

Yukon Manufacturing Company and Teresa Stockford and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Cases 7-CA-29346, 7-CA-29455, 7-CA-29498, 7-CA-29677, 7-CA-30024, 7-CA-30146, and 7-RC-19061

February 4, 1993

DECISION, ORDER, AND CERTIFICATION
OF REPRESENTATIVE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 19, 1991, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party Union filed an answering 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 exceptions¹ and briefs and has decided to affirm the judge's rulings, findings,² and conclusions,³ to modify his remedy,⁴ and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as

¹ There are no exceptions to, inter alia, the judge's finding, near the end of sec. II,B,1 of his decision, that the no-solicitation rule quoted in complaint par. 17(b) (and set out earlier in the judge's decision) violates Sec. 8(a)(1) because it is not limited to working areas.

² 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ In adopting the judge's findings in his discussion of the Employer's Objections 1-4 that the remarks of employees William Allen and Tom Hunnaman to employee Betty Turner and of then-unit employee Jim Wilkinson to employee Wesley Pauley did not constitute objectionable conduct, we do not rely on the judge's conclusion that these remarks concerned events that were too remote in time and possibility from the holding of the election to constitute objectionable conduct. Nevertheless, we find that the statements made by these three employees did not create an atmosphere of fear and coercion sufficient to warrant setting aside the election.

Further, even considering the totality of the credited evidence that the Respondent presented to support its election objections, we do not find that this conduct rises to the level that is sufficient to warrant setting aside the election.

We affirm the judge's conclusion that employee Robert Belknap did not engage in objectionable conduct when, according to the testimony of the Respondent's corporate secretary, Judy Bowerman, he walked along a line of employees waiting to vote and "talked to everybody." In reaching this result, we do not rely on the judge's finding that "Bowerman's testimony only that Belknap walked down the

modified below, and orders that the Respondent, Yukon Manufacturing Company, Litchfield, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Delete paragraph 2(k) from the recommended Order, and renumber paragraph 2(l) as 2(k).

CERTIFICATION OF REPRESENTATIVE

It is ordered that a majority of the valid ballots have been cast for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and that it is the exclusive collective-bargaining representative of the employees in the unit found appropriate.

voting line is no evidence of electioneering at all." As seen, Bowerman testified, without contradiction, and consistent with Belknap's own testimony, that Belknap not only walked down the line of voters, but that he also spoke to them. Rather, in affirming the judge's recommended overruling of this objection, we rely on (1) the absence of evidence sufficient to establish that Belknap was acting as an agent of the Union and, in any event, (2) the judge's finding, based on Belknap's credited testimony, that he said nothing more than "hi" or "good luck" to the employees waiting in line to vote.

⁴ Contrary to the judge, we shall not require the Respondent to mail a signed copy of the notice to all employees, past and present, whom it employed during the relevant period here. See *Batavia Nursing Inn*, 275 NLRB 886, 892 (1985).

Charles F. Morris, Esq., for the General Counsel.
Shelly K. Coe, Esq., of Walled Lake, Michigan, for the Respondent.
Ellen F. Moss, Esq., of Southfield, Michigan, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This matter under the National Labor Relations Act (the Act) was tried before me on eight dates between April 30 and May 16, 1990, at Coldwater, Michigan. The case originated with unfair labor practice charges that were filed by Teresa Stockford, an individual, and by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), against Yukon Manufacturing Company (the Respondent or the Employer). Stockford filed the charge in Case 7-CA-29346 on June 8, 1989.¹ The Union filed all the other charges on the following dates: Case 7-CA-29455, July 11; Case 7-CA-29498, July 24; Case 7-CA-29677, September 12; Case 7-CA-30024, December 15; and Case 7-CA-30146, January 24. Pursuant to a petition for election that was filed by the Union on August 11, in Case 7-RC-19061 (the representation case), an election among the Employer's approximately 127 production and maintenance employees was conducted by the Board on October 20. The Union received a majority of the valid ballots cast, but the Employer timely filed objections to conduct affecting the re-

¹ All dates are between January 27, 1989, and January 26, 1990, unless otherwise indicated.

sults of the election. On February 13, 1990, the General Counsel issued an order consolidating the representation case with all the charges and all the complaints which had issued on those charges (the complaint). Respondent filed answers admitting jurisdiction before the Board, but denying the commission of any unfair labor practices.

On the entire record,² and my observation of the demeanor of the witnesses, and on consideration of the briefs which have been filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

As Respondent admits and I find and conclude that Respondent is a corporation with office and facilities located in Litchfield, Michigan, and is engaged in the manufacture and nonretail sale and distribution of automotive parts and related products during the calendar year preceding issuance of the complaint Respondent, in the course and conduct of the business operations, caused to be manufactured, sold, and distributed from its Litchfield facilities products valued in excess of \$50,000 to Chrysler Corporation which annually ships from its Michigan facilities goods valued in excess of \$50,000 directly to purchasers located at points outside Michigan. Therefore, Respondent is an employer 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. ALLEGED UNFAIR LABOR PRACTICES AND UNDERLYING REPRESENTATION CASE

Respondent's principal products are racks that are used by automobile manufacturers to support automobile chassis during assembly. Individuals who were supervisors or agents within Section 2(11) or (13) at various relevant times discussed infra are:

Edward Bowerman	President
Judy Bowerman	Corporate Secretary
Ernie Harman	Plant Manager
Richard Barnett	General Foreman—Welding
Richard Paille	Controller and Office Manager
Robin Boudrie	Second Shift Foreman
Scott Bowerman	Engineer/Foreman—Tool and Die
Tom Veatch	Foreman—Welding (Line 2)
Joe Edwards	Foreman—Welding (Line 2)
Bob Bailey	Foreman—Welding (Line 1)
Ron Truitt	Foreman—Welding (Back Line)
Frank Estel	Foreman—Pressman
Craig Dirling	Foreman—Assembly
Jim Wilkinson	Foreman—Inventory
Fred Walls	Foreman—Maintenance

Judy Bowerman is Edward Bowerman's wife; Scott Bowerman is his son.

The issue in the representation case is whether the conduct of certain employees destroyed the laboratory conditions that are required by the Board before results, or a representative,

will be certified. The issues in the unfair labor practice case are whether Respondent, by certain of its abovenamed supervisors/agents: (1) violated Section 8(a)(1) of the Act by conduct such as interrogating and threatening employees, promising or granting benefits, giving employees the impression of surveillance, conducting surveillance, establishing and enforcing overly broad no-solicitation and nondistribution rules, and laying off employees because another employee had filed charges under the Act; (2) violated Section 8(a)(2) by dominating and interfering with the formation or administration of a labor organization (the Employee Committee) and contributing financial or other support to it; (3) violated Section 8(a)(3) by laying off employees (on June 8, December 12 and 22, and January 12), by failing to recall employees from the layoffs of June 8, December 12 and 22, and January 12, by imposing and enforcing more onerous work rules, by eliminating a perfect attendance bonus program, and by discharging employee Thomas McClughen; and (4) violated Section 8(a)(5) by certain unilateral conduct after the October 20 election including effectuating of the above-mentioned layoffs, implementing a disciplinary "point system" of absence control and disciplining employees under that system, and implementing a disciplinary drug-testing program.

Because the 8(a)(5) allegations are necessarily dependent on the representation case, that matter will be considered first.

A. The Representation Case

As reflected by the official tally of ballots, the vote at the October 20 election was 59 for the Union and 49 against, with 11 challenged ballots. On December 20, by order of that date, the Board sustained the challenges to two of the ballots, making the other nine nondeterminative. Therefore, unless the Employer's objections to conduct affecting the results of the election are sustained, the Board, under Section 9(a) of the Act, will certify the Union as the collective-bargaining representative of the Employer's production and maintenance employees. (The complete unit description is set forth below in the Conclusions of Law section.)

The Employer's objections are based on employee conduct; to wit:

1. Threatening and coercing employees with reprisals if they did not vote for the Petitioner at the scheduled election, including threats of bodily harm and property damage.

2. Threatening and coercing employees with unequal, different, unfair and discriminatory representation if they did not vote for the Petitioner at the scheduled election.

3. Threatening and coercing employees with unusual, different, unfair and discriminatory representation on the basis of unlawful criteria.

4. Harassing, interfering, restraining and coercing employees in the performance of their duties because said employees stated [that] they did not want Petitioner as their collective-bargaining representative. Regardless of whether the foregoing conduct is legally attributable to an officer, agent, representative or lesser functionary of the Petitioner, it created a general atmosphere among the eligible employers of confusion and

²I have, sua sponte, corrected many errors in the record.

fear of reprisal for failing to vote for or to support the Petitioner.

5. Offer[ing] promises and granting waiver[s] of, and/or reduction in, initiation fees to [the] eligible employees contingent upon joining the Petitioner prior to the election.

6. Engaging in electioneering and prolonged conversation with voters waiting in line to cast ballots in the polling place.³

Much of the alleged conduct that is the subject of the objections was done by employees who were designated by the Union as members of its in-plant organizing committee.⁴ There is no contention, or evidence, that the Union in any manner fostered, encouraged, or condoned any of the conduct alleged to have constituted interference with the election. The Employer contends that the organizing committee members, solely because they were organizing committee members, were statutory agents of the Union. Alternatively, the Employer contends that even if the organizing committee members were not agents of the Union their conduct and the conduct of two employees who were not members of the organizing committee (Tom Hunnaman and Jim Wilkinson) created an atmosphere which made a fair election impossible.

The Union first assigned International Representative Don Spillman to the organizational attempt. Spillman conducted election campaign meeting of employees at various public places in the Litchfield area on May 19 and 31 and June 6. International Representative Betty Harrison took over the assignment about July 1; Harrison conducted employee meetings on July 5, 17, 13, and 25; August 1, 7, 17, 22, and 31; September 7 and 19; and October 17.

At each of the meetings, the Union made available sheets of paper that employees could sign to be designated as members of its organizing committee. Following the meetings, the Union, by letter or by telephone, or by both, notified the Employer which employees, then to date, were members of the organizing committee. Ultimately, 43 employees were made members of the organizing committee. Some of the organizing committee members distributed union authorization cards, some distributed literature, and some talked to other employees about joining or supporting the Union; some did all of those things, some did some of those things, and others did none of those things.

The Employer argues that each act of campaigning by members of the organizing committee were actions by agents on behalf of a principal, the Union.

There is no evidence that any designation of an employee as an organizing committee member was effective for any purpose beyond a predicate for charging the Employer with knowledge of the employee's union activities. Moreover, there is no authority for the proposition that members of in-plant organizing committees are per se agents of the Union

³Numbering, and sometimes verb tenses, supplied.

⁴In this decision, the Union's in-plant organizing committee will be referred to as "the organizing committee." This reference is to be distinguished from "The Employee Committee" which, as I find here, is a labor organization (otherwise nameless) that was established by the Respondent in violation of Sec. 8(a)(2) of the Act.

that appoints them,⁵ and I would not attempt to create such authority here. However, I need not decide the issue because of my finding here, as I do, that the employees did not engage in the conduct attributed to them which, if somehow attributable to the Union, would require the setting aside of the October 20 election.

Undisputed facts relevant to these objections, and testimony of the Employer and union witnesses, and the necessary credibility resolutions, are as follows:

1. Objections 1 through 4

Rick Miller, a supervisor at time of trial but a forklift driver in 1989, testified that on the day before the election employees Thomas McClughen and Gary Dubois approached him and asked how he intended to vote. When Miller replied that it was none of their business, they asked Miller where he lived. Miller told them that that was none of their business either. Then, according to Miller, McClughen "said not to worry; the Union's got your address." Miller testified that he responded by saying "that if there was any trouble, I'd handle it myself, to leave my family alone." Miller further testified that about an hour later he met employee Kurt Loomis in a welding area:

And he asked me how I was going to vote and [I] told him it was none of his business and he wanted to know where I lived and I said, don't worry; I'm moving. And he wanted to know where and I just said out there and then I went to my supervisor and told him about it, which is Ron Truitt.⁶

Miller testified that he believed that there were other employees in the area when he was approached by McClughen and Dubois; he first testified that he did not know if they heard anything that McClughen and Dubois said, then Miller) stated that he was "pretty sure" other employees did hear McClughen and Dubois because McClughen raised his voice when he stated that the Union had his address. Miller did not testify that any other employees were present, or could have heard, when Loomis questioned him. Miller testified that he discussed the statements by McClughen and Loomis with no other employees.

Dubois and McClughen denied saying anything to Miller before the election, and they specifically denied the questions and remarks attributed to them by Miller. Loomis was not called to testify.

I believe Miller's testimony, and credit it accordingly. However, the testimony falls far short of the kind of serious threats of harm to body or property which have been found to constitute objectionable conduct in other cases.⁷ Indeed, Dubois and McClughen threatened to do nothing. Moreover, there was no dissemination of the purported threat; Miller admitted that he told no other employees about the incidents, and his testimony that he was "pretty sure" that other em-

⁵To hold such in this case would mean that approximately 35 percent of the employees in the bargaining unit were agents of the Union.

⁶Punctuation of this and most other long quotes is supplied.

⁷Cf. *Steak House Meat Co.*, 206 NLRB 28 (1973), in which the Board recognized that threats of bodily harm, even when made by nonparties and directed at only one voter, may create a "general atmosphere of fear and coercion" which will invalidate an election.

ployees would have heard McClughen is not probative evidence of any degree of dissemination. Therefore, this “threat” (standing alone or in conjunction with anything else found to have occurred here) cannot reasonably be said to have created any element of a general atmosphere of coercion that would affect the fairness of the election.

Employee Eugene Hasbrouck testified that during the week before the election, at a time when he was wearing a “Vote No” button, he was approached by a male employee whom Hasbrouck could not identify. According to Hasbrouck, the other employee remarked, “Oh, I see you want your legs broke too.” Hasbrouck replied, “If you think you can do it, try it.” Hasbrouck testified that no one else was within earshot of this exchange, but he did tell one other employee about it.

There is nothing in Hasbrouck’s testimony to indicate that the threat of leg-breaking had anything to do with the “Vote No” button that he was wearing at the time and, without more, I decline to draw the inference. However, assuming that there was a threat that was premised on Hasbrouck’s nonunion sympathies, there is no evidence of involvement by the Union, or even any involvement by any member of the organizing committee, and, even if there were such evidence, Hasbrouck’s telling only one employee of the threat is not probative evidence of dissemination,⁸ and there could have been no substantial impact on the election because of the threat.

During the several weeks before the election, Michael Grubbs worked as a welder on line 3. Grubbs testified that on October 18 the Employer showed a movie which attempted to persuade the employees to vote against the Union. In the movie, further according to Grubbs, there was depiction of a truck being blown up. Grubbs testified that immediately after the movie, at a time when Grubbs was wearing a “Vote No” button, from a distance of about 20 feet, “employee Craig Hays said he was going to blow my truck up just like the one in the movie.” Grubbs then owned a new pickup truck. When asked if he told anyone about the threat, Grubbs testified that he told then Foreman Ed Dooley about it. On cross-examination, Grubbs was asked if Hays had not immediately apologized; Grubbs responded that Hays did apologize, but not until after the election.

The Union called Ronald Truitt who is no longer employed by the Employer. Truitt testified that before the election Grubbs and Hayes worked under his supervision on welding line 3. Truitt testified that it was “quite a while before the election” that the movie in question was shown to the employees. Truitt testified that immediately after the movie Grubbs reported the Hays incident to him. Truitt took Grubbs out on to the welding floor and spoke to Hays about what Grubbs had reported. According to Truitt, Hays apologized and “said he was sorry; he was just joking,” and the men shook hands.

