first day they met an employee named Pedro who informed them that the Local 300 shop steward at Respondent's plant was Barbara (at the time, Respondent and Local 300 were parties to a collective-bargaining agreement effective August 26, 1976, through August 25, 1979). Barbara met with them and informed them that Respondent's employees wished to change unions because they were not receiving any benefits from Local 300. They told her that if a majority of the employees

[1] Unless otherwise stated, all dates herein are in 1979.

wished to change unions they could do so. Within the next few weeks, they spoke with employees more regularly, particularly German Ramirez and Mohan Singh, on the street, on the corner, and, on occasion, at a restaurant on the same corner. Chambers and Quinones gave Local 810 authorization cards to Ramirez and Singh about March, April, or May; Ramirez returned about 30 signed authorization cards to Quinones. In addition, during this period, Chambers and Quinones gave authorization cards to other employees they met on the street.

A. *Layoff of Santiago and Rosario*

Guillermo "Aladino" Santiago began working for Respondent in May as a polisher and grinder. Ramirez spoke to him about the advantages of Local 810. He signed an authorization card for Local 810, given to him by Ramirez.[2] On June 8, David Yaloz, a principal and admitted agent of Respondent, told Foreman Frederico Gonzales to layoff a few employees for a week or two since work was slow. Gonzales (who did not testify at the hearing) chose Santiago as one of the employees. (Yaloz assumes that Gonzales chose Santiago because he had little seniority, having only worked for Respondent for about a month.) Santiago testified that two or three other employees were laid off at the same time as he was. At the time of these layoffs, Ramirez (the Local 300 shop steward at the time) was informed by Yaloz that he was laying off the people because he did not have enough work for them. Yaloz testified that about a week later, after work at the plant had picked up, he asked Ramirez to contact Santiago and inform him to return to work. He testified that he did this because Respondent did not have Santiago's telephone number, while Ramirez knew Santiago. About a week later Yaloz asked Ramirez where Santiago was and Ramirez said that he did not know. Although Ramirez was never specifically questioned about this incident, he was asked: "When, if ever, was Santiago recalled to work?" and he answered: "August." In about October, Yaloz saw Santiago standing outside the plant and asked him what happened to him. According to Yaloz's undenied testimony, Santiago said that he was working when Yaloz asked him if he wanted a job working for Respondent, Santiago said that he did; and he has been working for Respondent since then. Yaloz denies having any knowledge of Santiago's preference for Local 810.

The only testimony supporting the allegation regarding the alleged discriminatory layoff of Miguel Rosario was Ramirez's testimony that Rosario was one of the employees laid off at the same time as Santiago. Ramirez also testified that he gave Rosario a Local 810 authorization card to sign, outside the plant on the corner, and Rosario signed it and returned it to him. The only other testimony regarding Rosario was Yaloz's testimony in answer to a question from me as to whether Miguel Rosario was laid off at the same time as Santiago; Yaloz's answer was: "Miguel had already left by taking a plane a long time before this."

The evidence of a violation herein is so sparse that I find it unnecessary to make any credibility determinations. As regards Rosario, even if he had been laid off there is no evidence that it was done for a discriminatory reason. His sole action on behalf of Local 810 was his signing an authorization card for Local 810, and this was done outside the plant, on the corner. About thirty other employees had done so as well. As regards Santiago, although it is clear that he was laid off on June 8, he had only been employed by Respondent for about 1 month, and it is not unreasonable to assume that he was one of the least senior employees. Additionally, the uncontradicted testimony is that a week after Santiago's layoff Yaloz asked Ramirez to contact him to return. Further, in October, when Yaloz saw Santiago for the first time since the layoff, he rehired him on the spot. Finally, Santiago's activity on behalf of Local 810 was limited to the signing of an authorization card for Local 810 (albeit, this testimony is very confused). I would therefore find that General Counsel has not sustained his burden of establishing that Santiago and Rosario were laid off in violation of Section 8(a)(1) and (3), and I would dismiss this allegation.

Having dismissed this allegation, I would likewise overrule the corresponding objection 1(a).

