Wells Aluminum Corporation, Sydney Division *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Cases 9–CA–29131, 9–CA–29810, 9–CA–29877, and 9–RC–15953

November 30, 1995

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On August 7, 1993, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The Respondent also filed a reply 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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Wells Aluminum Corporation, Sydney Division, Sydney, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Add the following as new paragraph 2(g).

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

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Union, United Automobile, Aerospace & Agricultural Implement Workers

[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 evidence 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.

We note that at sec. II, par. 7 in the ''Analysis'' section, the 14th sentence should state in relevant part: ''. . . Ankney was less than candid regarding the role he played in Linder's discipline.''

In adopting the judge's finding that it was appropriate to issue a remedial order on the basis of the Respondent's unlawful no-solicitation/no-distribution rule, Member Cohen, unlike the judge, does not rely on the Respondent's failure to ''admit wrongdoing.'' Rather, he agrees that because the Respondent did not give adequate ''assurances to employees that in the future their employer will not interfere with their exercise of their Section 7 rights'' and because the Respondent engaged in other unlawful interference with those rights after October 8, its posting of the new rule did not meet the standards of *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978), for effective repudiation of unlawful conduct.

[2] In agreeing with the judge that the defaced sample ballot would not mislead employees into believing that the Board favored the Union and that therefore the Respondent's objection regarding the ballot should be overruled, we rely on *Brookville Healthcare Center*, 312 NLRB 594 (1993). In that case, as in the instant case, the notice of election included language specifically disavowing Board participation in any defacement as well as specifically asserting the Board's neutrality in the election processes. The Board held that this language precluded a reasonable impression that any defacement reflected endorsement by the Board.

In adopting the judge's finding that statements by a union agent concerning work subcontracted to the Respondent by Navistar were not objectionable, we note that the remarks were made at a single union meeting in response to a question from an employee and that this occurred 3 days after the Respondent's plant manager had posted a notice asking employees to consider whether the Union ''would be more concerned about its hundreds of members at Navistar and stopping the outsourcing there [to the Respondent] or would it care about the future of our plant and the lives of the fifty or so of us.'' Thus, as in *Van Leer Containers v. NLRB*, 943 F.2d 786, 790 (7th Cir. 1991), enfg. 298 NLRB 600 (1990), on which the Respondent relies, it was the employer, and not the union, that introduced the issue into the campaign, and there was no evidence of a ''pattern of coercion by the Union to convince the employees that a 'Yes' vote would preserve their jobs.'' Were we to accept the Respondent's position on this objection, any employer whose work force is the target of an organizing campaign by a labor organization that represents the employees of another company that contracts out work to the targeted employer would be able, by injecting the subcontracting issue into the campaign, to put the union in an untenable position. Giving inquiring employees an honest answer that reflects the union's obligation to seek to protect the job security of employees it represents would put the union at risk of having any election victory set aside on the employer's objection. Cf. *Benjamin Coal Co.*, 294 NLRB 572, 572 fn. 2 (1989) (no unlawful coercion found where employer, in response to certain specific assertions in union campaign material, described likely economic consequences of unionization).

In support of its objection concerning the distribution of union caps and T-shirts, the Respondent relies on both the Board's decision in *Owens-Illinois, Inc.*, 271 NLRB 1235 (1984), and the court of appeals' decision in *NLRB v. Schrader's, Inc.*, 928 F.2d 194 (6th Cir. 1991). In *Owens-Illinois*, a divided Board panel set an election aside because of the distribution of union jackets on election day between voting sessions. In *Schrader's* because there had been no hearing, the court had to assume arguendo that the apparel at issue there had been offered to all employees coming to work between the two voting periods. Id. at 195–196, 198. In the present case, although employee Shepherd testified that he had received about 25 T-shirts and hats from Union Agent Robert Hamons and that he had distributed ''some'' on election day, most of Shepherd's testimony concerned making these pieces of campaign paraphernalia, along with union buttons, available to employees attending union meetings. The two other employees who testified on this subject and were credited both testified that they each picked up a union cap and T-shirt at a union meeting. In short, the Respondent, which has the burden on election objections, has had its opportunity to present evidence and has not established electioneering conduct rising to the level of that found in *Owens-Illinois* or assumed arguendo, in the absence of a hearing, by the court in *Schrader's.*

Member Browning argees that this case is distinguishable from *Owens-Illinois,* but she expresses no view as to the continuing validity of that decision.

of America, UAW, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All production and maintenance employees, including quality control, shipping group leaders, purchasing/inventory control clerk, production scheduler, engineering specialist/draftsperson, and QSP clerk, at the Employer's Sidney, Ohio facility, excluding manpower temporary employees, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

Debra Jacobson, Esq. and *Eric Oliver, Esq.*, for the General Counsel.
W. Melvin Haas III, Esq. and *Jeff Thompson, Esq. (Haynsworth, Baldwin, Johnson & Harper)*, of Macon, Georgia, and *John Smail*, of South Bend, Indiana, for the Respondent.
Robert Hamons, of Toledo, Ohio, for the Charging Party.

DECISION

JOHN H. WEST, Administrative Law Judge. The original charge in Case 9–CA–29131 was filed by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (the Union) on December 4, 1991. A complaint was issued on January 24, 1992. The original charge in Case 9–CA–29810 was filed on July 29, 1992, by the Union and it was amended on September 10, 1992. The original charge in Case 9–CA–29877 was filed on August 25, 1992, by the Union and it was amended on September 10, 1992. By order entered September 21, 1992, these cases were consolidated with Case 9–RC–15953 and a consolidated complaint and notice of hearing issued. A second consolidated complaint and notice of hearing was issued on October 2, 1992. The RC proceeding involves objections filed by Wells Aluminum Corporation, NAARCO Division[1] (Wells) regarding alleged conduct that assertedly affected the results of the election held on November 4, 1991. As pointed out in the report on objections therein, dated September 11, 1992, alleged threats covered in one of the objections apparently formed the basis, at least in part, of Wells' decision to discharge two employees, which discharges are alleged to be unlawful. In the second consolidated complaint the General Counsel alleges violations, collectively, of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) in that assertedly Wells (1) maintained an unlawful no-solicitation rule, (2) selectively and disparately applied its bulletin board policy by removing union literature and thereby prohibiting the posting of union literature, (3) threatened employees that their wages and benefits would be frozen if they selected the Union as their collective-bargaining representative, (4) impliedly promised employees increased benefits and improved terms and conditions of employment if they refrained from selecting the Union as their bargaining representative, (5) gave an employee the impression that his union activities were under surveillance by Respondent, (6) coercively interrogated an employee about his union sympathies, (7) unlawfully discharged Stephen Linder, Michael Shepherd, and Connie Murphy and, if the objections to the election are overruled, (8) implemented changes in the employees' terms and conditions of employment without providing the Union notice and the opportunity to bargain. Wells denies violating the Act.

A hearing on these consolidated cases was held on December 2–4, 1992, and on January 12 and 13, 1993. Briefs were filed in March 1993 by the General Counsel, Wells, and the Charging Party/Petitioner. On the entire record in this proceeding, including my observation of the witnesses and their demeanor, and after considering the aforementioned briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, has been engaged in the manufacture and assembly of truck and bus parts at Sidney, Ohio. The complaint alleges, Wells admits, and I find that at all times material, Wells has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Facts

Wells has a number of plants, including the Sydney plant, which is the plant involved here. In July 1991 John Miller became operations or plant manager at Sydney.

In late August 1991 employees Shepherd and Mark Gaier discussed having a union represent Respondent's employees. Gaier contacted a union representative.

According to the testimony of Murphy, sometime in the fall of 1991 several employees were talking about the fact that Group Leader Gene Daly's nose was running all of the time and one of the employees mentioned to the four other employees there at the time that her son had been at Daly's house and saw Daly snorting a white powder.[2]

In early September 1991 five of Respondent's employees, including Shepherd and Gaier, met with the Union's district representative at a nearby union hall.

In mid-September 1991 about 30 of Respondent's employees met and signed union authorization cards. Shepherd signed a union authorization card at this meeting. Several of the employees took cards with them. And subsequently cards were signed at the plant. Shepherd took about 10 cards and he testified that he had employees sign the cards either at their homes or at the plant during lunch or break.[3] Shepherd

[1] The General Counsel's motion at the hearing to change the name of the Respondent from NAARCO Division to Sidney Division was granted.

[2] Subsequently, Murphy testified that the boy was 10 years old and that, according to his mother, he said that he saw Daly snort the white powder off of a glass.

[3] Employee Millie Carol Shelby testified that Shepherd asked her to sign a union authorization card while she was ''standing there working'' in fabrication. Employee Juanita Walker testified that Shepherd and Gaier approached her while she was working in the lineal area pulling lineal and they asked her if she would sign a union card.

testified that, after this, union meetings were held just about every Monday night; that he would sit up front with the other union organizers; that he would speak openly at these meetings; and that he handed out union literature at the plant during breaks.

Miller testified that he believed that the Union's petition for an election was filed sometime in September 1991.

In late September 1991, according to the testimony of Wells employee Robert Gregory Monroe, he was in a local bar and grill when Wells' supervisor, Dale Kellis, told him that he, Kellis, had heard that Monroe was one of the organizers for the Union and that Shepherd was an organizer from the beginning. Kellis testified that he did have a conversation with Monroe in a local bar; that Monroe asked him to come to the bar to discuss his, Kellis', prior experience being a member of the UAW; that Monroe initiated the conversation by asking him who had been accusing him, Monroe, of being a union organizer; that he never told Monroe that he, Kellis, knew that Monroe or Shepherd was a union organizer; and that Monroe brought Shepherd up when he, Monroe, said that Shepherd and Gaier ''was doing this.'' On rebuttal, Monroe testified that he did not bring up the assertion that people were saying that he had something to do with starting the union campaign; that he did not and he had no reason to bring up Shepherd's name as a union organizer; and that he did not ask to see Kellis after work since ''[i]t was enough seeing him at work.'' Monroe also testified that he could have had four or five lite beers[4] in the hour or hour and a half he was there; that he had been in that bar before; and that he had never seen Kellis in the bar before.

In October 1991 Respondent revised its no-solicitation, no-distribution policy and after the revised rule went into effect union literature could be posted on the bulletin board in the breakroom without management permission. Miller testified that prior to the implementation of this revision, it was Respondent's practice to remove union literature from the bulletin board; that he was not sure if the employees in the past did ask for management approval before placing something on the bulletin board; that he removed union literature from the bulletin board; and that the removal of union literature from the bulletin board probably had something to do with the fact that company literature was often defaced and removed.[5]

According to the testimony of Wells employee Randy Hess, about October 1, 1991, he heard Linder say that he was going to burn employee Pat Shaw's house down if she did not vote for the Union. Hess testified that the alleged threat was made on the plant floor by the cage where they check their saw cut pieces; and that employees Bryan Katterhenry and Robert Lovett were present. On cross-examination, Hess testified that Linder made his statement about Shaw to all three of the employees who were standing there and there was no doubt in his mind that the other two named employees heard Linder's statement;[6] and that he, Hess, was checking parts at the cage. Subsequently, according to the testimony of Hess, he was back looking at some parts in the area of Shepherd, who he socialized with, and in Hess' presence, Shepherd said that if Obetta Sullenberger did not vote for the UAW he was going to bash her head in; that the following Monday he was back in Shepherd's area looking at parts and Shepherd told him that Daly had been trouble and if he did not want the UAW he, Shepherd, was going to bash his head in also; that he did not want to say anything else to Shepherd but rather he just wanted to get out of the area; and that on that Monday he told Supervisor Jay Sargent about the threats for the first time but he did not identify who made the threats.

Hess then told other members of Wells' management and Wells' attorney about the threats without identifying any of the employees involved, and he gave an affidavit to the Respondent on October 16, 1991 (R. Exh. 14), in which he gave the content of the above-described threats but did not identify either the individuals making the threats or who the threats were directed against.[7] Regarding the alleged threat to burn down an employee's house, Hess specifically indicated that the person making the threat said it to three employees who were present at the time. Later in October, Hess gave an affidavit to an agent of the Board about the alleged threats but again, as noted, he did not identify who allegedly made the threats.

Miller testified that during his first meeting with Hess about the threats, Hess said that he supported Miller and Hess thought Miller deserved a chance; that Hess, without giving names, mentioned that two other employees overheard one of the threats; and that he did not recall ever asking Hess for the names of the two other employees who allegedly overheard one of the threats.

Daly, who was a leadperson on the third shift at the time, testified that one evening early in October he received a telephone call and the unidentified caller said that if he did not stop knocking the Union he was going to get his head split open; that he did not recognize the male voice; that he had been vocal against the Union; that he told employees Mon-

[4] It was estimated that Monroe is 6 feet 2 inches tall and weighs about 250 pounds.

[5] Miller testified that he took the petition for an election filed by the Union personally in that he was not permitted the opportunity to exercise his management style and that he did not feel personally responsible for the union drive. Miller also testified that sometime in October 1991 Shepherd told him that the organizing was nothing personal toward him; that it was corporate and prior management; and that he concluded that Shepherd was probably prounion. Miller further testified that he took it personally in that he did not need a third party to treat people fairly and that he prefers to work in shops that do not have a union.

[6] On rebuttal, both of these employees, both of whom are still employed at Respondent, testified that they never heard any such threat. Both indicated that they support the Union.

[7] In this October 16, 1991 affidavit to the Respondent, Hess indicated that the threat to burn an employees' house occurred about 2 weeks before he gave the affidavit. Hess testified that the threat to burn the employees' house was made the day after the October 7, 1991 union meeting. In another affidavit Hess apparently gave to the Respondent on October 16, 1991, G.C. Exh. 12, Hess specifically referred to the October 7, 1991 union meeting by date. That affidavit deals with what was said at the October 7, 1991 meeting which Hess attended. In the October 16, 1991 affidavit dealing with the alleged employee threats, the company attorney wrote ''[t]he Company attorney has asked me not to tell him or the Company the names of these individuals. I will . . . tell the NLRB the names, etc., in a confidential manner.'' In his subsequent affidavit to the National Labor Relations Board (the Board), Hess did not reveal the names. Hess testified that he was concerned about himself and his family; and that he considered the fact that he and Shepherd had been good friends for a long time.

roe, Harry Kearns, and Norm McMillian about the call before the election; that Monroe and McMillian were eligible to vote in the election but Kearns, who was a temporary employee, was not; that he told his supervisor, Kellis, about the telephone call; and that he gave the Respondent a statement about the telephone call 1 week later. Subsequently, Daly testified that while he considered the telephone call to be a serious matter he did not report it to the police department because the local newspaper reports what is on the police log; and that Miller told him that the telephone company refused to put a ''tap'' on his line.