Hays, who was still employed by the Employer at the time of trial, testified that it was 2 weeks before the election that the Employer showed the employees a movie that depicted bad things that could happen if a union was voted into a

⁸At trial Hasbrouck made it clear that he had contemplated with relish a physical confrontation with the individual who had threatened him. Any dissemination of the threat assuredly would have included that attitude.

plant. At one point in the movie, an actor came rushing onto the scenes and reported to others that a truck had been blown up in the parking lot.⁹

Hays testified that the employees in the welding shop had been brought in in groups of 10 to the movie by Truitt. After his group saw the movie and had returned to the shop:

[W]e was all joking around in the back and Mike Grubbs had these “No” buttons on [him] and I said, “we might blow up your truck, Mike.” and we was chuckling and laughing. I mostly said it—it was being sarcastic because I was making fun of the movie.

Hays testified that after lunch that day another employee told him that Grubbs was upset because he thought Hays had been serious. Hays then went to Grubbs and “I told him that I didn’t want him to feel like I was going to be any kind of a threat to him or that I was going to hurt him or harm him in any way.” Grubbs responded, “Okay, I knew you was just joking.” Hays further testified that it was after this that he was approached by Truitt and told he should apologize to Grubbs. Hays testified that he apologized again.

A second alleged threat by Hays was testified to by Edward Dogley, who described himself as a “substitute foreman” and class A welder.¹⁰ Dooley testified that it was during the week of the election that the movie was shown and that, afterward, on welding line 3, Hays “was running off at the mouth threatening to blow up my truck.” Dooley was asked to be more specific:

Q. Do you remember any more specifically than what you’ve already said what Mr. Hays actually said to you?

A. All he just said—there’s another, excuse me, but, goddamn “no” voter. He keeps it up and I’ll blow up his truck too.

Q. Did you make any reply to Mr. Hays?

A. Oh, yes, I just kind of chuckled and said, “Yes, go ahead and blow my truck up; you won’t find it. I don’t drive a truck.”

Dooley, in fact, did not drive a truck.

Hays was asked what he told Dooley, and he testified:

I said “Yeah, you drive a truck too,” because he knew this is after I apologized to Mike Grubbs, and I said, “Yeah, you drive a truck too. And I’ll blow your truck up too.” And I laughed and he said, “Well, I’ll slit your tires on your car,” and just back and forth. It was just, we was all making fun of the movie because we was, as far as I’m concerned, we were treated like elementary kids.

Dooley was not recalled and asked if Hays was laughing when he made his comment; nor was he recalled to deny that

⁹Some employees testified that the movie showed the actual explosion of a truck; others testified that an actor only reported an explosion.

¹⁰At the October 20 election, Dooley was challenged by the Union as a supervisor. His ballot was ultimately ruled nondeterminative, and I need not determine just when he was, and was not, a supervisor here in view of other findings.

he responded that he would slit Hays' tires; and I credit Hays' testimony to that effect.

The Employer's objection to the "threats" by Hays is premised on conduct that it had fomented. It was the Employer, not the Union or any employee acting on the Union's behalf, that had introduced the prospect of violence. It did so by presenting a movie which showed, or described, a truck being blown up. All the employees knew this, and the Employer's presentation must have appeared as an absurdity to them. Sarcasm would naturally have been induced. For this reason, I fully believe that Hays was being sarcastic toward Grubbs and Dooley, and any reasonable employee would have known it.

Even if Grubbs did not recognize Hays' sarcasm, and even if Grubbs did not have reason to believe that Hays was being sarcastic, Hays apologized, on the same day,¹¹ twice, and told Grubbs that he had nothing to fear. Therefore, to the extent there could have been a threat, there was a clear and unequivocal immediate retraction.

In the case of the Hays-Dooley exchange, the sarcasm was necessarily obvious to Dooley. As he testified, he "chuckled" as he replied that he would respond with violence of his own. In these circumstances, there cannot be said to have been a threat (or an exchange of threats).

Accordingly, I find and conclude that there occurred no objectionable conduct in Hays' alleged threats.

Paint line employee Betty Turner testified to several incidents which the Employer alleges as objectionable conduct.

Turner testified that about 1 month before the election employee Glidden Wallen attempted to get her to sign a card and, in doing so, stated that those who did not "was not going to be working there." Wallen testified, but not on this point; therefore, I accept Turner's testimony as true. However, there is no element of a threat in Wallen's solicitation, and no basis for an objection to the election.

Turner testified that early in the week of October 20, as she walked through a work area, Craig Hays yelled "traitor" at her. Then, according to Turner, "he picked up his leg to kick me, and I moved out of the way, and I said, 'How can I be a traitor when I was never for the Union?'"

Hays testified that he once did ask Turner if she was a traitor; he testified that he did so because during the week before Turner had worn a UAW T-shirt. Hays denied that he attempted to kick Turner.

I credit Hays' denial that he attempted to kick Turner as she walked through the work area. Moreover, I find Turner's testimony that Hays "picked up his leg to kick me" insufficient, in any event, to prove that Hays' action would have put any reasonable employee in fear of assault. Hays' conduct of telling Turner that she was a traitor, or asking her if she was a traitor, cannot be considered objectionable conduct on any account.

Turner testified that during the week before the election, the Employer showed a movie in which an actor had stated that his truck had been blown up. After the movie, the Employer entertained questions. Ed Bowerman Jr. was there and, according to Turner:

[It] was a movie about a strike, and I asked him if people that wanted to work, if there was a strike,¹² if they could come in and go to work, and he said, "Yes." And I said, "Will you protect us?" and he said, "Yes." And [employee Tom] Hunnaman sat there and he said, "you could just get that nice looking Mustang you got blown up."

I asked Tom, I said, "are you threatening to blow up my Mustang," and he just grinned.

Turner's husband did own a Mustang automobile at the time.

Hunnaman, who was not a member of the organizing committee,¹³ did not testify; and, while I am suspicious about Turner's testimony, I must credit it as undenied. However, predictions of what could happen in the case of an event remote in time and possibility, such as a future strike, cannot be held to constitute conduct likely to affect the results of a Board election. *Great Atlantic & Pacific Tea Co.*, 177 NLRB 942 (1969).

Turner also testified that during the week of the election when some employees were eating lunch they discussed the possibility of a strike. According to Turner, she told the group that she was hired to work and would continue to work in the event of a strike. According to Turner, employee William Allen then "informed me that I could end up sick on my way to work."

Under the circumstances, it is equally inferable that Allen was suggesting that Turner could report sick, rather than report for work as she had been hired to do, in the event of a strike. However, I need not decide. Assuming that Allen was referring to circumstances that could befall an employee who worked in defiance of a union-called strike, the "threat," if any, was too remote and vague in reference to have an impact on the election processes. See *Great Atlantic & Pacific Tea Co.*, supra.

Finally, Turner testified that, on the day of the election, she approached Dubois and McClughen and asked them why they were spreading rumors that she was making more money than any other employee. Turner became quite agitated as she testified on this point, and her testimony is not clear as to what Dubois and McClughen are supposed to have said in reply, except that Turner was clear that McClughen said that Turner had no friends among the employees.

It is to be noted that antiunion employee Turner approached prounion employees Dubois and McClughen, and that she started the argument; it was not the other way around. Moreover, whatever else McClughen and Dubois are supposed to have said to Turner, it was in the context of the three employees' having "kept arguing," according to Turner. Free argument, even if it becomes mean-spirited, is not objectionable conduct.¹⁴

Employee Wesley Pauley testified that during the week before the election he engaged in a conversation with employees Mike Byrd and Mike Fields in the maintenance shop. Jim Wilkinson, who was a supervisor at the time of trial, but a laborer at the time in question, was present and could have

¹² Tr. 173, L. 22 is corrected to change "truck" to "strike."

¹³ A threat that a violent strike would ensue if a union wins a Board election would hardly encourage a "yes" vote.

¹⁴ This applies to all other incidents of petty bickering and name-calling described by Turner but not discussed here.

¹¹ I credit former employee/supervisor Truitt and Hays over Grubbs, who was ready to leave the stand without mentioning any apology at all.

heard the conversation. According to Pauley, he, Byrd, and Fields discussed “if there was a strike had occurred, if we would or would not cross the picket line.” Pauley did not testify about that any of the three employees had said among themselves whether they would cross such a picket line. Pauley did testify that as he was leaving the shop, Wilkinson said to him that “he’d blow my f—king tires off period, quote, unquote.” according to Pauley, he snickered at Wilkinson’s remark and Byrd and Fields “thought it was rather funny also.”

Wilkinson was called in Respondent’s case and questioned on direct examination about other matters, but he was not asked about this incident. On cross-examination, he stated that he was “for” the Union at the time of the election, but he did not sign a union authorization card, or wear a union button, or attend union meetings, and he was not a member of the organizing committee.

There is no evidence as to what Pauley, Fields, or Byrd stated about crossing a picket line, and there is no evidence that Wilkinson heard whatever was said, although Pauley testified that Wilkinson could have heard whatever was said. In these circumstances, there is no basis for holding that a threat was premised on any statement by Pauley that he would cross a picket line in the event of a strike. Even if such a threat was made, it was too remote to be said to have an effect on the election and, further, there is no basis for holding the Union responsible for the alleged threat.¹⁵ Finally, Pauley testified that everyone concerned thought the whole thing was “rather funny.” Therefore, no objectionable conduct occurred by Wilkinson’s alleged threat.

Accordingly, I recommend that Objections 1 through 4 be overruled.

2. Objection 5

Offers by unions to waive initiation fees for employees who sign authorization cards before Board elections have been held are unlawful inducements, and therefore objectionable conduct, by the Supreme Court. *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973). In *Davlan Engineering*,¹⁶ the Board held that employees who have been supplied authorization cards by a union, or otherwise are authorized to solicit authorization card signatures for a union, act as agents for that union when conducting such solicitations, and such a union will be held responsible for improper fee waiver representations under *Savair*. However, *Davlan* also clearly states:

A union may avoid responsibility for the improper fee-waiver statements of its solicitors, however, by clearly publicizing a lawful fee-waiver policy in a manner reasonably calculated to reach unit employees before they sign cards. Such publicity may take any number of forms including, for example, an explanation of the fee-waiver policy printed on the authorization card itself. A union that fails to take adequate steps to provide the employees with an explanation of its policy acts at its peril. [Footnote omitted.]

The authorization cards utilized by the Union in the subject campaign state, on the backs of each, in large type:

¹⁵ *Great Atlantic & Pacific Tea Co.*, supra.

¹⁶ 283 NLRB 803 (1987).

It is the policy of the UAW to waive initiation fees for ALL employees who join the union before thirty (30) days after the signing of an initial collective bargaining agreement. [Capitalization in original.]

During the campaign, the Union also circulated four handbills that said the same thing, or plain words to the same effect.

In support of its objection, the Employer produced two witnesses who testified that they were told that an initiation fee would be waived if they signed an authorization card before an election. Employee Joe Post testified that employee Jean Martinez spoke to him about signing a union authorization card. Post first floundered and went to other topics when asked what Martinez had told him. I interrupted him and asked:

Q. That’s all right; you’ve already explained that. Let me ask you this, sir, do you remember anything Ms. Martinez told you about the cards?

A. Okay. Towards the time I—I’m not exactly sure if it was before I signed it or right after I signed it, but was brought up that if, and anybody that had signed a union card, their initiation fee would be waived and at the time that it was brought up there was a hundred dollar initiation fee mentioned.

Q. All right. Who told you that?

A. Jean Martinez did.

Q. Do you know when?

A. It would be, not, you know, I can’t say exactly for sure, but I would say somewhere around the middle to the end of August.

Post signed his union authorization card on August 3, after having received it from employee Bill Allen, not Martinez. Post denied reading the above-quoted statement on the back of his card, and denied reading about the Union’s policy in any of its handbills.

That Post claims that he did not read the language of the card is not a proper predicate for nullifying the Board’s statement in *Davlan* that such language would effectively answer a *Savair* objection.¹⁷ Moreover, Martinez denied mentioning anything about initiation fees to Post, and the testimony of Martinez was clear and convincing, as opposed to the fuzzy ramblings of Post. However, assuming the truth of Post’s testimony, the alleged objectionable statement by Martinez was made after the card was signed, and not in the course of a solicitation. Even if it had been made in the course of a solicitation, there is nothing in Post’s testimony to indicate that Martinez told him that, despite the plain language of the card, he must sign a union authorization card before the election to avoid paying an initiation fee.

To the same effect is the testimony of employee David Chaney who testified that, about a week before the election, in a work area of the plant,¹⁸ employee Boyd Hickerson told him that an initiation fee would be waived if a union author-

¹⁷ In *K.D.I., Inc. v. NLRB*, 829 F.2d 5 (6th Cir. 1987), cited by the Employer, the court found an ambiguous, subsequent statement ineffective to cure a *Savair* objection. Here, there was a clear, simultaneous statement on the cards, themselves, as well as on other circulated matter.

¹⁸ Tr. 71, L. 11 is corrected to change “chicken fixture” to “jig and fixture.”

ization card was signed before the election. Hickerson credibly denied the remark; however, again, the Union's policy was plainly stated on its many handbills, as well as on the cards themselves, and this effort by the Union to comply with *Davlan* cannot be thwarted by an employee's testifying that he did not read such handbills, as did Chaney.

Accordingly, I shall recommend that Employer's Objection 5 be overruled.

3. Objection 6

Corporate secretary Judy Bowerman testified that while the election was being conducted she went to a vending area in the plant to purchase a soda. She testified that when she did so she saw employee Robert Belknap walking away from the polling area, along a line of employees waiting to vote, and he "talked to everybody." Bowerman testified that she watched this for "4 or 5 minutes just to see what was happening" and then went back into the office area. Bowerman acknowledged that she could not hear what Belknap was saying to any of the employees.

Substitute Supervisor Dooley testified that he saw Belknap standing in line at a coffee machine, which was within a few feet of a line of employees waiting to get into the polling area. According to Dooley, "and he was telling some people in the line that the UAW is going to guarantee them \$3 or \$4 more an hour and guarantee their jobs and just that they ought to vote 'yes'; it's the best thing for them."

Belknap testified that after he voted he did walk back up the line of those waiting to get into the polling area, but he denied saying any more that "Hi" or "Good luck."

Bowerman's testimony only that Belknap walked down the voting line is no evidence of electioneering at all. Dooley's account of Belknap's flagrant electioneering was less credible than Belknap's denial; Belknap had a more credible demeanor, and Dooley's testimony was a repetition of, and sounded like a repetition of, a well-worn line that employers often attribute to unions.

Accordingly, I shall recommend that the Employer's Objection 6, as well as all other objections to conduct affecting the results of the election of October 20, be overruled and that the Union be certified as the collective-bargaining representative of the Employer's production and maintenance employees.

B. Complaint Allegations

1. Alleged violations of Section 8(a)(1)

The complaint, at paragraphs 16 and 17, alleges a variety of 8(a)(1) violations.

16 (a). In or about April 1989, Respondent, by its agent Bob Bailey, threatened an employee that if a union came in the owner would shut the plant down.

On April 21, Charging Party Stockford injured her hand and had to go on extensive leave. Stockford testified that before her accident she asked Welding Supervisor Bob Bailey for a seniority list and she told Bailey that the purpose of the list was for use in starting a union organizational attempt. Bailey got the list for Stockford and gave it to her. Stockford testified that when Bailey gave her the list, Bailey told her not to tell anyone because it would get him in trouble and

that "Ed Bowerman would shut the plant down if they had a union started."

Bailey was called by Respondent, but on this issue he was interrogated solely by blatantly leading questions. That is, the lawyer was testifying, and Bailey was repeating "No" on cue. Bailey's responses to these leading questions were not credible "testimony" in any sense. Because, in part, of this leading, Stockford was the more credible witness, and I find and conclude that this allegation of the complaint has been proved.

16(b). In or about April 1989, Respondent, by its agent Tom Veatch, threatened an employee that Respondent would shut the doors if the employees tried to get a union in.