B. *The June Hiring*

General Counsel's main witness regarding this allegation was Keith Lawrence. As there are a number of credibility questions, herein, Lawrence's testimony will be examined first: Lawrence testified that while he was at a game room (a penny arcade with pinball machines) the owner of the game room ("Joe") told him to return on June 18 at 8 a.m. at which time there would be a job for him. On that morning, 15 to 18 other men were present, as were Rafael Griffin, delegate and organizer for Local 300, and Jimmy Robinson, organizer for the international union that Local 300 is affiliated with. Griffin informed those present that he had a job for them where they would earn $2.90 an hour, plus an additional dollar under the table; that they were to vote for Local 300 in the upcoming election and inform him of any employee talking about Local 810. At that time, they all got into cars and drove to Respondent's plant. These individuals all went upstairs and were joined by David Yaloz and Leon Yaloz (the other principal of Respondent) and Griffin. At that time, Griffin again informed them in the presence of David and Leon Yaloz that they would be paid $2.90 an hour, plus an additional dollar under the table and they were to let him know if anybody in the shop was going to vote for Local 810. Griffin also said that after the election they would be laid off for a while, and then all of those who voted for Local 810 would be fired and they would then be returned to work. David Yaloz then informed them that after the election Respondent would lay them off for a short time and rehire them after Respondent discharged all the employees who voted for Local 810. They filled out job applications and

[2] Ramirez testified that he gave Santiago the card outside the plant, on the corner, and Santiago signed it there. Santiago's testimony on the card signing is confusing; he testified that Ramirez gave him the card at his machine, where he signed the card, and "[Ramirez] took it back because everybody signed the same card." On cross-examination he testified that he received the card at night, outside the plant.

were told that they would be paid for that day even though they were not to commence work until the following day.[3]

Lawrence testified further that he worked for Respondent from June 19 to June 29 (with one day off in between) as a polisher and doing light work. On June 28, he informed Griffin that he would soon leave Respondent's employ. Griffin first attempted to convince him to remain in Respondent's employ and, when that failed, Griffin told Lawrence to return to Respondent's plant on July 13 to vote in the election. Prior to leaving Respondent's employ, Lawrence informed David and Leon Yaloz that he was leaving to attend automotive school. David Yaloz's only reaction was: "alright." Lawrence testified that he did not vote in the election.

Respondent attempted to use two exhibits in order to discredit Lawrence's testimony. One was the *Excelsior* list for the election, which was conducted on July 13; this shows that Lawrence's name was checked off by all the observers,[4] including Local 810's observer. Respondent introduced payroll checks made out to Lawrence dated July 13 and 20, in addition to his June paychecks; David Yaloz testified that a July 6 check made out to Lawrence in the amount of $14.50 could not be located by Respondent. Lawrence had testified that he did not work at Respondent after June 29 and General Counsel introduced into evidence his attendance record at school which shows that he began attending school on July 2, was present at school on July 13, and attended the school through the end of 1979. Although I am not an expert handwriting analyst, it is clear from an examination of the checks that the endorsement signatures on the July checks are different from the signatures on the June checks made payable to Lawrence.

David Yaloz testified that at the beginning of 1979 Respondent purchased a burned out building across the street from Respondent's plant, which it planned to rebuild as a warehouse. After receiving bids from contractors, he and his brother decided in about June to do some of the reconstruction work themselves with their own employees in order to save money on the work. About that time Robinson was in the plant, and Yaloz told Robinson of his plans and asked him if he knew any good men that Respondent could use to perform the work.[5] Robinson told him that he would try to get some people to do the construction work for Respondent.

David Yaloz further testified that around the middle of June he received a call over the intercom to come upstairs to the office (he spends most of the day on the floor supervising production). When he arrived he saw about 10 men in the office; he asked them if they were the construction people sent by Robinson and they said that they were. He told the secretary to give them applications to fill out and that they would begin work the next day, and he went back downstairs. Other than asking who they were, he did not speak to them and he did not see Robinson or Griffin there at the time. The next day these individuals reported for work and Leon Yaloz took them across the street to explain to them the construction work of the warehouse. That was the first day for which they were paid. David Yaloz testified that he never told Lawrence that he would be paid an extra dollar an hour, and, in fact, he never spoke to Lawrence. These employees cleaned out the garbage and performed certain of the construction work on the building; they spent most of their time on construction, but when they had to wait for materials or containers he assigned these employees to production work.