On October 4, 1991, Miller posted an open letter to employees on the bulletin board, Charging Party/Petitioner's Exhibit 1, in which he states, among other things, ''do you believe the UAW would be more concerned about its hundreds of members at Navistar and stopping the out-sourcing there [to Wells] or would it care about the future of our plant and the lives [of] the fifty or so of us?'' Miller testified that he posted the open letter in response to inquires of about 10 employees.

On October 7, 1991, the Union held a meeting for Respondent's employees. Hess, who attended the meeting, testified that one of the employees present asked Union Representative Robert Hamons if some of Respondent's Navistar work, the door projects, would be moved back to Navistar; that Hamons said that if the Union was voted in, it would not try to take them from Wells because both would be union shops but if the Union was not voted in, then the UAW would try to take the door project out of Sidney and take it over to Navistar in Springfield, Ohio; that at the time about one-half of the work in the Respondent's plant was Navistar work; that 25 to 30 employees attended this meeting; and that 25 to 30 of the employees who voted in the election would be affected by a removal of the Navistar work. Subsequently, Hess testified that the employee asked the question referring to what was stated in Miller's aforementioned October 4, 1991 open letter; that 30 percent of Respondent's work at the time involved the Navistar door; and that the next morning he discussed with five or six other employees the possibility that if the Union was not voted in certain of Respondent's work would be lost. In a letter to the Board dated July 28, 1992 (R. Exh. 34), Hamons explained that when an employee asked a question about the aforementioned passage of Miller's October 4, 1991 open letter, he answered

> that most jobs were sourced by the bidding procedure in todays competitive manufacturing arena, but he felt that the UAW would be less inclined to take work from the Sidney plant if they were members of the UAW but the UAW did not have the final say in the sourcing of work.

Shelby testified that before the election she attended a union meeting with about 30 employees; that Hamons started the meeting by saying that company sympathizers would be recognized and asked to leave; and that she was intimidated by this statement and she did not ask any questions. Subsequently Shelby testified that she did not recall hearing someone ask from the floor if company sympathizers present might go back and tell which employees attended the meeting; that no one was asked to leave the meeting that night; that a lot of questions about the pros and cons of a union were asked at this meeting; and that there was no indication at this meeting as to how company sympathizers would be recognized.

Walker testified that before the election she attended a meeting where just employees were present; that while no union representative was present, the meeting was held at the union hall; and that during the meeting she removed her coat and when Shepherd saw the ''Vote No'' button she was wearing he asked her to remove it or leave. On cross-examination, Walker testified that she did not leave the meeting at that point, which was about midway in the meeting, and she remained at the meeting for another hour; that she did not remove her button; that in the affidavit that she gave to the Board on December 4, 1991, she indicated that an employee named Debbie and also employee Peggy Austin were actually the ones who asked her to remove her ''Vote No'' button; and that while her affidavit does not mention that Shepherd asked her to remove her button, she recalls he did since she thought a lot about the meeting after she gave the aforementioned affidavit.

Regarding the bulletin board, Shepherd testified that he was never informed about any rule with respect to getting permission from management to post anything on the bulletin board; that he never observed any company official remove any employee notice about items for sale or benefit dances etc.; and that he, observer Miller,[8] and Production Manager Bill Ankney remove union literature from the bulletin board.[9] Lovett testified that before the union campaign he was not aware of any rule regarding employees using the bulletin board;[10] that he was never told that employees had to clear things with management before they were posted on the bulletin board in the breakroom; that notices regarding items for sale and dance benefits were posted on the bulletin board; that he never saw anyone in management take this type of notice down; that he saw several people in management take union literature down from the bulletin board; that on one occasion he saw Ankney remove union literature from the bullletin board and Lovett signed a memorandum to this effect (G.C. Exh. 10); and that on another occasion he saw Miller remove union literature from the breakroom bulletin board on November 6, 1991, and he and other employees who were present signed, at that time, a memorandum to this effect (G.C. Exh. 11). Monroe testified that he posted a restaurant menu on the bulletin board sometime before the union campaign; that he did not ask anyone in management before he posted the menu; and that the menu remained posted for a couple of months. Katterhenry testified that prior to the union campaign he was never told that he was required to get management's permission to post anything on the bulletin board; that shortly after the petition for election was filed Miller told the employees during a group meeting that they had to have permission before they could post anything

[8] According to Shepherd, this occurred within 2 weeks of the election. On cross-examination, Shepherd testified that this could have occurred within a couple of days of October 8, 1991.

[9] Shepherd introduced G.C. Exh. 10 which is a memorandum dated October 8, 1991, which memorandum indicates that Shepherd and 11 other employees, who signed the memorandum witnessed Ankney remove union literature from the bulletin board.

[10] Lovett did receive a copy of the employee handbook when he started work in 1988.

on the bulletin board; that before the union campaign he never saw anyone in management remove anything from the bulletin board; that after the union campaign commenced, he saw Miller on November 6, 1991, remove a union fact sheet from the bulletin board and put it in his pocket and walk out of the breakroom; that he signed General Counsel's Exhibit 11; and that he saw Ankney remove a union fact sheet from the bulletin board on October 8, 1991,[11] and Katterhenry signed General Counsel's Exhibit 10.

On October 8, 1991, Respondent posted a notice to the employees on the bulletin board (R. Exh. 29) which indicates when solicitation and/or distribution is prohibited. The individual in personnel who placed the notice on the bulletin board, Lynn Koverman, testified that before she posted this notice she, pursuant to the instructions of Miller, removed union literature from the bulletin board immediately; that after this posting, she and the members of management were told that they were to remove union literature only at the request of Miller; that she was never asked to remove any documents after October 8, 1991; that it was her job to post any literature on the bulletin board and remove any literature; that she removed outdated material; and that while it was her understanding, in accordance with the employee handbook, that an employee had to have prior approval to post something on the bulletin board, she had no way of knowing whether employees posted notices on the open bulletin board without prior approval. The production supervisor at the involved facility, Joseph Chrismen, testified that Respondent began to allow the publication of union material on the bulletin board after October 8, 1991.

On October 10, 1991, Respondent amended its employee handbook (G.C. Exh. 2) by deleting the no-solicitation and distribution rule contained therein.

On October 17, 1991, Miller posted the following, Respondent's Exhibit 28, on the bulletin board:

SPECIAL NOTICE

''VERY IMPORTANT''

TO: ALL WELLS/NAARCO—SIDNEY EMPLOYEES

> Employees have reported threats by employees against other employees because of their opposition to the union. The threats include both bodily harm and property damage. The threats violate the National Labor Relations Act and other laws. The company will report these threats to the NLRB.
>
> The company will not tolerate threats in the workplace. Employees should feel free to report to company management any known threats. Employees may also contact the NLRB directly to report such threats. Of course, employees may ask me or any of the supervisors if they have any questions on this matter.
>
> John Miller

[11] He conceded that in an affidavit to the Board he mistakenly indicated that this occurred sometime in November 1991 after November 6, 1991. He subsequently testified that when he gave the affidavit he did not have G.C. Exh. 10 in front of him and he did not see it after signing it until 1 week before he testified here.

Linder testified that after he had worked for about 60 days during his probationary period, or in other words, in late October 1991, Miller told him that he had an open door policy and if Linder had any problems he could talk to him; that he told Miller that he did not get his pay raise after his first 30 days; that Miller said that he would look into it; that about 30 minutes later Miller explained the raise policy to him; that he told Miller that the employees probably wanted a union because nothing was done right as demonstrated by the fact that he had not received his evaluation or pay raise on time; and that he wore a union ''Vote Yes'' button to work.[12]

Regarding his 30- and 60-day evaluations, Linder testified that he received both of them on the same day (G.C. Exhs. 6 and 7),[13] respectively; that he met with Ankney on October 24, 1991, regarding the evaluations; that Ankney said that he, Linder, was doing a good job; that Ankney mentioned not being on time; that Ankney asked him why his production had dropped at one time; and that he explained to Ankney that he was using a smaller cutting blade and, therefore, he could not load as many parts on his saw. The comments' section of the 60-day evaluation refers to two occasions of miscounts and it is also indicated on the evaluation that Linder's attendance is a severe problem.[14] Linder also testified that Ankney asked him about some miscounting.

Ankney testified that he had overlooked Linder's 30-day evaluation, along with the evaluations of other named employees;[15] that in preparing for the evaluations he determined that Linder's production was dropping; that Linder's attendance and miscounts caused him concern; that Linder said that his production drop was due to the fact that he was using a smaller saw blade; that while, in his opinion, the smaller blade would cause a drop in production, it did not account for the amount Linder's production dropped;[16] that at the time of Linder's 60-day evaluation Ankney was not aware of Linder's union activity; and that he reviewed with Linder certain documents dealing with production (R. Exhs. 18(a)

[12] On the day of the election he wore a union hat and T-shirt. He had worn the union hat 2 or 3 days before the election. Linder signed a union authorization card which Shepherd gave to him in the parking lot during break.

[13] Both of the evaluations are dated October 24, 1991.

[14] Linder testified that the four occurrences were 1 day off due to his mother's hospitalization to determine whether she had cancer, two tardies on returning back from lunch, and one occasion he forgot to clock in after returning back from lunch and he forgot to have his supervisor initial his timecard. The evaluation indicates that the next occurrence would result in Linder's termination. The comments section of the 60-day evaluation contains no specific reference to Linder's alleged drop in production.

[15] Walker, David Fair, and possibly other employees.

[16] Monroe, on rebuttal, testified that he used the same saws that Linder used and he, Monroe, made the parts that Linder made; that he would not be surprised to see fluctuations in the hourly rate of production on that saw; that the operator may have to sort for damaged materials; and that the size of the blade might affect the operator's production. On surrebuttal, Miller testified that while the saw operator might pull a damaged part off the top of the stack, there is no way that the Company can afford to slow down the saw for the operator to look underneath for damaged parts. Miller conceded on cross-examination that he did not train Linder on the saw. He pointed out, however, that he knew the people who did train Linder on the saw and he knew that they echo the same methods as he does.

and (b)). On cross-examination, Ankney testified that while production on Linder's 30-day evaluation was noted to be acceptable, on Linder's 60-day evaluation Ankney noted that Linder's production was good, which, according to Ankney's testimony, meant that Linder's production had improved in his second 30 days; and that this conclusion was reached and memorialized by him after he had pulled Linder's production records which he indicated show that Linder's production had dropped.

On October 28, 1991, Jay Sargent, who is the quality control supervisor, sent the following memorandum to Ankney:

> On Friday 10/25/91 Steve Linder backed into a skid of Navistar doors in front of Q C office. Randy told him he would have to re-stack the skid. Steve said it was not his job and drove away. Randy re-stacked skid and found one damaged door that needed flange repaired.

Ankney forwarded a copy of this memorandum to Miller.

Hess testified that he witnessed the occurrence described in the next preceding paragraph; that Linder was not looking where he was going; that Linder knocked over doors loaded on a pallet; that when Linder was asked to help pick the doors up to check for damage Linder replied ''it's not my god-dammed fucking job'' and he left the scene without helping; and that he and Walker restacked the doors except for one which was damaged in that the flange was bent out of shape. Hess testified that the door which was damaged was on the bottom of the stack; that the doors are made of aluminum; and that sometimes they are dropped and damaged.

About the beginning of November 1991 Ankney told Shepherd that he realized that they were on opposite sides of the fence but he appreciated the way Shepherd was running his department. Also about 2 weeks before the election, according to the testimony of Shepherd, Chrismen asked him what he did not like about what the Company was doing and what couldn't the company ''take care of.''[17] When Shepherd and Gaier bought donuts and left them in the breakroom for the employees, Miller photographed them and asked him, Shepherd, if he brought the donuts into the plant. At about this time, according to the testimony of Shepherd, Ankney, and Chrismen approached him and Ankney told him to tell his people to quit putting stickers on the machines. Shepherd testified that when he asked Ankney why he was being put in the spot, Ankney said that the people looked up to him and they would listen to him.

Employee Richard Fullerton testified that sometime in November 1991 prior to the election he pulled a UAW sticker off the door to the restroom; that McMillan said something about it to him; that employee Dave Pritchard told him that he should not be ''messing with Union property or Union material'' and if the Union got in it might have some bearing on whether he, Fullerton, was offered a permanent position; that employee Jeff Gates told him that he should check his truck at night before he went home since it might blow up; that Gates called him a ''cock sucker''; that he told his foreman, Chrismen, and Fullerton subsequently spoke to Miller and Ankney; and that he was subsequently called ''Rich the Snitch'' by Gates and a couple of other temporaries. On cross-examination, Fullerton testified that he did not vote in the election because he was a temporary; that the word ''cock sucker'' is a commonly used term on the plant floor; and that none of aforementioned employees, when they spoke to him in the plant, represented to him that they were speaking on behalf of the Union.

On November 5, 1991, Ankney noticed parts on a skid which were not big enough to protect the parts. He asked Linder about it and Linder allegedly said that he realized that the skid he was using was too small but he just said, ''Fuck it,'' and went ahead and finished loading the skid. Ankney had Linder restack the parts on a skid large enough to protect them. Ankney then drafted an information fact report regarding this incident (R. Exh. 8). A copy of this memorandum was given to Miller. Miller testified that on November 5, 1991, Ankney came to him, gave him a copy of Respondent's Exhibit 8, and said that he wanted to discharge Linder because of Linder's attitude when Ankney told him about the parts on the undersized pallet; that he contacted John Smail, who is Respondent's vice president of human resources in South Bend, Indiana, and Smail ''leaned towards'' discharging Linder;[18] that he was going to discharge Linder the Friday before the election but something else came up; that he could not recall what this other matter involved; that since the election was held the following week he did not want to take any action on this matter; that after the election, Hess told him that Linder was the one who threatened to burn Shaw's house; that Linder was discharged after the election; and that he did not know on November 5, 1991, of Linder's union activity. On cross-examination, Miller testified that the involved information fact report (R. Exh. 8) has four boxes at the top, namely, general information, general counseling, verbal warning documentation, and written warning documentation; that this list is in order of the seriousness of the matter; that the general counseling box is checked off on Linder's November 5, 1991 form; that, nonetheless, Ankney regarded this as serious enough to discharge Linder; and that Linder's signature does not appear on the form on the line designated ''Employee's Signature.''

About November 7, 1991, according to the testimony of Shepherd, Ankney approached him in his department and asked him why he felt like he did about the Union and was it due to something that management had done, namely, not giving Shepherd a supervisory position which had opened on

[17] When asked by counsel for the Respondent if he asked Shepherd what he did not like about the Company and what the Company needed to do, Chrismen gave an unresponsive answer. Then counsel for Respondent asked Chrismen whether he asked Shepherd about what problems he had about the Company regarding the Union. When the attorney said that he was referring to union activity, Chrisman testified that all of the supervisors were instructed that they were not to do that.