On nice days, the unit employees sometimes eat their lunches in an outdoor area. While she was on medical leave, Stockford sometimes returned to the plant to visit with the employees who ate their lunches outside (including former employee Donald Denmore, Stockford's then-fiancee, and later husband).

Stockford testified that at lunch one day in May she distributed union literature to some employees outside the plant's building. She also placed union fliers under some employees' automobiles' windshields. Stockford testified that as she did so she was approached by Veatch. Veatch asked Stockford what was going on, and she replied that the employees were talking about a union and offered him some of the literature. Veatch took a handbill and stated that he would stay "neutral," but, according to Stockford, Veatch also told her that "the office would shut the doors down if the Union come in." Veatch further told Stockford that the employees "was going to be sorry."

Veatch did not testify; Stockford apparent credible in this testimony; and I find that the allegation has been proved.

16(c). On or about May 1, 1989, Respondent granted a benefit of a \$25.00 perfect attendance bonus to undermine employee support for the Union.

Previous to the organizational effort, the Respondent had an attendance bonus program of granting a coffee cup, a cap, and a jacket after 30, 60, and 180 days, respectively, of perfect attendance. As admitted, in May the Respondent changed its perfect attendance program to a grant of a \$25 bonus for a month's perfect attendance. The only testimony of how the change was announced was by alleged discriminatee Robert Belknap who testified, in conclusionary terms, that Pressroom Foreman Estel announced it to the pressroom employees. Belknap did not testify that Estel, in any way, related the change to the Union's organizational attempt.

The granting of a benefit during an organizational effort, or even during the pending of a petition, is not a per se violation of Section 8(a)(1) of the Act. As stated in *Tonkawa Refining Co.*, 175 NLRB 619 (1969):

We find that the proper test under Section 8(a)(1), as expressed in *NLRB v. Exchange Parts Co.*, [375 U.S. 405], requires a finding that the employer's conferral of employee benefits while a representation election was pending was for the *purpose* of inducing employees to

vote against the union. [Footnotes omitted; emphasis in original.]

Although the record is replete with evidence of other violations by the Respondent, there is no evidence that the \$25 attendance bonus was instituted for any reason other than improving attendance; specifically, there is no evidence that the purpose of the change was to induce employees to vote against the Union or otherwise abandon their support for it. Accordingly, under *Tonkawa Refining*,¹⁹ I shall recommend that this allegation of the complaint be dismissed.

16(d). On or about May 19, 1989, Respondent, by its agent Tom Veatch, coercively interrogated an employee as to what had happened at a union meeting.

Alleged discriminatee McClughen testified that in June, shortly after he attended a union meeting, Veatch approached him at the plant and asked McClughen what had gone on at the meeting. McClughen replied, “[N]othing important.” Veatch told McClughen “you’d better start covering yourself . . . you’d better watch that union stuff; its going to get you into a little problem.”

Because Veatch did not testify, and because I found McClughen credible, I find that this allegation has been proved.

16(e). On or about June 2 and 3, 1989, Respondent, by its agent Richard Paille, created an impression among its employees that their union and concerted activities were under surveillance by Respondent and would continue to be under surveillance by Respondent.

According to Stockford, on or about June 2, Union Organizer Don Spillman called Paille²⁰ on the telephone. As Spillman told Paille, Stockford was on the line listening. (And after Spillman finished speaking to Paille, Stockford got on the line and talked to Paille.) Spillman read to Paille a list of names of employees who had joined the Union’s in-plant organizing committee. During the conversation, Spillman told Paille that the Union had conducted two organizational meetings. Stockford testified that Paille said “that he knew everything [that] was said at that Union meeting; he knew everything that was going on.” Spillman asked Paille how he knew such and Paille replied, “I have my ways of finding out.”

Because Paille did not testify, Stockford’s testimony is undenied, and I find it credible. Because Paille was aware that Stockford was on the line when he stated that he knew what was going on at the union meetings, I conclude that Respondent, by Paille, made a statement to employees conveying the impression of surveillance, as alleged.

¹⁹To be distinguished is the one case cited by the Charging Party. In *Spring City Knitting Co.*, 285 NLRB 426 (1987), the grant of a benefit (early payment of vacation pay) occurred immediately prior to a Board election, a factor relied on by the Board. Here, there is no such element of timing; the petition had not been filed, and there is no other salient event to which the grant can be related.

²⁰In this passage of the transcript, as in many others, Paille is misidentified as “Bailey.” Specific corrections of the transcript are unnecessary as the true identity of Paille is always shown by reference to his position (comptroller), or use of his first name (Richard), or otherwise by the context.

16(f). In or about early June 1989, Respondent, by its agent Richard Paille, implied to employees [a] futility [in] seeking representation by the Union.

Former employee Densmore, who is an alleged discriminatee here, testified that during the last week in May, on the day before a scheduled union meeting, Paille addressed the welders on line 2. According to Densmore, Paille, inter alia, “said he worked with the UAW for 25 years; he said it wouldn’t do any good for you, and he said he’d do anything he can legally to keep it from coming in, even if he had to send spies to the meetings.”

As Paille did not testify, this testimony by Densmore is undenied, and I find that it proven the allegation of the complaint. (The threat to send spies to the union meetings was not separately alleged as a violation, but it should be remembered in considering subsequently discussed allegations.)

16(g). On or about June 3, 1989, Respondent, by its agent Richard Paille, coercively interrogated employees concerning a recent union meeting.

Press operator Boyd Cox testified that in early June, Paille approached him at his work station:

[A]nd he asked how the Union meeting went; I says “better than I expected because it was real nasty weather” He asked what the discussion was about, and I said, “our insurance, more money and Ernie Harman.” And he asked me, he says, “what [do] you think that it would take, you know, to get things without a union?” I said, “insurance, more money and Ernie Harman.”

Plant Manager Harman was not a popular supervisor, at least with some employees.

As Paille did not testify, this testimony by Cox is undenied, and I find that it proves the allegation of the complaint.

16(h). On or about June 6, 1989, Respondent, by its agents Fred Walls, Richard Barnett, Bob Bailey and other supervisors and agents at the Litchfield Youth Center, engaged in surveillance of a meeting of employees engaged in protected concerted activities.

Union Organizer Spillman conducted the June 6 meeting of employees at the Litchfield Youth Center. The Center has a very small parking lot, but a city park across the street has a larger one.

Although the meeting was not officially scheduled to begin until 7 p.m. that day, the employees began gathering about 4 p.m., shortly after the day shift concluded. Employee Boyd Hickerson testified that when he got to the center, Maintenance Supervisor Fred Walls was inside saying that he was going to attend the meeting. Hickerson told Walls that Walls should not be there because he was a supervisor, but Walls replied that he was not a supervisor. Hickerson pointed Walls out to Spillman who asked Walls to leave, which Walls then did. Walls went to the parking lot across the street where Hickerson observed him joining Assembly Supervisor Craig Dirling and General Foreman Dick Barnett. Hickerson (and other employees) in the Youth Center could see that parking lot. Hickerson and other employees testified

that before and during the meeting they observed the supervisors drinking beer in the park. Hickerson testified that he knew that it was unusual to see supervisors drinking beer in the park because that is where he regularly drinks beer after work while waiting for another employee who rides home with him each day.

Hickerson further testified that he walked across the street and partook of the supervisor's beer himself. While doing so, he told Walls that the supervisors really should not be there. Walls replied, "Well, we're here." Hickerson testified that as he was in the parking lot with the supervisors several employees drove by and appeared to be turning into the lot. According to Hickerson, Dirling would point to such employees, and some "would just keep on going down the road." Hickerson further testified that while all of this was going on Plant Manager Harman was driving an automobile that was going up and down the street between the center and the park.

None of this testimony is denied, and it is corroborated by credible accounts of employees Boyd Cox, McClughen, and Stockford. Dirling was presented by Respondent to assert that Hickerson had invited him to come to the park and wait outside while the meeting was going on. Hickerson, however, credibly testified in rebuttal that during the day before the meeting Dirling had announced that he was going to go to be around the meeting and drink a few beers, and Dirling asked if Hickerson minded. Hickerson replied to Dirling that he did not.

I do not believe Hickerson invited Dirling to the meeting, or to hang around outside. But, even if that part was true, that would not excuse the conduct of Walls, Dirling, and Harman which clearly constitutes acts of surveillance, as previously threatened by Paille to Densmore, on the part of Respondent. Accordingly, I find and conclude that this surveillance allegation of the complaint has been proved.

16(i). On or about June 6, 1989, Respondent, by its agents Frank Estel and Jim Wilkinson, in order to undermine its employees' support for the Union, promised future insurance and pay improvements.

16(m). In or about late June 1989, Respondent, by its agent Jim Wilkinson, threatened employees that they would not get a union in the plant because the [Respondent] would first shut the doors.

As discussed *infra*, in early 1989 Respondent, in violation of Section 8(a)(2) of the Act, established a labor organization which was called simply, "the Employee Committee." Alleged discriminatee Boyd Cox testified that at several meetings of the Employee Committee that were conducted by the Employer, the employees complained about three things: their insurance coverage, their pay, and the supervision of Plant Manager Harman.

Cox testified that shortly after the June 6 meeting at the Litchfield Youth Center, Estel and Wilkinson, at a time when Wilkinson was a supervisor,²¹ conducted a campaign meeting

²¹ It is disputed that Wilkinson was a supervisor at this time. It makes no difference as Estel, an admitted supervisor, made the subject presentation with Wilkinson, indisputably on Respondent's behalf, and Wilkinson was therefore acting as an agent of Respondent within Sec. 2(13) of the Act.

of 15 to 20 of the pressroom employees. Estel read a paper and then the employees asked questions about money, insurance, and Harman. In response to one or more questions, Estel and Wilkinson told the employees "they were going to work on all three," according to Cox.

Cox further testified that at the same meeting, "Jim Wilkinson said something about Ed Bowerman would not stand for a union; he'll close the plant up, lose your jobs . . . there's going to be scabs come on and get our jobs, and they will be nigger scabs at that."

Cox further testified that at a later June campaign meeting of the pressroom employees conducted by Wilkinson and Estel, Wilkinson told the group that management was working on the three problems which the employees had brought up: money, insurance, and Harman. Wilkinson further told the group: "Ed Bowenman would shut the doors down before he would ever allow the Union to come on in here. I'm telling you that from point blank fact."

On direct examination, in response to blatantly leading and conclusionary questions, Estel and Wilkinson denied telling the employees in the June meetings that insurance or other benefits would be improved if the Union were selected. On cross-examination,²² Wilkinson acknowledged that at one of the June campaign meetings he told employees that in the event of a strike "they could bring scab labor which consisted of Mexicans, and Negroes and niggers." Wilkinson further testified that an employee stated that Respondent could close the plant, and he merely agreed.

To the extent they differ, I found Cox more credible than Wilkinson and Estel, and I conclude that these allegations of the complaint have been proved. Specifically in regard to the promises of more pay, better insurance, and better supervision, these were grievances that the employees had expressed in the meetings of the Employee Committee that Respondent had established, as discussed *infra*, and the coercive impact is more than clear.

16(j) and (k) [Here combined.] On or about June 8, 1989, Respondent, by its agent Richard Paille, in order to undermine its employees' support for the Union, promised employees a benefit of providing free welding gloves [and] promised employees that attendance bonuses would be paid monthly rather than quarterly.²³

In early June, Paille conducted a meeting of the Employee Committee. The employee-representatives, who had been selected in elections ordered by Respondent, were encouraged by Paille to voice problems of the employees. According to the credible testimony of alleged discriminatee McClughen, and a copy of Paille's notes of the committee's June 13 meeting, Paille announced that welders would be given one free welding glove per week. Previously welders paid for both their gloves; if they were right-handed, the left one wore out quickly because rods and objects being welded would normally be held in the left hand. Further at the June 13 meeting the Employee Committee, all employees were promised that the \$25 awards for 30 days' perfect attendance

²² Tr. 932, L. 24 is corrected to change "MS. COE" to "MR. MORRIS."

²³ There was a par. 16(1), but there was no evidence introduced in support thereof.

were to be paid monthly, rather than quarterly as had been the case.

As these promises were made in order to persuade employees to forgo their Section 7 right to become represented by the Union, and as the promises were the product of Respondent's unlawfully establishing the Employee Committee, I find and conclude that the allegations of paragraphs 16(j) and 16(k) have been proved.

16(n). In late June 1989 or July 1989 . . . Respondent, by its agent Craig Dirling, created the impression that it was engaging in surveillance of [an] employee's activities on behalf of the Charging Union by informing an employee it knew the employee had signed a union card.

16(o). In or about July 1989 . . . Respondent, by its agent Craig Dirling, coercively interrogated an employee as to what had happened at a union meeting.

Former employee Doris Milleman testified that in early July, at lunch, she signed a union authorization card. The next day, in the working area, she was approached by Dirling and

[Dirling] said that he had heard that I signed a green card, and I told him "yes." And then Craig said that well, he didn't care anyway and that was that.

Milleman further testified that twice in the following weeks, Dirling approached her in the working area and asked her if she had attended recent union meetings. Milleman had not, and she told Dirling so. Dirling replied; that he "wanted to know what was going on."

Dirling admitted that he knew that the Union was using green cards to solicit support and membership. Dirling admitted questioning a group of employees about who had gone to the union meetings, but he denied questioning any employee, specifically Milleman, individually. Milleman was not employed by Respondent at the time of the hearing; she had no apparent reason to lie, and I do not believe that she did. I credit Milleman.

Respondent suggests no possible legitimate purpose in Dirling's telling Milleman that he knew that she had signed a union authorization card. In the context of Respondent's many other unfair labor practices, the sounding out of Milleman to confirm Dirling's actual (or fictitious) sources of information necessarily takes on a coercive element. Moreover, Dirling's asking Milleman if she had attended union meetings, and telling her that he wanted information on the meetings' content, were violative interrogations. Accordingly, I conclude that the General Counsel has proved the allegations of paragraphs 16(n) and 16(o).

16(p). On or about July 24, 1989, Respondent, by its agent Frank Estel, threatened an employee with discipline for distributing a union button during lunch time.

Lunchtime for the day shift was from 12 to 12:30 p.m. On July 24, when it was almost 12:30 p.m., several employees were in the area adjacent to the office of Pressroom Supervisor Estel. According to alleged discriminatee Larry Cornell, another employee asked him for a union button. Cornell kept

his supply of buttons in Estel's office. Cornell reached for a button and handed it to the other employee. Estel saw that and told Cornell he could fire Cornell for what he was doing. Cornell asked why, and Estel told him "passing out Union stuff on Company time." Cornell testified that he told Estel that it was not past lunchtime, then he looked at his watch and "it was one minute past the time, but there was no buzzer to let me know what time it was." Cornell testified that nothing more was said between himself and Estel. Cornell was asked on direct examination if he was on break at the time he gave the union button to the other employee. Cornell replied, "I thought I was, yes."

The General Counsel called Robert Belknap to corroborate Cornell. According to Belknap, when Frank Estel told Cornell that he could be fired for what he was doing

[Cornell] said, Frank, I'm still on my time; the buzzer hasn't rang yet. Frank looked at his watch and said, "well, it's time to get back to work, so quit your monkeying around and get back to your presses."

Estel gave an account which varied mainly by his conclusion that, at the time he spoke to Cornell, 12:30 p.m. had passed.

It is impossible to tell with absolute certainty if 12:30 p.m. what actually come to pass when Cornell handed a union button to the other employee. It is clear enough from the testimony of Belknap and Cornell that there was at least a question about it. However, whether the lunchbreak was over, in this case, is not determinative.

If it was still nonworking time when Estel threatened Cornell with discharge, clearly there was a violation, as Respondent appears to concede. However, even if it was working time, in absence of a valid no-distribution rule, actual interference with production must be proved by the employer before the activity can be interdicted.²⁴ As discussed infra, the only no-solicitation or no-distribution rules in effect at the time were facially invalid. Therefore, Estel's threat to discharge Cornell violated Section 8(a)(1) of the Act, as I find and conclude.