Respondent's secretary-bookkeeper, Marilyn Mobiley, testified that on June 18 while she was sitting at her desk upstairs in Respondent's office, she heard a lot of noise coming from the location where the stairs lead to the office entrance. She walked around to see what was occurring and counted eight men in the office (with others standing in the stairway). Some of these men informed Mobiley that they wanted a job and she told them to speak to the receptionist; Mobiley returned to her desk, from which she could not see the reception area where these events were occurring. She did not see Griffin in the office that day, and did not see a group of men meeting with David Yaloz in his office that day (her desk is next to the door leading into Yaloz's office).

Chambers testified that about 3 to 4 weeks prior to the election he saw 9 or 10 individuals whom he did not recognize, enter the Respondent's plant; about 15 or 20 minutes later he saw Griffin enter the plant. Griffin did not testify.

Respondent included the names of 12 of these "construction" employees on the *Excelsior* list for the July 13 election.[6]

The credibility issue herein is a close one; neither Lawrence nor David Yaloz displayed any characteristics while testifying, which would be the basis for discrediting them on that account. After carefully examining the testimony of these witnesses, I have determined to credit the testimony of Lawrence. Respondent had purchased the property in question in January; on April 4, it received a bid for the reconstruction work, which it decided was too high. Yet, it was not until 2-1/2 months later that Respondent decided to hire its own employees to work on this building. It is extremely suspicious when a company waits this long before deciding to perform the work itself and then acts only 3 weeks before the election. Adding to this is the fact that even though Respondent knew there would be an election between Local 810 and Local 300 in the future (the consent election agreement was signed 3 days later) it obtained these employees through Local 300. Further, Respondent included these individuals on its *Excelsior* list even though

[3] Lawrence testified that he was paid for working on June 18, even though he did not work that day, but he never received the promised dollar an hour, "under the table." David Yaloz and Griffin told him to get it from "Joe" in the game room, but he never did.

[4] Ramirez was the observer for Local 810. On cross-examination, Ramirez was asked to list the names of the employees listed on the *Excelsior* list whom he did not know on the day of the election. He did not list Lawrence as one of these employees, and he later testified that Lawrence did not vote at the election and he knew and recognized him at the time.

[5] Yaloz testified that in the past Robinson has called him and said that he had a good employee if Respondent needed anybody and Respondent has hired some of these individuals. Yaloz did not ask Robinson to refer any production employees to Respondent in 1979.

[6] Those eligible to vote in the election, pursuant to the consent election agreement, were Respondent's production, maintenance, and shipping employees.

Yaloz testified that they were hired to perform the reconstruction work on the building where they spent a majority of their time, and only performed production work when materials or containers were lacking. These facts convince me that Respondent hired these employees to "pack the unit" shortly before the election with pro-Local 300 employees. Having done so, it is unreasonable to assume that Griffin and Yaloz spoke to the employees and informed them that they were to vote for Local 300 in the upcoming election and report on any employees discussing Local 810. For this reason, I credit the testimony of Lawrence. It should be noted that I found the two exhibits questioning Lawrence's credibility unconvincing; the fact that his name was checked off the *Excelsior* list is balanced by General Counsel's exhibit establishing that he attended school that day. Additionally, an examination of the two payroll checks in July clearly shows that the signatures are different from Lawrence's June checks. It should further be noted that I have not placed much weight on the testimony of either Chambers or Mobiley. Chambers simply saw Griffin enter Respondent's plant shortly after 9 or 10 individuals he did not know. Mobiley's only connection with the events in question was to inform the prospective employees to speak to the receptionist; her desk did not have a proper view of the reception area for her to know whether Griffin spoke to the assembled employees.

I would find that these events constituted violations of Section 8(a)(1) and (2) in two respects; initially the statements made by Griffin, in the presence of David and Leon Yaloz, and those by Yaloz himself, tended to coerce the new employees in their selection of a collective-bargaining representative in the upcoming election. By being told that they were to report on any employee speaking about Local 810, and that any employee who voted for Local 810 would be discharged, the message was clear to them that they had better vote for Local 300. Additionally, I would find that the other employees of Respondent who were eligible to vote in the election were restrained and coerced within the meaning of Section 8(a)(1) and (2) of the Act as their votes in the upcoming election had lost some strength and meaning because Respondent purposely hired these pro-Local 300 employees in order to dilute Local 810's strength. *Ralco Sewing Industries, Inc. & Weather Vane Outwear Corporation, Inc.*, 243 NLRB 438 (1979).