[18] Smail testified that late in the week of November 5, 1991, he agreed with Miller and Ankney that Linder should be terminated because of his productivity problems, attitude problems, knocking over pallets, and using some bad language; and that it is his philosophy that if there is doubt about a probationary employee, the Company is better of to terminate the employee. On cross-examination the General Counsel introduced an exhibit, G.C. Exh. 24(a), showing that a probationary employee received a written warning in 1988 for poor ratings and absenteeism and was advised in the warning that she was being terminated effective November 11, 1988. She was not terminated, however, until December 12, 1988.

the third shift; and that the conversation ended when he said that he did not want to get into it.

On November 12 or 13, 1991, according to the testimony of Murphy, she, along with the other third-shift employees and one temporary employee attended a meeting with Miller, Smail, Ankney, and Kellis.[19] Murphy testified that Miller told the employees that if the Union won the election, he would tie the employees up in court for 2 to 3 years with no raise in benefits and no raises during that time.[20] Miller testified that what he said was that he believed that some unfair things had happened during the campaign and he would go as far as he possibly could in the courts to fight it and that could take 2 or 3 years; that he also said that if it became a union shop, during negotiations all things like raises and wages are frozen; that the employees put the two statements together for some reason; and that the normal wage increases were given after the election.

On November 14, 1991, Miller, according to Shepherd's testimony, approached him and asked him if he had been telling people that he was going to be fired because of his union activity. Shepherd testified that he told Miller that he had not been telling people that; and that he told Miller that he was standing up for something he believed in and he was going to follow it out. Miller told Shepherd that he had no intention of firing anyone over the Union. Also, the next day Miller posted a letter indicating that the Company had no intention of firing Shepherd or anyone else because of their involvement in the Union. Shepherd was a union observer at the election. Shepherd also testified about a conversation he had with employee Nancy Likens where he told her that he understood no matter which way she voted and he hugged her. On the day of the election, November 14, 1991, Shepherd gave employees about 25 union T-shirts, about 25 union hats, and more than 25 union buttons. As he passed these items out to the employees, he told them that Miller said that they could wear them and they would not get in trouble.

Miller testified that on the day of the election about 10 employees wore union T-shirts and that he did not recall seeing union T-shirts being worn prior to election day. Miller sponsored two sample ballots (R. Exhs. 32 and 33) testifying that he took both of them down on November 14, 1991, when he found the former, after Koverman told him about it, with a handdrawn ''X'' in the ''YES'' box and a ''Vote UAW'' sticker[21] on it, and the latter with a UAW ''Vote Yes'' sticker on it. After these two sample ballots were taken down, two or three remained posted. Miller testified that he threw both union stickers away, he did not see who defaced the sample ballots, and he did not know who did it.

On the night of the election, according to the testimony of Monroe, he was wearing a ''Vote-Yes'' T-shirt when Miller, Ankney, and Kellis approached him. Monroe testified that Miller was yelling and he pointed his finger in Monroe's face; that Miller said, ''If you harm a hair on Scott Thompson's head, you'll be out the door''; that he told Miller that he did not know why he, Miller, would think that; that he told Ankney that he would not do that; that he told Miller that this was not against him and he was taking it personally; that Miller said that it was against him and the Company; that Miller then said that Monroe had better not have threatened Scott; that later that night Ankney and Kellis came to him and apologized for Miller's behavior; and that Kellis later said that before the election management figured out that the Company was going to lose the election by five votes. For the most part, Kellis corroborated Monroe. When asked by counsel for Respondent whether he told Monroe that Miller was upset because the Respondent had calculated that it was going to lose the election by five votes, however, Kellis testified, ''[n]ot before the election, no. I didn't even say—I was real careful before the election not even to allude to how the company felt the election was going to go.''

Of the 55 employees who voted on November 14, 1991, between 11 and 11:30 p.m., 30 voted for the Petitioner and 25 voted against the Petitioner.

On November 15, 1991, Respondent discharged Linder. Miller, when called by counsel for the General Counsel, testified that the primary reason for discharging Linder was not the fact that he allegedly threatened to burn another employee's house[22] but rather Linder, who was a probationary employee, was discharged for his declining production, his attendance problems,[23] and his lack of respect for company

[19] According to the testimony of Murphy, she had conversations with Kellis about the Union during the campaign, telling him why a Union was needed Wells. Kellis did not deny this.

[20] Wells employee Beverly Phillis corroborated Murphy about what was said at this meeting but Phillis was not sure which of the company representatives made the statement. On cross-examination, Murphy and Phillis testified that there was a raise after the union campaign and the employees were offered a 401(k) plan. Murphy also testified that Kellis, on almost a daily basis, would tell her about his experiences with unions and why Wells' employees did not need a union.

[21] The sticker was described as being about 3 inches in diameter.

[22] The G.C. Exh. 4 is Miller's memorandum to file dated November 15, 1991, which memorandum indicates that Linder, in addition to the reasons stated in the discharge report, was also terminated because of threats made regarding other employees. The memorandum goes on to indicate that Linder was not confronted with this information because of fear by the employee, Hess, reporting the threat. Miller testified that Hess indicated that two other employees were with him when he overheard one of the threats being made. The file also contains the following memorandum, G.C. Exh. 5, which is marked ''Received . . . on November 15, 1991'':

> I did not let you know who Mike had made his threatening statements about. Since I had with Steve Linder I thought I should with Mike. They were against Obetta Sullenburger and Gene Daly.
>
> Randy L. Hess
>
> P.S. John, if there is ever a walk out, you can count on me to be here working at my job.

Hess testified that he decided to tell management who made the aforementioned threats before the results of the election were known but he did not do it until after the results were known; and that he did not tell anyone in management before the election that he had decided to tell who made the threats because he wanted to see what was going to happen with the voting. Hess also testified that before he revealed the names, Miller or Smail asked for the names a total of three or four times from the time he revealed the threats. Miller testified that he never asked Hess what he would do if there was a walkout; and that he could not recall if he called Hess into his office to ask Hess to give him the names of the employees who allegedly made the threats.

[23] Linder's 30-day evaluation, which was due September 26, 1991, but is dated October 24, 1991, has the acceptable or good boxes checked off for all of the categories except for attendance which is checked off in the marginal box. G.C. Exh. 6, Linder's 60-day evaluation, is also dated October 24, 1991, G.C. Exh. 7. All of the

property and company goods in that Linder damaged parts and improperly loaded parts on an undersized pallet.[24]

When called by Respondent, Miller testified that he considers the probationary period an especially important time to be monitoring an employee; that it was his intention to discuss the situation after he spoke with Linder but when Linder forced the issue by saying be a man if you are going to fire me, he decided, after verifying the damaged door incident, to take action himself, especially since he, Miller, had learned that day that Linder had threatened to burn Shaw's house down; that he was going to terminate Linder even before he learned that he made the threat; and that the termination would have been based on Linder's performance and his lack of respect for the product. Miller, according to his testimony, did not say anything to Linder about the alleged threat because he did not want to reveal Hess. Miller testified that Linder's union activity did not have any impact on his decision to terminate him. While Linder did allegedly say during his meeting that this is because I wore a union T-shirt on the day of the election, Miller testified that he said that that had nothing to do with it.

Regarding his termination, Linder testified that Ankney took him into Miller's office; that Miller said that there were some problems after his, Linder's, initial evaluations and he wanted to discuss them; that Miller said that Linder backed over a pallet, used foul language, and refused to restack the parts which had fallen; that Miller said that Linder had stacked parts on the wrong pallet and he refused, using foul language, to restack them; and that Miller also mentioned Linder's attendance and a drop in his production rate. Linder testified that he had not missed a day after he received his prior evaluations;[25] that he explained to Miller that he backed over the corner of the pallet but he did not think that he hurt anything and so he just drove on; that while Miller said that he damaged one of the doors on the skid he, Linder, could not understand how this could be done because the doors are stacked 15 to 30 to a pallet; that if he hit any of the doors on the pallet, he would have hit more than one; that he told Miller at this meeting that when Ankney mentioned that the pallet was the wrong size, he told Ankney that he did not have any of the correct sized pallets when he stacked the involved parts and he asked Ankney to have the parts taken back to his saw area and he would restack them; that he told Miller at this meeting that his production rate dropped because he had a smaller blade on his saw and he could not cut as many parts; that when Miller brought up the miscounted parts, he told Miller that he was never shown any proof that he miscounted any parts; and that when Miller said that he would decide Monday whether he was going to keep him, he told Miller that he should decide that day; and that later that day Miller told him that he was terminated.[26] According to Linder's testimony, he was never asked prior to his termination whether he made any threats against any employees. Linder testified that he made no such threats. On cross-examination, Linder testified that he told Miller at the first meeting that if he was going to fire him he should be a man and fire him at that time so he, Linder, would not have to worry about it during the weekend.

On November 20 Hess gave a second affidavit to Respondent in which he gave the names of the employees who allegedly made the above-described threats.

On November 21, 1991, Miller discharged Shepherd. Regarding the reasons, Miller testified when called by counsel for the General Counsel that during the union campaign the leadman on the third shift, Daly, allegedly received a telephone call from an unidentified person who allegedly threatened that if Daly did not quit knocking the Union, he was going to get his head bashed in; that prior to the election Hess told him that he overheard Shepherd threaten to bash an employee's head in and he, Miller, thought that Hess gave Daly's name; that before the election Hess did not give ''names'' of who made the threat but rather he just indicated that the threat was made; that after the election Hess gave him the names of the individuals who made the threats, namely, Shepherd and Linder; that Hess told him that he also

checkmarks are in the acceptable or good boxes, except for attendance which has a checkoff in the unacceptable box.

[24] Ankney testified that after Miller reviewed Linder's production and attendance records with him, and Miller said that he was going to decide over the weekend whether Linder would be employed by Wells beyond his probationary period; that Linder told Miller to be a man and let him know at that time; that, after speaking to Sargent, Miller told Linder that he was terminated; and that when Linder asked Miller if his union activity had anything to do with his discharge, Miller denied it. Ankney also testified that a few days before the election he saw Linder wearing a union T-shirt but Linder's union activity had nothing to do with his recommendation that Linder be discharged; that attendance was the main criteria, especially for a probationary employee; and that he had recommended that other employees be terminated, namely Shepherd, probationary employee Fair, and Norm Watts. On Linder's termination checklist Ankney wrote ''[p]oor attendance, drop in production rate, and for showing a lack of proper concern for product he was producing,'' R. Exh. 11. Ankney testified that on his own initiative on November 5, 1991, he asked Miller to discharge Linder because of his attendance and the drop in his production. Ankney sponsored R. Exhs. 19 through 24 which are summaries of Linder's production on specified parts and R. Exhs. 25, 26, and 27, which are photographs of the tow motors used by Linder and pallets stacked with doorframes, which frames are stacked 15 high on a pallet and which frames are not secured in any way to the pallet when they are in the area of the quality control department. Ankney also testified that he does not inform employees of any production standards with respect to the various parts that they work on; that the Company does not have any such production standards; and that he does not tell employees that they are expected to produce so many parts an hour.

[25] On surrebuttal, Miller testified that probationary employee Fair was terminated for a severe attendance problem. On cross-examination, Miller conceded that the Information Fact Report on Fair, G.C. Exh. 25, demonstrates that Fair was given a warning about his attendance problem and given a chance to improve, and it was subsequent to the warning that Fair missed work and was terminated. That Information Fact Report reads, in part, as follows:

> [t]his is a warning that his current attendance record is extremely poor for a new employee & that *any* occurrence after this date would be cause to terminate his probation and employment. [Emphasis in original.]

[26] Respondent introduced Linder's employment application, R. Exh. 2. Linder conceded that he did not list one of his prior jobs on the application. This matter was not mentioned during his termination meeting. Actually Linder was not on the Company's payroll at that prior job but rather he was on the payroll of Manpower as a temporary employee working at the involved Company. Linder also began working at Wells as a temporary employee on Manpower's payroll.

overheard Shepherd threaten to bash Sullenberger's head in; and that during the termination meeting, Shepherd said that he ''did not threaten anyone at work.'' Ankney testified that he was present at Shepherd's termination meeting along with Miller and Shepherd and that

> John [Miller] had told Mike what the information was that he had about his threatening somebody *in the plant*, threatening an employee, and Mike denied making any threats. He . . . [sat] in his chair and told John that he absolutely did not threaten anybody in the plant. Well, he was extremely upset about it, of course. [Emphasis added.]

Ankney further testified that he interpreted what Shepherd said to be an admission since he said that he did not bother anyone there on the premises. On Shepherd's termination checklist (R. Exh. 12), Miller wrote ''Mike's being discharged for stated threats involving other employees.'' And on cross-examination, Ankney testified that he was not present when Hess gave the names of the employees who allegedly made the aforementioned threats; that he was aware of the allegations against Shepherd prior to the time he was discharged; that when Shepherd was called into the office on the day of his discharge, a decision had already been made to discharge him; and that prior to that time Shepherd had never been confronted with the accusations against him. At another point in his testimony Ankney testified that it is only fair to confront an employee with accusations made against him and let him respond.

Regarding his termination, Shepherd testified that at the end of his shift Ankney told him that Miller wanted to see him; that he went to Miller's office with Ankney; that as he approached the office he saw Miller with a paycheck in his hand and he, Shepherd, ''knew what was coming''; that Miller told him that he, Shepherd, was terminated because he made threats; that he told Miller that he would never threaten anybody; that he told Ankney that he had been there as long as the Company and he would not threaten anybody; that the management representatives present held their heads down and could not look him in the face; that he shook their hands and told them that he would see them in court; that during this meeting no one told him what he was alleged to have said which was threatening and no one asked him if he had said something threatening; that he did not recall ever saying that he did not threaten anyone in the plant; and that he never threatened anyone about the union campaign. John Smail also attended this meeting.[27]

When called by Respondent, Miller testified, with respect to the Shepherd discharge, that he, Miller, did not hold his head down during the termination meeting but rather he looked straight at Shepherd; that he discharged Shepherd for threats ''about an employee of Wells''; that Daly told him about receiving a telephone call during which some unidentified caller said ''if you don't quit knocking the Union, you'll get your head bashed in''; that Hess told him before the election about the threats of ''bashing of the heads'' and the day after the election Hess told him who made the threats; that he believed Hess because the threat described by Hess was almost word for word what Daly told him he heard on the telephone, he never had a problem with Hess, Hess has a severe speech impediment and Miller could see no reason why he had anything to gain from reporting what he allegedly heard, Hess was a concerned employee and several times he told Miller that he wanted to give him a chance, and he was not aware of Hess ever lying to him; that he took Shepherd's statement that he did not threaten anyone at work to be an admission; that he did not tell Shepherd that Hess reported the threats; and that he had not made a final decision to terminate Shepherd before he met with him because he wanted to hear what Shepherd had to say. Subsequently Miller testified that normally Shepherd received his paycheck on a Friday; that Shepherd was discharged on a Thursday; that the paychecks do arrive at the involved facility from South Bend on Thursday; and that he did not recall if he gave Shepherd his paycheck at any time during his meeting with him on November 21.