16(q). In or about October 1989, Respondent, by its agent Frank Estel, threatened temporary employees with 1088 of employment if the Charging Union was voted in.

As discussed more fully, infra, Respondent employs temporary employees from an agency personnel pool. Many permanent production and maintenance employees started out as personnel pool temporary employees; then, when they proved satisfactory, they were hired by Respondent. Employee Jerry Harris testified that about 2 weeks before the October 20 election, there were two personnel pool temporary employees on the second shift. Harris testified that during that period of time, Estel conducted a meeting of second-shift employees in which the election was discussed. Estel showed the employees a sample ballot and gave a speech about how they should vote. During his talk, Estel "said if the Union are in, Personnel Pool would be out the door," according to Harris.

Estel testified that either at a June or August employer campaign meeting, the subject of eligibility of personnel pool

²⁴ *Switchcraft, Inc.*, 241 NLRB 985 (1979).

employees came up. Estel told the employees who asked about it, including Harris, that he did not know and would get back to them on the question. Estel later, at some unspecified time, found out that there was an eligibility date, and he so informed the second-shift employees. On direct examination, Estel was asked generally if he had told employees that temporary employees would lose their jobs if the Union won the election; Estel denied that he had done so. Estel was not asked if he told the employees in October, as alleged in the complaint and as described by Harris, that temporary employees would be "out the door" if the Union won the election. In fact, on direct examination Estel was not asked anything about the October meeting described by Harris.

I cannot credit Estel's answer to the single leading, conclusionary question; moreover, I found Harris fully credible. Accordingly, I find and conclude that this allegation of the complaint has been proved.

16(r). On or about December 29, 1989, Respondent, by its agent Frank Estel, threatened that employees would not be recalled from layoff because they supported the Union.

As detailed *infra*, Respondent laid off most of the unit employees on December 22; most employees were recalled on January 2, but many were not, and they are alleged discriminatees here.

Sometime after January 2, production employee Kurt Henning was discharged by Respondent for violating its (unlawfully unilaterally imposed) "point system" of absence control. Henning testified that, in mid-January, before his discharge, he was working in the vending area when he overheard Estel talking to Foreman Joe Edwards and Quality Control Inspector Frank Tabalski. According to Henning, he heard Estel tell Tabalski and Edwards that Robert Belknap was not going to be recalled from the December 22 layoff because Belknap "supported the Union and he had his mind on the . . . Union instead of the f—king job he was supposed to do."

Estel did testify that about mid-January recall decisions were being made. Estel denied discussing the recall of Robert Belknap with Tabalski or Edwards, and he specifically denied the quote attributed to him by Henning. Edwards was called by Respondent, and he also specifically denied ever hearing the quote that Henning attributed to Estel. Tabalski was not called to testify.

While, in this instance, the supervisors answered more than leading and conclusionary questions, I nevertheless found the employee more credible. Henning's testimony did not help, and could not have helped, the presentation of the allegations made on his behalf, and Respondent suggests no reason that Henning would perjure himself for the benefit of Belknap. On the other hand, at several other points in their testimonies, Estel and Edwards seemed more than willing to do whatever they felt was necessary to advance Respondent's case. I therefore credit Henning, and find and conclude that this allegation of the complaint is proved as well.

17(a). On or about June 3, Respondent, by its agent Judy Bowerman, promulgated the following overly broad rule by posting a notice stating: "It is against company policy to distribute literature of any kind on

company property. Violators will be given disciplinary action."

17(b). On or about June 5, Respondent, by its agent Judy Bowerman, promulgated and since said date has maintained the following rule:

NOTICE TO YUKON MANUFACTURING EMPLOYEES:

No solicitation/No Distribution Rule

Employees Shall *not*:

1. Solicit other employees during working time.
2. Distribute literature to other employees in working areas at any time.
3. Distribute literature to other employees in non-working areas during working time.

Non-employees or outsiders are not permitted to solicit or distribute literature on Company property at any time. In addition, in order to ensure the safety of employees entering and leaving work, and to avoid interruption to production, employees are not to enter the plant or remain on the premises unless he/she is on duty or scheduled for work.

17(c). Respondent promulgated the rules described above in paragraphs 17(a) and (b) in order to discourage its employees from joining, supporting or assisting the Union and from engaging in concerted activities for the purposes of collective bargaining or other mutual aid or protection.²⁵

. . . .

17(e). On or about June 2, 1989, Respondent, by its agent Judy Bowerman, discriminatorily prevented employees from distributing literature concerning the projected concerted activities of Respondent's employees.

17(f). On or about December 5, 1989, Respondent, by its agent Ed Bowerman, orally promulgated an overly-broad no-solicitation rule by advising employees not to engage in discussion about the Union.

On June 2, while she was still on medical leave, Charging Party Stockford again went to the plant to distribute union literature to employees who were outside eating their lunches. Stockford credibly testified, and Judy Bowerman did not deny, that while Stockford was engaged in such distribution, Bowerman watched Stockford from an office window. After a while, Stockford and the employees around her were approached by Bowerman. Bowerman told Stockford to "get off the f—king premises and don't ever come back." Stockford left. That action is the subject of paragraph 17(e) of the complaint. The next day, Respondent posted the rule that is alleged as violative in paragraph 17(a). On June 5, Respondent posted the rules alleged that are as violative in paragraph 17(b).

As succinctly stated in *Tri-County Medical Center*, 222 NLRB 1089 (1976):

Finally, except where justified by business reasons, a rule which denies off-duty employees entry to parking

²⁵ There was a par. 17(d), but no evidence in support thereof was introduced by the General Counsel, and I shall accordingly recommend its dismissal.

lots, gates, and other outside nonworking areas will be found invalid.

This is exactly the import of the last paragraph of the June 5 rule and, no business reason having been shown for the prohibition, that portion of the rule violates the Act, as alleged in paragraph 17(b). Moreover, Judy Bowerman's ordering an off-duty employee, such as Stockford, to leave the premises while the employee is engaged in otherwise protected concerted activities in nonworking outside areas, as was Stockford, further violated Section 8(a)(1) of the Act as alleged in paragraph 17(e).²⁶

The blanket proscription against all distributions of literature on the property, as alleged in paragraph 17(a), was a violation of Section 8(a)(1) of the Act. The no-solicitation rule quoted in 17(b) is not limited to working areas, and therefore is violative of Section 8(a)(1) as well.²⁷

In support of paragraph 17(f), the General Counsel offered the testimony of former employee Jerry Harris. Harris testified that in late November 1989, he was discussing with another employee threats which had been made in a strike elsewhere. Afterward, Harris was called to the office of Edward Bowerman. There, three employees stated that they had overheard the conversation between Harris and the other employees, and that they considered themselves threatened by Harris' comments in the conversation. Harris and the employees then argued about what had been said in the working area. Bowerman, according to Harris, terminated the argument saying to the three other employees that "if they heard me talking about anything else—any union anywhere, come tell him and he'll kick me out the door."

Bowerman testified, but not on this point, and I found Harris credible. Bowerman's broad proscription against Harris' discussing any union anywhere violated Section 8(a)(1) of the Act, as I find and conclude. *Atlas Metal Parts Co. v. NLRB*, 660 F.2d 304 (7th Cir. 1981).

2. Alleged violations of Section 8(a)(2)

The complaint alleges that the Employee Committee is a labor organization within Section 2(5) of the Act and that by certain conduct in relation to the Employee Committee, and that, in violation of Section 8(a)(2) of the Act, Respondent dominated and assisted the labor organization by the following acts and conduct: (a) Paille suggested that the employees form a labor organization in February; (b) Paille suggested that the labor organization be reconstituted in June (after it had been inactive for a few months); (c) Walls and Veatch conducted a meeting on June 6 in which they supervised the selection of representatives of the Employee Committee; (d) on June 8, Paille made various promises to the Employee Committee;²⁸ (e) in June, Estel selected a representative to be on the Employee Committee; and (f) beginning in February and continuing thereafter, Respondent, by Paille and other supervisors, extended recognition to, and bargained with, the Employee Committee.

²⁶ See *Pizza Crust Co.*, 286 NLRB 490 (1987), in which the employee concerned was also on medical leave.

²⁷ See *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962).

²⁸ Other than the evidence of Paille's 8(a)(1) promises to Cox, noted above, there is no evidence in support of this allegation, and I shall recommend its dismissal.

Several employees testified about such conduct by Paille, but Paille was not called on behalf of Respondent. Therefore, the following facts are established by un rebutted employee testimony which I found credible.

Paille became comptroller in January and then began overseeing several aspects of the plant's general operations. On January 27, Paille began conducting biweekly meetings of representatives of each department. The representatives had been chosen at the direction of the departmental supervisors including Estel, Veatch, and Walls,²⁹ or the supervisor simply appointed the representative. At the January 27 meeting of the Employee Committee, Paille introduced himself, and since thusly elected/appointed employee departmental representatives, in turn, did the same. At Paille's direction, the representatives stated certain problems in their respective departments and they stated other problems that affected all employees. These matters included wages, insurance, the (disliked) supervision by Plant Manager Harman, inadequacy of performance by a forklift driver, suspected toxicities of paint fumes, and other such terms and conditions of employment.

Paille attended all meetings of the Employee Committee and kept minutes. Paille's minutes of eight meetings of the Employee Committee that were conducted between January and July were received in evidence. Almost every aspect of the employment relationship was discussed. Several early spring meetings were not conducted, but the meetings were re-instituted in late spring, when the Union began organizing. Again, supervisors instructed line representatives to attend; if the representatives were no longer employed, the supervisors picked a replacement or instructed the remaining employees in the department to do so.

At the reinstated meetings grievances also were heard, and many were satisfied. Paille's notes of the June 13 meeting recite:

As a result of discussions in this meeting a few policy changes have been made:

1. Welders will receive a free *left-hand* glove once a week in exchange for a soiled glove. Tool crib personnel will keep track of this.
2. The \$25.00 Attendance Incentive Program will be administered monthly instead of quarterly. May and June awards will be paid in July, then monthly after that.

Section 2(5) provides:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Because the Employee Committee addressed virtually every aspect of what the Act defines as a labor organization, I find

²⁹ As testified by admitted Supervisor Estel, "So, I went around to everybody in the press room; told them they have to elect them a person to represent the press room."

and conclude that the Employee Committee is a labor organization within the meaning of Section 2(5) of the Act.

I further find and conclude that by establishing the Employee Committee, selection or directing the selection of its officers, and thereafter bargaining with the Employee Committee, Respondent dominated the Employee Committee, as labor organization, in violation of Section 8(a)(2) of the Act, as alleged.³⁰

McClughen testified that in a June campaign meeting conducted by Walls and Veatch, Walls told employees that they did not need a union because they had the Employee Committee. Some employees told Walls that the department did not have a representative because the last one had been fired and not replaced. Walls told the employees they should pick a new representative. Then Walls asked McClughen if he would be interested. McClughen said that he would. Walls asked the other employees if they would object to McClughen being their representative. They replied that they had no objection, and McClughen became the departmental representative to the Employee Committee.

Walls was not presented to deny this testimony by McClughen; I found McClughen credible and that his testimony represents facts.

Cox testified that in June Estel asked him to be on the Employee Committee. Estel denied it, although he did admit telling the employees that they "have" to pick a representative themselves. I found Cox's testimony more credible than Estel's denial.

This credited testimony by Cox and McClughen, and Respondent's bargaining with the Employee Committee, prove the allegations of unlawful assistance in violation of Section 8(a)(2), as I find and conclude.

3. Alleged violations of Section 8(a)(3)

a. *The June 8 layoff*

According to the undisputed testimony of Densmore, the then-fiancee of Charging Party Stockford, at the beginning of the week of June 8, the approximately 15 employees on welding line 2 were told they were scheduled to work 10 hours, until 5:30 p.m., each day of that week, and they were told that the overtime was mandatory.

The parties stipulated that on June 8, a Thursday, the following employees were laid off: Michael Pillbury, Donald Densmore, Gary Dubois, Ronald Cable, Thomas McClughen, Lyle Shaffer, and Roger Sizemore.

June 8, as noted, was the day that Stockford filed the charge in Case 7-CA-29346 over her June 2 ejection from the property by Judy Bowerman, as discussed above. Stockford personally served a copy of this charge on Judy Bowerman around 3 p.m. on June 8.

Further, according to undisputed testimony by Densmore, between 3 and 3:30 p.m., on June 8, as he and other employees were working, Supervisor Veatch came down the welding line and told the above-named seven employees that they were immediately laid off and that they should not report to work the next day. No explanation was given by Veatch, or any other supervisor, to the employees. Four employees on welding line 2 were not laid off that day: Edward Dooley,

Charles Lewis, Scott Miller, and Eugene Hill. The laid-off employees reported to work as usual on Monday, June 12.

The seven employees who were told to leave in midafternoon of June 8, and told not to report the next day, were members of the Union's organizing committee at the time, and Respondent knew it. Stockford testified, without contradiction, that she was on the line on June 2 and 7 when Union Organizer Spillman called Paille to notify him of the most recent appointments to the Union's in-plant organizing committee. Spillman told Paille that the seven alleged discriminatees, as well as several other employees, had become members of the union organizing committee.³¹

Of the four employees on welding line 2 who were not laid off on June 8, only Lewis was a member of the Union's organizational committee. No other employees in the plant were laid off on that date, according to this record.

The General Counsel has presented a prima facie case of discrimination in violation of Section 8(a)(3) and (1) of the act principally because of timing. The timing element is revealing in several respects: (1) the layoffs were announced and implemented within minutes of Stockford's serving on the Bowermans a copy of the first charge filed here; (2) the layoff was effectuated before the end of the workweek, a Thursday; (3) it was effectuated at a time when the employees were working; and (4) the employees had been told that they would be required to work overtime through the end of the week. In addition to doing, a prima facie case is established by the copious evidence of Respondent's animus, Respondent's knowledge of the alleged discriminatees' union activity, the statistical unlikelihood of only union organizing committee members being selected for the layoff, and, with the single exception of Lewis, only nonorganizing committee members on welding line 2 being spared from layoff on June 8.

The immediacy of the layoff after the service of Stockford's charge is such a strong factor that I further find that the General Counsel has presented a prima facie case of discrimination independently violative of Section 8(a)(1). Even if the laid-off employees had not been union members, the General Counsel's presentation raises the inference that the layoff was effectuated as an act of retaliation against other employees, those working on the same welding line as Stockford's fiancee, Densmore, because Stockford had just served first charge here. That is, the time of the layoff, alone, raises the inference that when the Bowermans received Stockford's charge they took it out on her fiancee and many of the employees working with him, an act of retribution that could only restrain Stockford, and other employees, in any subsequent exercise of the Section 7 right to file charges under the Act.

The General Counsel having presented a prima facie case of unlawful discrimination under Section 8(a)(1) and (3) of the Act, Respondent must come forward with evidence that the June 8 layoff would have been effectuated even absent

³¹ Respondent objected to Stockford's being led to some of the many names that were mentioned in the two Spillman-Paille telephone calls. I have considered this leading, but find that it is insufficient grounds to discredit Stockford. Stockford had a credible demeanor throughout her testimony, and the failure to remember each of 20 names mentioned in two telephone calls is understandable; moreover, unlike the leading of Respondent's witnesses here, this testimony by the General Counsel's witness was not contradicted.

³⁰ *Fremont Mfg. Co.*, 224 NLRB 597 (1976), and cases cited there.

the employees' statutorily protected activities. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

Although Ed Bowenman generally testified that lack of materials or lack of work could cause a layoff, he suggested no such thing as a cause for the June 8 layoff. No other supervisor did either.