On the basis of the above, I would likewise sustain the allegations contained in Objection 1(b).

C. *Threat by Leon Yaloz*

Ramirez testified that 3 or 4 days prior to the election he overheard a conversation between Leon Yaloz (who did not testify) and two employees—Reynoso and Garcia—in the machine shop.[7] Ramirez (who is presently employed by Respondent) testified on direct examination that Leon Yaloz told these employees that if they voted for Local 300 they would get the same benefits that Local 810 would give them, but if Local 810 won the election, he would close the plant.

On cross-examination, Ramirez's story slowly changed, so that, at its conclusion, it was unrecognizable from his testimony on direct examination. He testified that he was 2 or 3 feet away from where Yaloz was speaking with Garcia. He then testified that he (Ramirez) was also involved in the conversation.

> Q. It was the three of you that were present. Is that correct?
>
> A. Yes.
>
> Q. I believe on direct examination though, that you stated that Benito Reynoso was also present at the time?
>
> A. Yes, he was also there.[8]

Counsel for Respondent then read to Ramirez from his affidavit given to the Board, wherein he stated that Yaloz's statements were made to five or six welders whose names he could not recall. Ramirez's reaction was that it was confusing, and that "Everyday he spoke more or less the same on different occasions." Ramirez was then asked what Leon Yaloz specifically said to them. His answer: "We should vote for Local 300. We would have more increases in benefits. With Local 810 we would have problems." Ramirez was then asked about his testimony that Yaloz had said that if Local 810 won the election he would close the plant and Ramirez testified that Yaloz had said this to him "many times two weeks before the election":

> Q. And what were the exact words he used?
>
> A. Vote for 300, that if we vote for 810 this union had a lot of problems, you should stay with us which is a good union.

Leon Yaloz did not testify.

Ramirez was clearly a pro-Local 810 employee. On the basis of the changes in his testimony, together with the discrepancy between his testimony and his affidavit, I would find that his testimony on direct examination was an exaggeration of what Leon Yaloz said, a statement which Ramirez built upon. I would therefore credit Ramirez's final testimony on cross-examination as to what Yaloz really said—"the exact words he used"—that they should vote for Local 300, which is a good union, while there would be a lot of problems with Local 810.

It is well established that an employer need not remain neutral in an election involving his employees, but may express a preference for one of the competing labor organizations, as long as there is no accompanying threat or promise of benefit.[9] The only possible violation herein is Yaloz's statement that Local 810 had a lot of problems. Is this an innocent prediction of circumstances outside Respondent's control or a threat of reprisals by Respondent should the employees vote for Local 810?[10] It

[7] On being shown his affidavit, Ramirez changed the time of this conversation to 2 weeks prior to the election, and the classification of these employees to welders.

[8] Ramirez's difficulty with the number of employees present may be due to counsel's question a moment earlier: "How many welders were present at that meeting?" Reynoso is not a welder.

[9] *Rold Gold of California, Incorporated*, 123 NLRB 285 (1959).

[10] *Fabriko, Incorporated*, 227 NLRB 387 (1976); *Alley Construction Company, Inc.*, 210 NLRB 999 (1974).

is very difficult to say, there is really only one important word—"problems." Did Yaloz mean (and the employees understand) that he would give the employees and Local 810 problems if they voted for Local 810, or that with any new union (i.e., any union other than Local 300) becoming their collective-bargaining representative, there were bound to be normal "getting used to each other" problems? I would find that, based on the entire record, there is insufficient evidence to support the allegation that this statement violated Section 8(a)(1) and (2) of the Act and I would therefore dismiss this allegation. I would also overrule the corresponding objections—Objections 2(a) and (3)

D. *Singh's Termination*

Mohan Singh was employed by Respondent in February 1979 as a polisher. Shortly thereafter, he met Chambers and Quinones on the corner near Respondent's plant and they informed him of the benefits Local 810 could provide to Respondent's employees. They gave him authorization cards to hand out to other employees in the shop, which he did between the middle to end of May. He testified that he approached five or six employees at their work station (in answer to a question from me, he testified that he gave cards to three employees), told them that they must support Local 810 and handed each of them, individually, a Local 810 authorization card (although he testified that the employees ignored him or refused to accept the authorization cards). He further testified that during this entire period that he was speaking to the employees about Local 810, David Yaloz was observing him from about 50 feet away. (Singh testified that there are "alot" of polishing machines, which are about 3 feet high, in the area.)