On about November 28, 1991, according to the testimony of Murphy, there was a meeting at the union hall and she, Shepherd, and Monroe were chosen to be bargaining committee members.

On December 17, 1991, the Union issued $200 checks to Shepherd and Linder (R. Exhs. 5 and 6), respectively.

On December 18, 1991, Shepherd and Linder gave affidavits to the Board.

In January 1992, when Daly was made a supervisor, Ankney, according to his testimony, spoke to Daly about the Company's concern with Daly's purported drinking problem, he sought an assurance from Daly that it was not a problem and he told Daly that such a problem would not be tolerated at work. Miller also testified that when he made Daly a supervisor, he told him that drinking would not be tolerated and if it occurred he, Daly, would be gone.

According to the testimony of Kearns, sometime after January 1, 1992, he overheard a conversation of Kellis, Daly, and Ankney about Monroe and Murphy. Kearns testified that Ankney told Daly that he should not let Murphy and Monroe, who were union representatives, talk while Murphy was on the clock. As noted above, Daly had been promoted to supervisor of the third shift in January 1992. Ankney testified that he never made any statements with regard to the fact that Murphy was a shop steward. While Daly testified herein, he did not deny this.

According to the testimony of Murphy, in late January or early February 1992, after some of the employees agreed that if they had a problem with Daly, they would ask the Company to give him a drug test, she told Ankney that the third-shift employees were upset about Daly's drug use. Murphy testified that Ankney said that he knew that Daly had a drinking problem but he had no idea about drugs; that Ankney asked her if she was sure; that he told her that she should get the people who told her to come forward; and that the woman who told her did not want to come forward because she was afraid of losing her job. Phillis testified that she recalled several discussions with Murphy and other third-shift employees about Daly's alleged drug and alcohol use;

[27] Smail testified that he did not recall Miller giving Shepherd his paycheck at this meeting and that he did not believe that this occurred. The General Counsel introduced two of Respondent's evaluations for Shepherd. Shepherd received an excellent rating in all categories, G.C. Exhs. 21 and 22, and a memorandum from the former plant manager, Montgomery, explaining that Shepherd was an outstanding employee and why he, Montgomery, brought him back to Wells to fill a lead position. G.C. Exh. 23.

and that Murphy mentioned that she had told Ankney. Subsequently Phillis testified that it was brought up by the employees that someone's child had been at Daly's house and the child came home and said that they were sniffing powder; and that the employees discussed Daly's runny nose.

On January 30, 1992, Miller signed and posted a notice (G.C. Exh. 20) which indicated, among other things, that the unfair labor practices filed by the Union dealt principally with the discharges of Shepherd and Linder and that the Company has an obligation to insure the safety of everyone at the facility and cannot tolerate threats to employees.

Ankney testified that in January 1992 Murphy told him that Daly was using ''coke''[28] on company premises; that he told Murphy that he was aware that Daly purportedly had a drinking problem but he had never heard anything about any drug problem; that Murphy told him that she was going to speak to the person who supposedly knew that Daly was using drugs; that the next day Murphy told him that the person would not come forward; and that without proof no action could be taken. Ankney testified that Murphy told him that someone else could tell him that Daly was ''doing cocaine at the plant'' and that all of the employees on the shift were concerned about it. Ankney did not tell Murphy that she should not discuss this matter with other employees. He testified that one could conclude, based on what Murphy told him in January 1992, that Murphy had conversations with other employees about Daly's drug use.

In May 1992 Respondent implemented a new employee handbook (G.C. Exh. 3).

On June 1, 1992, Respondent implemented a new 401(k) plan and safety bonus program as alleged in paragraph 8(b) of the above-described complaint. Respondent stipulated that the involved changes that it made in 1992 were made unilaterally without bargaining with the Union.

Over breakfast one morning in late May or early June 1992, Murphy told a temporary employee, Derek Abrevaya, about the Union, the fact that she had been voted on the bargaining committee, the things that went on in the shop, and also about the fact that she told Ankney in January 1992 about Daly's alleged drug use.[29] On June 18, 1992, Howell gave an affidavit to Respondent (R. Exh. 10) in which he indicated that Murphy told him 3 or 4 months before he gave the affidavit that Daly had smoked marijuana in the plant with a couple of guys. Howell, who by the time of the hearing here had become a permanent employee with Respondent, testified that during his breakfast with Murphy she made this statement and she also said that Daly did not like temporaries and Howell had no chance of becoming a permanent employee at Wells; and that he never went to management to let them know about this statement. On cross-examination, Howell testified that nothing that Murphy said that morning bothered him; that he did not go to management about the conversation but, rather, management came to him several months after the conversation; that he and Murphy were discussing a number of different things relating to work that morning; and that they were both employees at the plant at the time.

Daly testified that Abrevaya told him what Murphy said about Daly not liking temporaries and, therefore, they had no chance of being hired and about Daly smoking marijuana in the plant; that he learned that Murphy had spoken to Howell so he asked Howell about it; that Howell told him that Murphy made the same statements to him; that he told his supervisor about what Murphy told the two temporary workers; that there was no truth to Murphy's statements; and that he has never used marijuana in his house in front of a child of a coworker. On cross-examination, Daly testified that Murphy did a very good job at what she did.

On June 23, 1992, Murphy was discharged. Miller testified that he made the decision to terminate Murphy in consultation with Smail; that he met with Murphy prior to discharging her; that they discussed the statements that she allegedly made to specified temporary employees regarding Daly's alleged drug use and his attitude toward temporary employees; that Murphy's supervisor, Ankney, attended this meeting and he confirmed that Murphy did tell him in January 1992 about her suspicions about Daly's use of drugs; that Murphy volunteered at this meeting that she did check out one rumor about Daly taking drugs in the plant with other employees and she was told by one of the other alleged participants that it was nonsense; and that Murphy indicated that she had received reports from other employees concerning Daly's drug use but she would not give the names of the other employees to Miller or to Ankney in January 1992. Ankney testified that at this meeting Murphy said that it was simply gossip, something to talk about, and she did not see any harm in it;[30] and that Abrevaya told him and Miller that Murphy took him out to breakfast and told him that Daly smoked ''dope'' in the plant, did not like Manpower help and, therefore, he should not plan on being hired, and Daly would stab him in the back. Abrevaya gave Wells an affidavit regarding what Murphy allegedly told him about Daly (R. Exh. 9). Ankney testified that he discussed this allegation with Daly who denied smoking marijuana and who offered to take a drug test; and that he had seen a general information memorandum (G.C. Exh. 15) in Daly's personnel file, dated April 10, 1990, in which the then plant manager wrote, as follows:

> Sue Nichols & Connie Murphy indicate that they have smelled alcohol on your person on at least two occasions! This session between you and I is to make sure you understand that coming to work ''impaired'' drinking or doing drugs during working hours is *not* tolerated.

Ankney testified that before the hearing here he had not seen a memorandum in Daly's personnel file which is dated 6–

[28] Ankney testified that Murphy never mentioned marijuana at this meeting.

[29] Murphy testified that she did not tell this temporary that he had little chance of being hired as a permanent employee and that she may have told this temporary employee that Daley does a lot of backstabing and that Daly told another employee that he smoked marijuana at work with another employee but the other employee denied it. Murphy testified that she may have made the latter statement to temporary employee Ryan Howell. Counsel for Respondent represented at the hearing here that Abrevaya was subpoenaed but he did not arrive at the courthouse and that Respondent had not been able to get in touch with him. A copy of the return receipt of the subpoena was received here as R. Exh. 16.

[30] Ankney testified that at this meeting Murphy mentioned ''dope'' and marijuana, but she did not mention cocaine and that while she denied telling Abrevaya that Daly did not like temporaries, she admitted saying that Daly does a lot of back stabbing.

27–88 and indicates ''must be beyond a doubt—sober & not high'' (G.C. Exh. 16). Daly's personnel file also contains a memorandum (G.C. Exh. 17) which indicates ''Drinking before work. . . . Beer at lunch time.''[31]

When called by Respondent, Miller testified that before he terminated Murphy, he telephoned Howell and Abrevaya while Ankney was in his office listening on the speaker phone; that during his meeting with Murphy she said that there was another lady who knows it for a fact; that he asked for the lady's name indicating that he would deal with her; that he discharged Murphy for making malicious statements which is in violation of the handbook; that he told Murphy that she was to return to work and not disrupt the work force; and that he did not view Murphy as being a part of any concerted action or speaking on behalf of others in this matter. On cross-examination, Miller testified that he considered Murphy's statements to be malicious because she did not have anything to substantiate them; she had no proof.

Regarding her discharge, Murphy testified that she was called into Miller's office on June 22, 1992; that Ankney and Miller were there; that Miller asked her if she made the statement that Daly was using drugs and she said that she told Ankney that in January 1992 and Ankney agreed; that Miller asked her why she was saying it if she had no proof; that when Miller asked her if she had ever seen Daly use drugs she replied that she had never seen Daly drinking but the employees knew that Daly came into work under the influence of alcohol and it was in his record; that she told Miller that the employees had decided to let Ankney know in case there was a problem with Daly being overbearing; that she asked Miller if this had anything to do with the Union and Miller got very upset saying that it had nothing to do with the Union; that Miller asked her if she had made a statement about Daly smoking marijuana and she said no, indicating that another employee told her that Daly told him that he, Daly, had smoked ''grass'' at work; that she told Miller that the employee who allegedly smoked marijuana at work with Daly told her that he had never smoked with Daly; that she told Miller that she believed Daly used drugs; that Miller asked her about telling temps that Daly does not hire temps and she told Miller why would she say that since Daly does not do the hiring; and that Miller asked her not to discuss the meeting with the other employees on the third shift because he would rather that they did not know until he had decided on the punishment. According to Murphy's testimony, the following day, June 23, 1992, Miller telephoned her and told her that he had telephoned corporate and corporate said that she was to be terminated.

By memorandum dated July 7, 1992 (G.C. Exh. 9), Miller indicated as follows:

> Connie Murphy falsely told one of our Manpower temporary workers that he would not be hired at Wells because his supervisor did not like to hire temporary people and that therefore that temporary employee had little chance of being hired. She also told the temporary person that the supervisor would do all he could to ''bust him.'' Connie also told this temporary person, plus one other temporary, that the same supervisor had been using drugs in our plant. She made this statement about drugs without any proof of same upon being questioned about same. Further, upon being questioned, Connie Murphy admitted that she had told about the drugs because it was ''gossip and something to talk about.'' She told one of the temporary persons that the supervisor had used drugs in the plant with a ''couple of guys.'' Upon being questioned she said that she knew the supervisor hadn't used drugs because she had asked one of the ''guys'' who the supervisor had supposedly used drugs with and that ''guy'' told her that that was nonsense.
>
> Because of the above Connie Murphy was terminated. She violated published company work rules that ''making or publishing vicious or malicious statements concerning other associates, supervisors, management, Wells/Sidney and its products or customers,'' is a violation and that ''certain conduct not specifically forbidden by any published policy or rule, but which is clearly harmful to the orderly conduct of business, to the safety of other associates, equipment, or product, or is against generally accepted standards of conduct, will result in disciplinary action, including possible termination.''
>
> John W. Miller
> Operations Manager

The Ohio Bureau of Employment Services issued an administrator's reconsideration decision on September 2, 1992, which affirmed the original determination that Murphy was discharged by Wells for just cause in connection with the work. (R. Exh. 3.)[32]

Analysis

Paragraph 5(a) of the second consolidated complaint (complaint) alleges that from June 4 through October 8, 1991, Respondent maintained an unlawful no-solicitation, no-distribu-

[31] When, on cross-examination, counsel for the General Counsel brought up the matter of the disciplining of employee Robert Lyons, Ankney testified that he did not participate in Lyons' disciplinary hearing since he, Ankney, was not part of the management team at the time. Then when he was shown a memorandum, G.C. Exh. 19, he conceded that he was production supervisor at the time and he was present at that disciplinary hearing. Subsequently he testified that he had no real involvement with this incident. Then he agreed that while he did not remember, the memorandum does indicate that he did attend that disciplinary hearing. The memorandum lists him as a participant. According to the memorandum, which is dated August 6, 1986, a male employee admitted to a female employee's accusation that he exposed his genital area twice to the female employee on company property. The memorandum indicates that the employee was not fired but rather he was put on probation for 180 days with the understanding that he was to receive psychiatric counseling. The memorandum goes on to point out to the male employee that his conduct is potentially criminal, if prosecuted. Ankney, along with the former works manager and the involved male employee, signed the memorandum. Ankney testified that when a problem arises with an employee, the preferred approach is to point the problem out to the employee and correct it.

[32] In her request for reconsideration filed August 7, 1992, Murphy indicated that she spoke to the other worker about her supervisor on her own time and she was not at her place of employment when the conversation took place. R. Exh. 4. The original determination that Murphy was discharged for just cause in connection with the work was received here as R. Exh. 13.

tion rule. On brief, the General Counsel points out that Respondent admits that it maintained the unlawful rule during the period involved.[33] Respondent contends, on brief, that it did not act unlawfully in that no employees were disciplined pursuant to the rule in question and the Company retracted the rule on October 8, 1991, and posted a notice to all employees of this change; and that since Wells posted the notice of retraction on its own initiative, more than a month before the election and before any change was filed, paragraph 5(a) of the complaint should be dismissed. While the notice Respondent posted on October 8, 1991, indicates that ''[t]hese rules override and takes the place of any other published rules including those contained in the handbook,'' the notice does not include, nor were the employees assured that in the future Wells would not interfere with the exercise of their Section 7 rights, *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Respondent did not admit any wrongdoing. Rather it indicated in the ''retraction'' that the new rules were ''[t]o clarify any confusion on this subject.'' Additionally, Respondent here engaged, as noted below, in a number of other unlawful acts. In these circumstances, I do not believe that it would be appropriate to find that there is no need for a separate remedy for the maintenance of the above-described unlawful rule.