Respondent therefore having offered no defense for its action of June 8 in laying off seven employees on June 8, I find and conclude that the allegations of unlawful discrimination in violation of Section 8(a)(1), as well as Section 8(a)(3), of the Act have been proved.

b. *The imposition of new work rules*

The complaint alleges that on August 24 Respondent discriminatorily promulgated and thereafter enforced work rules that prohibited food and drink at work stations, work rules that required the employees to be at their work stations "when the first buzzer sounded," and work rules that required employees to be at their work stations "until the break or quitting buzzer sounded and thereby eliminating clean up time."

On August 24, after a meeting with Bowerman and Harman, the departmental supervisors addressed their subordinates. Belknap testified that:

Pressroom Foreman Estel called us all together in front of the press room office and stated that this wasn't his idea. That this comes straight from the management's office. That there would be no more pops, no more coffee, no more eating in the area, and if you want to go to the bathroom, you get permission.³²

Belknap testified that previously there were no restrictions on pressroom employees' having foot or canned soda at machines. Belknap further testified that there were two morning buzzers, one at 6:55 and one at 7 o'clock. The first was a warning buzzer to those scheduled to be at work at 7 a.m. Belknap further testified that Estel told the employees that they had to be in front of his office when the first morning buzzer went off.³³ Belknap further testified that before August 24 the employees would stay in their working area until 10 minutes before quitting time and then "go clean up" (an apparent reference to time for what is called "personal clean up" as opposed to "area cleanup"). Belknap testified that on August 24 Estel told the pressroom employees that in the afternoons employees must continue working (and, apparently doing area cleanup) until 5 minutes before quitting time; then, apparently, they were to do their personal clean up. Belknap further testified that Estel further told the employees that they could be "written up" for any violations of the rules he had mentioned, except, as Belknap further related, Estel stated that he would not enforce the rule about

³² A new work rule regarding permission to go to the bathroom was not alleged; but the parties treated it as if it was, and the complaint is accordingly treated as amended.

³³ Tr. 712, L. 12 is corrected to place a period after "buzzer" in place of the comma, and start another question by counsel for the General Counsel.

going to the bathroom unless his sufferance was being abused.

Estel testified that he had been a supervisor since February. Estel did not contradict any of Belknap's testimony about new rules for reporting in the morning and reporting back from breaks. Estel did testify that when he started working for Respondent early in 1989, the area cleanup time was 10 minutes, but, at some unspecified time, he increased it to 15 minutes because the employees were not getting the area sufficiently clean. Estel testified twice that his current policy in the pressroom was to allow 15 minutes to clean the area; then he testified that 2 months before the hearing (or early 1990) he had changed it back to 10 minutes. Estel was asked on direct examination if he had, in August, eliminated "clean up time," and he denied it.

Estel's testimony did not mention any allowance for personal cleanup, and Belknap's testimony did not include any allowance for area cleanup. To be fair to both, one must say that Estel presumably included some personal cleanup time, and Belknap considered area cleanup as part of his job to be done before personal cleanup time began.

Edward Bowerman testified that the employees had always been given 5 minutes of personal cleanup time, and there were no changes in August.

Estel's account of a 15-minute cleanup time being cut back to 10 minutes is completely uncorroborated, and I do not credit it. Even if credited, it is not a denial of Belknap's testimony of an August reduction in personal cleanup time for the pressroom employees and I believe that is what happened. I find that Bowerman was speaking of what he had thought was a companywide rule of 5 minutes of personal cleanup time, but Estel had been allowing 10 minutes for personal cleanup. Estel's announcement of August 24 was, therefore, an announcement that the pressroom employees were going back to 5 minutes of personal cleanup time.

Gary Dubois testified that about this time³⁴ Front-Shop Welding Line Foremen Dick Barnett and Tom Veatch told the welders that they no longer could have snacks or drinks on the line; they had to tell a foreman before they could to go to the bathroom during worktime; and they had to stay at their work stations until a lunch or break buzzer went off; and they had to be back when the break-ending buzzer went off. Before, the employees were allowed drinks and snacks, and they were allowed "a minute" after a return-to-work buzzer sounded. Neither Veatch nor Barnett testified, and I credit Dubois.

Employee Joe Palmer testified that on August 24, Supervisor Ron Truitt told the 20 to 25 backshop employees that the supervisors had had a meeting with Edward Bowerman and "there would be no more eating³⁵ or drinks on the [welding machines] and you had to have permission to go to the bathroom or leave the back shop." Palmer testified that, theretofore, the backshop employees had been allowed to have soda at their work stations, and they could go to the bathroom if they told their other crewmembers where they were going; Truitt was there about half the time. On cross-examination, Palmer acknowledged that Truitt also told the

³⁴ Dubois could not find a date; but there was no objection to this line of testimony, and the only "rules" allegation of the complaint is stated as August 24.

³⁵ Tr. 531, L. 13 is corrected to change "working" to "eating."

backshop employees that the Company had lost \$400,000 the month before because of "everyone standing around and smoking and drinking." Truitt testified, but not on this point, and I credit Palmer.

Employee Doris Martinez testified that in August Assembly Foreman Dirling told the employees that he had been told to tell the employees that there would be no more eating or drinking on the line.

Dirling testified that the rules against having food or drink at the assembly work stations had been in effect since, at least, early 1989 when he began working there. He testified that sometimes the rules are not strictly enforced, but during the summer Edward Bowerman told all supervisors "that the paper and cups and everything; it was on the floor; that we'd better start enforcing this rule a little bit tougher so that we can keep our areas clean." Afterward, he told the assembly employees that Bowerman had told the supervisors to "start enforcing that rule a little bit more so that we can keep our areas clean." He further testified that the rules are still in effect and "we've tried to enforce it."

Joe Edwards, supervisor of welders in subassembly, testified that he told his subordinates that higher management wanted the rules against eating and drinking enforced, but he would not enforce the rules against having canned sodas at their work stations as long as they kept the area clean.

Edward Bowerman was asked on direct examination and testified:

Q. Do you have any rules on whether employees can have food or drink at their work stations?

A. We try to keep that at a minimum.

Q. Let me stop you right there. Can you answer that yes or no; first of all, before you describe it?

A. Yes.

Q. Have those rules ever changed while you've been in business?

A. Only to the point of at times the supervisors getting lax and in enforcing the rules.

Q. Okay. Would that be a change in the rule or. . . .

A. No, just the supervisors getting lax.

Q. Okay. What are your rules on food and drink at the work stations?

A. None.

Q. Can you explain that a little bit more. What do you mean by "none."

A. They have no food and they have no drink; and "drink" is coffee, pop.

Bowerman testified that the reason for this rule was fire safety. When asked to state the bathroom-break policy, Bowerman replied, "We like to hold it to every 2 hours." When asked if that rule had ever changed, Bowerman replied, "As far as I know, I've never had anybody on the floor have a mishap." When asked for explanation of Respondent's policy on break buzzers, Bowerman testified that employees get 10-minute breaks which starts at one buzzer and ends with another; then the employees are expected to return to their workstations and begin working. When asked if the break buzzer policy had ever changed, Bowerman replied, "Not as far as I know."

There is much disagreement about what rules may have existed before August 24; apparently things worked differently in different departments. However, it is clear from

Respondent's own witnesses, and the undisputed testimony of the General Counsel's witnesses, that on August 24 changes in rules regarding drinks and snacks at the working area, reporting and cleanup times, and bathroom privileges were being announced, and all changes were for the more onerous. Either new rules were being created or old ones, previously unenforced, were thereafter to be enforced. The best example is the drinks situation; even Bowerman persisted in admitting, until his lawyer guided him away from it, that, while a prohibition had previously existed, enforcement had been "lax."

Respondent adduced no evidence that employees were creating a fire hazard, or even unsightliness, or were being late in reporting to their work stations, or were leaving their work stations early, or were abusing bathroom privileges before August 24. Certainly, Respondent adduced no evidence that it had sought, and failed, to achieve discipline through invocation of previously existing rules. That is, Respondent adduced evidence of no legitimate purpose for the August 24 announcements.

Absent any explanation for the announcement, and in the context of Respondent's virulent animus toward the protected organizational effort then being conducted by its employees, an inference of unlawful motivation in the effectuation of the onerous new work rules is warranted. *Weathershield of Connecticut*, 300 NLRB 93 (1990).

As in *Weathershield*, the only defense offered an the unsubstantiated conclusion of the official who was responsible for effectuating the rule changes; Edward Bowerman testified that there were no changes that he knew of. In this circumstance, Respondent has not met its burden under *Wright Line*, and I therefore find and conclude that the General Counsel has proved the allegation that Respondent implemented more onerous work rules on August 24, in violation of Section 8(a)(3) of the Act.

c. *The elimination of the perfect attendance bonuses*

As noted above, in May, Respondent instituted a bonus of \$25 for 1 month's perfect attendance. It is undisputed that in October Respondent did not pay the bonus for September, and that it has not paid the bonus since October 1. The complaint alleges the elimination of the bonus to be a violation of Section 8(a)(3) of the Act.

As in the case of the imposition of new, onerous work rules, Respondent offers no explanation for the change.

For the reasons cited above in the case of the imposition of the work rules, under *Weathershield* and *Wright Line*, I find and conclude that this allegation of the complaint has also been proved.

d. *The discharge of Thomas McClughen*

The complaint alleges that Respondent discharged Thomas McClughen because of McClughen's union activities and thereby violated Section 8(a)(3) of the Act.

McClughen began working as a welder on June 27, 1988, and was fired on December 5, 1989. Respondent has a progressive disciplinary procedure that provides for verbal warnings, written warnings, and suspensions before discharges.³⁶ Before his discharge, McClughen had received no disciplinary action. There is no evidence that he was consid-

³⁶ Testimony of Scott Bowerman at Tr. 830.

ered anything but a good worker, as noted above, Veatch appointed him to be the welding department's representative on the Employee Committee, the labor organization (unlawfully) established by Respondent.

McClughen was an early activist on behalf of the Union, and knowledge of his sympathies is not denied. McClughen attended all union meetings and solicited employees to join the Union. He received union literature in the mail from the Union's headquarters in Detroit, and he distributed that literature among the employees. At work, McClughen wore union buttons and had a union sticker on his welding helmet. He also had a union sticker on his pickup truck which he drove to work. McClughen was in attendance at the June 6 union meeting which was surveilled by various of Respondent's supervisors, as discussed supra.

As noted above, in June, as well as interrogating McClughen in violation of Section 8(a)(1) of the Act, Supervisor Veatch told McClughen, "you'd better start covering yourself . . . you'd better watch that union stuff; its going to get you into a little problem."

Before he was discharged, McClughen had a job-related back injury. Both before and after his discharge, McClughen was treated at Chiropractic Professional Offices in Coldwater. The secretary-receptionist at that clinic is Lois Voelzke who testified in this matter on May 2. Voelzke testified that on April 23 (or 12 days before she appeared) she called Respondent to inquire about payment on its account for McClughen. Voelzke was referred to Judy Bowerman. Voelzke testified that during the course of her conversation, Judy Bowerman stated, "you know, he's the one that's been causing all this trouble with the Union . . . so they had to let him go." Voelzke also made a file note of her conversation that was received in evidence:

4/23/90—Called Yukon about patient's bill. Judy told me that Tom had gone to workers comp. I ask for that date but she said she didn't have his file in her office. She stated that he was the one that started all the trouble about the union and that's why "they" left [sic] him go.

Judy Bowerman admitted talking to Voelzke, but denied the remark attributed to her. Voelzke is an individual of unassuming visage and speech, and she has been shown by Respondent to have no interest in the outcome of this case. Indeed, her testimony could conceivably affect her adversely, as her employer could well suffer a business loss because of her appearance and testimony against Respondent. Moreover, Voelzke was testifying about an event that happened only 3 weeks before she testified, and it is exceedingly unlikely that there was any mistake caused by the passage of time. I credit Voelzke.

On such evidence, I conclude that the General Counsel has presented a prima facie case that McClughen was discharged in violation of Section 8(a)(3) of the Act.

Respondent contends that McClughen was discharged on December 5 because of certain of his conduct that date while he was welding racks that were to be used by Ford Motor Company for shipping automobile transmissions.

The rack in question here is 54 inches wide, 88 inches long, and 25 inches deep. It holds eight transmissions at a time. The racks are produced on an assembly line along which welders are stationed at various points. The last three

stations are called "tail welding" stations, and the fourth-to-last station is called "subassembly A." The welders on subassembly A work in pairs. On December 5, McClughen and Dubois were the subassembly A welders. Joe Edwards was the line foreman (having succeeded Veatch who left about September 1); and Scott Bowerman, son of owner Edward Bowerman, was the manufacturing engineer.

According to Scott Bowerman, after he had twice instructed McClughen and Dubois to do their welds more accurately, he stepped back to watch them work and

Tom's side was off a little bit. I said, "hey, Tom, that's off a little bit." He ripped the [measuring] jig out of the rack, and he said, "if you want it done different, you do it yourself," and he took the jig and threw it to the other end of the rack.

Scott Bowerman further testified that he said nothing to McClughen at the time. He stood there and watched McClughen and Dubois as they continued working. Bowerman checked the nest rack that they welded and found it satisfactory; then he went back to his office where he went back to work. Further, according to Scott Bowerman, Edward Bowerman stopped by the office later and asked how things were going. Scott Bowerman said there had been problems on the line. Edward Bowerman asked what the problems were. Scott Bowerman told him that McClughen and Dubois were not taking enough time to place their welds, and he further told him of McClughen's alleged conduct. At that point Edward Bowerman decided to fire McClughen.

Edward Bowerman testified that he decided to discharge McClughen for insubordination. When asked to elaborate, Bowerman went into a tirade which included "attitude problems," slowdowns that were always in McClughen's area, inferior workmanship and "he was handling this checking fixture [the jig] like a piece of tube and throwing it up against the wall or throwing it on the floor." At that point his lawyer interrupted him. When he got back on track Bowerman continued:

He told our engineer [Scott Bowerman] that, you know, if he wanted it that way, he could do it himself. [If it] wasn't good enough, do it yourself, and I guess it was daylight under my feet, and I said, you know, "this guy's gone, I've had it. Everybody's got to work together to get their job done."

After Edward Bowerman left Scott Bowerman's office, Scott Bowerman had Edwards bring McClughen to his office. When Edwards finished escorting McClughen to the office, Edwards went on to lunch and did not hear what happened between Scott Bowerman and McClughen.

Scott Bowerman fired McClughen. Bowerman testified that he told McClughen that McClughen was being discharged for faulty workmanship. Bowerman did not testify that he mentioned "insubordination" as well, but McClughen's testimony about the discharge interview makes it clear that Bowerman did so.

Edwards testified that he was present on the welding line when McClughen told Scott Bowerman "if he could do it better himself, he'd best go ahead and do it." Edwards further testified that, about 20 minutes later, after everybody had gone back to work, he was called to Scott Bowerman's

office where he found Scott Bowerman in an upset state. Edwards testified that he and Bowerman decided to write McClughen up for poor workmanship and “[w]e, in turn, we made up termination papers because Tom McClughen had refused work by telling Scott that [if] he could do it better to go ahead and do it himself.” Then, according to Edwards, he went to McClughen and escorted him back to the office; then he went to lunch.

McClughen testified that his back had been hurting that day and, after the third instruction by Scott Bowerman, he told Bowerman “get somebody else to do this job; my back is hurting me; get somebody else to do it.” Edwards told McClughen that he was going to get McClughen a replacement and for McClughen to keep working, which McClughen did. Then, as lunchtime approached, Edwards appeared and took him to the main office. Once there, Scott Bowerman told Edwards that he was tired of him telling him to do the work himself. McClughen denied to Bowerman that he had said such. Bowerman replied, “[w]ell, it doesn’t make any difference if you own up to it or not, you’re doing sloppy work.”

Dubois supported McClughen in his denial that he told Scott Bowerman to do the work himself. I believe McClughen and Dubois. If McClughen had said that, or anything like it, Bowerman would have done something, anything, on the spot and not waited until Edward Bowerman heard about it later.

