A. O. Smith Automotive Products Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 14–CA–22452 and 14–CA–22549

December 16, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On March 23, 1994, Administrative Law Judge Nancy M. Sherman issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] as modified, and to adopt the recommended Order.

1. We agree with the judge that the Respondent violated Section 8(a)(1) when its supervisors distributed campaign paraphernalia in a manner pressuring employees to make an observable choice or open acknowledgment of their union sentiments. *Lott's Electric Co.*, 293 NLRB 297, 303–304 (1989), enfd. mem. 891 F.2d 281 (3d Cir. 1989); *Houston Coca-Cola Bottling Co.*, 256 NLRB 520 (1981); and *Kurz-Kasch, Inc.*, 239 NLRB 1044 (1978). By having its supervisors directly offer employees paraphernalia opposing the Union, the Respondent effectively put employees in the position of having either to accept or reject the Respondent's proffer. In adopting the judge's findings, however, we find it unnecessary to consider whether offers of paraphernalia made to open union adherents who were wearing, or had worn, prounion paraphernalia also violated Section 8(a)(1). Inasmuch as the record established similar distributions to employees not shown previously to have expressed their union sentiments, any additional instances of distribution to other employees would be cumulative.[3]

2. We agree with the judge that during mid-May 1993[4] the Respondent placed Jerald Richards in a position in which employees reasonably could believe that Richards was acting on behalf of management, and that Richards had apparent authority to act on the Respondent's behalf when, on May 12 and 19, Richards coercively interrogated employee Mike Pakovich.

In adopting the judge's finding of apparent authority, we note particularly that the interrogations occurred between May 1 and 22, when, according to the Respondent's production manager, William G. Peterson, department 1011 was in a ''transition period.'' Prior to May 1, Richards was the second-shift supervisor in department 1011.[5] On May 1 the Respondent transferred Richards to a newly created position on the first shift known as a TQM facilitator, which the Respondent contends is a nonsupervisory position. However, between May 1 and 22, when Richards interrogated department 1030 employee Pakovich during the second shift, Richards remained on the second shift for 4 to 6 hours daily responsibly directing employees new to department 1011 and assisting newly transferred management personnel in the intricacies of department 1011 procedures.

In these circumstances, second-shift employees reasonably could perceive that Richards was continuing to act on behalf of management during the ''transition period.'' Richards remained in department 1011 on the second shift for substantial periods over several weeks, directing employees and assisting management personnel. Accordingly, we adopt the judge's findings that the Respondent violated Section 8(a)(1) during that period through Richards' conduct toward Pakovich.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, A. O. Smith Automotive Products Company, Granite City, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evident convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We note that no exceptions have been filed to the judge's findings that the Respondent did not violate the Act in the incidents described in par. 5, subpars. (a) through (e), of her conclusions of law.

[3] Similarly with regard to the judge's interrogation findings, Chairman Gould and Member Devaney find it unnecessary to rely on the incident of January 22, 1993, in which Production Manager Peterson asked employee Roberts, an open union adherent, why he wanted a union. Given evidence of other unlawful interrogations supporting the order, this is cumulative.

Member Stephens would reverse the judge's finding that this incident constituted unlawful interrogation because, under all the circumstances, Peterson's remarks had no reasonable tendency to interfere with or coerce employee Roberts in the exercise of his Sec. 7 rights.

[4] All dates are in 1993 unless stated.

[5] The Respondent stipulated to his supervisory status before May 1.

Mary J. Tobey, Esq., for the General Counsel.
Jay W. Kiesewetter, Esq. and *Shawn R. Lillie, Esq.*, of Memphis, Tennessee, and *John DiClemente, Esq.*, of Milwaukee, Wisconsin, for the Respondent.
John Truffa, of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

NANCY M. SHERMAN, Administrative Law Judge. These consolidated cases were heard before me in St. Louis, Missouri, on August 23, 24, and 25, 1993, pursuant to a charge in Case 14–CA–22452 filed against Respondent A. O. Smith Automotive Products Company by International Union, United Automobile, Aerospace, and Agricultural Workers of America (UAW) (the Union) on April 27, 1993, and amended on June 7, 1993; a complaint in that case issued on June 16, 1993, and amended on July 9,1993; a charge in Case 14–CA–22549 filed by the Union on June 21, 1993, and amended on July 19, 1993; and a consolidated amended complaint in both cases issued on July 19, 1993, and amended on August 18 and 23, 1993. The consolidated complaint in its final form alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by interrogating employees about union activity, forcing employees to reveal their union sympathies, making certain oral statements regarding union matters, promising benefits if the Union were rejected, threatening reprisals if the employees opted for union representation, and disparately enforcing a rule restricting solicitation, literature distribution, and posting of notices.

On the entire record, including the demeanor of the witnesses, and after due consideration of the briefs filed by counsel for the General Counsel (the General Counsel) and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation authorized to do business in the State of Illinois. Respondent operates a facility in Granite City, Illinois, where it is engaged in the manufacture and nonretail sale and distribution of automotive parts. During the 12-month period ending June 30, 1993, Respondent sold and shipped from its Granite City, Illinois facility goods valued in excess of $50,000 directly to points outside Illinois. I find that, as Respondent admits, it is engaged in commerce within the meaning of the Act, and that assertion of jurisdiction over its operations will effectuate the policies of the Act.

The Union is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

About May 1992, some of Respondent's employees got in touch with the Union in an effort to obtain union representation for employees at Respondent's Granite City plant. Prounion employees mailed union literature to employees' homes, told them about the Union, and asked them to come to meetings. In late 1992 or early January 1993, the Union began to conduct regular weekly meetings.

On November 19, 1992, the Union filed a representation petition seeking to be certified as the representative of some of Respondent's Granite City employees. On December 15, 1992, Respondent and the Union executed a Stipulated Election Agreement for an election to be held on January 29, 1993; this agreement was approved by the Regional Director for Region 14 on December 15 or 16, 1992. On January 28, 1993, the Union submitted a request to withdraw its petition. Respondent objected to the withdrawal request, on the ground that were the election to be conducted as scheduled and were the Union to lose, the Union would be barred from filing a new petition for a year, whereas approval of the withdrawal request would provide for only a 6-month bar to refiling the petition. On January 28, 1993, the Regional Director granted the withdrawal request, and stated that unless good cause was shown to the contrary, no petition filed by the Union within 6 months would be entertained. As of the August 1993 hearing, the Granite City production employees were not union-represented, but the Granite City millwrights and electricians had been represented since at least 1990 by the Carpenters and the IBEW, respectively.

As previously noted, the first charge in the instant proceeding was filed 3 months after the Union's withdrawal request. The complaint in its final form alleges unfair labor practices between early November 1992 and June 1993. As of August 25, 1993, the instant charges were the only charges ever filed against Respondent with respect to the Granite City plant, which was opened in 1954.

B. *Alleged Violations through Human Resources Manager Richard G. Smith*

The pleadings establish that Richard G. Smith (not to be confused with Richard Schmitt; see infra) is the Granite City human resources manager, and that he is a supervisor within the meaning of the Act.

Archie Williams worked for Respondent between January 1986 and February 1993, when Smith discharged her for reasons which are not shown by the record, and which are not alleged in the complaint to have been unlawful. Williams was very active in the Union; she was on the union committee and wore union shirts and buttons in the plant. She testified that people generally knew that she was for the Union, that she did not make it any secret, and that on the date of the alleged conversation discussed below, Smith knew she was for the Union. She also testified that she did not like him.

Williams testified that on an occasion, which preceded Christmas 1992 and may have been as early as October 1992, she attended a conference at about 11 a.m. at the union hall in Granite City with some ''people'' who were trying to get a union in Respondent's Rockford, Illinois plant and were visiting Granite City. She went on to testify that at about 6 p.m. that same day, when she was leaving the Granite City ladies' locker room at the end of her break, she ran into Smith. According to Williams, Smith told her that he had heard she had been at the union meeting with the people from Rockford, she replied that she had, and he ''just looked at'' her.

Smith testified that during a meeting with Williams, initiated by him in his office on a date between November 9 and 12, Smith expressed his concern about a report that she had untruthfully told some of the other employees that he had had told her he knew the identity of the employees who were going to union meetings; according to Smith, Williams replied that she had made no such statement. Smith denied telling Williams that he knew she had attended a union meeting held in Granite City with some Rockford employees. For demeanor reasons, I credit Smith.

C. *Alleged Violations through Plant Manager Jack Johnson*

At all material times, Jack Johnson has been vice president of Respondent's Granite City operation, and has admittedly been a supervisor within the meaning of the Act.

In January 1993, before the scheduled election, Johnson conducted several employee meetings during working hours at which Respondent communicated its position on the Union's petition. Also representing management during three of these meetings was Joe Podawiltz, who is Respondent's vice president of human resources. Johnson credibly testified that during the last two or three meetings, he asked the employees to give him an opportunity to work with them without representation from the Union. In view of his testimony in this respect, uncontradicted employee testimony that during one of these meetings Podawiltz asked the employees to reject the Union, and uncontradicted evidence that Respondent was otherwise attempting to induce employees to vote against the Union, I infer that the Union's defeat was also urged by Johnson and Podawiltz during the other preelection meetings.

First-shift employee Kenneth Crain testified about a meeting with departments 1010 and 1030, which was attended by Podawiltz, and which Crain timed as ''it was getting close to the election. One of the last captive meetings.'' According to Crain's testimony, Johnson said that since the union organizing started some problems had come to his attention, including the problem of overtime scheduling; and that he would try or was going to do something but he ''couldn't do nothing right now.'' Johnson denied promising employees, at any time during the union organizing activity, that he would do something to help them if they voted against the Union, and denied telling people, during a meeting which may or may not have been the one testified to by Crain, that Johnson would not remedy or look into any problems until after the union drive was over. To the extent that Crain's and Johnson's testimony may differ, for demeanor reasons I credit Crain.

Second-shift employee Donald Floyd, who works in department 1030, testified about a meeting which he timed as having occurred during the last week before the scheduled election. Because Johnson's speeches were given during working hours and Floyd worked on a different shift than did Crain, I see nothing significant in any alleged conflict between Crain and Floyd about the contents of the two Johnson speeches they respectively testified about. Floyd credibly testified that during the meeting attended by him Podawiltz talked about ''what a Union would do—or couldn't do for you, jeopardizing your future, or the future of the Company, all the hard work they had put into this Company, don't jeopardize it by putting a Union in here and making it harder to do business.''[1] Still according to Floyd's testimony, Johnson then said that

> he felt that he had to take the full responsibility for any problems that we might be having around the shop, that he understands that people had concerns. And they were going to hold meetings to help to address some of these concerns and needs, and let people voice their opinions. They would give people a better communication of what was going on in the shop to give them another chance, that these problems could all be worked out.

Johnson credibly testified that at the ''last meeting'' (it is unclear whether this was a meeting described by any employee witness) he said that he wanted to conduct an interview with each employee on his birthday to ''review on an informal, one-on-one basis where the business is going, what we are doing, if we have production problems, what we should be doing to try to get better at them . . . the buck does stop at my desk.'' When asked whether during ''these [preelection] meetings that were mentioned, did you say that you were going to address problems in the plant?'' Johnson testified:

> It's very difficult to address—you want to look at them, you want to listen to them, and see if you can do something that will make the overall plant more [valuable] and better. You can't promise anything—you never-what one person might want another person might find offensive so you can't—you have to be very cautious and when you get to be my age you learn you don't promise anything any more.

To the extent that Floyd's and Johnson's testimony may differ, for demeanor reasons I credit Floyd.

Second-shift employee Gerald Wood, who works in department 1052, testified about a meeting which employees had to attend, and which he timed as having occurred within days of the scheduled election. According to Wood's credible testimony, Johnson said that ''we knew we had problems in the plant, but we don't need a union to solve these problems, that we have an open-door policy [see infra fn. 13], and we can solve these problems ourselves . . . anybody could come and see him.'' Because Wood worked in a different department than did Crain and Floyd, and on a different shift than did Floyd, I see nothing significant in any alleged conflict between Wood on the one hand, and Crain and Floyd on the other, about the contents of the three Johnson speeches the three employees respectively testified about. Wood further credibly testified that the plant had had an ''open-door'' policy for a number of years, and that he did not recall Johnson's saying anything about taking it away if the Union won the election. Johnson, too, credibly testified that the ''open-door'' policy had been in effect as long as he had been at the plant, and credibly denied telling anyone that he would terminate that policy if the Union won the election.