Paragraphs 5(b)(i) and (ii) of the complaint allege that Respondent disparately applied its bulletin board policy to prohibit the posting of union literature and it unlawfully removed union literature from the employee bulletin board in the breakroom. The General Counsel, on brief, contends that Respondent's witnesses admitted removing union literature from the bulletin board; that Miller engaged in this conduct as late as November 6, 1991; that Respondent admits that prior to the union campaign the policy requiring permission to post notices on the bulletin board was not enforced; that Respondent admits that the removal of union literature was, at least in part, in retaliation for the defacement of antiunion literature posted by Respondent; and that the disparate enforcement of a dormant policy, especially by a supervisor in front of employees, is inherently coercive and interferes with the employees' exercise of their Section 7 rights. Respondent, on brief, argues that Miller had removed an unauthorized notice concerning a raffle; that Koverman removed unauthorized notices from the bulletin board; that Chrismen testified that the Company's preexisting policy had been to remove any unauthorized notices found on the bulletin board; that an employer is not required to allow its employees access to its bulletin board; that a rule which requires management authorization for notices to be posted on bulletin boards does not violate the Act; that no evidence was presented that notices of social events posted prior to the union organizing drive had not been approved by management or that management knew of these notices; that there was no evidence that Respondent's policy was in effect when Monroe posted the Cowboy Bob's menu without permission or that Respondent was aware of the posting; and that the removal of union notices during the campaign was consistent with Respondent's preexisting policy and practice. With respect to Respondent's contentions on brief, it is noted that Miller testified that he removed the material dealing with a raffle from the bulletin board because it involved gambling; that on the very next page of the transcript Miller testified that he could not say for sure that before employees posted something on the bulletin board they came to management and asked; that Koverman, who was responsible for policing the open bulletin board, testified that she had no way of knowing whether or not an employee posted something on the bulletin board without obtaining management's approval; that apparently Koverman's main concern in removing material, other than union literature, from the bulletin board was whether it was outdated; and that Chrismen's understanding of the rule was as follows: ''we didn't allow, not only union activity, but just any sort of personal things to be posted on the bulletin board.'' Respondent may have had a policy regarding the posting of material on the bulletin before the union campaign. But even if it did, the enforcement of that policy was, at best, lax. This changed, however, with the commencement of the organizing drive. Koverman, who previously removed outdated and, therefore, irrelevant material, now, pursuant to instructions, was removing relevant union literature. The General Counsel correctly argues that this was disparate enforcement of a dormant policy in order to chill employees' union activities and in order to retaliate for the defacement of antiunion literature posted by Respondent. Respondent violated the Act as alleged in these paragraphs.

Paragraph 5(c) of the involved complaint alleges that on or about November 12, 1991, Respondent threatened employees that their wages and benefits would be frozen if the employees selected the Union as their bargaining representative. The General Counsel, on brief, contends that Miller admits telling employees shortly before the election that (1) if the Union won Respondent would fight it and the litigation could take 2 or 3 years, and (2) typically during negotiations all things are frozen and that Murphy and Phillis, who is a current employee and was not a union adherent, testified that they were told there would be no raises in wages or benefits for the 2- or 3-year period that Respondent would keep things tied up in court. Respondent, on brief, argues that Miller's alleged statements that he intended to exercise the right to file objections based on the Union's objectionable conduct did not constitute a threat of force or reprisal or promise of benefits; and that Phillis confirmed Miller's testimony that Miller stated that on the employees' selection of the Union, wage rates, and pay raises were negotiable and changes would occur only in the course of bargaining. Phillis testified as follows on this point:

> Q. You don't recall the statement being that the company would file objections and would challenge the union's election victory in court and that would take two to three years?
>
> A. They said they would hold it up in court any way they could and that we wouldn't be able to get pay raises.
>
> Q. You weren't told that the issue of pay raises—the issue of not receiving pay raises would occur during the course of bargaining and the company couldn't make changes?

[33] The rule in question reads as follows:

> Vending, soliciting, distributing or collecting contributions during work time or on Naarco/Disney premises without authorization from management [is prohibited].
>
> No solicitations or collections of any kind on company premises will be made without prior approval. All solicitations will be supervised by Naarco/Sidney.

A. We were told that everything was negotiable.
Q. In the course of bargaining?
A. Yes.
Q. Have employees received pay raises since the election?
A. One. That would be the normal one we get.
Q. And when was that?
A. The end of March.
Q. Have there been changes in benefits?
A. Not a lot. I mean, you've got your normal insurance and they did put out a non-union 401(k) that you could get.

Phillis and Murphy are credited. The fact that Respondent did not carry out the threat does not mean that the threat was not made. Miller's explanation that the employees put the two statements together for some reason is nothing more than a reluctant admission that the opposite was not true, namely, that there was no way that the employees could have understood him to be making a threat. Respondent violated the Act as alleged in this paragraph.

Paragraph 5(d) of the involved complaint alleges that in late October or early November 1991 Respondent, by Chrismen, impliedly promised its employees increased benefits and improved terms and conditions of employment if they refrained from selecting the Union as their bargaining representative. And paragraphs 5(e) and (f) of the involved complaint collectively allege that on or about late October or early November 1991, Respondent, by Ankney, gave the impression, that an employee's union activities were under surveillance by Respondent and it coercively interrogated an employee concerning his union sympathies. The General Counsel, on brief, contends that these allegations are supported by the credible testimony of Shepherd; that *Rossmore House*, 269 NLRB 1176 (1984), does not apply because there was no credible evidence that Shepherd was ''open'' in his support for the Union with management; and that accordingly, Ankney's and Chrismen's conversations with Shepherd, in which they implied that his union activities were under surveillance, questioned him about the reasons for his union support, and suggested that Respondent could remedy whatever was causing employees to support the Union were violative of Section 8(a)(1) of the Act. Respondent, on brief, argues that, as evidenced by his conversations with Ankney, Shepherd had voluntarily made his support for the Union known to Respondent; that Chrismen's question to Shepherd, viz, what he did not like about what the Company was doing and what couldn't the Company take care of, presupposes the Company's knowledge of Shepherd's support for the Union; that according to Monroe's testimony, Kellis, in late September 1991, told Monroe that he knew that Shepherd was an organizer from the ''get-go''; that Miller testified that Shepherd approached him soon after the union campaign was underway and stated that the organizing effort was ''nothing personal''; that Shepherd was active on behalf of the Union and had distributed union T-shirts, literature, and authorization cards, conducted meetings, and served as an election observer; that the involved conversations occurred with supervisors, vis-a-vis the owner of the Company, and they occurred in work areas and not in locations that have a tendency to coerce; and that the alleged statements did not violate the Act because Shepherd was a known union supporter and because the alleged statements contain no threat of reprisal or force a promise of benefit. Even if one was to credit Miller that Shepherd told him in October 1991 that the organizing was nothing personal toward him, Miller, in view of Miller's subsequent testimony that he concluded that Shepherd was probably prounion, this alone would not mean that Shepherd was an open and active union supporter. Regarding Respondent's assertion that Shepherd served as an election observer and distributed union T-shirts and literature, it was not shown that Shepherd did these things before his involved conversation with Ankney and Chrismen. And distributing authorization cards to employees and conducting meetings outside the plant would not appear to be a sufficient basis for concluding that Shepherd was an open union supporter at the time of the involved conversations. Moreover, contrary to the assertions of Respondent on brief, the statements made by Ankney do not demonstrate that Shepherd had voluntarily made his support for the Union known to Respondent. Ankney told Shepherd that he, Ankney, realized that they were on opposite sides of the fence. It was not demonstrated that Shepherd was an open union supporter at that time. Consequently, Ankney conveyed the impression that Shepherd's union activities were under surveillance. Ankney's asking Shepherd why he felt the way he did about the Union and was it due to something management did was coercive interrogation about his union sympathies which violated the Act because it has not been shown that Shepherd was an open union supporter at that time. And finally, Chrismen's question to Shepherd, namely, what did he not like about what the Company was doing and what couldn't the Company take care of, was, as alleged, in effect an implied promise that Respondent could improve the terms and conditions of employment if the Union was not selected as the employees' bargaining representative. Respondent violated the Act as alleged in paragraphs 5(d), (e), and (f) of the involved complaint.

Paragraphs 6(b) and (e) of the involved complaint allege that Respondent unlawfully discharged Linder. On brief, the General Counsel contends that Respondent knew of Linder's support of the Union before he was discharged in that Linder mentioned the Union to Miller in a conversation early in the campaign and Ankney testified that he became aware that Linder was a union supporter when he wore a union T-shirt just before the election; that the timing of the discharge the day after the election strongly suggests a connection; that Respondent's proffered reasons for the discharge are so clearly pretextual; that while Ankney testified that he recommended that Linder be discharged on November 5, 1991, because of his attendance and his drop in production, Linder had not missed work since his 60-day evaluation was given and Ankney did not, after the 60-day evaluation, have any indication that Linder's production rate was unacceptable; that the production records introduced here demonstrate that Linder's production improved substantially during the course of his probationary period; that it is difficult to understand why Miller, who had already decided before the election to discharge Linder for production and attendance problems, needed a weekend to think about this discharge after learning from Hess that Linder allegedly threatened to burn Shaw's house; and that Miller was visibly upset and volatile on the day of the election and the following day he picked out an easy target, a probationary employee who was noticed wear-

ing a T-shirt just before the election. Respondent, on brief, contends that probationary employee Linder was discharged for poor performance, poor attendance, a poor attitude, and his conduct; that the evidence does not support a finding that the General Counsel has made a prima facie case of discrimination; that Linder's activities on behalf of the Union were minor; that even assuming arguendo that the General Counsel has met the burden of proving its prima facie case, the evidence clearly shows that Linder would have been discharged even in the absence of any union activities; that as a probationary employee, Linder could have been discharged for any one of his enumerated instances of misconduct and poor performance; and that Linder was warned at his 60-day evaluation that his continued employment remained uncertain and immediately following his evaluation, he damaged company products with a tow motor and improperly stacked parts on a skid, *causing those parts to be damaged*.'' (Emphasis added.) See Respondent's brief at 31. Linder signed a union authorization card, told Miller in late October 1991 that the employees probably wanted a Union because nothing was done right by Respondent, wore a Union ''Vote Yes'' button to work and wore a union hat and T-shirt to work before he was discharged. Miller, however, testified that on November 5, 1991, he did not know of Linder's union activity. But Linder was discharged on November 15, 1991. Miller testified that actually the decision to terminate Linder was made on or about November 5, 1991. But for some reason that he could not remember Miller, according to his testimony, did not terminate Linder at that time, notwithstanding the fact that allegedly Ankney and Small had also concluded at that time that Linder should be terminated. Ankney conceded that a few days before the election he saw Linder wearing a union T-shirt. But, according to Ankney's testimony he recommended Linder's termination on November 5, 1991, because of Linder's attendance and the drop in his production. No one disputes Linder's testimony that he did not have any attendance occurrences after his evaluations in October 1991. And regarding production, Ankney testified that the Respondent does not have production standards and he does not give production standards to employees. Additionally, it was not shown that Ankney reviewed any production data in addition to that which he reviewed at the time of Linder's evaluations. In my opinion, Ankney was less than candid regarding the role he played in Lyons' discipline. And while Ankney testified that a decision had already been made to discharge Shepherd when he was called into the office on the day of his discharge, Miller testified that he had not made a final decision to terminate Shepherd before he met with him because he wanted to hear what Shepherd had to say. Miller's assertion was belied by the fact that he had Shepherd's paycheck in hand at the beginning of this meeting. Both Miller and Smail realized this when the former testified that he did not recall if he gave Shepherd his paycheck at any time during the discharge meeting and the latter testified that he did not recall Miller giving Shepherd a paycheck at the discharge meeting, he did not believe that Miller gave Shepherd a paycheck at this meeting and he could not recall anything about a paycheck. I cannot credit the testimony of these three individuals that it was decided on or about November 5, 1991, to terminate Linder. If such a decision had been made at that time it would have been carried out at that time and not put off for some reason so insignificant that Miller cannot now remember what it was. If such a decision had been reached on or about November 5, 1991, there would have been no need, as Ankney testified, for Miller to tell Linder on November 15, 1991, that he, Miller, was going to decide over the weekend whether Linder would be employed beyond his probationary period.[34] Accordingly, at the time a decision was made to discharge Linder, he had engaged in union activity and Respondent admittedly was aware of at least some of Linder's union activity.

On November 14, 1991, Linder wore a union T-shirt. Monroe also wore a union T-shirt on November 14, 1991. That evening Miller yelled at Monroe and pointed his finger in Monroe's face apparently accusing Monroe of threatening employee Scott Thompson. Miller did not deny this conduct. No evidence was introduced here that anyone, including Monroe, threatened Thompson or even that there was an accusation that anyone threatened Thompson. If there was no threat, why did Miller raise this issue? Was the issue raised because Monroe was wearing a union T-shirt? Was Miller using a bogus charge of a threat in an attempt to intimidate an employee who obviously supported the Union. Was Miller tipping his hand? Was he telling Monroe this is how easy it is to get you out? Monroe knew he did not threaten Thompson. And yet Miller was making this serious accusation. Monroe's testimony that Kellis apologized later that evening for Miller's behavior is credited. Also, Monroe is credited with respect to Kellis' explanation for Miller's conduct, namely, that management had figured out that it was going to lose the election by five votes.

Only Hess testified that Linder and Shepherd made the aforementioned threats; his testimony is not corroborated. On the other hand, two employees testified that there were no such threats, namely, Linder and Shepherd, and two other employees, Katterhenry and Lovett, testified that contrary to Hess' adamant assertions they did not witness Linder's alleged threat. Regarding Katterhenry and Lovett, Miller did not speak to them before firing Linder to find out if they corroborated Hess. Obviously this decision could not have been based on the union sympathies of Katterhenry and Lovett for he, Miller, did not even ask Hess for their names before he fired Linder. And any argument that it was done to keep anyone from finding out that Hess informed must be viewed by terms of the inevitability that in the circumstances of the situation at hand this would eventually be known. Hess waited until after the involved election before providing any of the specifics regarding the alleged threats. Assertedly he did not provide the specifics before that time because he feared for his own safety and the safety of his family. It is not clear how his situation changed in the approximately 45-day period involved after he allegedly heard the first threat.[35] I do not credit Hess' testimony about the alleged threats assertedly made by Linder and Shepherd.[36]

---

[34] As pointed out by Administrative Law Judge Learned Hand in *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), ''[i]t is no reason for refusing to accept everything that a witness says, because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all.''

[35] It is noted that there is an apparent conflict in the testimony and affidavits of Hess as to when the first alleged threat occurred.

[36] There is no evidence that anyone ever filed a police report regarding any of these alleged ''serious'' threats.

For whatever reason, Miller took the anticipated results of the election personally.[37] He went after Monroe, who was wearing a union T-shirt, verbally on the evening of the election. The next day he went after another employee who was also wearing a union T-shirt on the day of the election—Linder. Linder was more vulnerable because he was a 90-day probationary employee, who was hired August 26, 1991, and because he has an attitude.

Why the overkill? Why does Respondent argue on brief that the parts were damaged which Linder originally stacked on a pallet which was not large enough to protect the parts? Nothing in the record supports this contention. If Miller actually had reliable information that Linder threatened another employee and if it had already been decided on or about November 5 to discharge Linder, why, as pointed out by the General Counsel, did Miller need the weekend to reach a decision which supposedly was made some time before Respondent was made aware of the alleged Linder threat? According to Ankney, Miller said to Linder that he was going to decide over the weekend whether Linder would be employed beyond his probationary period.[38] If it had already been decided that Linder was going to be terminated, why would Miller make this statement?