Particularly incredible was Edwards who testified that it was he and Scott Bowerman who decided to discharge McClughen. This testimony made no sense, especially as both Bowermans testified that Edward Bowerman made the decision when the Bowerman, were in Scott Bowerman’s office; they made no mention of Edwards’ presence or Edwards’ having anything to do with the decisional process. Edward, was obviously trying to advance any story line that he thought might help Respondent, and I believe his mendacity spilled over into his account of what McClughen had said to Scott Bowerman. Moreover, Edwards did not deny that he told McClughen that he would get someone to replace McClughen. Edwards’ telling McClughen that he would find a replacement for McClughen is altogether consistent with McClughen’s testimony that he told Scott Bowerman to find another employee to do the work at sub-assembly A.

I do find that, at some point in the morning, McClughen did throw the jig to the end of the 88-inch rack (but not on the wall or the floor, as Edward Bowerman’s embellished version would have it). Scott Bowerman was credible on this point. Also, McClughen was not called in rebuttal to deny throwing the jig, although I stated on the record that I was going to be required to find if McClughen threw the jig and to find if that action was all, or part, of the reason for discharge.

However, I further find that although McClughen did throw the jig it had nothing to do with his discharge, except to serve as part of a pretext for discharging him.

Edward Bowerman, who made the decision to fire McClughen, found out about the incident only because he happened to drop by Scott Bowerman’s office that morning and asked if there had been any problems that day. That is, until that point, Scott Bowerman had treated the morning’s events at subassembly A as no more than routine production

problems and an employee’s momentary fit of pique, not worthy of discipline or even comment. Certainly, Scott Bowerman had not sought out Edward Bowerman to seek permission to discharge McClughen, or otherwise discipline him, assuming that Scott Bowerman did not possess the authority to do something himself.³⁷ Although Scott Bowerman was willing to let the events of the morning go, Edward Bowerman viewed them as much more; “a light under my feet” as Edward Bowerman phrased it.

Edwards’ testimony that he found Scott Bowerman upset when he reached Bowerman’s office was probably true. However, in view of the fact that Scott Bowerman had done nothing immediately on suffering the alleged insubordination by McClughen, logic leaves only the conclusion that the onset of Scott Bowerman’s upset came after he had left the production floor—probably when his father visited his office and made the decision to fire McClughen for matters which Scott Bowerman had let pass.

The Bowermans testified that McClughen was discharged for insubordination and poor workmanship. Scott Bowerman was insistent that the “insubordination” consisted of McClughen’s refusal to do the job. But McClughen had not refused to do the job; he continued working, and Scott Bowerman stood back and watched. Bowerman even checked McClughen’s work and found it satisfactory. Respondent’s reliance on a palpably false assertion that McClughen had refused to work demonstrates the pretextual nature of Respondent’s entire line of defense. Moreover, assuming that McClughen’s “insubordination” consisted of an insolent remark and/or the throwing of the jig, and further assuming that McClughen was guilty of inferior workmanship on that day and/or on other days, there is still no accounting for the acquiescence and inaction by Scott Bowerman until Edward Bowerman saw “the light under [his] feet.”

Further, there is the element of Respondent’s refusal to afford McClughen the benefits of its progressive disciplinary system. Edward Bowerman testified that McClughen was not given a warning or suspension because McClughen’s telling Scott Bowerman to do the work himself equated with being caught stealing or smoking marijuana. The aggrandizement of the offense is, itself, indicative of pretext.³⁸ Moreover, my credibility resolutions here are that McClughen did not tell Bowerman to do the work himself; it did not happen.

Assuming that on December 5 McClughen was guilty of some degree of faulty workmanship,³⁹ there still remains no reason for Respondent’s failure to afford McClughen the protection of its progressive disciplinary system. Scott Bowerman had done nothing about the conduct of McClughen, until Edward Bowerman saw the “light” under his feet, but Scott Bowerman testified that McClughen was

³⁷ Further evidence that Scott Bowerman did not consider the jig-throwing incident to be significant is the fact that, as related by McClughen’s unrebutted testimony, the jig was not mentioned in the discharge interview.

³⁸ See *Electri-Flex Co.*, 238 NLRB 713, 725 (1978).

³⁹ As noted above, McClughen was previously considered a good employee; Respondent even appointed him to be a welding department representative to the Employee Committee. Moreover, at one point Edwards admitted that he had previously given McClughen and Dubois a “tail welding” job “more or less to feel around—try to get the two best guys on that job to push the line.”

not afforded the protection of the progressive disciplinary system because:

Any time you take a piece of tool that's worth as much as that jig, that located as much as sub assembly A located,⁴⁰ from one end to another, there's no need for a written warning. That's immediate termination.

Scott Bowerman did not think it was grounds for "immediate termination" when it happened; therefore, this testimony is a post hoc rationalization for denying McClughen the benefit of the progressive disciplinary system, if, indeed, any discipline had been called for at all. This failure to afford McClughen the protection and benefits of Respondent's progressive disciplinary system raises a "strong inference" that the termination was imposed because of his protected activities.⁴¹

In these circumstances, it must be concluded that Respondent has failed to prove that McClughen would have been discharged for any of his conduct of December 5, absent his union activities.

In summary, the General Counsel has established a prima facie case that McClughen was discharged because of his known union activities, and, the reasons asserted for the discharge of McClughen being pretextual, I find and conclude that Respondent discharged McClughen because of those union activities, and that by this discharge Respondent violated Section 8(a)(3) of the Act, as alleged.

4. Alleged violations of Section 8(a)(3) and (5)

a. *The layoffs of December 12 and 22*

On December 12, Respondent laid off all but two of the approximately 15 pressroom employees. On December 22, Respondent laid off all 90 of the bargaining unit employees except 2 pressroom setup men and 3 maintenance employees.⁴² Some of the employees involved in the December 12 layoff were recalled the next day, but others were not recalled for several days. One employee, Robert Binion, was not recalled from the December 12 layoff at all. For most of the employees laid off on December 22, the layoff lasted only until January 2, 1990, but for several pressroom employees the December 22 layoff became permanent.

The complaint alleges that both December layoffs constituted unilateral actions in violation of Section 8(a)(5) of the Act, as well as discrimination in violation of Section 8(a)(3).

Respondent admits that it did not bargain about the December layoffs; it denies a violation of Section 8(a)(5) occurred, arguing that the Union was not lawfully selected as the collective-bargaining representative of the employees at the time.

An employer acts at its peril by committing unilateral actions while its objections to a Board election are pending; if

⁴⁰The jig is frequently used to measure for points at which welds are made.

⁴¹*Transportation Enterprises*, 240 NLRB 551, 560 (1979)

⁴²Some of the employees involved in the second December layoff were actually laid off a day or two before December 22. Any remedy will date from the exact date of the individual cases; however, for purposes of convenience, I shall refer to all of these cases as "the December 22 layoff."

the objections are overruled, the unilateral actions will be held to be violative under Section 8(a)(5) of the Act. Because I have found that Respondent's objections to the October 20 election must be overruled, it follows that Respondent violated Section 8(a)(5) of the Act by failing to notify the Union of its decision that both of the December layoffs were necessary and by failing to give the Union the opportunity to bargain over the layoffs and the recalls from the layoffs, as I find and conclude. *Clements Wire & Mfg. Co.*, 257 NLRB 1058 (1981); *United Gilsonite Laboratories*, 291 NLRB 924 (1988).

As noted, the complaint also alleges that by implementation of both December layoffs Respondent violated Section 8(a)(3). The complaint further alleges that Respondent violated Section 8(a)(3) by its refusal to recall certain employees from the December 22 layoff. (There is no allegation that the delays in recalling employees from the December 12 layoff violated Section 8(a)(3) of the Act; however, see the discussion of the issue under Section 8(a)(5), *infra*.)

Layoffs are common in this industry, and there was much discussion about prior layoffs by Respondent; specifically, there is evidence that Respondent had a plantwide Christmas-time closure the year before. There is also no evidence that would constitute some logical nexus between the December layoffs and any activity of the Union or the employees. (Contrast the immediacy of the service of the charge filed by Stockford and the June 8 layoff of employees on the production line on which her fiancée, Densmore, worked.) Specifically, there is no evidence that by either December layoff Respondent intended to punish the unit employees because of the organizational effort that had culminated in the October 20 election. There is evidence, as I discuss *infra*, that the refusals to recall certain employees from the December 22 layoff were unlawfully motivated; however, that evidence will not suffice retrospectively to impute animus for what had gone on before. See *Marlan Lewis, Inc.*, 270 NLRB 432 (1984), in which the Board held that evidence that would support a conclusion that an employer unlawfully discriminated in recalling employees from layoff would not, without more, support an allegation that the layoff had theretofore been unlawfully extended for all employees.⁴³ Therefore, because the General Counsel has failed to present a prima facie case to support the allegations that by the layoffs of December 12 and 22 Respondent violated Section 8(a)(3) of the Act, as well as Section 8(a)(5), I shall accordingly recommend dismissal of those allegations.

Although there is no allegation that Binion was discriminatorily denied recall from the December 12 layoff, the matter was fully litigated. Binion was named in the Union's letters to Respondent as one of the organizing committee members, but Binion denied that he was, in fact, a member of that committee, and there is no evidence to indicate that Binion was singled out for a discriminatory denial of recall from the December 12 layoff. However, assuming that a prima facie case has been stated on his behalf, I find that Respondent has established a defense, under Section

⁴³To be distinguished is *Knoxville Distribution Co.*, 298 NLRB 688 (1990), cited by the Charging Party, where an employer's calling previously discharged and reinstated employees "troublemakers" before their layoff was held to constitute evidence of animus that would support the conclusion their *subsequent* layoffs were violative.

8(a)(3), but not Section 8(a)(5), for its failure to recall Binion.

Estel testified that Binion was never recalled because before the layoff of December 12 Binion had asked Estel to lay him off "because he wanted to move back down South." Binion was called in rebuttal by the General Counsel and denied that he had volunteered for the December 12 layoff or that he told Estel that he was moving out of the area. (Binion further testified that he had not moved out of the area; he had moved to another address in the nearby Hillsdale area, but not until February.) Binion further testified that when he left Respondent's employment, he left with someone at Respondent's office his aunt's telephone number because he did not have a working telephone himself. His aunt's telephone number has not changed. On direct examination, Binion was asked if he had contacted "the plant" about going back to work. Binion testified that he had done so 3 weeks before he testified (or 1 week before the hearing began).

Estel was credible in his testimony that Binion had told him that he planned to move from the area. Moreover, had Binion not actually planned to move away, or otherwise intended to abandon his employment, he presumably would have contacted Respondent, or the Union, about recall possibilities at some point before late March 1990, or 1 week before the hearing. Binion testified that Respondent had a telephone number through which he could have been reached; however, he had told Estel that he was moving away, and Respondent's agents had every reason to believe that Binion had done so. While Respondent's agents were under that impression, Respondent had no duty to seek Binion out for purposes of recall.

In view of these findings, I conclude that Respondent has successfully rebutted any prima facie case that the failure to recall Binion was based on discriminatory motivation, and I shall recommend dismissal of the complaint to the extent that it alleges a violation of Section 8(a)(3) by Respondent's failure to recall Binion from the December 12 layoff.

However, there is still the 8(a)(5) allegation regarding Respondent's failure to recall Binion. Respondent's period of ignorance of Binion's desire to stay in the area ended shortly after Binion filed an unemployment claim on January 25. Respondent received notice of that filing, presumably in due course of the mails after that date, and its duty to conduct recalls pursuant to bargaining with the Union was ongoing as of the date of that service.⁴⁴ Respondent failed to bargain about Binion's recall, as it failed to bargain about all other recalls from the December layoffs, and its failure violated Section 8(a)(5) of the Act, as I find and conclude.

There is evidence that Respondent did deny some employees recall from the December 22 layoff in violation of Section 8(a)(3).

Six pressroom employees were never recalled from the December 22 layoff: Boyd Cox, Robert Belknap, Larry Cornell, Clifford Johnson, Glidden Wallen, and Alex Ronzak. All were employed on the day shift under Estel except Johnson who was employed on the night shift under Bailey. Except for Ronzak, all six were members of the Union's in-plant organizing committee and otherwise active on behalf of the Union.

Boyd Cox, a press operator, testified that he went to the plant in mid-January to ask his supervisors why he had not been called back. Cox approached Scott Bowerman and spoke to him in the presence of employee Robin Boudrie, Estel, and one "Gene." According to Cox:

I says, "Scott," and I said, hey Scott, how come I'm not back to work? And I was talking, you know, in a voice just like I am now, and he raised his voice; he says, "We don't have to call back complainers, troublemakers . . . and the people that don't kick out production . . ." and [he] said, "just—damn Union just about got us broke, and there's going to be changes."

Boudrie testified that he witnessed part of this exchange. Boudrie testified that he heard Bowerman respond to Cox that "the company would call back who they wanted, when they wanted and did not have to call back anybody they deemed troublemakers or boisterous people." At that point, Boudrie testified, he went back to his work station.

Bowerman and Estel denied this testimony; however, I found Cox and Boudrie credible.

Robert Belknap was one of the more active union adherents, and Respondent was fully aware of it. Indeed, Belknap's alleged conduct on behalf of the Union was made the subject of two of the Employer's objections to the October 20 election discussed above: electioneering at the polls and "harassing" of Betty Turner, an outspoken employee opponent of the Union. Employee Kurt Henning testified that in late January, when other employees had been recalled, but Belknap had not, he witnessed Estel speaking to Edwards and Quality Control Technician Frank Tabalski. According to Henning:

I heard Frank Estel say that Bob Belknap would not be called back because of he supported the Union and that he had his mind on the, excuse me on the French, on the Union instead of the f—king job he was supposed to do.

Tabalski did not testify; Estel and Edwards denied that any such incident occurred, but I found Henning credible, as noted in my findings above.

Henning further testified that on the Friday before the December 22 layoff he heard Estel and Belknap talking and that Estel told Belknap that if "they," apparently the office, did not call back Belknap "by a certain date, that Mr. Estel himself would call him back." Although a suspicion about this testimony is created because Belknap did not mention any such remark in his testimony, Estel did not deny the remark, and Henning otherwise appeared credible. Therefore, I find that Estel assured Belknap that he would be recalled after the December 22 layoff.

Although there is no like evidence of specific animus toward the union membership or activities of the three other union organizing committee members who were not recalled from the December 22 layoff (Wallen,⁴⁵ Johnson, and Cornell), I find that the General Counsel has made out a prima facie case as to all five members of the union organizing

⁴⁴ *Clements Wire & Mfg. Co.*, supra.

⁴⁵ Wallen was one of the most active union adherents; indeed, the Union notified Respondent that Wallen had been removed from the organizing committee, apparently for overzealousness.

committee for the following reasons: (1) Before the layoff, Estel had stated that he would recall Belknap personally if the office did not. Then, after the other employees had been recalled, Estel told Edwards and Tabalski that Belknap would not be recalled because he had his mind on the Union more than his job. It is safe to conclude from this inconsistency that during the layoff a decision had been made to use the recall procedures as a vehicle for ridding Respondent of active union adherents. (2) Scott Bowerman told Cox that the reason he was not being recalled was because he was a "troublemaker," a term of antipathy that is commonly used by antiunion employers, such as Respondent, for prounion employees, such as Cox and the other members of the Union's in-plant organizing committee. At the same time, Bowerman blamed the Union for the Respondent's financial troubles. There is no reason to believe that the antipathy for Cox's activities did not radiate to other employees who were similarly situated; i.e., those who had joined the union organizing committee or otherwise supported its effort at organizing, and who thereby had caused Respondent the financial trouble to which Scott Bowerman had alluded.

Therefore, I find that the General Counsel has established a prima facie case that five of the six alleged discriminatees were denied recall from the December 22 layoff in violation of Section 8(a)(3).