First-shift employee Don McNew testified on direct examination that a couple of weeks before the election, at a meeting of employees in departments 1010 and 1030, Johnson said that he had a lot of good ideas but could not put them into place until the union drive was over. On cross-examination, McNew testified that Johnson said that he knew there were problems in the plant which were not being addressed in these meetings, but he could not do anything until the campaign was over. McNew's prehearing statement to the Board said, ''I don't recall Johnson saying anything about knowing what our problems are.'' Johnson denied saying, at a meeting which may or may not have been the one testified to by McNew, that Johnson had a lot of good ideas but could not put them into place until the union drive was over. John-

[1] The complaint does not allege that any unlawful statements were made by Podawiltz.

son further testified to telling the employees that Respondent's new human resource manager, Joe Divine, had mentioned a lot of things that he had done at other facilities that Johnson thought would help resolve some of ''the issues that we had over time and the bid systems and . . . the hours worked.'' In view of the inconsistencies between McNew's testimony and his prehearing affidavit, as to what Johnson said at this meeting I credit Johnson to the extent his testimony may conflict with McNew's testimony.

D. *Alleged Unlawful Conduct in Connection with Election Literature and Paraphernalia*

1. Respondent's written rule (not attacked in the complaint) regarding solicitation and distribution

At all material times, Respondent maintained in its employee handbook the following rule:

> SOLICITATION AND DISTRIBUTION OF LITERATURE
>
> . . . work time, for the purposes of this policy, is defined as those periods of the work day which are designated for the performance of assigned job tasks . . . employees are prohibited from engaging in any of the following:
>
> Soliciting for any causes or reason during work time. Distributing pamphlets, circulars or other written materials during work time or in work areas. Posting of notices at any time anywhere on the premises.

The General Counsel does not contend that this rule is unlawful on its face to the extent it may apply to union literature or union solicitation.

About mid-December 1992, employee Mike Pakovich handed out union T-shirts to other employees in work areas during worktime; he stopped this activity upon being told by Jerald Richards (at that time, admittedly a supervisor) that ''it was against Company policy to distribute Union paraphernalia, literature in a working area during working hours.''[2] In addition, before January 13, 1993, employee supporters of the Union distributed union literature in the break areas and in the bathrooms, and also, outside of their own working time, laid literature on the side of operating machines so that it could be read by the operator at breaktime. During this same period, employee opponents of the Union passed out literature and antiunion buttons in the same way, and also distributed them during working time in work areas.

2. The alleged incident involving Supervisor Watkins and employee Roberts

The pleadings establish that all material times, Second-Shift Supervisor Dan Watkins was a supervisor within the meaning of the Act. Watkins did not testify.

Employee Greg Roberts testified that in late November 1992, while Roberts was going to work, he walked down the aisle with Watkins, who was holding several ''vote no'' hats. According to Roberts' testimony, Watkins asked Roberts if he wanted a hat, to which Roberts said no. Roberts regularly wore union paraphernalia to work, and testified that Watkins knew Roberts supported the Union. Roberts' prehearing statement to Respondent's counsel (see infra sec. II,E) states, ''At no time did any manager official or supervisor ever [offer] me a pro-company shirt, cap or button or [imply] I should wear one.'' Nevertheless, because Roberts' testimony in this respect is uncontradicted, because other employees credibly testified that Watkins directed similar conduct to employees other than Roberts on other occasions (see infra), and in view of Roberts' testimony about his state of mind when he gave this statement to company counsel (infra sec. II,E), I credit Roberts.

3. Vice President for Human Resources Podawiltz' instructions regarding management distribution of antiunion paraphernalia

The pleadings establish that at all material times, Maintenance Supervisor Terry Leach and Third-Shift Foreman Kent Patterson were supervisors within the meaning of the Act. Leach testified that in January 1993, on a date he was not asked to give, Vice President of Human Resources Podawiltz during a supervisory training session stated that the supervisors could not ''force'' vote-no caps, T-shirts, and buttons on anyone, or ''insist that they take one.'' Patterson testified that during a January 1993 training session before these paraphernalia were made available to employees, Podawiltz said that the supervisors could only give them out to employees who asked to receive them. The record fails to show that Patterson and Leach were purporting to describe the same training session. In any event, I believe that their respective descriptions constituted their honest recollection of what they understood Podawiltz to say.

Human Resources Manager Smith testified that after January 13, 1993 (see infra sec. II,D,6), Respondent's ''distribution of buttons and shirts were [sic] based upon the request of the employee and then the supervisor would deliver them. That was the way we were proceeding.''

4. Supervisor Watkins' efforts to distribute ''vote no'' buttons to second-shift employees

About January 6, 1993, when a group of second-shift employees were sitting in the break area just before the beginning of their shift, Supervisor Watkins came into the area with a plastic sandwich bag of ''vote-no'' buttons. He stood in front of each of the employees, held out the bag of buttons in one hand and one button in the other, and, while making a circle with his hand, asked whether anyone wanted a button and would wear it. None of the employees was displaying ''vote-no'' paraphernalia, and some of them (including employee Joe Corrado) were wearing union paraphernalia. When Watkins smilingly asked him whether he wanted a vote-no'' button, Corrado said, ''I'll take the whole bag if you want to give them to me.'' Watkins laughed and said he could only give Corrado one. Corrado said that if he could not have the whole bag, he did not want any. None of the employees present accepted a button.

5. Supervisor Leach's distribution of ''vote-no'' paraphernalia

About a week before the scheduled election, Supervisor Leach approached employees McNew and Crain when the two employees were actively working in the same area. Leach was carrying ''vote-no'' shirts and caps. Both employ-

[2] Richards did not discipline Pakovich for this activity.

ees were wearing union caps, and Crain was wearing a union shirt.[3] Leach said that the employees did not ''need'' the union caps, but ''needed the vote-no hats.'' He asked McNew whether he would like to trade his union cap for Leach's ''vote no'' cap. McNew said that he was happy with the cap he had. Then, Leach asked Crain whether he would like to trade his union shirt for Leach's ''vote no'' shirt. Crain said that he was happy with the one he had. Leach said that he had been on both sides of the fence before, that he felt nonunion was the best way to go for business, and that if the plant got a union it might be bad for business. Then, still carrying the ''vote no'' paraphernalia, he walked down the aisle to the other departments, where he talked to the employees while they were working. Leach never revisited either Crain or McNew about the matter. Leach testified that this was a ''joking conversation'' in normal tones of voice; that the employees were smiling and did not appear offended or upset; that Leach had gone to them because he felt comfortable around them, had known them for more than 7 years, and had worked with them both as an hourly and as a salaried employee; and that he had always thought he had a friendly relationship with them. When asked whether Leach had been joking, McNew testified, I cannot say that for sure . . . I mean, it is not a joke to me when someone is messing with my future.''

Leach spoke with four other employees about ''vote no'' paraphernalia. In each such instance, the employee asked Leach what union paraphernalia he had and Leach thereupon told him and asked if he would like to have one; in at least one case, Leach accompanied this offer by holding up a ''vote no'' T-shirt. In this manner, Leach gave out three T-shirts and two caps.

6. Management's January 13, 1993 instructions to employees regarding distribution of election literature and paraphernalia, and related events

Beginning about the fall of 1991, employee Corrado had a series of personality clashes with employee Linda Goodman.[4] In consequence of these difficulties, Corrado bid out of her department (1011) and into the department (1030) where he was working at the time of the hearing.

Most of the department 1030 employees on Corrado's shift supported the Union. About early January 1993, Corrado began to distribute union literature in department 1011 during periods before his shift had started but after the beginning of department 1011's shift. Where a department 1011 employee was operating his or her machine, Corrado followed the practice of laying the union literature beside the machine. Probably on, but perhaps a few days before, January 13, 1993, Goodman, who had been wearing an antiunion shirt, reacted to Corrado's distribution of union literature is department 1011 by telling him that ''we are running production even if you are not.'' Corrado said that he was not bothering her production, and told her to leave him alone.

Thereafter, and probably a few minutes later that same day, Goodman approached Human Resources Manager Smith. She told him that Corrado had been handing out union literature to employees in her department 1011 at about 3:20 p.m., after her shift began in that department; and said that when she questioned Corrado as to why he had the right to do this, he used some abusive language toward her. Smith thereupon relayed this report to Production Manager William G. Peterson, admittedly a supervisor.[5] Management then conducted an investigation, which unearthed no independent witnesses to the Goodman-Corrado conversation but during which a number of people reported that he had been distributing literature in her department.[6]

Right after the beginning of Corrado's shift on January 13, Corrado's immediate supervisor, Dan Watkins, took Corrado to the office and said that Goodman had accused him of directing abusive language to her and was filing sexual harassment charges.[7] Corrado said that he was not going to be harassed or intimidated over Goodman or passing out literature. Watkins said that her report was being investigated by him and Peterson.

At about 9 p.m. that day, at Peterson's and Smith's instructions, Watkins brought Corrado into Smith's office. Present were Corrado, Smith, Peterson, and Watkins. A member of management said that allegations had been made regarding Corrado's language toward Goodman, and regarding his distribution of union literature in department 1011. Corrado denied directing abusive language toward Goodman, and asked whether management was ''going to let her make allegation after allegation and never discipline her . . . until she gets lucky.'' He stated that he had distributed union literature in department 1011 while people were working, but that he had placed this material up on the press panels and had not interfered with anyone working. He further stated that he had received reports from employee Donald Floyd, and perhaps others, that ''pro-Company people'' had been passing out literature. Corrado stated that Goodman was ''supposed to have been'' handing out literature at a team meeting (a term explained infra sec. II,G,3), and that Floyd had told him that people had handed out things for the United Way Campaign solicitation. Management thereupon concluded the meeting.

Later that evening, Peterson and Smith decided that ''it was not conclusive that Mr. Corrado had directed abusive language'' at Goodman. Then, Peterson and Smith had Watkins bring Floyd and Corrado to Smith's office. After man-

[3] This finding is based on credible parts of the testimony of McNew and Crain. Crain testified on cross-examination that he was pretty sure that the union paraphernalia he was wearing at that time consisted of a button. All three men testified that Leach solicited the two employees to trade ''vote-no'' paraphernalia for the union paraphernalia they were wearing.

[4] Spelled ''Goodwin'' in many portions of the transcript. Respondent's unopposed motion to correct the spelling to ''Goodman'' is hereby granted. Her given name is sometimes referred to in the record as ''Lorraine.''

[5] Respondent's answer admits Peterson's supervisory status. The complaint alleges that his title was ''production manager;'' he testified that his title is ''manager manufacturing materials and maintenance;'' and Respondent's tables of organization give his title as ''manager, manufacturing/maintenance/materials.'' Because the table of organization before May 1993 assigns to another individual (Daniel Borkowski) the title of ''manufacturing manager,'' for purposes of clarity Peterson will be referred to herein as the production manager.

[6] My findings in these three sentences are based on Smith's and Peterson's testimony, which was not offered for the truth of the reports made to management by Goodman and others. She did not testify. Corrado's previously summarized testimony about his conversation with Goodman is the only probative evidence of its content.

[7] The record fails to show whether she ever filed such charges.

agement closed the door, Smith said that he and Peterson wanted to set some ground rules for the union campaign. Peterson said that up until that point both sides had done things that may not have been legally correct, and that from this point on he wanted to do things the way they were supposed to be done. Peterson said that Corrado had been violating labor law by distributing literature in department 1011, even though the press lines were not stopping and the literature distribution was not slowing down production. Peterson said that from now on, if Corrado and Floyd wanted to distribute literature in the plant, they would have to either leave it in the break area or distribute it at the front door where the employees came in and out, and that Corrado and Floyd could no longer go through the departments themselves. Peterson further remarked that he wanted them to stay out of department 1011; that the employees in that department were trying to set Floyd and Corrado up; and that for their own good, it would be best to stay out of there.[8] Management said that under company ''policy rule,'' employees were not to distribute materials during working hours in working areas. Corrado said that he did not think this was fair, because Supervisor Watkins had been distributing ''vote no'' buttons, and asking employees if they wanted buttons, without giving any reason why they should vote that way. Peterson leaned back in his chair and said, ''We don't think that is a problem.'' Without giving specifics, Floyd said that ''your guys'' were distributing antiunion literature in the departments ''all the time.'' Peterson said that he would talk to them; and that if Corrado or Floyd saw an employee distributing antiunion literature in a work area, to tell Peterson about it and he would take care of it. Similar statements were made by Smith. Smith went on to say that ''we would be getting with the pro-Company employees and informing them of the no-solicitation rule'' (see infra fn. 9).