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), approved *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), the General Counsel has made a prima facie showing sufficient to support an inference that protected conduct was a motivating factor in Respondent's decision in that the General Counsel has demonstrated that Linder engaged in union activity, Respondent knew, and there was union animus on the part of Respondent.[39] Has Respondent demonstrated that the same action would have taken place even in the absence of Linder's union activity? In my opinion it has not. What was the triggering event? It was not the end of Linder's probationary period yet. The alleged damaged door flange incident and his utilizing the undersized pallet had occurred in late October 1991 and November 5, 1991, respectively. It appears that Linder did not have any absences since his 60-day evaluation. The production data relied on at that time was the same production data reviewed for Linder's October 24, 1991 evaluations. Miller was not really relying on the threat Linder allegedly made. As contended by the General Counsel on brief, the timing must be considered. Linder was not discharged the day after his 30- and 60-day evaluations. Linder was not discharged the day after he allegedly damaged a door. Linder was not discharged the day after he utilized an undersized pallet. Linder was not discharged at the end of his probationary period. Linder was discharged the day after he wore a union T-shirt. Linder was discharged the day after Miller verbally attacked Monroe apparently because he was wearing a union T-shirt. Linder was discharged the day after Kellis explained to Monroe that Miller was upset because he realized that Respondent was going to lose the election by five votes. Linder was discharged the day after Respondent did lose the election by five votes. In my opinion, but for Linder's union activity he would not have been discharged on November 15, 1991. In discharging Linder for his union activity, Respondent violated the Act as alleged.[40]

Paragraphs 6(c) and (e) of the involved complaint allege that Respondent unlawfully discharged Shepherd. The General Counsel, on brief, contends that the explanations offered by Miller for crediting Hess without even questioning Shepherd are either patently false or equally applicable as a reason to credit Shepherd; that Shepherd was an outstanding employee; that Miller's assertion that Hess had nothing to gain by coming forward against Shepherd is belied by his further assertion that Hess had volunteered to him several times that he was opposed to union representation; that Hess believed he had much to gain with Respondent by helping it to succeed in its efforts to defeat the Union; that Hess even made the connection explicit by assuring Miller as a postscript to his note ''fingering'' Shepherd and Linder, that ''[i]f there is ever a walkout, you can count on me to be here working at my job''; that while Ankney testified that the decision to discharge Shepherd had already been made before Shepherd was summoned to the office, Miller testified that he had not made the decision prior to this meeting; and that Miller's and Smail's lack of recall of Miller's giving Shepherd his paycheck at the meeting was nothing more than them ''backpedaling furiously, attempting to portray their summary dismissal of Shepherd without opportunity to respond as a due process hearing, denying the presence of the telltale paycheck to maintain the twisted version of events.'' The General Counsel's brief at 16. Respondent, on brief, argues that Miller decided to terminate Shepherd unless he could credibly explain or deny the alleged threats; that when he met with Miller and Ankney on November 21, 1991, Shepherd refused to fully deny that he had threatened other employees but instead allegedly stated that he did not threaten anyone in the plant; that pursuant to *Chicago Metallic Corp*., 273 NLRB 1677 (1985), the General Counsel has the

[37] As indicated in fn. 5, supra, Miller testified that he took the organizing personally in that he did not need a third party to treat people fairly and be preferred to work in a shop that did not have a union.

[38] See fn. 34, supra.

[39] As noted above, Respondent opposed the Union and as noted here, Respondent engaged in unlawful conduct in violation of the Act both before and after the election.

[40] Respondent, on brief, argues that pursuant to the Board's decision in *John Cuneo, Inc*., 298 NLRB 856, 857 (1990), Linder's backpay should be terminated as of the date Respondent discovered that Linder misrepresented his employment history on his employment application which he submitted to Respondent. Respondent did not present evidence that it would not have hired Shepherd on a permanent status, if at all, but for its reliance on Shepherd's alleged misrepresentation, which was discovered after his unlawful discharge. In *John Cuneo, Inc*., supra, the involved employee stated on the application that he was self-employed rather than laid off from another company and it was found therein that Respondent had a policy of not hiring applicants who misstate their employment background. The administrative law judge in *John Cuneo*, supra, found that the employee willfully, deliberately, and intentionally misstated his employment history. Obviously if an applicant takes positive measures to avoid informing a prospective employer that he is on layoff and may be recalled, a conclusion that the applicant willfully, deliberately, and intentionally made a misstatement is warranted. That is not the situation here, however, in that at most it was demonstrated that Linder did not list Western Ohio Packaging where he worked as a Manpower (temporary) employee. Respondent did not develop the record as to whether the omission was due to negligence or a misunderstanding or was intentional on Linder's part. Consequently, I cannot find that the omission was willful, deliberate, and intentional. In my opinion, Linder's backpay should not be limited.

burden of going forward with evidence that Shepherd (and Linder) did not, in fact, engage in the misconduct alleged; that the General Counsel failed to establish a prima facie case in that it failed to prove that the threats made by Shepherd (and Linder) did not in fact occur; that Hess had no reason to come forward other than an interest in protecting his coworkers from harm; that the Company's honest belief, formed after a thorough investigation, that Shepherd (and Linder) made these threats has been established; that since the General Counsel had not affirmatively shown that the threats of Shepherd (and Linder) were not made, there is no occasion to apply the *Wright Line* analysis; and that even assuming, arguendo, that the General Counsel has proven a prima facie case, Shepherd (and Linder) would have been discharged even in the absence of any protected activity in light of the ''serious nature of the threats and the fact that *they were made to* female as well as male employees.'' (R. Br. 38.) (Emphasis added.) While Respondent took the position that it had reasons other than the alleged threat to discharge Linder, with Shepherd the alleged threats assertedly were the only reason for the discharge. Unlike the two cases cited by Respondent on brief, *Classe Ribbon Co.*, 227 NLRB 406 (1976), and *Chicago Metallic Corp*., supra, here the employees who allegedly were the object of the threats, except Daly, did not report them to management or testify about them at the trial here. None of the employees, except Daly, who allegedly were the object of the alleged threats actually heard the threat. And Daly did not hear the alleged threat that Hess assertedly overheard Shepherd make against Daly. The only threat that Daly allegedly heard was assertedly made over the telephone by someone who Daly testified he could not identify. Some guidance can be gleaned from the two aforementioned cases cited by Respondent in its brief. Both cite *Fred Stark*, 213 NLRB 209 (1974), for the proposition that ''if there was fabrication, it would seem more probable that it was one, rather than the four, who was lying.'' As noted above, no witness corroborates Hess. Four of the witnesses who testified here specifically refute Hess. Daly does not specifically corroborate Hess. As noted, Daly was not present when Hess allegedly overheard threats being made. And, as noted above, Daly testified that he could not identify the caller who allegedly threatened him. As indicated above, I do not credit Hess' testimony. Daly's testimony should not cause one to treat Hess' testimony any differently to the extent it refers to Shepherd.[41] Respondent argues that it had an honest belief formed after a thorough investigation that Shepherd made the alleged threats. How thorough was the Respondent's investigation? Did Respondent's management maintain a open mind until after it interviewed Shepherd about the alleged threats? Ankney testified that the decision had been made to discharge Shepherd before he was interviewed.[42] Perhaps this is why Smail came from South Bend and sat in on the meeting. Shepherd corroborates Ankney in that Shepherd testified that before the meeting even began he saw his paycheck in Miller's hand and he knew at that point in time that he was going to be discharged or in his words ''what was coming.'' As noted above, Shepherd is credited on this point. Miller's and Smail's testimony regarding Shepherd's paycheck, as contended by the General Counsel on brief, was nothing more than them ''backpedaling furiously, attempting to portray their summary dismissal of Shepherd without the opportunity to respond as a due process hearing, denying the presence of the telltale paycheck to maintain this twisted version of events.'' Even the allegation that Shepherd said that he did not threaten anyone at work must be viewed in the light of Ankney's testimony that during the discharge meeting Miller told Shepherd that he had information about Shepherd threatening somebody ''in the plant.''[43] Perhaps it could be expected that the natural response to such an accusation would be no I did not threaten anyone ''in the plant'' or at work. Shepherd's testimony is credited. During the meeting he said that he would not threaten anybody. I saw the man. I listened to him speak. It is my impression that he is a very sincere individual. His record demonstrates that he is an outstanding worker. Everything about him says that this is not a man who would threaten another person, especially a woman, behind their back. Shepherd impressed me as being the type of person who, if he had a problem with you, would squarely face you and tell you what the problem was. Contrary to its assertion, Respondent did not have an honest belief formed after a thorough investigation.

Under *Wright Line*, the General Counsel has made a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the Respondent's decision. While it was not demonstrated that Shepherd was an open union supporter when Respondent, as concluded above, unlawfully interrogated him, by the time of his discharge, his union support was clearly open. As concluded above, there was a union animus on the part of Respondent. Respondent has not demonstrated that it had a sufficient business justification to discharge Shepherd. Respondent has not demonstrated that it would have discharged Shepherd in the absence of protected conduct. Respondent violated the Act as alleged regarding the discharge of Shepherd.

Paragraphs 6(d) and (e) of the involved complaint allege that Respondent unlawfully discharged Murphy. The General Counsel, on brief, contends that, as acknowledged by Daly, Murphy did a good job; that as testified to by Kearns, who actively opposed the Union, Kellis and Ankney told Daly not to allow Murphy and Monroe to talk to each other on the clock because they were the employees' union representatives; that, therefore, Respondent knew of Murphy's union activity; that when Murphy reported Daly's apparent drug use to Ankney she was not disciplined or warned that she was not to discuss Daly's suspected drug use with other employees; that Ankney conceded that based on what Murphy told him in January 1992 it was clear that she had had conversations with other employees about Daly's drug use; that, therefore, the offense for which Murphy was terminated in June was the same conduct for which she was not even warned in January 1992; that Respondent's contention that Murphy's conduct was a dischargeable offense under its rule against ''making or publishing vicious or malicious statements'' simply because Murphy could not prove her assertion means that an employee could be punished for making a truthful assertion if the employee was unable to prove the

[41] While Respondent on brief and Daly in his testimony spoke to the seriousness of the alleged threats, as noted no evidence was introduced here demonstrating that a police report was filed.

[42] See fn. 34, supra.

[43] See fn. 34, supra.

assertion; that Respondent may not lawfully prohibit employees from engaging in conversations about their supervisor's conduct insofar as it affects their working conditions and such communication is a necessary prerequisite to concerted action and is protected under Section 7 of the Act; that employee conversations about their supervisor's drug use, so long as they are not so reckless or maliciously untrue as to lose the Act's protection, may not subject the employees to discipline or discharge, *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953), *Emarco, Inc*., 284 NLRB 832 (1987), and *Cincinnati Suburban Press*, 289 NLRB 966 (1988); that inasmuch as Murphy merely reported what she had been told by others and believed to be true, she did not forfeit the Act's protection and she did not act recklessly or maliciously; and that Murphy's conversations about drugs and Daly looked toward group action, in that Murphy spoke of asking that Daly be treated for drugs if he mistreated employees. Respondent, on brief, argues that Respondent's work rules list ''[m]aking or publishing vicious or malicious statements concerning any . . . supervisor'' as a ''Serious Conduct Violation'' (G.C. Exh. 2 at 50); that the same rules also indicate that ''[t]he *seriousness of the violation will ultimately dictate the form of discipline to be used*'' (emphasis in original), id. at 44; that there is no credible evidence that Ankney and Miller had any knowledge of any union activity by Murphy; that it cannot be presumed that Kellis informed Ankney or Miller of his discussions with Murphy about her union activity since Ankneys' denial of any knowledge of Murphy's union activities is uncontradicted; that even assuming, arguendo, Respondent's knowledge of Murphy's union activity, any inference of discriminatory animus is rebutted by the lapse of 7 months between the time of the election campaign and any union activities by Murphy had ceased and Murphy's termination; that Murphy's activities on behalf of the Union, wearing a union button only occasionally and attending only one union meeting, were minor; and that Murphy's conduct did not constitute protected activity and no witness corroborated Murphy regarding the report of a coworker's child since Phillis' testimony assertedly was not offered for the truth of the matter asserted.

Murphy discussed her support of the Union with Supervisor Kellis during the union campaign. While he testified here, Kellis did not deny that this occurred. Murphy wore prounion paraphernalia. She was voted on the bargaining committee, along with Monroe, after the election. Kearns' testimony is credited that sometime after January 1, 1992, Ankney told Supervisor Daly that he should not let Murphy talk to Monroe while the former was on the clock because both of them were union representatives. While Daly testified here he did not deny that this occurred. Ankney testified that he never made any statement with regard to the fact that Murphy was a shop steward. Ankney's testimony wittingly or unwittingly misses the point. Murphy was not a shop steward. Murphy engaged in union activity and Respondent's management knew it.[44] As noted above, there was antiunion animus on the part of Respondent. Under *Wright Line*, supra, the General Counsel has made a prima facie case.[45]

In the fall of 1991 Murphy and other employees discussed the fact that Daly's nose was running all of the time and one of the employees mentioned that her son had been at Daly's house and saw him snort white powder. Murphy's testimony on this later point was corroborated by Phillis. Both Murphy's testimony and Phillis' corroborating testimony are credited.[46]

In early 1991, after some employees discussed the fact that if they had a problem with Daly, they would ask the Company to give him a drug test, Murphy told Ankney that the third-shift employees were upset about Daly's drug use. Ankney conceded that Murphy told him that Daly was taking drugs at the plant and all of the employees on the shift were concerned about it. He also testified that it was reasonable to conclude from what Murphy said that she had conversations with other employees about Daly's alleged drug use. Ankney did not prohibit Murphy from discussing this matter

[44] Respondent argues, on brief, that Supervisor Kellis' knowledge cannot be imputed to Respondent because Ankney's denial that he knew anything about Murphy's union activities is not refuted. Kellis testified that he worked very close with Miller throughout ''this whole thing.'' Kellis and Miller knew of Murphy's union activity and, as noted above, neither Ankney nor Daley specifically deny Kearns' testimony.