Conversely, no prima facie violation of Section 8(a)(3) has been established in the case of Respondent's refusal to recall Konzak from the December 22 layoff. Konzak was not a member of the union organizing committee and was not otherwise active on behalf of the Union. Also, there is no contention, or evidence, that Konzak was denied recall in order to give an aura of legitimacy to the denials of recalls to the five union organizing committee members who also were laid off on December 22. Accordingly, I shall recommend dismissal of the allegation that Konzak was denied recall in violation of Section 8(a)(3) of the Act. (However, as noted, the failure to recall Konzak from the December 22 layoff, as well as the layoff itself, violated Section 8(a)(5) of the Act.)

The prima facie violations of Section 8(a)(3) having been established for the denials of recall to Johnson, Wallen, Cox, Belknap, and Cornell, Respondent is required to go forward with evidence that the employees would have been denied recall absent their union activities. *Wright Line*, supra.

Respondent's defense for not recalling Johnson is that there was no work for him on the second shift under Bailey. The remaining four, Respondent contends, were not recalled because of alleged inferior work performances before the strike layoff of December 22.

According to Estel: *Cox* started off as a good worker, but then took to wandering around and bickering with other employees, and his production dropped. *Wallen* once was a good worker, producing 200 to 300 parts per day, but then his production dropped when he started drinking too much; also Wallen "just roamed around to a lot of different departments." Estel showed Wallen the production records which reflected his serious drop in productivity, and Wallen promised to do better, but he did not. *Belknap* wandered around and he had a medical restriction, which limited his usefulness; his production had once been good, but during the last month and a half before the layoff "his even dropped." *Cornell* had been caught sleeping, and was given a written warning notice for it, on July 25; also, shortly after that, Cornell

did a bad deburring⁴⁶ job; also, Cornell's production had declined continually.

Thus, Respondent's defenses for failing to recall Cornell, Belknap, Wallen, and Cox are twofold: poor production and/or misconduct that preceded the layoff. I find that neither defense has been proved.

In support of its defense that these four were poor producers, Respondent offered only Estel's conclusory testimony that the production of each employee had dropped at some unspecified time before the December 22 layoff. On cross-examination, Estel acknowledged that Respondent keeps records of pressroom employees' job numbers, number of pieces produced on each job, and start and stop times. By relying on such conclusory testimony, rather than producing extant records which would conclusively prove any such defense, a prima facie case of unlawful discrimination is not rebutted. *Industrial Supply Co.*, 289 NLRB 639 (1988); *Textron, Inc.*, 199 NLRB 131, 134 (1972). In Belknap's case, such records would have been particularly decisive if there had been any truth at all to Estel's testimony that Belknap's disability manifested itself at a particular point after Belknap came back from a medical leave on July 17.⁴⁷

Moreover, the General Counsel established that, although Cornell had gotten a warning for sleeping on July 25, Wallen, Belknap, and Cox had never received any written warnings pursuant to Respondent's progressive disciplinary system, and pursuant to that system, Cornell had never been suspended. On direct examination, without being asked, Estel volunteered the explanation that he had given no warnings because: "I think they're men, you know, and, at least they're supposed to be, so I tried to treat them that way the best I could." At another point Estel testified that he never warned any of his subordinates about their conduct because "it didn't do any good; they just tell me, 'well, them write ups don't mean nothing.' This was the response you'd get." Estel did not testify that any of these four alleged discriminatees ever gave such a response.

Estel testified that he verbally warned the employees about their conduct. That was credibly denied by each of these four alleged discriminatees; moreover, this testimony by Estel does not answer the question of why they were not also given the benefit of Respondent's progressive disciplinary system and further warned in writing and/or suspended before they were, in effect, discharged. The failure to afford Wallen, Cox, Belknap, and Cornell the benefits of Respondent's progressive disciplinary system raises a "strong inference" that their terminations were imposed because of their protected activities. *Transportation Enterprises*, supra. At minimum, Respondent's failure to warn these four employees of their alleged misconduct compels the conclusion that the misconduct did not occur. In Cornell's case, there is no evidence that he engaged in similar misconduct between the July 25 warning notice for sleeping and the December 22 layoff.

⁴⁶ Tr. 998, LL. 23 and 25 are corrected to change "debug" and "debugged" to "debur" and "deburret."

⁴⁷ On direct examination, Estel testified that Belknap's physical restriction limited his ability to use 5 of the 10 presses in the shop. On cross-examination, after long pauses, Estel could name only two such presses, thus proving himself incredible on this point, as well as many others.

Therefore, I find and conclude that Respondent has failed to prove that Wallen, Cox, Belknap, and Cornell would have been denied recall from the December 22 layoff because of the poor production and/or misconduct attributed to them, even in absence of their protected activities. Accordingly, I find and conclude that, by its refusals to recall Wallen, Cox, and Cornell, Respondent violated Section 8(a)(3) of the Act, as well as Section 8(a)(5).

Equally pretextual, I find, is Respondent's stated defense for not recalling Johnson. Johnson had to have been a superior worker, or he never would have been made a setup man.⁴⁸ Johnson was originally a day-shift employee; but rather than transfer him back to the first shift when production resumed on January 2, Respondent made the decision to deny him reinstatement permanently. After the six day-shift pressroom employees were not recalled, there assuredly was a "slot" for Johnson on the day shift. Even without the lacunae created by the other six terminations, if any credence at all is to be given to Estel's testimony, better workers were badly needed on the first shift. Respondent replaced Johnson, and the others who were not recalled from the December 22 layoff, with new and inexperienced workers from personnel pool, and elsewhere. No reason for not offering Johnson a place on the day shift, rather than hiring new and inexperienced employees, was offered.

I find that Respondent has therefore failed to rebut the prima facie case that Johnson was not recalled because of his union activities, and I accordingly conclude that by refusing to recall Johnson Respondent has violated Section 8(a)(3) of the Act, as well as Section 8(a)(5).

b. The layoff of Steven Wilkes

Steven Wilkes was hired on May 3, and was permanently laid off on January 12, 1990; no other employee was laid off on that date. At all times during his employment, Wilkes was classified as a maintenance employee, but, during the first 3 months he "did welding," as he testified, under Truitt. After that he worked in the maintenance department under Walls. Wilkes was one of four maintenance employees; he was unskilled, and the only nonroutine jobs he described were those in which he helped others.

Wilkes became a member of the Union's organizing committee shortly after the drive began in June. He wore a union hat about half the time, and he often wore union buttons while working. There is no evidence that any supervisor spoke to Wilkes about his union membership or sympathies.

Wilkes was laid off by Walls who told Wilkes that the Respondent was cutting back on maintenance expenses. Wilkes asked Walls if he could go back to welding; Walls told him to see Plant Manager Harman. Wilkes attempted to find Harman, but could not. He did find Judy Bowerman and he asked her if he could be transferred to welding rather than being laid off. Wilkes testified Judy Bowerman referred him to Edward Bowerman; Edward Bowerman was out, so Wilkes left the plant. A few days later, Wilkes returned to the plant to get his tools. He went to see Walls and again

⁴⁸I reject Bailey's testimony that at Respondent's plant, as opposed to other such plants, setup employees are not more skilled employees. Setup employees determine the end result of production; such responsibility would not be entrusted to less than the best employees.

asked to be transferred to welding; Walls again sent him to see Harman. Again, Harman was not there; again Wilkes found Judy Bowerman and, again, she referred him to Edward Bowerman; again, Edward Bowerman was not there, and, again, Wilkes left. Wilkes made no other attempts to secure a transfer to welding.

After Wilkes' layoff, Respondent advertised several times for welders. On brief, the General Counsel and Charging Party make no argument that Wilkes was discriminatorily selected for layoff. However, to the extent that the complaint could be interpreted to allege that there should have been no layoffs in the maintenance department, or that Wilkes was unlawfully selected for layoff, I reject it. The General Counsel's witnesses Hickerson and Boudrie (the latter being a maintenance electrician) testified that after Wilkes' layoff no new maintenance helpers were hired; the retained employees have continued to do all maintenance work. That is, no employee (with possibly less prouunion sentiments) replaced Wilkes, a further element that detracts from any inference of discrimination.

The General Counsel and Charging Party argue that Respondent should have allowed Wilkes to transfer back to welding, as he requested of Walls and Judy Bowerman, and that Respondent's failure to do so constitutes a violation of Section 8(a)(3). Both Walls and Judy Bowerman told Wilkes to see someone else about his request to transfer from maintenance to welding, in so doing, they were denying that they had the authority to grant such a request, and there is no evidence that their disclaimers of such authority were false.

When Wilkes could not find Harman or Edward Bowerman, Wilkes gave up. He did not ask Walls or Judy Bowerman to convey his request to Harman or Edward Bowerman; and he did not visit or telephone Harman or Edward Bowerman at a later date. Finally, when Respondent later advertised for welders, Wilkes, according to this record, did not apply.

Therefore, I find that the General Counsel has failed to state a prima facie case that Wilkes was unlawfully denied a transfer to welding because there is no evidence that any responsible official of Respondent knew, or should have known, that Wilkes desired a transfer from maintenance to welding. Accordingly, I shall recommend that this 8(a)(3) allegation of the complaint be dismissed.⁴⁹

However, the complaint also alleges that the layoff of Wilkes violated Section 8(a)(5) of the Act and, as noted, Respondent admits that it has never bargained with the Union. Again, because I have found that at all times following the October 20 election, the Union has been the collective-bargaining representative of the production and maintenance employees, Respondent at all times thereafter has had a duty to bargain with the Union over such issues as layoffs and recalls, and its failure to do so in the case of Wilkes' layoff constituted another violation of Section 8(a)(5) of the Act, as I find and conclude.

⁴⁹The 8(a)(3) case of Wilkes is to be distinguished from the 8(a)(3) case of Johnson. Wilkes was asking (the wrong persons) for a complete change of classification. Johnson was (implicitly) asking only for recall to the pressroom, the department in which he was working at the time he was laid off. Moreover, Johnson was replaced by new and inexperienced workers; Wilkes was not replaced at all.

5. Other alleged violations of Section 8(a)(5)

a. *The disciplinary "point system" of attendance control*

The complaint alleges, and the answer admits, that:

29. On or about November 6, 1989, Respondent implemented a new "point system" for employee absenteeism and late reporting.

30. Since implementation of the point system referred to above in paragraph 29, Respondent has taken disciplinary action against employees pursuant to said system, by, [inter alia,] on or about January 16, 1990, suspending its employee, Kirk Henning.

Henning testified, without objection or contradiction, that in January he was suspended for 3 days pursuant this "point system" of disciplinary absence control, and that, in February, he and employee Kurt Loomis were discharged pursuant to the system. Also, the parties stipulated that Michael Wilkes was discharged on March 2, 1990, pursuant to the disciplinary "point system" of attendance control.

Respondent had a duty to bargain with the Union before it implemented or enforced such a disciplinary system;⁵⁰ therefore, its unilateral establishment of the disciplinary "point system" of attendance control on November 6, and its subsequent discipline of employees pursuant to the system, violated Section 8(a)(5) of the Act, as I find and conclude.

b. *The drug abuse program*

At one point in his direct examination, Edward Bowerman volunteered that employees were subject to drug testing. On cross-examination, Bowerman testified that Respondent had established its disciplinary drug-testing policy in early 1990. The General Counsel then moved to amend the complaint to allege that such action constituted a violation of Section 8(a)(5). After the amendment was granted, Judy Bowerman was called by Respondent to testify that the drug-testing policy had existed since before the October 20 election. Judy Bowerman's testimony was wholly unsupported and unbelievable. Presumably, if such a program had previously existed, it would have come to the attention of Edward Bowerman. (Edward Bowerman concerned himself with matters such as whether the employees drank soda at machines or left trash on the floor; presumably, he concerned himself with the more vital issue of possible employee drug use as well.)

As in the case of the disciplinary absence control program Respondent had a duty to bargain with the Union before implementing such;⁵¹ therefore, its unilateral establishment of the drug abuse program, and any discipline that may have resulted from it, violated Section 8(a)(5) of the Act.⁵²

CONCLUSIONS OF LAW

1. Respondent Yukon Manufacturing Company is an employer engaged in commerce and in an industry affecting

commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act by the following acts and conduct, thereby violating Section 8(a)(1) of the Act:

(a) On April 21, by Bailey, Respondent threatened employee Stockford with plant closure if the employees organized and attempted to bargain collectively.

(b) In May, by Veatch, Respondent threatened employee Stockford with plant closure if the employees organized and attempted to bargain collectively.

(c) During the last week in May, by Paille, Respondent told employee Densmore that it would be futile for the employees to seek representation by the Union.

(d) On June 2, by Paille, by Respondent, conveyed the impression to employee Stockford that Respondent had conducted surveillance of the employees' union activities.

(e) On June 2, by Judy Bowerman, Respondent unlawfully prohibited employee Stockford from distributing union literature to other employees in a nonworking area during the employees' nonworking time.

(f) On June 3, Respondent promulgated an unlawfully broad written rule prohibiting employee distribution of union literature in all areas of the plant property.

(g) On June 5, Respondent promulgated an unlawfully broad written rule denying to off-duty employees entry to parking lots, gates, and other outside nonworking areas.

(h) On June 6, by Walls, Dirling, Barnett, Bailey, and Harman, Respondent conducted surveillance of an employee union meeting at the Litchfield Youth Center.

(i) In June, by Veatch, Respondent interrogated employee McClughen about what had happened at a union meeting.

(j) In early June, by Paille, Respondent interrogated Cox about what had happened at a union meeting.

(k) In June, by Estel and Wilkinson, Respondent promised Cox and other employees better supervision and future pay and insurance improvements if they refrained from becoming or remaining members of the Union or refrained from giving any support to it.

(l) In June, by Estel and Wilkinson, Respondent threatened employees that Respondent would close the plant if the employees selected the Union as their collective-bargaining representative.

(m) In June, by Paille, Respondent, in meetings of its unlawfully established employee committee, promised employees welding gloves and other benefits in order to undermine employee support for the Union.

(n) On June 8, Respondent laid off employees Michael Allsbury, Donald Densmore, Gary Dubois, Ronald Cable, Thomas McClughen, Lyle Shaffer, and Roger Sizemore because employee Teresa Stockford had filed charges under the Act.

(o) In early July, by Dirling, Respondent created the impression of surveillance by informing employee Millemann that he had heard that she had signed a union authorization card.

⁵⁰ *Van Dorn Plastic Machinery Co.*, 265 NLRB 864 (1982).

⁵¹ *Johnson-Bateman Co.*, 295 NLRB 180 (1989); *Storer Communications*, 297 NLRB 296 (1989).

⁵² *Ibid.*

(p) In mid-July, by Dirling, Respondent interrogated employee Milleman about her union activities, membership, or desires and the union activities, memberships, and desires of other employees.

(q) On July 24, by Estel, Respondent threatened employee Larry Cornell with discharge for engaging in distribution of union literature at a time when Respondent did not have a valid no-distribution rule in effect.

(r) In early October, by Estel, Respondent threatened all temporary employees with discharge if the Union was selected as the permanent employees' collective-bargaining representative.

(s) In late November, by Edward Bowerman, Respondent threatened employee Harris with discharge if other employees reported that Harris had been discussing the Union.

(t) In mid-January 1990, by Estel, Respondent told employees Henning and Tabalski that the employee Cox would not be recalled from layoff because of his union activities.

4. Respondent violated Section 8(a)(2) and (1) of the Act by the following acts and conduct:

(a) In late January, by Paille and other of Respondent's supervisors, Respondent suggested to employees that they form the Employee Committee to deal with Respondent concerning wages, hours, and other terms and conditions of employment, thereby dominating and interfering with the formation and administration of a labor organization, and contributing financial or other support to it.