At this point, Floyd was excused from the meeting. Then, Smith and/or Peterson told Corrado that they were unable to determine whether it was he or Goodman who was telling the truth. Corrado offered to take a lie detector test, but management said the matter was being dropped. Later that evening, Smith and other members of management called Goodman into the office, told her that they did not know who had told the truth about her conversation with Corrado, and told her to abide by the ''no-soliciting policy.''[9]

My findings as to the events on January 13 are based on a composite of credible parts of the testimony of Corrado, Floyd, Peterson, and Smith. To the extent inconsistent with my other findings, I do not credit Peterson's or Smith's testimony that Corrado and Floyd evinced satisfaction with management's statement that the limitations on literature distribution would extend to both prounion and antiunion employees.

Johnson, Peterson, and Smith all credibly testified that so far as they knew, no employee-whether in favor of or against the Union—had violated the solicitation/distribution rule after this January 13 conference.

7. Additional efforts by Supervisor Watkins to distribute ''vote no'' paraphernalia to employees

For several months before mid-January 1993, employee Crain had worn prounion paraphernalia at the plant every day, and also had handed out union literature at the plant. On a day about 2 weeks before the scheduled election, as Crain was coming from the locker room on his way to leaving the plant for the day, Supervisor Watkins asked Crain whether he wanted to trade his union pin for a ''vote no'' hat. Crain said no. Watkins said, ''Are you sure?'' Crain said, ''Yes, I'm sure.'' Crain testified that when Watkins first came up to him and said this, Crain thought it was a joke, but that when Watkins asked the same thing again, then ''I took it as it wasn't a joke.''

On a day between January 13 and 29, Supervisor Watkins asked various employees whether they wanted a ''vote no'' shirt. If an employee said that he wanted one, Watkins went back and got it. After responding ''no'' to such an inquiry, Corrado while working at his machine later that day saw Watkins walking by with some ''vote no'' shirts on his shoulder. Corrado said that he wanted a shirt because he had had a hydraulic spill and was going to use it. Watkins laughed and kept on walking.[10]

A few days before the scheduled election, when second-shift employee Floyd was working behind his machine, Watkins came by while carrying some ''vote no'' shirts on his arm. He sternly told Floyd to ''vote no,'' but did not offer him a shirt.

8. Activities by Supervisors Campbell, Patterson, and Richards

McNew credibly testified that about a week before the scheduled election, he saw admitted Supervisor Jim Campbell with antiunion paraphernalia in his hands walk from employee to employee through the plant, and talk to them while they were supposed to be working. Campbell unexplainedly failed to testify.

McNew credibly attributed similar activities to Supervisor Kent Patterson. Patterson testified to the following effect:

> On two days a week or a week and a half before the scheduled election, he came to work wearing a ''vote-no'' shirt and a ''vote-no'' ball cap with a ''vote-no'' button. On these occasions, several employees came up to him and asked where they could get a ''vote-no'' hat and/or a T-shirt. In response to each of these queries, Patterson ascertained what size they wanted, and then brought them the size they wanted. He handed out these ''vote-no'' items on working time and in working areas. Patterson never asked any employee if he wanted

[8] Corrado credibly testified that partly because Peterson had remarked on an undisclosed occasion that Goodman was wearing a ''vote no'' shirt and Corrado was wearing a union shirt he believed that Peterson's instructions about department 1011 were due to Corrado's conflicts with Goodman.

[9] This finding is based on credible parts of Smith's testimony, which as to this conference is uncorroborated. Although Smith testified that management ''again explained the no-soliciting policy to her,'' there is no other evidence (laying the employee handbook to one side) that it had ever been explained to her before. Laying the handbook to one side, the record fails to show whether management ever specifically advised any other antiunion employees of this policy.

[10] My findings in this paragraph are based on Corrado's uncontradicted testimony. Employee Williams credibly testified that during this same period, while the employees were working, she saw Watkins carry brand new T-shirts along the working aisle toward the welding line.

procompany paraphernalia, never asked any employee to wear them, and never initiated any conversation with any employee about obtaining them. Nor did Patterson carry through the plant any more shirts than had been requested by employees.

In view of Campbell's unexplained failure to testify, I inter from McNew's testimony that Campbell's conversations with employees during working time included suggestions from him that they wear the paraphernalia he was concomitantly carrying. However, I credit Patterson's testimony, which is consistent with McNew's testimony, about Patterson's conversations with employees.

In January 1993, Richards (admittedly a supervisor at that time) gave out ''vote no'' paraphernalia, during working time and in working areas, to employees who asked for them. He never asked an employee if he wanted a ''vote-no'' cap, shirt, or button when the employee had not brought the matter up.

9. Supervisor Koch's distribution of vote-no paraphernalia

The pleadings establish that at all material times, Dennis Koch was a supervisor within the meaning of the Act. Employee Roberts testified that on two or three different occasions in December 1992 and January 1993, including an occasion after January 13, he saw Koch drive an electric scooter around department 1011, talk to employees (outside of Roberts' earshot) who were walking from their break area to their machines, and then give ''vote no'' T-shirts to some employees but not others. Roberts further testified that on one occasion after January 13 but before the scheduled January 29 election, Koch drove up with several red T-shirts saying, ''Stop the UAW,'' and asked Roberts whether he wanted one. Roberts went on to testify that he said no, and that Koch then said that he had been working for Respondent a long time; that he had worked union and nonunion; that the ''place'' as it was right now was a good place to work; that he knew there were ''problems''; but that if the employees brought in a union, ''the Company could get very nasty.'' Roberts regularly wore union paraphernalia to work, and he testified that Koch knew Roberts supported the Union.

Roberts' prehearing statement to Respondent's attorney (see infra sec. II,E) states, ''At no time did any manager official or supervisor ever [offer] me a pro-Company shirt, cap or button or [imply] I should wear one. I work in an isolated area and third shift is pretty far removed from this sort of thing.'' Also, as to many matters he was a very hesitant witness. On the other hand, Koch was evasive as to whether he asked Roberts if he wanted a union cap or shirt. Koch denied stating to Roberts that if the Union came in, Respondent could get nasty to work with or that things would get worse, or implying that things would get worse. On balance, as to this conversation, I credit Roberts. Further, because when testifying for Respondent Koch was not asked about the other distribution activities attributed to him by Roberts, I infer from Roberts' testimony that Koch took the initiative in asking employees whether they wanted this vote-no paraphernalia.

10. Distribution of ''vote no'' caps, during working time and in working areas, by Supervisor Prior and employee Raderman

The parties stipulated that at all times material to this proceeding, before May 1, 1993, Dennis Prior was a supervisor within the meaning of the Act. Toward the end of January, Prior, who was carrying a stack of ''vote no'' caps in a working area of the plant, said something to employee Mary Raderman, who at that time was supposed to be actively operating a fork truck. Then, while still talking to her, he gave her several of the caps. After that, he headed out of the area. Raderman drove her fork truck behind him, and passed out caps to other employees who at that time were supposed to be actively working. There is no evidence that any management officials saw her driving around handing out the ''vote-no'' caps.[11]

11. Other antiunion activity during working time

Employee McNew credibly testified that after he heard about the January 19 conference regarding union solicitation, he saw employee Pete Bauman placing antiunion literature in the break area, during working hours and after the regular scheduled break. McNew further credibly testified that after he heard about the January 13 conference, and while he was actively working, he was approached by Paul Calkins, who said that McNew did not need his union hat, he needed a ''vote-no'' hat. Bauman's employee status is undisputed. The General Counsel contends that Calkins, who is a salaried engineer, is not a supervisor; and Respondent's posthearing brief describes him as a ''non-supervisory engineer'' (p. 49). Production Manager Peterson testified in August 1993 that Calkins was a member of management and was ''manager of quality engineering.'' A memorandum from Vice President Johnson dated May 13, 1993, states that Calkins had been reassigned to assuming responsibility for quality and engineering activities, and would continue to report to Johnson. I can find no other record evidence bearing on Calkins' status at any time. Production Manager Peterson, an admitted supervisor, testified that the no-solicitation rule does not apply to ''supervisors or managers.'' There is no evidence that any admitted supervisor observed this activity by Bauman or Calkins.

E. *The Incident Involving Production Manager Peterson and Employee Roberts*

At about 7:30 a.m. on January 22, 1993, employee Roberts had occasion to turn in some production reports and paperwork at a point just outside Production Manager Peterson's office. At that time, Roberts was wearing a union hat. Peterson asked Roberts to come into the office and speak with Roberts, whereupon he entered Peterson's office. The two men discussed possible ways to simplify moving a die in and out of one of the blankers Roberts was working on. Then, Peterson, who had been working for Respondent for 5 or 6 months, asked Roberts (a 5-year employee) ''what some of his concerns were, what some of the issues were, how [Re-

[11] My findings as to the Prior-Raderman incident are based on the uncontradicted testimony of employee Gerald Wood, who was not close enough to overhear what Prior said to her. Prior and Raderman did not testify.

spondent] could get better, what some of the problems were.''[12] Roberts described some perceived safety problems. Peterson said that they were being corrected but it would take some time. Roberts said that he did not think anything would change without some help from the Union. Peterson asked Roberts why he wanted a union in the plant. Roberts said that the employees needed job security and a contract, ''some rules written down on paper, so that they cannot change them at their discretion.'' Peterson said that the Union does not provide job security, that the jobs coming into the plant are what provide the job security. Roberts said that the employees did not have any fair grievance procedures. Peterson said that Respondent presently had an open door policy.[13] He went on to say that he previously worked for two unionized employers, that some union contracts permit or require employees and the employer to communicate through a third party such as a steward, and that under these circumstances the existence of a bargaining representative would add an extra step in the communication process between the employer and the employee and cause some grievances to take a long time, even up to 2 years. Roberts said that all he wanted was to get the ''damn problems'' fixed. Peterson further said that if the Union came in Respondent and the Union would negotiate about Respondent's operations; and that ''in negotiations we bargain. You gain, you lose . . . you are negotiating one point versus another point and there is always that possibility. There is no guarantee.'' In addition, Peterson said that ''You could lose a lot of what you have before you gain the one thing that you wanted.'' Roberts asked Peterson a lot of questions about his opinions, Respondent's ''direction,'' and Peterson's past experiences with unions. The conversation lasted from 45 minutes to an hour. Peterson gave honest testimony that it was ''friendly'' in tone.

My findings as to the contents of this conversation are based on a composite of credited parts of Peterson's testimony, credited parts of Roberts' testimony, and a prehearing written statement prepared by Respondent's counsel, signed by Roberts, and offered into evidence by Respondent without limitation and received without objection.[14] To the extent not reflected in my findings, for demeanor reasons, I do not accept Peterson's or Roberts' testimony about what was said.[15] Roberts' prehearing statement to Respondent's attorney fails to include certain remarks to which Roberts testified before me, and further states that Roberts did not remember what was said. To the extent reflected in my findings as to what occurred, I nonetheless credit portions of his testimony which are not referred to in his prehearing statement, in view of Peterson's partial corroboration thereof and Roberts' credible testimony that four or five times Respondent's attorney asked him to sign the statement and he refused, she ''finally'' said that it was ''in his best interests'' to sign (he did not remember at the hearing what, if anything, she said about why it would be in his best interests), this ''got [him] rattled,'' and the situation made him feel ''scared.''[16] For similar reasons and the additional reasons set forth in *Radio Officers v. NLRB*, 347 U.S. 17, 51 (1954), I do not accept the assertion in Roberts' written statement that the January 22 conversation did not cause him to feel threatened or intimidated.

F. *Conduct Allegedly in Connection with Article About Ford Audit*

After the Union withdrew its petition, several of the employees prepared, and mailed to their fellow employees, newsletters dated April 29, May 29, and June 29, 1993, which all had the same format, and which were directed to maintaining the employees' interest in the Union. The May 29 newsletter, which is the only one in the record, states, ''Prepared for you by your co-workers that favor UNION representation'' (emphasis in original), and urges employees to show support for the Union, attend union meetings, and find out what needed to be done in order to install the Union as ''our'' bargaining representative. That newsletter included an article with the headline, ''Management Misleads Ford Q-1 Audit!/First Rule in [Business]: 'Don't Cheat, or Lie to Your Customer'!'' This article alleged that during a September 1992 inspection by Ford Motor Co., Respondent's biggest customer, Respondent had given false charts to the quality inspector from Ford. The article further stated that the inspected products were in fact of good quality, and expressed concern that use of falsified records might cause Respondent to lose customers and, therefore, jobs.