Singh also testified that on July 5 he informed Yaloz that his father had died and he requested a 3-week leave to go to Guyana for the funeral. Singh showed Yaloz his plane ticket and Yaloz informed him that he could have the 3-week leave, and that his job would be waiting for him when he returned. Yaloz then asked the bookkeeper to give Singh a paper to sign, which he did. The paper, Respondent's stationery, dated July 5, states: "This will confirm that I, Mohan Singh, terminated my employment at the above on July 5, 1979" and it was signed by Singh. Singh testified:

> Q. You didn't question him?
>
> A. No, I don't question him. Because he told me I could get my job as soon as I get back in the country.
>
> Q. Now, did you understand it when you signed it?
>
> A. Yes, terminating my employment.
>
> Q. You terminated your employment?
>
> A. Yes.
>
> Q. Does it say anything about leave?
>
> A. No, but he told me my job is there.

A moment later Singh was asked:

> Q. Did you understand that form when you signed it?
>
> A. No, I didn't understand it.
>
> JUDGE BIBLOWITZ: Did you read what was on it before you signed it?
>
> A. No.

Singh needed a letter from Respondent regarding his employment, in order to bring his mother to the United States. Therefore, on the following day, he returned to Respondent's plant and asked David Yaloz for a letter confirming his employment by Respondent. Yaloz had the bookkeeper type the following letter, which he gave to Singh:

> American Counsel in Georgetown, Guyana
>
> To Whom It May Concern:
>
> Mr. Mohan Singh has been in the employ of the above since February 7, 1979. His salary was $3.00 per hour, 40 hour week. He was a general worker.

Singh testified further that he returned to the United States on Saturday, July 28, but did not report for work to Respondent until Tuesday, July 31. He testified that on Monday, "I feel upset." At this point a conflict appears in Singh's testimony. On direct examination he testified that when he returned to Respondent's plant on Tuesday, July 31, he informed Yaloz that he was back in the country and returned for his job, but that Yaloz told him to report to work on Thursday, the start of the payroll week. When he returned on Thursday, he worked for 5 minutes and Yaloz called him from his machine and said that he could not employ him anymore because he was laying off people. Singh left.

On cross-examination, in answers to questions from counsel for Respondent, Singh testified that on Tuesday, July 31, he arrived for work at 8:30, his timecard was there, he punched in his timecard and began working. Five minutes later, Yaloz came up to him at his machine and told Singh that he could not employ him anymore. Singh asked why and Yaloz said only that he could not employ him anymore. On further cross-examination by counsel for Local 300, Singh returned to the original version of the incident, that he returned to Respondent's plant on Tuesday, informed David Yaloz that he was back in the country and returning to "secure my job back again," and Yaloz told him to return on Thursday; when he did so, he punched his timecard and Yaloz informed him that he could not employ him anymore.

David Yaloz testified that he never saw Singh handing out Local 810 authorization cards to any employees, in fact he was in Israel between May 15 and 29, nor did he overhear Singh speaking to employees about Local 810. Yaloz further testified that he did not know whether Singh signed an authorization card for, or supported, Local 810. On July 5, Singh came to speak to him in his office and said that his family needed him, and that he was going back to live in his country. Yaloz instructed the secretary to pay Singh whatever they owed him and to have Singh sign the termination letter form. Yaloz observed the secretary give Singh the letter to sign, he read it and signed it. Singh never mentioned a leave of absence, nor did he show Yaloz his airplane ticket, according to Yaloz's testimony. Yaloz testified that commenc-

ing about February 1979, whenever an employee informed him that he was leaving Respondent's employ, Respondent had the employee sign a termination letter, just as Singh did; the reason Respondent does this is that Respondent used to have problems with employees who quit their employ and later attempted to collect unemployment insurance benefits; with the termination letters, Respondent had a record that they left its employment on their own.

Yaloz testified from that time through the summer he did not see Singh. Shortly thereafter, he met Singh outside Respondent's plant, they exchanged pleasantries, but he never asked Yaloz for his job back.

On September 26, Respondent sent Singh a registered letter stating:

> According to our payroll records you voluntarily terminated your employment on July 5, 1979, and have not worked for us since that date, or offered to return to work. Unless you notify us in writing within 5 days of receipt of this letter of your intent to return to work, we shall consider your voluntary resignation to be a final termination.