[45] None of the cases cited by Respondent for the proposition that an inference of discriminatory motive is not warranted due to the timing and the alleged limited extent of Murphy's union activity are applicable here. In the first case cited *Human Resource Institute*, 268 NLRB 790 (1984), as pointed out by Respondent here on brief, the administrative law judge concluded that ''[s]ix months is too long a time to look back for a hidden motive in the absence of any other substantive proof of illegal intent.'' What Respondent fails to point out on brief is that Chairman Dotson and Members Hunter and Dennis specifically indicated that they did not rely on this language of the judge. Also, there the union movement had ''died off'' and all union activity had ceased sometime before the discharge in question. Here, the Union won the election, and Wells had filed objections. Murphy was voted on the bargaining committee and Ankney told Daley that Murphy was a union representative and she should not be talking with Monroe while she was on the clock since he was also a union representative. *U.S. v. Barrett*, 837 F.2d 1341 (5th Cir. 1988), is distinguishable because there it was concluded that there was no union animus and the only union activity was signing a card and attending one union meeting. In *Benchmark Industries*, 270 NLRB 22 (1984), Chairman Dotson and Members Hunter and Dennis, with Member Zimmerman dissenting, affirmed the findings of Administrative Law Judge Gershuny that an employees' activities months before his discharge in signing a union card and demonstrating his change of allegiance with the wearing of a union button and an antimanagement sign on his shirt played no role in his discharge. Murphy's union activities far exceeded that. In *S. S. Kresge Co*., 234 NLRB 402 (1978), there was no showing that the employee involved there engaged in any union activity other than perhaps being among the majority of employees who cast votes for the Union in the representation election. Also there was no allegation that Respondent in that proceeding committed any other violation of the Act at any time reasonably close to the employees' discharge.

[46] The day after Phillis testified Respondent belatedly objected to this point of her testimony arguing that it was hearsay. At that time counsel for the General Counsel pointed out that if Respondent had made a timely objection she would have indicated that the testimony was not being offered for the truth of the mattter asserted. In other words, counsel for the General Counsel was not attempting to prove through Phillis' testimony that Daley was in fact snorting white powder. If the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted and the statement is not hearsay. *Emich Motors Corp. v. General Motors Corp*., 181 F.2d 70 (7th Cir. 1950), revd. on other grounds 340 U.S. 558 (1951).

with other employees. About 6 months later Murphy discussed this issue with two company employees who work at Wells. Subsequently, as noted above, she was terminated. Murphy testified that during her discharge meeting she told Miller that she believed Daly used drugs and when Miller asked her if she had ever seen Daly use drugs she replied that she had never seen Daly drinking but the employees knew that Daly came into work under the influence of alcohol and it was in his record. Contrary to the assertions of Daly, the Respondent was concerned about certain of his behavior and it had documented that he had a problem with one substance, alcohol. Miller was concerned enough about it to tell Daly when be became a supervisor that drinking would not be tolerated and if it occurred Daly would be gone. Ankney also spoke to Daly about the Company's concern with his purported drinking problem. In light of all of this, were Murphy's statement to the two temporary employees so reckless or maliciously untrue that she lost the Act's protection? I do not believe that is the case. Murphy was not even placed on notice that the Company did not believe that it was appropriate to discuss this matter with other employees unless she had proof. In the absence of Murphy's union activity, I do not believe that she would have been terminated over this. Ankney, with the prior plant manager, participated in the disciplining of Lyons, who was not terminated even though his misconduct involved—as Respondent itself concluded—potentially criminal acts, namely exposing himself two times to a female employee. Murphy's conduct did not involve potentially criminal acts. But Murphy was involved in union activity. Respondent violated the Act as alleged in discharging Murphy.

Paragraphs 7 and 8 of the involved complaint allege that if Respondent's objections to the aforementioned election are overruled, then Respondent unlawfully implemented a number of changes in the involved employees terms and conditions of employment without providing the Union with prior notice and the opportunity to bargain. Since I conclude, infra, that sufficient grounds have not been advanced for setting the election aside, Respondent violated the Act as alleged in these paragraphs.

Objections

Wells' objections set for hearing are as follows:

1. The Union, through Representative Robert Hamons, threatened employees with loss of work and jobs if they did not select UAW as their representative.

2. The Union, through its agents, threatened employees with damage to their person, damage to their homes, and damage to their automobiles if they opposed the UAW's attempt to organize the Employer.

3. The Union, through its agents, intimidated and coerced employees in the exercise of their rights to oppose unionization. Employees are coerced and intimidated whenever they engaged in procompany conduct and were told by prounion employees not to remove union paraphernalia from company property.

4. The Union, through its agents, promised employees benefits if they selected the UAW as their representative.

5. The Union, through its agents and representative, engaged in other conduct which interfered with employees' exercise of free choice in the election and which destroyed the ''laboratory conditions'' in which the election should have been conducted.

6. The Union, through its agents, defaced the NLRB notice and sample ballot and placed UAW paraphernalia on the sample ballot notice.

7. The Union, through its agents, misrepresented facts concerning the election to employees when the Employer did not have sufficient time to reply.

8. The Union, through its agents, solicited union support during worktime.

9. The Union would not allow procompany employees to attend union meetings.

10. Employees and others have engaged in conduct which interfered with employees' exercise of a free choice in the election and which destroyed the ''laboratory conditions'' in which the election should have been conducted.

As stated in *Chicago Metallic Corp.*, 273 NLRB at 1704–1705:

> It is well settled that an election will be set aside where there is an atmosphere of violence or threats of violence which precludes employees from exercising a free choice.[161] For conduct to warrant setting aside an election, not only must that conduct be coercive, but it must be so related to the election as to have a probable effect upon the employees' actions at the polls.[162] The burden of proving that an election should be invalidated because of objectionable conduct rests with the party filing the objections, in this case, the Respondent.[163] The Respondent, as the party challenging preelection conduct, must establish that such conduct impaired employees freedom of choice.[164] Thus, when preelection conduct is challenged on the basis that it interfered with the election, the critical inquiry is whether employees were able to exercise free choice.[165]

---

[161] *Price Bros. Co.*, 211 NLRB 822 (1974); *Valley Rock Products v. NLRB*, supra; *Zieglers Refuse Collecters v. NLRB*, supra.

[162] *Valley Rock Products v. NLRB*, supra; *NLRB v. Golden Age Beverage Co.*, 415 F.2d 26 (5th Cir. 1969).

[163] *NLRB v. Mattison Machine Works*, 365 U.S. 123 (1961); *Campbell Products Department*, 260 NLRB 1247 (1982). As the Ninth Circuit Court of Appeals stated in *Valley Rock Products v. NLRB*, supra, 590 F.2d 300, 302:

> It is well established that Congress has entrusted the Board with wide discretion in conducting and supervising elections. *NLRB v. Suak Valley Mfg. Co.*, 486 F.2d 1127, 1130 (9th Cir. 1973). Accordingly, the party challenging the election carries a heavy burden in charging that coercion prevented a fair election, for evidence must be furnished overcoming the presumption that ballots cast under the the safeguards provided by Board procedure reflect the true desires of the participating employees.

[164] *NLRB v. Eurodrive, Inc.*, 724 F.2d 556 (6th Cir. 1984); *NLRB v. Basic Wire Products*, 516 F.2d 261 (6th Cir. 1975).

[165] Ibid.

The first objection set forth above is overruled. It refers to the Hamons' statements at the above-described October 7, 1991 union meeting. As indicated in footnote 2 of the report on objections (G.C. Exh. 1(z)), Wells also filed an unfair labor practice charge in Case 9–CB–8057 alleging that the Petitioner's conduct, set forth in this objection, was coercive and in violation of Section 8(b)(1)(A) of the Act. Footnote 2 goes on to indicate that on June 30, 1992, the General Counsel affirmed the Acting Regional Director's dismissal of the charge, and by letter dated August 27, 1992, denied

Wells' July 8, 1992 motion for reconsideration of the denial of the appeal. Wells, on brief, contends that the Navistar work involved 31 of the 55 bargaining unit jobs; that the statements by Hamons, made to over half the voting unit, constitute threats of economic reprisal which interfered with employee free choice in the election; that such threats are grounds for overturning an election; and that the Board in *Van Leer Containers*, 298 NLRB 600 (1990), stated that a threat of job loss is coercive and, therefore, would be a ground for overturning an election. The Union, on brief, cites footnote 2 in the report on objections. In *Van Leer Containers*, supra at 600, the Board, in a case similar to the one at hand, upheld the election concluding that the union's statement

> provides an unambiguous explanation of the Union's legal obligation to represent only employees who have selected it as their representative—an explanation given, not gratuitously, but in response to questions raised by communications to employees from sources other than the Union.

This reasoning of the Board would apply with equal force here. Consequently, Objection 1 does not supply a reason for overturning the election.

On brief, Respondent treats the remaining objections under four headings. The first is that the Union's agents and supporters interfered with the election by threatening other employees with physical harm and property damage. Wells refers to (1) the anonymous telephone call Daly allegedly received with the caller assertedly threatening to split his head open if he did not quit knocking the Union, (2) Hess allegedly overhearing Linder and Shepherd make threats against other employees, and (3) Fullerton being threatened after he removed a union sticker. I have a problem with Daly's credibility in that he attempted to play down what transpired between himself and Wells' management regarding his drinking. In making this attempt, he was less than candid about the Company's expressed concerns. Daly himself made an issue out of the fact that his daughter overheard the alleged telephone threat. In effect Daly was testifying that there is corroboration. But the daughter was not called to testify at the hearing here. Her age was not made a matter of record. Perhaps, she is very young. Daly testified, however, that she overheard the threat and they discussed it after he hung up the telephone. This was the only alleged anonymous telephone threat testified about in this proceeding. Daly, who was not a supervisor at the time, did not file a police report. And he personally did not contact the telephone company. According to Daly's testimony, he turned the matter over to Wells' management and was subsequently told by Miller that the telephone company would not take any action. While Miller testified here, he did not testify about any efforts he may have made with respect to the telephone company or the authorities. Daly is not credited. And even if he were, this one, isolated alleged anonymous telephone call considered alone or in conjunction with other conduct at issue here, would not warrant setting the election aside. The employees he allegedly told about the telephone call did not testify here to corroborate Daly.

As noted above, I do not credit Hess' testimony about Linder's and Shepherd's alleged threats. Fullerton's testimony is credited. He did not, however, vote in the election because he was a temporary. And it is not asserted that any of the employees involved in the Fullerton matter was acting on behalf of the Union, was an agent of the Union, or that the Union instigated, directed, authorized, adopted, ratified, or condoned this conduct. Additionally, it is not asserted that Fullerton told any employee who did vote about the conduct directed against him. Fullerton's treatment, considered alone, or in conjunction with other conduct at issue here, would not warrant setting the election aside.

Wells also includes the above-described testimony of Shelby and Walker under this heading. Shelby's testimony must be viewed in the light of the fact that no one was asked to leave the union meeting and that those present asked a lot of questions about the pros and cons of a union. Her testimony does not support Wells' objection that the Union would not allow procompany employees to attend union meetings. And Walker's testimony must be viewed in the light of the facts that she did not remove her ''Vote No'' button at the employee meeting; that she did not leave the meeting but rather stayed for another hour after her ''Vote No'' button became an issue; and that there is a conflict as to who told her to remove the ''Vote No'' button in that in her December 4, 1991 affidavit, which was taken about 2 months after the incident, she indicated that it was two female employees, while she testified at the hearing she asserted that she thought a lot about the meeting, after giving her affidavit, and it was Shepherd who told her to remove the button. In these circumstances it is difficult to credit Walker's testimony regarding Shepherd's role in this incident. And even if I did, which I do not, in my opinion it has not been demonstrated that this was anything but a meeting of the employees themselves. Moreover, in view of the fact that Walker did not remove the button which apparently offended some of her fellow employees, and she did not leave the meeting, I do not believe that what occurred is an adequate reason, considered alone or in conjunction with other conduct at issue, for setting the election aside.

Respondent argues that even if none of the above-described threats were attributable to agents of the Union, the threats contributed to an atmosphere of fear and coercion that warrant setting aside the election. I disagree. In my opinion it has not been demonstrated that there was an atmosphere of fear and coercion that warrants setting aside the election.

Wells' second heading, on brief, is that the Union, through its agents and supporters, interfered with the election by altering the official notices of election to mislead employees into believing that the Board favored the Union. Although Koverman, according to Miller's testimony, was the first to discover the Board's sample ballot with a handwritten ''X'' in the ''yes'' box and a ''Vote UAW'' sticker on it, and although she testified here, she did not testify about any sample ballots. Again, while one of Respondent's witnesses testifies that there is corroboration, the alleged corroborating witness is not called to corroborate. While Miller saved the sample ballots, did he save the offending stickers? No, according to his testimony the round stickers were peeled off the sample ballots (taking some of the print with them) and he then threw the stickers out. One is left to rely on his testimony alone as to the allegedly removed stickers. As noted above, I did not find Miller to be a credible witness. There is no basis for attributing the ''X'' to the Union. As pointed

out in *Sugar Food*, 298 NLRB 628 (1990), where, as here, the modification to the official sample ballot is clearly not part of the official notice,[47] ''employees viewing the defaced notices would not likely be misled by this anonymous . . . conduct into believing that the Board favored the Petitioner.'' This objection is overruled.

And Wells' third heading on brief is that the Union interfered with the election by distributing union hats and shirts during the preelection period in order to induce employees to vote in favor of union representation. Wells cites *NLRB v. Schrader's, Inc*., 928 F.2d 194 (6th Cir. 1991), arguing that the court held that if an employee distributed 10 union T-shirts and 10 union hats during the voting period, it would clearly warrant setting aside the election. The following appears in *R. L. White Co*., 262 NLRB 575, 576 (1982):[48]

> 3. The Administrative Law Judge found, and we agree, that Respondent violated Section 8(a)(1) of the Act by distributing and encouraging employees, in a coercive manner, to wear pro-Respondent T-shirts. However, the Administrative Law Judge made an additional finding that the T-shirts constituted an unlawful grant of a benefit in violation of Section 8(a)(1). Respondent has excepted to this finding, contending that the T-shirts were merely inexpensive pieces of campaign propaganda. We find merit in this exception.
>
> A party to an election often gives away T-shirts as part of its campaign propaganda in an attempt to generate open support among the employees for the party. As such, the distribution of T-shirts is no different than the distribution of buttons, stickers, or other items bearing a message or insignia. A *T-shirt has no intrinsic value sufficient to necessitate our treating it differently than other types of campaign propaganda*, which we do not find objectionable or coercive. See, e.g., *Lach-Simkins Dental Laboratories, Inc*., 186 NLRB 671, 672 (1970). Accordingly, we hereby dismiss this allegation of the complaint. [Emphasis added.]