Granite City Vice President Johnson credibly testified that he was concerned about this article because he feared that it might cause Respondent to lose Ford and others as customers. He arranged for Ford, and some of Respondent's personnel outside the Granite City plant, to review the article. These reviews showed, to the satisfaction of all the reviewers, including Ford, that the article was incorrect in its allegations about misleading charts, and that the errors in the article were caused by the failure of the quality control inspectors, who had provided the information on which the article was based, to have a clear understanding of what goes on in a review with a customer. Also, Johnson initiated a practice of letting the inspectors sit in at meetings with customers. In addition, management tried to find out who had written the article, but nobody admitted responsibility. Neither the inspectors nor anyone else was ever disciplined or reprimanded as a result of this article. Johnson testified that the employees' reaction to this article was ''mixed,'' but that a majority were very angry because they took it as a threat toward their jobs. Although it is not wholly clear from his testimony

[12] The quotation is from Peterson's testimony.

[13] The Company's employee handbook invites employees to express any disagreement with a policy or practice ''through our 'Open Door' and problem solving procedure. . . . Every question, problem or suggestion will be considered and answered as quickly as possible.''

[14] Immediately preceding Roberts' signature are the words, ''I declare under penalty of perjury that the foregoing affidavit is true and correct.'' I need not and do not consider whether the statement, which is not notarized, in fact, constitutes an affidavit.

[15] Among other things, I credit Peterson's denial of Roberts' testimony that Peterson said in terms that there would be no open-door policy if the Union won the election.

[16] Also on July 2, 1993, Roberts signed a paper, tendered by company counsel either or after Roberts signed his statement, stating that her only purpose in interviewing him was to investigate the facts and prepare a defense to union unfair labor practice charges against Respondent, that his job or his rights as an employee would not be affected by his participation or nonparticipation is the investigation, and that he had the right to join or not to join any union without fear of reprisals. In view of Roberts' demeanor when testifying, I conclude that this document did not in fact fully reassure him.

whether he was attributing this anger to the publication of the article or to the alleged company conduct described therein, I am inclined to think that he was describing the employees' perceived reaction to the former activity.

After concluding the investigation of the article's accuracy, Johnson conducted various group meetings with employees, at which he told them about the investigation and explained that Ford had not been misled. At one of these meetings, which meeting employees were required to attend but which did not include any employees from ''quality,'' Johnson said that when he first saw the article, he was really upset, but that then he had decided in all fairness to conduct an investigation, that Respondent had had nothing to hide and everything was fine, and that ''this was just the UAW trying to stir things Up.''[17] So far as the record shows, the Union never apologized to Respondent or the employees for any part the Union may have played in connection with this article.

The article had in fact been written by employee Corrado, who is an operator and not an inspector, on the basis of information which he obtained from various other employees. Corrado was among the employees who attended, about June 28, the meeting where Vice President Johnson had attributed the quality-control article to the UAW's desire to stir things up. On the following day, en route to the restroom, Corrado encountered and greeted employee Lowell Burton, who was standing near his machine and about 25 feet from Corrado's work station. While the two were exchanging greetings, Shift Supervisor Schmitt (whose supervisory status is established by the pleadings) drove by in an electric scooter. After visiting the restroom, Corrado returned to his machine. About a half hour after this chat with Burton, Corrado's work gloves developed a hole, and he headed for the gauge room for some new work gloves. On this errand, he again went by Burton's machine. Burton stopped Corrado and asked him about the meeting which Johnson had held the day before. After they had been chatting for 2 minutes at most, Schmitt again drove by. This time, he stopped and asked Corrado what he was doing ''over here.'' Corrado said that he was going to the gauge room to get a pair of gloves. Schmitt, who normally does not curse, said that Corrado had been in Burton's work area for at least a half hour, and obscenely ordered Corrado to return to his machine.[18] Corrado did so. Then, Schmitt asked Burton what Corrado had been doing in Burton's work area. Burton truthfully told him that Johnson's meeting had been the subject of the conversation, and untruthfully stated that the conversation and its subject had been initiated by Corrado.[19]

Schmitt thereupon looked at Corrado, and saw that he was not operating his machine and was talking to Jamie Stack, a fork lift operator. In the belief that Schmitt had been angry in ordering Corrado back to his machine because Schmitt believed Corrado and Burton had been chatting throughout the half-hour interval between Corrado's trip to the restroom and his aborted trip for the gloves, Corrado waved Schmitt over and asked Stack to tell him where Corrado had been 15 minutes earlier. She said that Corrado had been at his machine for a while before leaving it to get some new gloves. Schmitt told Corrado that if he needed gloves, he should radio the ''TQM person,'' who would bring him some. Corrado admitted that he had been wrong, but said that his second conversation with Burton had occurred because Burton had called him over, and that if Schmitt did not believe Corrado, Schmitt should ask Burton. Schmitt said that he already had, and that Burton had said Corrado had asked his opinion of Johnson's meeting ''on union letters and accusations.'' Schmitt went on to say that he had no problem if Corrado went to Burton's machine because Burton asked for his help on a work problem. However, Schmitt said, if Corrado wanted opinions from people on Johnson's meeting, Corrado should ask them on break and lunch and not during production time. Corrado said that he did not appreciate Schmitt's ''hollering'' at him, and that if Corrado did something wrong, Schmitt should tell him about it, and it would not happen again. Schmitt said, ''Joe, you were wrong . . . if you're interested in what people think about the meeting we had yesterday, then you would stop writing articles about this Company that are pissing people off.'' Corrado said that he did care about the people out there. Schmitt said that he hoped this was true, and drove off.[20]

G. *Alleged Unfair Labor Practices Through Jerald Richards*

1. Events while Richards was admittedly a supervisor

Respondent stipulated that Jerald Richards was a supervisor before May 1, 1993.

About Thanksgiving 1992, on a day when third-shift employee Roberts had begun work early and before the end of the second shift, Second-Shift Supervisor Richards walked up to Roberts when he was heading for his work area and told him that Richards knew who was going to the union meetings.[21]

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[17] This finding is based on the testimony of employee Corrado. For demeanor reasons, I do not credit Johnson's denial that he made the quoted remarks. He admittedly believed that the newsletter had been issued by the Union.

[18] For cost-control purposes, the gloves were kept in the gauge room in a locked box to which the ''TQM person'' (see infra sec. II,G,3) had a key. The ''TQM'' room is next to the gauge room. Schmitt testified that it would have been ''easier'' for Corrado to use the radio to ask the ''TQM person'' to bring Corrado the gloves. The record suggests that the ''TQM person'' is paid more than Corrado.

[19] Burton did not testify, and there is no evidence that anyone but the participants could hear the conversation. Corrado, whose demeanor impressed me favorably, testified that the conversation and its subject had been initiated by Burton.

[20] My findings as to the June 29 incident are based on a composite of a memorandum prepared by Schmitt that evening and credible portions of Schmitt's and Corrado's testimony. For demeanor reasons, I do not credit Schmitt's denial of any discussion with Corrado about the newsletter article, Schmitt's testimony that he did not then know that Corrado had written this article, Schmitt's denial that he directed obscenities to Corrado, or Schmitt's denial that Stack (who did not testify) said anything to him. Schmitt's memorandum admits being advised that Corrado had not been talking with Burton throughout the period between the two occasions when Schmitt saw them talking. The sequence of events as testified to by both Corrado and Schmitt is difficult to reconcile with Schmitt's testimony that Corrado had obtained his new gloves by the time of his conversation with Schmitt at Corrado's machine in Stack's presence.

[21] This finding is based on Roberts' testimony. Richards testified that he could not ''recall'' any ''conversations'' with Roberts about the Union, and that Richards did not tell Roberts, ''I know you are

About late December 1992, while employee McNew was working, Richards initiated a conversation by asking him when the next union meeting was, to which McNew replied that he could not tell Richards that. Richards had known McNew for 6 or 7 years, during which period Richards had always been a supervisor and McNew an employee. Richards credibly testified to knowing since the first union campaign in 1987 or 1988 that McNew favored unions. McNew wore prounion paraphernalia in the plant, and on several occasions orally expressed (and sometimes volunteered) support of the Union to Richards, and on several occasions had asked Richards, during conversations about the Union, how he felt about things; in response, Richards would express his views on unions. During the union campaign, on a date or dates not shown by the record, McNew told Richards that ''this time'' the Union had planned a new strategy which consisted of a joint campaign for a simultaneous election among all of Respondent's satellite plants; the record fails to show whether this was true.

During the organizing campaign, the Union periodically held employee meetings, usually on Wednesdays. These meetings were held just before the beginning of the second shift, to which both Richards and employee Corrado, an open union supporter, were assigned. Although the two men worked in different areas, on Wednesdays Richards would find a reason to be in Corrado's department and, on many occasions, would asked such things as, ''What's happening today? What have you got planned for us next?'' Later, Richards asked Corrado whether the Union was going to ''pull'' the petition (as the Union eventually did do). Sometimes Richards would initiate these conversations by approaching Corrado at his work station or stop him in the aisle when he was on a fork truck, and sometimes Corrado would stop his fork truck in anticipation of questions from Richards. In response to these questions, Corrado would try to tell him nothing. During this period, Corrado and Richards had many conversations about the Union; on occasion, this subject was brought up by Corrado, who asked Richards about union activity in Rockford, Illinois, where Respondent operates another plant.[22]

2. Events after Richards allegedly became an employee

Employee Pakovich wore a union button in the plant, always supported the Union, on one occasion had been reproved by Richards for distributing prounion paraphernalia in working areas during working hours, and testified that most people in the plant, including Richards, would have known that Pakovich supported the Union. On May 12, 1993, while Pakovich was using a forklift to pick up a basket, Shift Supervisor Schmitt and Richards drove up in a scooter to count baskets. Richards came over to Pakovich and asked him if he knew who was writing articles in the union newsletter. Pakovich untruthfully replied that he did not know. Richards then said that if Pakovich found out who it was, Pakovich ought to let Richards know.[23]

The original charge which underlies the instant complaint was filed on April 27, 1993. Thereafter, employee Pakovich gave a statement to the NLRB which named Richards. After giving this statement, Pakovich encountered Richards in an aisle of the plant about May 19, 1993. Richards blocked Pakovich and asked him if he knew anything about the labor charges which the Union had filed against Respondent. Pakovich untruthfully replied that he did not. Then, Richards said that he had already had to talk to the Company, and that all he had told the company lawyer was that Richards had not said anything that was half as bad as had been said by Sam Licavoli, whom Pakovich testimonially identified as ''the corporate person in Milwaukee for A. O. Smith.''

Pakovich testified that he responded untruthfully to Richards' question about the ''labor charges'' because ''I didn't feel that I had to tell him that I went down to the Labor Board—you know, filed charges . . . maybe I didn't feel comfortable about telling him . . . that I was down there . . . I didn't know . . . if it was my right [not to tell him]. I didn't look at it that way.'' Pakovich went on to testify that he did not feel it was any of Richards' business.

3. Richards' status after April 1993

At all times relevant here, Johnson, who is vice president of the Granite City operations, has been responsible for the overall operations of the Granite City plant. Also at all times relevant here, Smith has been the human resources manager at that plant, and Peterson has been the production manager at that plant (see supra fn. 5).

At all relevant times, the plant has operated on a three-shift basis. Before May 1, 1993, the production employees reported directly to the ''resource/manufacturing'' (usually referred to by plant personnel as a foreman, and so referred to here) assigned to their department on their shift. Some of the five ''resource/manufacturing'' foremen supervised only one department on their shift, and some supervised more than one. Between 1985 and the end of April 1993, Richards was a ''resource/manufacturing'' foreman who supervised department 1011 on the second shift. Richards was admittedly a statutory supervisor at all material times during the period before May 1993. Between at least October 1992 and the end of April 1993, Daniel Borkowski was classified as a manufacturing manager. During this period, all the ''resource/manufacturing'' foremen (including Richards) and Borkowski reported directly to Production Manager Peterson.

As discussed infra, effective May 1, 1993, Richards' job title became ''TQM facilitator,'' which Respondent contends is a nonsupervisory job. On June 15, 1993, Richards was issued a job appraisal which stated that his ''Major Responsibilities'' were:

going to Union meetings.'' To the extent that their testimony may differ, for demeanor reasons I credit Roberts.

[22] My findings in this paragraph are based on Corrado's testimony. Richards admitted having conversations with Corrado about the Union, and did not deny Corrado's testimony about their content. For demeanor reasons, I credit Corrado's testimony about their frequency.