Yaloz testified that this letter was sent to Singh on the advice of counsel; counsel for Respondent makes note of the fact that this letter was sent by Respondent on receipt of the consolidated complaint herein, dated September 24, which alleges, *inter alia*, Singh's discriminatory discharge.

I would first note that in making my determination herein, I am disregarding Respondent's September 26 letter to Singh. Although first appearing highly suspicious and self-serving, as it was sent to Singh only 2 days after the issuance of the consolidated complaint, it is not unreasonable to assume that Respondent sent the letter to cut its losses, i.e., to toll its backpay should it be found at the hearing on the consolidated complaint that Singh was terminated unlawfully.

Although not completely free of doubt, I would discredit Singh herein. His testimony was fluctuating and, at times, was improbable; he changed his testimony regarding his return to work on either July 31 or August 2, and whether he understood the July 5 termination letter. Additionally, the only proof of knowledge of Singh's alleged activities on behalf of Local 810 was his solicitation of Local 810 authorization cards from three or five or six employees between the middle to the end of May. However, David Yaloz was out of the country during the entire period. Additionally, I find it doubtful that Yaloz, allegedly 50 feet away, and on the same floor level as Singh could actually see Singh speaking to the other employees through all of the polishing machines. Lastly, if Respondent were preparing to discharge Singh when he returned from Guyana at the end of July, it would not have had his timecard prepared for that week. This, together with the fact that there was no credible proof of any Local 810 activity on the part of Singh known to Respondent (Ramirez, the known Local 810 adherent was still employed by Respondent) convinces me that General Counsel has not sustained his burden herein, and this allegation will therefore be dismissed.

E. *Dues Deduction*

The facts herein have been stipulated to by the parties: as stated, *supra*, Respondent and Local 300 were parties to a collective-bargaining agreement which expired on August 25, 1979. This agreement contained a union-security clause requiring employees covered to join Local 300 on the 30th day following the effective date of the agreement, or the 30th day following the beginning of employment. The dues checkoff cards signed by the employees for Local 300, entitled "APPLICATION AND CHECKOFF AUTHORIZATION BLANK" state:

> I, the undersigned, hereby apply for membership in the above Local Union and I authorize it to represent me for the purpose of collective bargaining, and I authorize and irrevocably direct my Employer to deduct from my wages, initiation fees and monthly dues, to become due to it as the periodic dues and initiation fees uniformly required by said Local Union as a condition of acquiring or maintaining membership. The amount deducted each month shall be forwarded to the Secretary-Treasurer of said Local Union.
>
> This checkoff authorization is executed apart from, and independent of, the existence of the Union security provisions and the necessity of paying Union dues contained in and required by the applicable collective bargaining agreement. It is my express intent that this checkoff authorization shall continue in full force and affect, and its continued validity shall not be affected in any manner whatsoever if the said Union security provisions and the necessity of paying Union dues should become inoperative for any reason whatsoever.
>
> Authorization and direction shall be irrevocable for the period of one (1) year or until the termination of the collective bargaining agreement between my Employer and said Local Union, whichever occurs sooner, and I agree and direct that this authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective bargaining agreement between my Employer and said Local Union whichever shall be shorter, unless written notice by certified mail is given by me to the Employer not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year or of each applicable collective bargaining agreement between my Employer and said Local Union, whichever occurs sooner.

For the months of September, October, November, and December 1979, the Respondent continued to deduct the dues of its employees pursuant to the checkoff authorizations signed by them, and transmitted these amounts to Local 300. Beginning in January 1980, Respondent, while continuing to deduct the dues of those employees who had signed checkoff authorizations, ceased transmitting these amounts to Local 300 and, instead, placed this money into an escrow account. There-

after, Respondent ceased making these dues deductions and returned all the escrowed money deducted since January 1, 1980, to the employees involved.

The issue therefore is whether Respondent violated Section 8(a)(1), (2), and (3) of the Act by deducting Local 300 dues for employees who had signed checkoff authorizations for the months of September, October, November, and December 1979, a period after which its contract with Local 300 had expired. I find that it has not.