Two years later Chairman Dotson and Members Hunter and Dennis, with Member Dennis dissenting, issued a decision in *Owens-Illinois, Inc*., 271 NLRB 1235, 1236 (1984), containing the following language of the majority:

> As to the gifts of union jackets, the Petitioner's business representative Christ admitted that he handed out about 25 jackets with union insignia to employees who came to his room at the Ramada Inn during the period between the first and second voting sessions and that about five or six of these employees had not yet voted. The jackets cost the Petitioner $16 each, and thus the Petitioner's gifts to unit employees on election day totaled about $400. The Regional Director concluded that the Petitioner's gifts were not objectionable, because there was no evidence that the jackets were given to any employee conditioned on a promise to vote for the Petitioner but rather it appeared the jackets were given to employees who had already manifested support for the Petitioner. We are persuaded, however, that distribution of these jackets was objectionable conduct. While only five or six employees received jackets before voting, the vote tally and our disposition of the challenged ballots show that five or six votes could have determined the election's results. Moreover, these jackets were not given away during the preelection campaign but on election day itself; distributed as they were between voting sessions, they could well have appeared to electorate as a reward for those who had voted for the Petitioner and as an inducement for those who had not yet voted to do so in the Petitioner's favor. While not dispositive, we note that the evidence indicates one employee was heard to say, ''the way I voted I better get a jacket.'' Although the Board held in *R. L. White Co*., 262 NLRB 575, 576, (1982), that distribution inexpensive pieces of campaign propaganda such as buttons, stickers, or T-shirts is not per se objectionable conduct, the value of the jackets given away here far exceeds that of the items considered in *R. L. White*. Given all the circumstances of this case, we find the Petitioner's distribution of these jackets was objectionable conduct. Accordingly, we shall sustain Objection 1 and set aside the election.

Member Dennis' dissent reads as follows:

> Contrary to my colleagues, I would adopt the Regional Director's finding that the Petitioner did not engage in objectionable conduct by giving employees jackets with union insignia. Applying the objective ''tendency-to-influence test'' set forth in Board and court precedent,[1] cannot find that a $16 union jacket is of sufficient value to create in the recipient a feeling of obligation to favor the Petitioner in the election. Rather, I would find that the Petitioner's conduct here was comparable to that of the employer in *R. L. White Co*., 262 NLRB 575, 576 (1982), where the distribution of company T-shirts was found to be permissible.[2] The Board correctly recognized in *R. L. White* that the distribution of inexpensive pieces of campaign propaganda is commonplace in NLRB elections. I decline my colleagues' invitation to begin regulating such innocuous conduct.

[47] The fact that the stickers, whatever they were, obviously covered only a portion of the printed material, thereby precluding a reader from making sense out of what was left of that portion of the printed material, would lead a reasonable person to conclude that they were not part of the official notice but rather were a defacement.

[48] The case decided by Members Fanning, Jenkins, and Zimmerman.

[1] See, e.g., *Gulf States Canners*, 242 NLRB 1326 (1979), and cases cited therein, enfd. 634 F.2d 215 (5th Cir. 1981). Because the test is an objective one, my colleagues' reliance on the subjective reaction of one employee is erroneous.

[2] My colleagues also regard as significant the $400 total value of the Petitioner's gifts to employees. In *R. L. White*, however, the employer distributed 468 T-shirts (262 NLRB at 588), and therefore the two cases cannot be distinguished on that ground.

The court in *NLRB v. Schrader's, Inc*., supra at 198, stated as follows:

> Furthermore, we are confused by the agency's internal fussing over whether these hats and shirts may have cost a few pennies more or less than the jackets in *Owens-Illinois*. Manifestly, precise monetary measure

> of value was not the question in *Owens-Illinois*, and it should not be the question in this case. The inquiry, as it is relevant to a charge of improper electioneering, concerns the potential of the gifts to influence voting decisions: Are the articles sufficiently valuable and desirable in the eyes of the person to whom they are offered to have the potential to influence that person's vote? Although workers may be willing to accept campaign buttons and bumper stickers to show support for a union, those articles have little potential to ''purchase'' or otherwise unduly influence a vote, especially when contrasted with attractive ball caps, T-shirts, and jackets. Viewed in this context, there is no meaningful distinction between the apparel offered in *Owens-Illinois* and the apparel [10 T-shirts and 10 hats] offered in this case.

Here, the obvious purpose of items such as T-shirts and caps which have the same prounion message printed on them or the Union's insignia imprinted thereon is to indicate that the wearer supports the Union. Sometimes such paraphernalia has a message, i.e., ''VOTE YES.'' It is advertising for a specific purpose. The wearers are wearing cloth billboards. They are declaring to fellow employees and, as is the case here, to management ''I support the Union.''[49] The more people wear these billboards advertising their support of the Union, the more likely that some who are undecided may vote for the Union. As noted above, this message was not lost on Miller. He made note of the fact that employees wore union T-shirts on the day of the election and he went after two of them, Monroe and Linder. Here, it does not appear that the cloth billboards given out at the day of the election influenced the outcome of the election. As noted above, one of Respondent's supervisors told Monroe that Miller estimated before the election that Respondent was going to lose by five votes. Respondent lost by five votes. The Board has never concluded that union T-shirts or baseball type caps are valuable enough to influence a vote.[50] I am bound to follow Board law. Moreover, here, unlike *Owens-Illinois*, supra, and *Schrader's, Inc*., supra, since the items were given away during the preelection campaign[51] and not just on the election day itself, they should not have appeared to the electorate to be a reward for those who voted for the Petitioner and as an inducement for those who had not yet voted to do so in the Petitioner's favor.

And Wells' fourth heading is that the cumulative effect of the objectionable conduct by the Union, its agents, and its supporters rendered a free and fair election impossible. Wells points out that the Sixth Circuit Court of Appeals has noted that ''[o]ur court has repeatedly emphasized the intensified effect of threats and violence in a small unit, particularly where the election results are close.'' *John M. Horn Lumber Co. v. NLRB*, 859 F.2d 1242, 1244 (6th Cir. 1988). On the last page of its brief Wells argues ''Steve Linder and Mike Shepherd made threats involving at least six employees.'' On its face, this assertion would appear to mean that a total of at least six employees was collectively the objects of Linder's and Shepherd's alleged threats. On the record made here, only three employees, Daly, Shaw, and Sullenberger, were allegedly the objects, collectively, of Linder's and Shepherd's alleged threats. Wells' assertion on brief doubles this number. Perhaps Wells, in making this assertion, is also counting Linder, Shepherd, and Hess.[52] If that is the case perhaps Wells would have been well advised to explain the basis of its representation so that the reader would not be mislead. In any case, as noted above I do not credit Hess' and Daly's testimony regarding the alleged threats and even if Daly's testimony were credited, this isolated telephone threat was anonymous.

All of Wells' objections are overruled.[53] It has not demonstrated that there is sufficient grounds for setting the election aside.

CONCLUSIONS OF LAW

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

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

3. By maintaining an unlawful no-solicitation, no-distribution rule, the Respondent violated Section 8(a)(1) of the Act.

4. By disparately applying its bulletin board policy to prohibit the posting of union literature and by unlawfully removing union literature from the employee bulletin board, the Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees that their wages and benefits would be frozen if the employees selected the Union as their bargaining representative, the Respondent violated Section 8(a)(1) of the Act.

6. By impliedly promising an employee increased benefits and improved terms and conditions of employment if he refrained from selecting the Union as his bargaining representative, the Respondent violated Section 8(a)(1) of the Act.

7. By giving the impression that an employees' union activities were under surveillance, the Respondent violated Section 8(a)(1) of the Act.

---

[49] Undoubtedly some may view a T-shirt as just another shirt that they can wear to work.

[50] Whether an employee is represented by a union can have a significant impact on his or her working situtation. It is difficult to believe, assuming arguendo that items such as a union T-shirt or cap have an intrinsic value sufficient to necessitate treating them differently than other types of campaign propaganda, that an individual would make his or her decision based on the receipt of a trinket—a T-shirt or cap with union writing and/or an insignia on it.

[51] Shepherd testified that the union T-shirts were given to people at union meetings before the election and that anyone at the union meetings would just take the T-shirts which were laid out for them. Monroe testified that he got his union T-shirt and union cap at a union meeting a week or two before the election; that the T-shirts were in boxes; and that Hamons, told those present at the meeting that they could take a T-shirt if they wanted one. Linder testified that he received his union T-shirt and cap at a union meeting and that ''[t]hey were laying on a table and you would take one if you wanted one. I needed a work shirt because they get pretty dirty where I worked at, so I just grabbed one of them.'' This testimony of these three witnesses is credited.

[52] Or perhaps Wells was referring to some combination of those who allegedly overheard Linder's alleged threats or allegedly were told about the alleged threat of Daly over the telephone.

[53] Wells does not treat its original Objection 8 in its brief. Assuming arguendo that two of Wells' employees, who were working, were asked to sign union authorization cards by other employees of Wells, this would not be grounds for setting an election aside.

8. By coercively interrogating an employee concerning his union sympathies, the Respondent violated Section 8(a)(1) of the Act.

9. By discharging Stephen Linder, Michael Shepherd, and Connie Murphy, the Respondent violated Section 8(a)(1) and (3) of the Act.

10. The following employees of Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

> All production and maintenance employees, including quality control, shipping, group leaders, purchasing-inventory control clerk, production scheduler, engineering specialist-draftsperson, and QSP clerk, at the Employer's Sidney, Ohio facility, excluding manpower temporary employees, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

11. By making specified unilateral changes in May and June 1992 in the wages, hours, and other terms and conditions of employment of the involved unit without prior notice to the Union and without affording the Union an opportunity to bargain, the Respondent violated Section 8(a)(1) and (5) of the Act.

12. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Objections in Case 9–RC–15953

It having been established here that the Respondent has not shown sufficient reason warranting the setting aside of the election held on November 14, 1991, I recommend that Respondent's objections be overruled. Since the Union received a clear majority of the ballots cast in the election, I recommend that the Board certify the Union as the exclusive bargaining representative of the employees in the above-described unit.

The Remedy

Having found that Respondent has engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent discharged Stephen Linder, Michael Shepherd, and Connie Murphy in violation of Section 8(a)(1) and (3) of the Act, it is recommended that Respondent offer Stephen Linder, Michael Shepherd, and Connie Murphy immediate and full reinstatement to their former jobs or, if that those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of the discrimination against them by payment to them of a sum of money equal to that which they would have earned as wages during the period from the date of their discharge to the date on which Respondent offers reinstatement less net earnings, if any, during said period with interest as computed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[54]

I shall also recommend that Respondent be required to remove from its files any reference to the discharges of Stephen Linder, Michael Shepherd, and Connie Murphy and notify them in writing that this has been done and that evidence of their discharges will not be used as a basis for future personnel action against them.

With respect to the unilateral changes made by Respondent, I shall also recommend to the Board that the Respondent at the Union's request, return to the status quo ante which was in effect prior to the Respondent's implementation of such unilateral changes, with regard to the rates of pay, wages, hours, and other terms and conditions of employment, and that Respondent reimburse the involved employees for any monetary losses they may have suffered as a result of Respondent's unilateral changes, with interest thereon to be computed in the manner prescribed in *New Horizons* (see generally *Isis Plumbing & Heating Co*., 138 NLRB 716 (1962)), and continue such payments until such time as Respondent negotiates in good faith with the Union or to impasse.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[55]

ORDER

The Respondent, Wells Aluminum Corporation, Sidney Division, Sidney, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an unlawful no-solicitation, no-distribution rule.

(b) Disparately applying its bulletin board policy to prohibit the posting of union literature and unlawfully removing union literature from the employee bulletin board.

(c) Threatening employees that their wages and benefits would be frozen if the employees selected the Union as their bargaining representative.

(d) Impliedly promising an employee increased benefits and improved terms and conditions of employment if he refrained from selecting the Union as his bargaining representative.

(e) Giving the impression that an employee's union activities were under surveillance.

(f) Coercively interrogating an employee concerning his union sympathies.

(g) Discharging employees because the employees assisted the Union and engaged in concerted activities.

(h) Making specified unilateral changes in the wages, hours, and other terms and conditions of employment of the involved unit without prior notice to the Union and without affording the Union an opportunity to bargain. The appropriate unit is:

---

[54] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set forth in the 1986 amendment to 26 U.S.C. § 6621.

[55] 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.

All production and maintenance employees, including quality control, shipping, group leaders, purchasing-inventory control clerk, production scheduler, engineering specialist-draftsperson, and QSP clerk, at the Employer's Sidney, Ohio facility, excluding manpower temporary employees, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

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

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

(a) Offer Stephen Linder, Michael Shepherd, and Connie Murphy immediate and full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges and notify Stephen Linder, Michael Shepherd, and Connie Murphy in writing that this has been done and that the discharges will not be used against them in any way.

(c) On the Union's request restore the status quo ante which existed prior to the implementation of the unilateral changes made by Respondent with regard to the rates of pay, wages, hours, and other terms and conditions of employment in the unit described above, and reimburse the employees in the unit, or former employees in the unit, for any monetary losses they may have suffered as a result of Respondent's unilateral changes, with interest thereon to be computed in the manner set forth in the remedy section of this decision, and continue such payments until such time as Respondent negotiates in good faith with the Union or to impasse.

(d) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees of Respondent in the bargaining unit described above, and embody in a signed agreement any understanding which may be reached.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Sidney, Ohio, copies of the attached notice marked ''Appendix.''[56] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

IT IS ALSO ORDERED that the objections in Case 9–RC–15953 be overruled, the election held on November 14, 1991, be validated, and the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW be certified as the exclusive representative of all the employees in the appropriate unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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 maintain an unlawful no-solicitation, no-distribution rule.

WE WILL NOT disparately apply our bulletin board policy to prohibit the posting of union literature and unlawfully remove literature from the employee bulletin board.

WE WILL NOT threaten you that your wages and benefits would be frozen if you select the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as your bargaining representative.

WE WILL NOT impliedly promise you increased benefits and improved terms and conditions of employment if you refrain from selecting the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as your bargaining representative.

WE WILL NOT give the impression that your union activities are under surveillance.

WE WILL NOT coercively interrogate you concerning you concerning your union sympathies.

WE WILL NOT discharge you because you assisted the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW or any other union and engage in concerted activities.

WE WILL NOT make changes in the wages, hours, and other terms and conditions of your employment without prior notice to the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and without affording the Union an opportunity to bargain. The appropriate unit is:

All production and maintenance employees, including quality control, shipping, group leaders, purchasing-inventory control clerk, production scheduler, engineering

[56] 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.''

specialist-draftsperson, and QSP clerk, at the Employer's Sidney, Ohio facility, excluding manpower temporary employees, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

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

WE WILL offer Stephen Linder, Michael Shepherd, and Connie Murphy immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings or other benefits suffered as a result of our discrimination against them.

WE WILL notify Stephen Linder, Michael Shepherd, and Connie Murphy in writing that we have removed from our files any reference to their unlawful discharges and that the discharges will not be used against him in any way.

WE WILL on the request of the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW restore the status quo ante which existed prior to the implementation of the unilateral changes made by us with regard to the rates of pay, wages, hours, and other terms and conditions of employment in the unit described above, and reimburse you or former employees in the unit, for any monetary losses they may have suffered as a result of our unilateral changes, with interest, and continue such payments until such time as we negotiates in good faith with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW or to impasse.

WE WILL recognize and, on request, bargain with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW as the exclusive collective-bargaining representative of the employees in the bargaining unit described above, and embody in a signed agreement any understanding which may be reached.

WELLS ALUMINUM CORPORATION, SIDNEY DIVISION