[23] My findings as to this incident are based on Pakovich's testimony. Richards testified that he did not ''recall'' any conversations with Pakovich about articles which were appearing in the union newsletter, and denied asking him, or any other employees, who was writing the articles for the union newsletter. Schmitt testified for Respondent, but was not asked about this incident; Pakovich testified, in effect, that Schmitt observed the two men talking although Schmitt may not have been close enough to hear what they said. For demeanor reasons, I credit Pakovich.

All second shift press operations . . .
Second shift Tooling . . .
Determine work assignments
Facilitate the teaming work ethic
Quality, efficiency, safety and ''people'' responsibilities of above identified departments

In connection with this last entry (and, perhaps, all of these entries), Production Manager Peterson testified on direct examination as follows:

Q. . . . Your testimony earlier was that the facilitators do not have people responsibilities. It was the supervisors who had people responsibilities. Do you remember that?
A. Yes.
Q. Is that true?
A. Yes.
Q. What is that in reference to then if [Richards] was a facilitator?
A. This is his evaluation for the year previous so this would be a one-year evaluation from the period of June of '92 to June of '93 of which he was a supervisor for eleven months so the evaluation is primarily based on the performance of Jerald Richards for eleven months of which he was a supervisor.
Q. So the description on the front page is a combination of eleven months as a supervisor and one month as a facilitator?
A. Yes

The appraisal states that Richards' ''Time in Present Assignment'' was ''8 years 6 months.'' However, the appraisal further states that one month previous, Richards had been assigned to his ''present job.''

Under the heading ''Projects and Strategic Objectives since Last Appraisal'' were the entries:

Train Operators in doing their own die changes . . .; Increase Operator performance levels to meet customer requirements and elimination of overtime; Facilitate teaming/operator ownership.

Richards was rated partly on the basis of his ''Management Competence.'' Under this heading were entries which included:

1. Delegating: . . . follows up on delegated responsibilities to the degree that subordinates carry out assignments even when not under constant supervision.
. . . .
2. Developing Subordinates: Selects, trains and develops subordinates so that they can function effectively with a high degree of independence and without close supervision. Identifies potential in subordinates and provides and recommends training and developmental experience to realize that potential.
. . . .
5. Organizing-Systematically organizes . . . work of those supervised.

When Johnson took over the Granite City plant in late 1990, he entertained the intention of improving the quality of Respondent's products by, among other things, using employee ''teams'' in order to involve employees in this effort.[24] At a time not clear in the record, Respondent introduced to the employee ''teams'' a concept called ''starpoint,'' with each point on the star representing a separate ''discipline'' involved in running a factory, such as human resources, production, safety, and quality. On each employee ''team,'' some employees were each given one of these separate ''starpoint'' functions. On behalf of the team, such ''starpoint'' employees meet with an appropriate member of management to review matters involved in making the plant more productive and competitive.

As part of this effort to improve product quality, a management reorganization was effected in the spring of 1993. Among other things, Respondent eliminated the job title of ''resource/manufacturing'' which had been held by eight admitted supervisors (including Richards) who had reported directly to Peterson. In addition, Respondent created the job title of ''operations'' shift supervisor, one for each shift, and gave such jobs to three of the former resource/manufacturing'' foremen (Borkowski, Patterson, and Schmitt), who reported directly to Peterson. Also, Respondent set up a ''TQM'' (''total quality management'') branch headed by TQM coordinator Donna Romeo, an admitted supervisor who reported directly to Peterson. Under her were 10 individuals (divided among the three shifts), including Richards, to whom Respondent gave the job title of ''TQM facilitator.'' Of these 10, 3 (including Richards) had previously been supervisors, and the rest had not. Peterson testified that Respondent decided to create the job of TQM facilitator because ''we needed individuals who could isolate and work on these items of continuous improvement involving both man and machine, materials, methods, which would be training, you know, uh, quality problems we have, just the whole gamut, somebody who could isolate themselves just to the problems.''

All 10 of the TQM facilitators had been salaried personnel, and their salaries were not appreciably changed when they became classified as TQM facilitators. The TQM facilitators continue to receive pay on days they are out sick, a benefit which is accorded all salaried employees but not hourly employees. If figured on an hourly basis, Richards' salary is greater than the average per-hour rate of Respondent's hourly paid production employees. Before the management reorganization, the departmental supervisors each had a cubicle which they used as an office. Since the reorganization, the TQM facilitators have all occupied a room, referred to by Peterson as the TQM room, where they work by a large conference table and have no individual desks.[25] The TQM facilitators confer daily for 30 to 90 minutes at the beginning and end of each shift, and all of them meet with upper management twice a week.

[24] Richards' appraisal forms for periods between May 1991 and June 1993 show that Respondent was then seeking to develop the ability of members of management to involve employee teams in plant operations.

[25] After becoming TQM facilitators, the former foremen left their personal effects in their respective cubicles, which have not been rededicated to any specific use and are centrally located. From the honest testimony of employees Crain and Floyd that these exforemen still use these cubicles, and from Peterson's testimony that these cubicles ''are used by just about anybody because it is a good place to meet with employees,'' I infer that the exforemen continued to use their respective cubicles for this and other purposes.

On April 30 or May 1, 1993, production manager Peterson read to all of the employees a speech in which he stated, in part:

> First, we are going to have only one person for each shift act as supervisor. This [person's] role will be to assure communications are consistent and accurate. This will allow us to consistently communicate policy, procedure and treat everybody fairly under the same rules. These individuals will be the only persons you should seek for information. . . .
>
> The second thing we are doing is creating a team that will be headed up by Donna Romeo. We are calling this team TQM (total quality management) team.
>
> . . . .
>
> . . . these teams will have as [their] primary role the elimination of waste and the implementation of the solution to the problems we have. Their responsibility will be to identify the causes of lost time and scrap and take corrective actions to reduce and eliminate these causes. . . . At times the tasks that they will [undertake] will require the help of many of you during normal working hours and on overtime. They will be a part of your team. They will listen to and try to identify your problems and work on the implementation of the solutions and continually communicate with you.
>
> They will follow the simple rule of [identifying] the problem, plan the solution, make the changes, follow up on the corrections and lastly and most important take action . . . when the solution does not perform as it was [supposed] to. These individuals have no one reporting to them. . . . These changes will take effect on Monday [May 3.] But, it will take some time for the transition to take place . . . and everybody to get used to this new way of doing business.

During this speech, Peterson put on the wall an ''overhead'' which showed that Romeo directly reported to him, that the TQM facilitators (including Richards, who like the others was identified by name) directly reported to her, and that the three shift foremen (identified by name and ''Operations'' followed by their respective shift) directly reported to Peterson.[26]

At least after giving this speech to the first shift, Peterson opened the floor for questions. On of the employees asked whether the TQM was ''going to be a bird dog or somebody watching us all the time;'' to which Peterson replied,''. . . only if you make him.'' Another employee asked what would happen if Borkowski, the shift supervisor on the first shift, was not there; Peterson replied that in that event, the employees should go to the facilitator.

The job description for the TQM facilitators, which states ''Job Analyzed 5/4/93,'' states that the facilitator's primary function includes elimination of ''too much transportation (both person and part); excessive operator movement . . .; too much waiting time/excessive machine movement; . . . and unbalanced layout/worker load. Leads the PPI [product process improvement] process.'' The facilitator's duties and responsibilities include identifying who is connected with waste; plotting lost time and cause of lost time; monitoring the causes of scrap and the ''corrective actions necessary to eliminate'' it; and facilitating ''Operator involvement through the PPI . . . process [, which] will be used where results must be quickly altered —efficiency, scrap and lost time.'' Also, ''In shared responsibility with the Operational Supervisor [the admittedly supervisory shift foreman], [the facilitator] pays particular attention to operator performance in areas of 1) Operator fatigue/boredom and 2) operations that cannot be repeated exactly by another Operator to minimize/eliminate inefficiency and potential injury.'' The May 5, 1993, job description of the ''Coordinator/TQM'' (Donna Romeo), to whom the facilitators immediately report according to the organizational chart, includes''. . . the elimination of waste through proactive Operator ownership. . . . General supervisory responsibilities for TQM facilitators and of the shop floor in support of the team approach.'' The May 5, 1993 job description of the ''Operations Supervisor'' (shift foreman) includes, ''Daily monitors operational efficiencies and interaction with teams and star point leaders. . . . Motivates the star point leaders and shop floor teaming. . . . Keeps and consistently administers company policy, rules and regulations. . . . Provides direction and assistance to complete daily production schedules.''

On May 13, 1993, Vice President Johnson issued a written announcement which stated, in part:

> Donna [Romeo's] primary task will be to coordinate the activities of the TQM facilitators in the elimination of waste.
>
> . . . .
>
> Each shift will have a team of facilitators to provide manufacturing-quality-maintenance-engineering expertise to support team objectives for continuous improvement in all activities through pro-active operator ownership in quality, cost and delivery of our products to our customers. The individual facilitators will be assigned to specific teams and are charged with building the teams into high performance units.
>
> . . . .
>
> Each shift will have an Operations Resource to provide leadership through coaching and shared vision to our factory teams. All factory employees will report directly to their respective Operations Resource.

At a training session for TQM facilitators, all of them (including Richards) were told that they are not supervisors. They cannot hire, fire, issue discipline to, promote, demote, or reward employees. TQM facilitators do not have authority to permanently reassign employees to other departments, grant employees time off, or authorize employee overtime.[27] However, when the shift supervisor is on vacation or is absent for other reasons, his supervisory authority is exercised by (according to Johnson) a TQM facilitator on that shift who is selected by the shift foreman or (according to Peter-

[26] In August 1993, almost 4 months after seeing the ''overhead,'' employees Floyd and Crain, both of whom testified for the General Counsel, gave erroneous descriptions of the overhead.'' In evaluating their testimony, I have taken these errors into consideration.

[27] Determination of which individual employees are to work the overtime determined by management is made by a ''starpoint'' employee. In some departments the determination is made by seniority, and in some on a rotational basis. In Richards' department, the employee who worked the fewest overtime hours is given the initial offer of overtime hours, with ties being governed by seniority.

son and Richards) each of the facilitators on that shift with respect to that facilitator's department.[28] Each shift supervisor has an annual vacation of 3 weeks, and may be absent for other reasons for up to a week a year.

Before becoming the shift supervisor on the second shift on May 1, 1993, Schmitt had had only a limited amount of experience in department 1011, which Richards had been supervising on the second shift. Also, about May 10, Respondent transferred to department 1011 on the second shift 12 new employees who had never worked in that department before. During a period which ended about May 22, Richards, who appeared on the new organizational chart as a TQM facilitator on the first shift, worked in department 1011 on the second shift (his shift before May 1993) for 4 to 6 hours a day. According to Peterson, during this period Schmitt ''had to get used to the paperwork that is generated, the calculations, the efficiency and [Richards] had to pass on that knowledge to him, how he calculated the efficiencies, understanding how the paperwork was, the schedules. The schedules used in the press department is totally different than the schedules used where Richard Schmitt was so [Richards] tried to help him understand how the schedules are interpreted and how . . . the jobs proceed in order.''

Most of the employees receive a total of 3 weeks' paid vacation. They are required to take 1 week's continuous vacation, during a period which they select early in the calendar year. As to their remaining vacation days, they frequently, and perhaps usually, take a day or two at a time. Requests for such brief vacations must be initially approved by a ''starpoint'' employee in the department, who is not supposed to permit more than two employees in the department to be on vacation at the same time. Before May 1993, Richards approved two or three vacation requests a week. Between about May 18 and August 25, 1993, a period which included a 3-week leave of absence by Richards, he approved four vacation requests from employees on the first shift and three vacation requests from employees on the second shift, including three requests from employees in the department and shift (department 1011, second shift) which Richards had admittedly been supervising before May 1993.[29] There is no evidence as to whether Schmitt, who after April 1993 was the shift supervisor on the second shift, was actively working when Richards approved these vacation requests from second-shift employees. Borkowski, who after April 1993 was the shift supervisor on the first shift, was on vacation when Richards approved the vacation requests from first-shift employees.

Before May 1993, an employee's timecard was signed by his immediate supervisor or, if he was not there, by a supervisor from another department. Before May 1993, Richards ordinarily signed the timecards of the employees whom he supervised; after April 1993, timecards were ordinarily signed by the shift supervisor. Employee Crain testified in August 1993 that the facilitator signs the time cards when the shift supervisor is not there. As previously noted, there is no evidence that Schmitt, the shift supervisor on the second shift, was on vacation or otherwise absent at any material time. Richards signed the time cards for about 18 second-shift employees for the week ending May 23, 1993. Peterson testified that Richards did this because ''he knew who the individuals were and he was there and he could verify . . . that they were there, whereas Richard Schmitt was unaware of who some of these people were. He had never met them before. Some were new employees that had been hired in within a month previous to that and [Richards] knew who they were.'' In addition, Richards signed the time cards of about 23 first-shift employees the week ending June 27; Borkowski, the first-shift supervisor was on vacation on the day the timecards for that week were supposed to be signed. Also, Richards signed the timecard of one first-shift employee for each of the weeks ending May 9 (Beeler) and June 6 (Hawkins), respectively; and a timecard for a third-shift employee (Schultz) for the week ending June 6, although there is no evidence that the shift supervisor on that shift was absent at any material time.