Lowell Corrugated Container Corporation, 177 NLRB 169 (1969), is on point. There the employer and incumbent union had a collective-bargaining agreement set to expire on March 7. This agreement contained a union-shop clause and a clause providing for checkoff of dues. Prior to the expiration of this agreement, a timely petition for election was filed. At the election conducted on February 8, the petitioner received a majority of the votes cast; objections were filed, overruled, and the petitioner was certified on April 3. Regardless, from March 7 through July 1, the employer continued to deduct and transmit dues from wages of employees who had executed and never cancelled dues authorization forms to the incumbent. It was found that these actions did not violate the Act. As stated by the Administrative Law Judge:

> No cases have been cited, and I have been unable to find any, where the Board has held that it is improper for an employer to continue to honor an uncancelled, unabrogated, or unrevoked checkoff after the contract providing for it has expired, but before the checkoff has terminated by its own terms.

As no evidence was adduced that any employees whose dues were deducted and transmitted to Local 300 during this period had revoked their dues-checkoff authorization, I would dismiss this 8(a)(1), (2), and (3) allegation.[11]

F. *Access to Respondent's Premises*

Objection 2(b) alleges that during the preelection period Respondent allowed Local 300 representatives to enter its premises to engage in campaigning, but excluded Local 810 representatives from campaigning on its premises. The evidence establishes that although Local 300's representatives were present in Respondent's plant during this preelection period, the Local 810 representatives never requested of Respondent that they be allowed access inside Respondent's plant to speak to the employees.

In *Lazzara Products, Inc., Lazzara Products of Northern Jersey, Inc. Lazzara Products of Central Jersey, Inc.*, 178 NLRB 204 (1969), cited by Respondent in its brief, one of the two unions filed objections, one of which alleged basically what Objection 2(b) alleges herein. The Board found the objection without merit because the petitioner (the "shut out union") did not request authority from the employer to enter its premises *and* there was no evidence that the intervenor engaged in any electioneering on the premises. The evidence herein is that Quinones and Chambers were present outside Respondent's plant on almost a daily basis during the preelection period and they observed Griffin and Robinson both inside and outside the plant about three or four times a week during this period. No evidence was adduced, however, that during this period Griffin and Robinson were engaging in electioneering inside the plant, and without such evidence I cannot make that finding as Local 300, at that time, was the collective-bargaining representative of Respondent's employees. As Local 810 also did not request of Respondent it have access to its plant to speak to the employees, I find the facts herein fall squarely within *Lazzara, supra*, and I would find this objection to be without merit.

IV. THE EFFECT OF SUCH CONDUCT UPON THE ELECTION

As I have heretofore sustained the allegations contained in Local 810's Objection 1(b), I hereby order that the election conducted on July 13, 1979, be set aside and a new election be conducted.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above in section III, B, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

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

2. Local 300 and Local 810 are each labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (2) of the Act by:

(a) Threatening and coercing its employees to vote for Local 300, rather than Local 810, in a National Labor Relations Board election.

(b) Hiring employees for the purpose of assisting Local 300, and defeating Local 810, in a National Labor Relations Board election.

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

[11] This finding is consistent with the Board's finding in *Trico Products Corporation*, 238 NLRB 1306 (1978), where the Board found that the employer violated Sec. 8(a)(1), (2), and (3) of the Act by continuing to deduct dues pursuant to *revoked* checkoff authorizations after the expiration date of the contract.

ORDER[12]

The Respondent, Yaloz Mold & Die Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening or coercing its employees to vote for Local 300, rather than Local 810, in a National Labor Relations Board election.

(b) Hiring employees for the purpose of assisting Local 300, and defeating Local 810, in a National Labor Relations Board election.

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

(a) Post at its Brooklyn, New York, plant copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the consolidated complaints be dismissed with respect to the allegations not specifically found herein to be violative of the Act.

IT IS FURTHER ORDERED that the election conducted on July 13, 1979, in Case 29-RC-4601 be set aside and a second election be conducted as early as possible thereafter.

APPENDIX

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

WE WILL NOT threaten or coerce our employees to vote for Local 300, International Production, Service and Sales Employees Union, or any other labor organization, rather than to vote for Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, in a National Labor Relations Board conducted election.

WE WILL NOT hire employees for the purpose of assisting Local 300, or any other labor organization, and defeating Local 810, or any other labor organization, in a National Labor Relations Board conducted election.

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

YALOZ MOLD & DIE CO., INC.

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[12] 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 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.

[13] In the event that the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."