As a practical matter, employees cannot leave the plant before the end of their regular shift (because of, for example, a family emergency) without a gate pass; an employee may be discharged for leaving early without one. Before May 1993, gate passes were signed by the employee's immediate supervisor or, if he was unavailable, by the supervisor of another department, Smith, or Human Resource Manager Divine. Before May 1993, Richards normally signed all of the gate passes (two or three a week) for employees in the departments which he supervised. After April 1993, if an employee could not find a supervisor to sign a gate pass, the employee went to his facilitator. On May 25, 1993, while Borkowski was on vacation, Richards signed three gate passes, at least two of them for first-shift employees.

When on duty during the ''transition period'' which ended about May 22, Richards directed employees in what to do, told them about safety on a press, and told them how to conduct team meetings. The first shift, whose sole immediate supervisor (Respondent contends) is Borkowski, consists of 100 to 120 employees. Borkowski circulates in the plant by using an electric scooter, spends about 25 percent of his time in department 1011 (for which Richards is the first-shift TQM facilitator), and usually does not attend that department's team meetings, all of which are attended by Richards. Richards testified, in effect, that after the reorganization the employees did not have a direct supervisor who was in contact with them at all times. Peterson testified that on occasion, the shift supervisor ''may go ahead and act just on the [TQM facilitator's] recommendation.''

Peterson testified that the facilitator may recommend the temporary transfer of an employee, and Borkowski would give Richards' recommendation great weight, but that Borkowski would actually effect the transfer. Richards testified that Borkowski ''normally'' handles a team leader's request for assignment of more or fewer employees to his line, the selection of individuals to be transferred being made by the leader of the team where they are working.[30] Richards further testified that ''normally,'' temporary interdepartment

[28] Because Peterson and Richards have a better opportunity than Johnson to observe what is in fact done on the factory floor, as to the substitute-supervisor matter I accept Peterson's and Richards' testimony. However, of arguably more significance in determining whether facilitators are supervisors at all times is upper management's uncertainty about when they substituted for shift supervisors and admittedly exercised the authority of a statutory supervisor.

[29] Two of these proceeded from one employee, Tim Moline.

[30] Team leaders are hourly employees, not claimed to be supervisors. The selection of transferees is made by seniority or rotation.

transfers are handled by Borkowski. However, Richards testified that if Borkowski were busy dealing with some other problem in another part of the plant, Richards would in case of an emergency (such as an employee injury) say to a particular team leader, ''We can get by on one fewer guy on your line. Would you send one over to the other line?''; and that the team leader would view Richards as having the authority to give that instruction.

Richards performs production work only to relieve rank-and-file employees for such things as bathroom breaks. Both before and after becoming a TQM facilitator, he walked around his department to see that it was running, investigated line stoppages, and tried to get the line running again. Johnson testified that the facilitators' basic job is that of problem solvering. He further testified that when the facilitator decides that the problem is a ''people problem,'' the perceived ''people problem'' is turned over to the shift supervisor. Peterson testified that lost time may be caused by employee error, operator negligence, or employee ''goofing off;'' and in that event, the facilitator may recommend further training. Peterson further testified that where scrap has resulted from operator error, the facilitator is supposed to try to ''foolproof'' the job; that telling the operator to be more careful is primarily the supervisors job but ''we would hope'' any employee, including the facilitator, would tell this to an unsafe operator; and that the facilitator would attempt to bring up an employee's low production by analyzing the method he used, but not by reporting that the employee was not working very hard. Richards testified that on occasion, where he suspected that a particular employee was creating a ''bottleneck'' on the production line, Richards would suggest to the employee that he change his technique in order to reduce fatigue; that Richards ''would have thought'' the employee would try the technique suggested by Richards; and that he would report to Borkowski any failure by the employee to do so. Richards further testified that if he believed excessive scrap was being caused by operator inattention, he would tell the operator that he needed to pay attention and ''Hopefully, they would.'' Also, Richards testified that he would investigate the reasons for an employee's seemingly excessive absence from his machine and if Richards were not satisfied with the employee's explanation, would make a report to the shift supervisor but would not tell the employee to go back to work. Peterson testified that Richards' shift supervisor, Borkowski, would give great weight to Richards' recommendations as to department 1011. Richards testified that if he gave an employee a direction, Richards would expect him to follow Richards' direction, but that he did not think that ''in all cases'' employees would expect that they were required to follow his direction. For demeanor reasons, I think Richards understated his expectations of obedience.

Employee Floyd credibly testified in August 1993 that the TQM facilitators are constantly present in his department, take notes, count machines, and ''suggest you get back to your job . . . in such a stern manner or way that you get the feeling that this is somebody that if you didn't pay attention to them when they were speaking that you will catch some trouble for it somewhere later.'' He further gave honest testimony that he viewed TQM facilitators as supervisors (although nobody ever told him they were supervisors) ''or somebody with more authority than an hourly person.'' Employee Crain identified Shift Foreman Borkowski as Crain's immediate supervisor. An employee-authored flier to other employees dated May 29, 1993, refers to the facilitators as ''overseers'' who are ''ordered to'' build the teams into ''high pressure'' units.

H. *Analysis and Conclusions*

1. Alleged threats and promises by Koch and Johnson

I agree with the General Counsel that Respondent violated Section 8(a)(1) of the Act when Supervisor Koch told employee Roberts that the plant was presently a good place to work, but that if the employees brought a union in, Respondent could get ''very nasty.'' *M. K Morse Co*., 302 NLRB 924, 930 (1991).[31]

Moreover, I agree with the General Counsel that Respondent violated Section 8(a)(1) when Vice President Johnson, during employee meetings conducted by Respondent during which it urged a vote against the Union, told employees (1) that since the union organization started, some problems had come to Johnson's attention, including the problem of overtime scheduling, and he would try to or was going to do something but could not do anything ''right now''; (2) that he intended to hold meetings with employees to address their concerns and needs, that the employees should give Respondent another chance, and that ''these problems could all be worked out''; and (3) that Respondent's new human resource manager had mentioned likely solutions to ''the issues that we had over time and the bid systems and . . . the hours worked.'' I conclude that Johnson thereby promised benefits to the employees in order to discourage them from unionization, in violation of Section 8(a)(1) of the Act.[32]

At the outset of the hearing, Respondent moved to dismiss paragraph 5,D,2 of the consolidated amended complaint, which is docketed as Cases 14–CA–22452 and 14–CA–22549, was served on July 19, 1993, and alleges that about January 22, 1993, Respondent, through Production Manager Peterson and in violation of Section 8(a)(1), ''Informed an employee that employees could no longer approach Respondent directly if they selected the Union as their collective bargaining representative.'' Respondent's motion was based on the alleged absence of a sufficient underlying charge. However, less than 6 months elapsed between the date of this alleged conduct (January 22, 1993) and the June 16, 1993, service of the original complaint, which included this allegation. Moreover, the charge and amended charge on which the original complaint (docketed as Case 14–CA–22452) was based allege unlawful interference with the same organizational campaign; indeed, the April 27, 1993, charge alleges that on January 22, 1993—the same day as the conversation attacked in paragraph 5,D,2 Respondent unlawfully ''told employees [Respondent] would remedy grievances that were

[31] No different conclusion is suggested by *Star Fibers, Inc*., 299 NLRB 789 (1990), cited by Respondent. The Board there found that in context, this remark was addressed to the collective-bargaining process; no such context was present in the case at bar.

[32] *Hubbard Regional Hospital*, 232 NLRB 858, 870 (1977), enfd. in relevant part 579 F.2d 1251, 1257–1258 (5th Cir. 1978); *Pennsy Supply, Inc*., 295 NLRB 324, 325 (1989). ''Ordinarily, the more imminent a representational election, the greater the presumption that management's expression of concern for employee welfare has an impermissible motive.'' *NLRB v. Rich's of Plymouth, Inc*., 578 F.2d 880, 883 (1st Cir. 1978).

brought up in the campaign.''[33] Accordingly, I conclude that paragraph 5,D,2 is not barred by the 6-month limitation period prescribed in Section 10(b). *NLRB v. Overnite Express Co*., 938 F.2d 815, 820–821 (7th Cir. 1991); *NLRB v. Complas Industries, Inc*., 714 F.2d 729, 732–733 (7th Cir. 1983); *Recycle America*, 308 NLRB 50 (1992); *Buckeye Plastics Molding*, 299 NLRB 1053 (1990); *Electrical Workers (Paramax Systems)*, 311 NLRB 1031, 1053 (1993).

However, on the merits, I agree with Respondent that it did not violate the Act when production manager Peterson told employee Roberts that Respondent presently had an open door policy, that some union contracts permit or require employees and the employer to communicate through a third party such as a steward, and that under these circumstances, the existence of a bargaining representative would add an extra step in the employer-employee communication process and cause some grievances to take up to 2 years. See *Pembroke Management, Inc*., 296 NLRB 1226 (1989); *Purolator Products, Inc*., 270 NLRB 694 (1984), enfd. 121 LRRM 2120 (4th Cir. 1981). Moreover, I agree with Respondent that it did not violate the Act when Johnson said, during the employee meeting described by Wood, that Respondent and the employees did not need a union to solve problems in the plant, but that these problems could be solved by resort to Respondent's long-standing ''open door'' policy. See *Establishment Industries, Inc*., 284 NLRB 121 fn. 2 (1987). Nor did Respondent violate the Act when Peterson told Roberts that during negotiations, the employees might gain and might lose, and that they could lose a lot of what they had before gaining the one thing they wanted; this is an essentially accurate description of the collective-bargaining process. See *Fern Terrace Lodge of Bowling Green*, 297 NLRB 8 (1989); *Liquitane Corp*., 298 NLRB 292, 297 (1990); *Clark Equipment Co*., 278 NLRB 498, 499–500 (1986); *Uarco, Inc*., 286 NLRB 55, 58 (1987).

2. Remarks by Supervisor Schmitt to employee Corrado

a. *Respondent's procedural defense*

Paragraph 5(1) of the consolidated amended complaint, which was issued on July 19, 1993, alleges that Respondent had violated Section 8(a)(1) in that about June 29, 1993, Supervisor Schmitt ''told an employee that other employees were upset because the employee wrote articles for a pro-Union newsletter.'' On August 23, 1993, on the first day of the hearing and before the first witness testified, the General Counsel stated that the complained of statement actually consisted of the assertion that other ''people''—not other ''employees''—were upset. Respondent's posthearing brief contends that this allegation should be stricken because it is insufficiently supported by the only charge filed after this statement was allegedly made. That charge (filed on July 19, 1993) alleges, in part, that Respondent had violated Section 8(a)(1) ''by advising employees that other employees were upset by those employees' union or concerted activities.'' Because the alleged unlawful statement set forth in the July 19 charge is much the same as the June 29 statement attacked in the July 19 complaint (particularly as explained by the General Counsel in August 1993 before any testimony was adduced), and because both the complaint and the General Counsel's explanation were received by Respondent less than 6 months after the event in question, I conclude that the July 19 charge is sufficient to support the July 19 complaint. *NLRB v. Fant Milling Co*., 360 U.S. 301, 307–309 (1959); *NLRB v. Overnite Express*, supra at 820–821; *Complas Industries*, supra at 732–733; *Recycle America*, supra; *Buckeye Plastics Molding*, supra at 1053; *Electrical Workers (Paramax Systems)*, supra at 1053.

b. *The merits*

In determining the legality of Schmitt's remarks to Corrado, it is appropriate to consider their context. On the previous day, Company Vice President Johnson had told employees who were attending a company meeting (including Corrado) that Johnson had been ''really upset'' at the article about the allegedly misleading ''quality'' charts, and that this article ''was just the UAW trying to stir things up.'' Corrado had in fact written this article, and Schmitt's allegedly unlawful remarks to him revealed that Schmitt knew this. Schmitt's remarks further revealed his knowledge that the meeting where Vice President Johnson expressed at least initial unhappiness with Corrado's article had been the subject of Corrado's conversation with Burton on company time. Also, Corrado was aware (1) that Schmitt entertained the reasonable (although mistaken) belief that Corrado's conversation with Burton when they were supposed to be actively working had lasted a full half-hour, (2) that Schmitt had been untruthfully advised by Burton that the Burton-Corrado conversation had been initiated by Corrado, and (3) that this contact had so annoyed Schmitt that he had ''hollered'' at Corrado and, contrary to Schmitt's normal practice, had directed obscenities at him. Further, Corrado had openly campaigned in favor of the Union, which Respondent opposed, and had been reproved by Respondent for distributing union literature during his own time in work areas to other employees when they were supposed to be actively working.

In short, when Schmitt made his remarks to Corrado, Corrado had very good reason to believe that Respondent was angry at him because of his protected union activity (including his activity in writing the ''quality'' article) and because of conduct which was associated with that activity although it may not have been statutorily protected in itself.[34]

[33] The June 16 charge alleges, in part, that ''since on or about November 1, 1992, [Respondent] has interfered with, restrained, and coerced its employees . . . by promising to remedy [employees'] problems if they reject the Union.''

[34] Respondent does not appear to dispute that Corrado engaged in protected concerted activity by drafting an article, for a newsletter to be distributed among his fellow employees for the avowed purpose of sustaining their interest in unionization, which expressed concern for employment security in reliance upon Respondent's quality control employees' erroneous conception of the nature of a review between Respondent and its customers. See *Delta Health Center*, 310 NLRB 26 (1993), enfd. mem. 5 F.3d 1494 (5th Cir. 1993); *Allied Aviation Service Co*., 248 NLRB 229 (1980), enfd. 636 F.2d 1210 (3d Cir. 1980). I note (1) that the newsletter in which the article appeared shows on its face that it was prepared and circulated by Respondent's employees in an effort to induce their fellow employees to support the Union; (2) that it was directed solely to such employees, there being no evidence that either the employees or the Union ever drew it to the attention of any of Respondent's customers (although company Vice President Johnson elected to send it to Ford); (3) that the article stated that the Respondent's products

In this context, I agree with the General Counsel that Schmitt was threatening Corrado with reprisal for his protected union activity when Schmitt stated that his vexation at Corrado's working-hours conversation with Burton about the meeting had been exacerbated by the fact that that very meeting had been caused by Corrado's article, that Corrado's action in writing it evinced indifference to the opinions and welfare of plant personnel, and that the opinions of plant personnel (including management) were so condemnatory of the article (at least after hearing Johnson's explanation at the meeting of the allegedly misleading charts) that an employee genuinely concerned about these opinions would stop writing articles which thus angered other plant personnel. See *El-Tech Research Corp*., 300 NLRB 522, 524, 530, 537 (1990); *Wometco Coca-Cola Bottling Co*., 255 NLRB 431, 443 (1981); *United States Aviex Co*., 279 NLRB 826, 831 (1986) (telling employee that satisfied employees did not wear union hats).

3. Alleged impression of surveillance

I agree with the General Counsel that Respondent gave employees the impression of surveillance, in violation of Section 8(a)(1) of the Act, when Supervisor Richards approached employee Roberts and told him that Richards knew who was going to union meetings. *NLRB. v. Gold Standard Enterprises*, 679 F.2d 673, 676–677 (7th Cir. 1982); *Filene's Basement Store*, 299 NLRB 183, 195, 234 (1990); *Forrest City Grocery Co*., 306 NLRB 723, 727 (1992).

4. Alleged unlawful interrogation

a. *Distribution of antiunion paraphernalia*

An employer violates Section 8(a)(1) of the Act by distributing insignia or paraphernalia in such a manner as to pressure employees to make an observable choice or open acknowledgment concerning their position in a union campaign.[35] The credible evidence shows that techniques used by Respondent's supervisors to distribute ''vote no'' paraphernalia among the employees effected such pressure. Thus, Supervisor Watkins approached a group of second-shift employees, some of whom were wearing prounion insignia and some of whom were not, and offered to give them ''vote no'' buttons provided the employees would wear them. In addition, he and Supervisor Koch asked various employees whether they wanted a ''vote no'' T-shirt, and gave shirts to those who said they wanted them. Moreover, Watkins and Koch each volunteered ''vote no'' paraphernalia to employee Roberts, who regularly wore prounion paraphernalia to work; when Roberts refused, Koch advanced a threat of reprisal against employees if the Union won the election. Furthermore, Supervisors Watkins and Leach asked employees who were wearing prounion paraphernalia if they wanted to trade them for ''vote no'' paraphernalia, and, when employee Crain said ''no,'' Watkins asked him whether he was ''sure.'' Further, in the absence of any direct testimony as to the conversation between employees and Supervisors Campbell and Prior when distributing ''vote no'' paraphernalia, I infer from the undisputed employee testimony about these supervisors' out-of-earshot conduct that they volunteered such paraphernalia to employees.[36] As to these incidents, dismissal is not indicated by *Wm. T. Burnett & Co*., 273 NLRB 1084, 1092–1093 (1984), or by *McDonald's*, 214 NLRB 879, 883 (1974), both of which are relied on in Respondent's posthearing brief. In these cases, the supervisor's conduct evinced indifference as to whether the employee displayed the paraphernalia in question.

Respondent's contention that its supervisors' conduct with respect to union paraphernalia did not violate the Act where directed to employees who were open union supporters, or because the concomitant Watkins-Corrado, Watkins-Crain, and Leach-Crain McNew conversations were at least allegedly conducted in a joking manner and between friends, is irrelevant to Watkins' January 6 conduct with respect to second-shift employees who were not overt union supporters and as to whom there is no evidence of any friendship with Watkins, or to the conduct by Supervisors Koch, Campbell, and Prior. Furthermore, Crain credibly testified that when Watkins asked Crain whether he was ''sure'' he did not want to substitute management's tendered ''vote no'' paraphernalia for the union paraphernalia Crain was actually wearing, he ''took it as it wasn't a joke.'' Rather similarly, McNew testified that he could not say ''for sure'' whether Leach had been joking when he asked employees Crain and McNew to trade their union paraphernalia for ''vote no'' paraphernalia; ''it is not a joke to me when someone is messing with my future.''[37] Nor is Watkins' distribution of ''vote no'' buttons shown to be lawful by employee Corrado's conduct—when Watkins offered him a button individually after unsuccessfully tendering buttons to a group of employees including him—in stating that he would only accept Watkins' entire stock of buttons, thereby implying that Corrado would accept buttons only under circumstances which would empower him to halt their distribution to others. Humor is a not infrequent technique in attempting to ameliorate stress imposed by a superior.

b. *Other forms of interrogation*

My action in discrediting Williams' testimony about Smith's remarks to her calls for dismissal of the complaint allegation that he unlawfully interrogated her.

However, I find that Respondent violated Section 8(a)(1) of the Act when (1) Production Manager Peterson asked em-

were of good quality; (4) that so far as the record shows, the article accurately reflected representations made to the writer by quality control employees about quality control charts; (5) that Johnson in effect conceded that the errors in such representations were not intentional but, rather, were attributable to misunderstandings by quality control employees which Respondent took steps to correct; and (6) that the article showed on its face that it was directed toward the wholly proper purpose of preserving employees' jobs, a normal objective of union organization.

[35] *Lott's Electric Co*., 292 NLRB 297, 303–304 (1989), enfd. 891 F.2d 601 (3d Cir. 1989); *Houston Coca-Cola Bottling Co*., 256 NLRB 520 (1981); and *Maremont Corp*., 294 NLRB 11, 40 (1989).

[36] I need not and do not consider whether Section 8(a)(1) was violated through the techniques used by Supervisor Patterson in distributing ''vote no'' paraphernalia. Any such findings would be cumulative and would not affect the remedy.

[37] See *Gemco*, 279 NLRB 1138, 1146 (1986); *Frederick's Inc*., 269 NLRB 165, 168 (1984); and *Photo Drive Up*, 267 NLRB 329, 329, 353 fn. 158 (1983). See also *A. P. Green Fire Brick Co. v. NLRB*, 326 F.2d 910, 914 (8th Cir. 1964) (''executives who threaten in jest run the risk that those subject to their power might take them in earnest'').

ployee Roberts why he wanted a union in the plant; (2) when Richards (at that time, admittedly a supervisor) (a) asked employee McNew when the next union meeting was (a question which McNew declined to answer), (b) asked employee Corrado whether the Union was planning to ''pull'' its petition, and (c) repeatedly asked him about what was happening at union meetings and what the Union was planning to do, during contacts which Richards regularly brought about shortly after the Union's regular Wednesday meetings; and (3) when Richards, after having become a TQM facilitator, asked employee Pakovich who was writing articles in the union newsletter, told him to let Richards know if Pakovich found out who it was,[38] and asked him if he knew anything about the labor charges which the Union had filed against Respondent, in connection with which Pakovich named Richards in a statement to the NLRB Regional office. In so finding, I note that Pakovich gave untruthful responses to Richards' questions; that Corrado tried to give uninformative answers and McNew declined to give an answer; that Production Manager Peterson was a second ranking member of onsite management at the plant; that prior to the interview when Peterson interrogated Roberts, Supervisor Watkins had made an unlawful effort to induce Roberts to substitute a ''vote no'' hat for the union cap which Roberts wore during his conversation with Peterson, and Supervisor Richards had unlawfully given Roberts the impression of surveillance over union meetings; that the interrogation of Corrado was repeated and calculated; that none of the questioning by Respondent's management had a legitimate purpose or was accompanied by assurances against reprisal; that some questioned employees were asked to identify by name the employees who were engaging in certain union activity, and to describe union activities of employees other than themselves; that Respondent encouraged employee distribution of ''vote no'' paraphernalia during working time while forbidding employees to distribute union material during working time (see infra Part 2,H,5); that Respondent was admittedly seeking to keep the plant from being unionized; and that Respondent's principal executive at that plant had unlawfully promised benefits in an effort to bring about the Union's rejection. See *NLRB v. Shelby Memorial Hospital Assn*., 1 F.3d 550, 558–560 (7th Cir. 1993); *Jays Foods, Inc. v. NLRB*, 573 F.2d 438, 444 (7th Cir. 1978), cert. denied 439 U.S. 859 (1978); *Central Transport, Inc. v. NLRB*, 997 F.2d 1180, 1189–1190 (7th Cir. 1993); *Action Auto Stores*, 298 NLRB 875, 887 (1990), enfd. 951 F.2d 349 (6th Cir. 1991); *Hickory Creek Nursing Home*, 295 NLRB 1144, 1147 (1989), enfd. 917 F.2d 1304 (6th Cir. 1990); and *Mississippi Chemical Corp*., 280 NLRB 413, 415 (1986).

I agree with the General Counsel that whether or not Richards was a statutory supervisor after becoming a TQM facilitator on May 1, 1993 (an issue which I find it unnecessary to address), Respondent was answerable for his conduct on May 12 and 19, 1993, when he asked Pakovich about who was writing articles for the union newsletter and about the Union's NLRB charges against Respondent. Where an employer places an employee in a position where other employees could reasonably believe that the employee spoke on behalf of management, the employer has invested the employee with apparent authority to act as the employer's agent, and the employee's actions are attributable to the employer. *Transit Management Services*, 298 NLRB 721, 729 (1990). conclude that at least during the period in question (May 12–19, 1993), Respondent put Richards in such a position with respect to Pakovich. Thus, until May 1993, Richardson had admittedly been a supervisor on the second shift, where Pakovich worked at all material times. When Richards was admittedly a supervisor, his duties included approving vacation requests and approving time cards and gate passes; he also performed such duties on various occasions between about May 18 and about June 8. During the ''transition'' period which began on May 1 and ended about May 22, he worked with at least four admitted members of management,[39] training new employees. Between May 24 and 28, when admitted Supervisor Borkowski (the shift foreman on the first shift) was on vacation, Richards admittedly possessed supervisory powers with respect to the first-shift employees. Moreover, even when announcing on April 30 or May 1 that Richards and others had been made TQM facilitators and were no longer supervisors, production manager Peterson told the first-shift employees to go to the facilitator if the admittedly supervisory shift supervisor was not there, and that the facilitator would watch the employees all the time if they made him do so. I conclude that Richards' conduct with respect to employee Pakovich on May 12 and 19, 1993, is attributable to Respondent. *Sears & Roebuck de Puerto Rico*, 284 NLRB 258 (1987); *Classic Industries*, 254 NLRB 1149, 1154–1155 (1981), enfd. 667 F.2d 205 (1st Cir. 1981). I note, moreover, that Richards' comment to Pakovich in connection with Richards' inquiries about who was writing union newsletter articles—namely, that if Pakovich found out, he ''ought to'' let Richards know—indicates concern by Richards as a manager rather than as a fellow employee, a friend, or merely an inquisitive person; and that management obviously had an interest in the unfair labor practice charges against it, the subject of Richards' later inquiry to Pakovich.

5. Alleged unlawful disparate enforcement of limits on solicitation and distribution

As found supra section II,D,1, Respondent's employee handbook includes a rule (not claimed to be facially unlawful) which forbids solicitation during work time, and literature distribution during work time or in work areas. Paragraph 6(B) of the complaint in its final form alleges that about January 13, 1993, Respondent, in violation of Section 8(a)(1), ''enforced [this] rule . . . selectively and disparately by verbally reprimanding employees for distributing 'pro-Union' literature in working areas while allowing its supervisors to distribute 'anti-Union' buttons and apparel on work-

[38] This conversation preceded by 2 weeks the article about the Ford audit. Richards testified, in effect, that he did not hear until about 10 days after his May 12 conversation with Pakovich that an article about Respondent's quality control program was being prepared. However, Pakovich did testify that for 2 to 3 weeks before this conversation, ''it wasn't a secret'' in the plant that organizing-committee members were gathering information to write an article about Respondent's quality program.

[39] Production Manager Peterson, Quality Control Supervisor Campbell, Human Resources Manager Smith, and TQM Coordinator Romeo.

ing time and in working areas.''[40] Respondent's posthearing brief admits (p. 12), and I find, that it did in fact engage in this alleged conduct. However, I agree with Respondent that such conduct did not violate the Act. *NLRB v. United Steelworkers (Nutone, Inc.)*, 357 U.S. 357 (1958); *Fairfax Hospital*, 310 NLRB 299, 299 fn. 3, 312 (1993), enfd. mem. 14 F.3d 594 (4th Cir. 1993); *Summitville Tiles*, 300 NLRB 64, 66 (1990). *Nutone* cannot be distinguished, as the General Counsel seeks to do, on the ground that the supervisory conduct in disregard of the rule was coercive in itself; see *Nutone*, supra at 359–360, 362–363; see, also, the partial dissent in that case, 357 U.S. at 367–369.

At the hearing and in her posthearing brief, the General Counsel relied on *Heartland of Lansing Nursing Home*, 307 NLRB 152, 160 (1992). I am unable to perceive any straightforward reading of *Heartland* which is reconcilable with *Nutone*, a case not cited in *Heartland*. In *Heartland*, the Board found that a health care facility maintained in its handbook a written no-solicitation rule which was unlawful on its face because it forbade solicitation in areas other than immediate patient care areas; see 307 NLRB at 159–160, 168–169. In addition, the employer permitted supervisors to talk against unions at nursing stations and in hallways, while forbidding employees to talk about unions in hallways; the decision does not specifically state whether the written rule could lawfully or did in fact apply to nursing stations or hallways. After describing the disparate enforcement as to hallways, the Board found (307 NLRB at 160) that the employer ''violated Section 8(a)(1) by applying its no-soliciting rule in a discriminatory manner whereby it prohibited prounion employees from discussing [the union] in the hallways while permitting antiunion campaigning in the same areas,'' citing *Blue Bird Body Co*., 251 NLRB 1481, 1485 (1980), a case which dealt with discrimination between solicitation by prounion and by antiunion employees in a factory.[41] The Board may wish to clarify the basis for this ruling in *Heartland*.[42] Meanwhile, since I cannot reconcile the Board's decision in *Heartland* with the Supreme Court's decision in *Nutone*, I am, of course, constrained to follow the latter.

[40] The parties have tacitly assumed that for purposes of this case, the right to distribute literature is indistinguishable from the right to distribute election paraphernalia. Accordingly, I need not and do not consider whether these rights are indistinguishable for all purposes; cf. *Oklahoma Installation Co*., 309 NLRB 776, 789 fn. 29 (1992).

[41] The *Heartland* conclusions of law found that the employer violated Sec. 8(a)(1) by, inter alia, ''discriminatorily enforcing a rule prohibiting campaigning for the Union in hallways while permitting campaigning against the Union in the same areas'' (307 NLRB at 168). The cease-and-desist order prohibits the employer from, inter alia, ''discriminatorily prohibiting campaigning for the Union in areas where campaigning against it is permitted'' (307 NLRB at 169). As to this matter, the notice substantially tracks the order (307 NLRB at 170).

[42] Thus, *Heartland* may reflect the principle that a health-care employer's disparate enforcement between employees and supervisors, as to solicitation in a nonworking area (like, perhaps, a hallway) where nonhealth-care employers may not normally forbid solicitation by employees, is unlawful because the health-care employer's action in permitting solicitation by supervisors negates any contention by the health-care employer that solicitation activity in that area would disrupt the delivery of medical care. See *Fairfax Hospital*, supra at 312.

At the outset of the hearing, Respondent moved to dismiss paragraph 6(B) of the complaint, essentially on the grounds summarized above. At that point, and before the receipt of any evidence, the General Counsel stated that she would show one incident where a supervisor had an employee distribute for him. The General Counsel's posthearing brief states, in part, that after the January 13, 1993, meeting (see, supra, sec. II,D,6), ''Respondent's supervisors . . . continued to permit anti-union employees to distribute in violation of the rule,'' describing, inter alia, the Prior-Raderman incident (see, supra, sec. II,D,10). The General Counsel's brief then goes on to say (emphasis added), ''Although the Employer's no solicitation/distribution rule appears to be valid on its face, the evidence establishes that it is being applied disparately, even though it was ostensibly directed against both pro and antiunion activities, because Respondent permitted other employees and supervisors to distribute anti-union apparel in working areas and during working time. See *Columbus Mills*, 303 NLRB 223, 230–231 (1991),'' which based an 8(a)(1) finding on disparate enforcement of a no-distribution rule between prounion and antiunion employees. Moreover, Respondent's posthearing brief includes a heading ''The Company Did Not Enforce The Policy Against Pro-Union Employees While Allowing Anti-Union Employees To Violate It,'' followed by two and a half pages in attempted support of the merits of this allegation (pp. 48–50). Accordingly, I conclude that this issue is properly before me notwithstanding footnote 81 on page 48 of Respondent's brief, which footnote contends that there should be no finding of violation as to this issue because it ''goes beyond any reasonable reading of the allegations set forth in the Complaint.'' See *Ernst Home Center*, 308 NLRB 848, 849–850 (1992); *Graham-Windham Services*, 312 NLRB 1199 (1993); *Heartland*, supra at 152; *Marshall Durbin Poultry Co*., 310 NLRB 68 fn. 1 (1993). When an issue relating to the subject matter of a complaint is fully litigated at a hearing, the judge and the Board are expected to pass upon it even though it is not specifically alleged to be an unfair labor practice in the complaint. *Mine Workers, District 29*, 308 NLRB 1155, 1156 (1992), and cases cited.

As Respondent does not appear to question, an employer violates Section 8(a)(1) of the Act by permitting employees to distribute antiunion material at times when and/or in locations where he forbids employees to distribute prounion material. *Nashville Plastic Products*, 313 NLRB 462 (1993); *Standard Products Co*., 281 NLRB 141, 142 (1986), enfd. in material part 824 F.2d 291 (4th Cir. 1987); *Columbus Mills*, supra at 230–231; and *Capitol Records, Inc*., 232 NLRB 228, 238–239 (1977). Further, the undisputed evidence shows that although Respondent forbade employees to distribute prounion material during worktime or in work areas, employees did distribute antiunion paraphernalia, without being disciplined therefor, in work areas and/or at times when the employee distributing these items and/or the recipient was supposed to be actively working. Respondent contends that this evidence does not establish an unfair labor practice, on the ground that there is no evidence that such activity was observed by management. However, the evidence as to the Prior-Raderman incident shows that during working time and in a working area, Prior gave ''vote no'' caps to Raderman with at the very least the expectation, and perhaps with the instruction, that she distribute them to her fellow employees

during working time and in work areas, as she in fact did. As Respondent tacitly concedes (Br. p. 49 fn. 83), the fact that he gave her several caps shows that he contemplated she would give most of them to other employees. Moreover, he gave them to her during working time while she was on her fork truck, which is a most unlikely and impractical place to retain them until breaktime but is a very convenient means of passing them out in work areas at once, as she in fact did. Accordingly, I conclude that Respondent violated Section 8(a)(1) of the Act by permitting employees to distribute antiunion material during times when and in locations where employees were forbidden to distribute prounion material.

CONCLUSIONS OF LAW

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

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

3. Respondent has violated Section 8(a)(1) of the Act by engaging in the following conduct:

a. When Supervisor Koch told employee Roberts that the plant was presently a good place to work, but that if the employees brought a union in, Respondent could get very nasty.

b. When Vice President Johnson told employees, for the purpose of discouraging unionization, that Respondent would try to solve their problems.

c. When Shift Supervisor Schmitt threatened employee Corrado with reprisal for his protected union activity.

d. When Supervisor Richards told employee Roberts that Richards knew who was going to union meetings.

e. When Respondent's supervisors distributed ''vote no'' paraphernalia in such a manner as to pressure employees to make an observable choice or open acknowledgment concerning their position in a union campaign.

f. When Production Manager Peterson interrogated employee Roberts as to why he wanted a union in the plant.

g. When Supervisor Richards interrogated employees McNew and Corrado about union activity.

h. When TQM facilitator Richards interrogated employee Pakovich about the identity of the author of union news letters and about the Union's unfair labor practice charges against Respondent.

i. When Respondent permitted an employee to distribute ''vote no'' paraphernalia during working time and in work areas, while forbidding employees to distribute union literature during working time and in work areas.

4. The unfair labor practices set forth in Conclusion of Law 3 affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. Respondent did not violate the Act when:

a. Human Resources Manager Smith talked to employee Williams.

b. Vice President Johnson told employees that a union was not needed to solve problems in the plant, but that these problems could be solved by resort to Respondent's ''open door'' policy.

c. Production Manager Peterson told employee Roberts that some union contracts permit or require employer-employee communication through a union representative, and that under these circumstances, the existence of a bargaining representative would add an extra step in the employer-employee communications process and cause some grievances to take up to 2 years.

d. Production Manager Peterson told employee Roberts that during negotiations, the employees might gain and might lose, and could lose a lot of what they had before gaining the one thing they wanted.

e. Respondent forbade employees to distribute union literature during working time and in work areas, while permitting supervisors to distribute ''vote no'' paraphernalia during working time and in work areas.

THE REMEDY

Having found that Respondent has violated the Act in certain respects, I shall recommend that Respondent be required to cease and desist from such conduct, and like or related conduct, and to post appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [43]

ORDER

The Respondent, A. O. Smith Automotive Products Company, Granite, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with reprisals for activity on behalf of International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW), or any other labor organization.

(b) Promising employees benefits to discourage them from such activity.

(c) Giving employees the impression of surveillance over such activity.

(d) Distributing paraphernalia in such a manner as to pressure employees to make an observable choice or open acknowledgment concerning their position with respect to the UAW or any other labor organization.

(e) Interrogating employees with respect to activity in connection with the UAW or any other labor organization, in a manner constituting interference, restraint, or coercion.

(f) Permitting employees to distribute antiunion paraphernalia during working time and in work areas, while forbidding employees to distribute union literature during working time and in work areas.

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

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

(a) Post at its facilities in Granite City, Illinois, copies of the attached notice marked ''Appendix.''[44] Copies of the notice, on forms provided by the Regional Director for Region 14, shall be posted by it immediately upon receipt and main-

[43] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[44] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

tained for 60 consecutive days thereafter, in conspicuous places, including all places where Respondent customarily posts notices to employees. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

Paragraphs 5A, 5D,2, and 3 of the consolidated amended complaint are dismissed. Paragraphs 5F and 6B of the complaint are dismissed to the extent they allege violations not otherwise found.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with reprisals for activity on behalf of International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW), or any other union.

WE WILL NOT promise you benefits to discourage you from such activity.

WE WILL NOT give you the impression of surveillance over such activity.

WE WILL NOT distribute paraphernalia in such a manner as to pressure you to make an observable choice or open acknowledgment concerning your position with respect to the UAW or any other union.

WE WILL NOT interrogate you with respect to activity in connection with the UAW or any other union, in a manner constituting interference, restraint, or coercion.

WE WILL NOT permit employees to distribute antiunion paraphernalia during working time and in work areas, while forbidding employees to distribute union literature during working time and in work areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under the Act.

A. O. SMITH AUTOMOTIVE PRODUCTS COMPANY