(b) Commencing on January 27, and continuing thereafter, by various supervisors and agents, Respondent has recognized and bargained with the Employee Committee as the collective-bargaining representative of its employees, thereby dominating and interfering with the formation and administration of a labor organization, and contributing financial or other support to it.

(c) On or about June 2, by Paille and other of Respondent's supervisors, Respondent suggested to employees that they reconstitute the Employee Committee by choosing new representatives to deal with Respondent concerning wages, hours, and other terms and conditions of employment, thereby dominating and interfering with the formation and administration of a labor organization, and contributing financial or other support to it.

(d) On June 6, by Walls and Veatch, Respondent supervised a meeting of employees during which representatives for the Employee Committee were selected, thereby dominating and interfering with the formation and administration of a labor organization, and contributing financial or other support to it.

(e) In June, by Estel, Respondent selected employee Cox to be on the Employee Committee, thereby dominating and interfering with the formation and administration of a labor organization, and contributing financial or other support to it.

5. Respondent has discriminated in regard to hire or tenure of employment, or terms or conditions of employment, to discourage membership in the Union, in violation of Section 8(a)(3) and (1) of the Act, by the following acts and conduct:

(a) On June 8, Respondent laid off employees Michael Allsbury, Donald Densmore, Gary Dubois, Ronald Cable, Thomas McClughen, Lyle Shaffer, and Roger Sizemore.

(b) On August 24, Respondent imposed more onerous work rules on its production and maintenance employees.

(c) In October, Respondent eliminated its program of giving perfect attendance awards.

(d) On December 5, Respondent discharged employee Thomas McClughen.

(e) Since on or about January 2, Respondent has refused to recall from layoff employees Robert Belknap, Boyd Cox, Glidden Wallen, Clifford Johnson, and Lawrence Cornell.

6. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time production and maintenance employees employed by Respondent at 900 Anderson Road, Litchfield, Michigan, including general laborers, assemblers, welders, painters, tool and die employees, jig and fixture employees, shipping and receiving employees, cold storage employees, fork truck drivers, truck drivers, janitors, quality control employees, electricians, machine operators, and machine set-up employees, but excluding office clerical employees, sales persons, draftspeople, professional employees and guards and supervisors as defined in the Act.

7. At all times since October 20, 1989, the Union has been, and is, the certified exclusive representative of the employees in the aforementioned unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8. Respondent has refused to bargain with the representative of its employees in the aforementioned unit, in violation of Section 8(a)(5) and (1) of the Act, by the following unilateral actions, or acts that were taken without prior notice to and bargaining with the Union.

(a) On November 6, Respondent implemented a disciplinary "point system" of attendance control.

(b) Since on or about November 6, Respondent has warned, suspended, and/or discharged employees pursuant to its aforementioned disciplinary attendance control system. The employees include, but are not limited to: Kirk Henning, Kurt Loomis, and Michael Wilkes.

(c) On December 12, Respondent laid off approximately 12 of the unit employees, and thereafter delayed recall of, or denied recall to, these employees.

(d) On December 22, Respondent laid off approximately 90 of the unit employees, and thereafter delayed recall of, or denied recall to, these employees.

(e) In early 1990, Respondent established a disciplinary drug abuse program for the unit employees.

9. The General Counsel has failed to establish that Respondent has otherwise violated the Act.

THE REMEDY

In addition to the usual cease-and-desist orders, and the order to post appropriate notices to employees at its plant, certain other affirmative actions are required of Respondent to remedy the violations found here.

The Respondent, having discriminatorily laid off Michael Allsbury, Donald Densmore, Gary Dubois, Ronald Cable, Thomas McClughen, Lyle Shaffer, and Roger Sizemore on June 8, 1989, and having discriminatorily discharged Thomas McClughen on December 5, 1989, and having discriminatorily denied recall to Robert Belknap, Boyd Cox,

Glidden Wallen, Clifford Johnson, and Lawrence Cornell on and after January 2, 1990, shall be ordered to reinstate Thomas McClughen and recall the remaining employees, if it has not already done so. Respondent shall be ordered to make whole, with interest, all of these discriminatees for any loss of earnings and other benefits that were suffered by them as a result of the discrimination found. Such losses shall be computed on a quarterly basis from the date of the discriminatory conduct affecting each discriminatee to the date of proper offer of reinstatement or recall, less any net interim earnings as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Respondent shall further be required to remove from the files of Allsbury, Densmore, Dubois, Cable, McClughen, Shaffer, Belknap, Cox, Wallen, Johnson, and Cornell any reference to the actions found unlawful, and Respondent shall be required to notify each of these discriminatees, in writing, that this has been done and that evidence of the actions will not be used as a basis for further personnel actions against them.

Respondent having withdrawn its attendance bonus system in violation of Section 8(a)(3) of the Act, it shall be required to reinstate the program and pay to all unit employees who would have earned awards under that system all such awards, with interest.

Respondent having on or about August 24 imposed more onerous work rules on its employees in violation of Section 8(a)(3) of the Act, it shall be ordered to rescind the rules and restore the status quo ante.

The law is that employees who are laid off in violation of Section 8(a)(5) of the Act are entitled to backpay which is to be ordered from the dates of the layoffs. See *Lapeer Foundry & Machine*, 289 NLRB 952 (1988). Moreover, under *United Gilsonite Laboratories*, 291 NLRB 924 (1988), the backpay of Respondent's employees who were laid off in violation of Section 8(a)(5) of the Act continues until the employees are recalled or the earliest date on which one of the following conditions is met: (1) mutual agreement with the Union is reached; (2) good-faith bargaining results in a bona fide impasse; (3) the Union fails to commence negotiations within 5 days of receiving Respondent's notice of desire to bargain; or (4) the Union subsequently fails to bargain in good faith. Of course, the occurrence of one of these last four conditions (the *United Gilsonite* conditions) would not affect Respondent's backpay liability to Robert Belknap, Boyd Cox, Glidden Wallen, Clifford Johnson, and Lawrence Cornell who were denied recall in violation of Section 8(a)(3) after they were laid off in violation of Section 8(a)(5). Those five individuals shall continue to be entitled to the usual remedies for 8(a)(3) violations, as specified above, even if one of the *United Gilsonite* conditions were met; that is, only by a proper offer of reinstatement may Respondent toll its recall and backpay liability to those five discriminatees.

Except for Binion, the employees who were unilaterally laid off on December 12 have been recalled, and under Section 8(a)(5) backpay shall be ordered from the dates of their layoffs until the dates of their recalls. As noted, while Respondent's initial failure to recall Binion has been held not to be a violation of Section 8(a)(3) of the Act, once Respondent had notice that Binion was still in the area, it had an obligation under Section 8(a)(5) of the Act to seek him out and to offer recall to him. Therefore, Binion is entitled

to the backpay remedy from the date of Respondent's receipt of notice of his January 25 claim for unemployment compensation until he is recalled, or until one of the *United Gilsonite* conditions are met.

Konzak and any other employees who were unilaterally laid off on December 22 (even though they are not mentioned by name here) and Wilkes, who was unilaterally laid off on January 12, are entitled to the 8(a)(5) backpay remedy from the dates of their layoffs until they are recalled or one of the *United Gilsonite* conditions are met.

Respondent shall further be ordered to reinstate and make whole, with interest, the employees whom it has warned, suspended, and/or discharged pursuant to its unilaterally established disciplinary "point system" of attendance control or its unilaterally established drug abuse program; Respondent shall be required to remove from the files of such employees any reference to their warnings, suspensions, or discharges; and Respondent shall be required to notify all such employees, in writing, that this has been done and that evidence of their unlawful warnings, suspensions, or discharges pursuant to those unlawfully established programs will not be used as a basis for further personnel actions against them. These employees include, but are not limited to: Kirk Henning, Kurt Loomis, and Michael Wilkes.

Having found that Respondent has dominated, as well as assisted, the Employee Committee, I shall also recommend that Respondent completely disestablish the labor organization.

All interest ordered shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In this case, the Respondent has violated every subsection of Section 8(a) of the Act except (a)(4). Even the principles of Section 8(a)(4) have not gone unassaulted; when employee Stockford filed charges under the Act on June 8, Respondent immediately laid off seven other employees in retaliation, offering no excuse for its actions then or at the hearing. That June 8 layoff was short, but it was long enough to make the point Respondent has no regard for the principles of Act.

Therefore, it is not because of the volume of violations alone that I recommend the broad order against Respondent, an order that it cease and desist in any other manner from violating the National Labor Relations Act.

Finally, because of the massiveness of the violations committed by Respondent, the notice to employees goes into its fourth page, and some parts of it are complex. A routine order of posting would necessarily assume that the employees, on their limited breaktimes, are supposed to crowd around one copy, or only a few copies, of this extraordinarily long and somewhat complex notice and attempt to digest it in full view of the Respondent's agents (who are not loathe to conduct surveillance). This is not an effective way to inform these employees of their rights and protections under the Act. Accordingly, I conclude that the appropriate remedy in this case includes an order that Respondent mail a signed copy of the notice to each of its employees (past and current, temporary⁵³ and permanent) who were on its payrolls between the approximate date that it embarked on its course of

⁵³ Estel singled out the temporary employees for one of Respondent's most serious threats, as detailed supra.

unlawful conduct, February 1, 1989, when it established the Employee Committee, and the date it begins posting of the notice at its plant.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵⁴

ORDER

The Respondent, Yukon Manufacturing Company, Litchfield, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure if the employees join, or otherwise support, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), and attempt to bargain collectively.

(b) Telling employees that it would be futile for them to seek representation by the Union.

(c) Conveying to its employees the impression that Respondent has conducted surveillance of the employees' union activities.

(d) Prohibiting employees from distributing union literature to other employees in nonworking areas during the employees' nonworking time

(e) Promulgating any rule that prohibits employee distribution of union literature in all areas of its plant property.

(f) Promulgating any rule that denies to off-duty employees entry to parking lots, gates, and other outside nonworking areas.

(g) Conducting surveillance of any union meeting that is attended by its employees.

(h) Interrogating its employees about their union activities, memberships, or desires or about the union activities, memberships, or desires of other employees.

(i) Promising employees better supervision, or future pay or insurance improvements, if they refrain from becoming or remaining members of the Union or refrain from giving support to it.

(j) Threatening employees with discharge or other discipline because they are engaging protected concerted activities or union activities.

(k) Threatening temporary employees, or any other employees, with discharge if the Union is selected as its permanent employees' collective-bargaining representative.

(l) Threatening employees with discharge if Respondent receives reports that they have been discussing the Union.

(m) Telling employees that other employees will not be recalled from layoff because of their union activities.

(n) Laying off any employee, or taking any other adverse action against any employee, because any other employee has filed charges under the Act.

(o) Dominating or interfering with the formation or administration of the Employee Committee or any other labor organization or contributing financial or other support to the labor organization, or any other labor organization, or by giving effect to any agreements reached with the organization; pro-

vided however, that nothing in this Order shall require or authorize Respondent to vary or abandon any wage, hour, seniority, or other substantive benefit that it has established for its employees because of any such agreements, or by the assertion by its employees of any rights they have derived as a result of the agreements, without prior notice to and bargaining with the Union.

(p) Recognizing the Employee Committee, or any successor thereto, as the representative of its employees concerning wages, hours of employment, or any other term or condition of employment.

(q) Discharging, laying off, or refusing to recall from lay-off employees, or in any other way discriminating against employees in regard to their terms or conditions of employment in order to discourage membership in the Union.

(r) Terminating its attendance bonus program, or any other program of employee benefits, in order to discourage membership in, or activities on behalf of, the Union.

(s) Imposing more onerous work rules on employees in order to discourage membership in, or activities on behalf of, the Union.

(t) Laying off employees without prior notice to and bargaining with the Union.

(u) Establishing and enforcing disciplinary attendance control procedures, drug-testing procedures, or any other procedures which affect the terms and conditions of employment of the employees in the unit found appropriate, without prior notice to and bargaining with the Union.

(v) In any other manner interfering with, restraining, or coercing 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 to Thomas McClughen, Robert Belknap, Boyd Cox, Glidden Wallen, Clifford Johnson, and Lawrence Cornell immediate and full reinstatement or recall 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 make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision. Respondent shall also remove from the files of all of those employees any reference to the discharges and the denials of recalls that have been found to be unlawful and notify all of those employees that this has been done and that evidence of the actions will not be used as a basis for future personnel actions against them.

(b) To the extent it has not already done so, recall those employees whom it laid off on June 8, December 12 and 22, 1989, and January 12, 1990, and make those employees whole for any loss of pay suffered as a result of its unlawful conduct in the manner set forth in the remedy section of this decision.

(c) Offer to Kirk Henning, Kurt Loomis, and Michael Wilkes, and any other employees who have been discharged pursuant to Respondent's unilaterally established disciplinary procedures, as described here, 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 make whole such employees, and make whole any

⁵⁴If 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.

other employees who have been suspended, or who have otherwise suffered a loss of earnings as a result of Respondent's enforcing its unilaterally imposed disciplinary procedures as described here. Respondent shall also remove from the files of all of those employees any reference to their discharges, suspensions, or other adverse action that it has taken against them pursuant to its "point system" of disciplinary absence control, or its drug abuse control program, and notify all such employees that this has been done and that evidence of such discharges, suspensions, or other adverse actions will not be used as a basis for future personnel actions against them.

(d) Reinstate its attendance award program that it unlawfully discontinued on or about October 1, 1989, and make whole, with interest, any of its employees who would have earned monetary awards pursuant to that program.

(e) Withdraw and revoke the work rules that it unlawfully established on or about August 24, 1989.

(f) Notify and give the Union an opportunity to bargain about any changes in the unit employees' terms and conditions of employment, including layoffs and recalls and disciplinary attendance and drug abuse procedures.

(g) Rescind its "point system" of disciplinary attendance control and its drug abuse policies found here to have been unlawfully imposed on the employees in the unit found appropriate here.

(h) Withdraw and withhold recognition from and completely disestablish the Employee Committee or any successor as a representative of its employees for the purpose of collective bargaining.

(i) 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.

(j) Post at its plant in Litchfield, Michigan, copies of the attached notice marked "Appendix."⁵⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on 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.

(k) Mail to each employee, temporary and permanent, past and current, who were on Respondent's payrolls at any time between February 1, 1989, and the date the notice specified here is posted at Respondent's plant, a copy of the notice on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative.

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

⁵⁵ 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."

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT threaten our employees with plant closure if they join, or otherwise support, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and attempt to bargain collectively.

WE WILL NOT tell our employees that it would be futile for them to seek representation by the Union as their collective-bargaining representative.

WE WILL NOT convey to our employees the impression that we have conducted surveillance of their union activities.

WE WILL NOT prohibit our employees from distributing union literature to other employees in nonworking areas during the employees' nonworking time.

WE WILL NOT promulgate any rule that prohibits employee distribution of union literature in all areas of our plant property.

WE WILL NOT promulgate any rule that denies to our off-duty employees entry to our parking lots, gates, and other outside nonworking areas. WE WILL NOT conduct surveillance of any union meeting that is attended by our employees.

WE WILL NOT interrogate any of our employees about their union activities, memberships, or desires or about the union memberships, activities, or desires of other employees

WE WILL NOT promise employees better supervision or future pay or insurance improvements, if they refrain from becoming or remaining members of the Union or refrain from giving support to it

WE WILL NOT threaten our employees with discharge or other discipline because they are engaging protected concerted activities or union activities.

WE WILL NOT threaten temporary employees, or any other employees, with discharge if the Union is selected as our permanent employees' collective-bargaining representative.

WE WILL NOT threaten our employees with discharge if we receive reports that they have been discussing the Union.

WE WILL NOT tell any of our employees that other employees will not be recalled from layoff because of their union activities.

WE WILL NOT lay off any employee, or take any other adverse action against any employee, because another employee has filed charges under the Act.

WE WILL NOT dominate or interfere with the formation or administration of the Employee Committee or any other labor organization or contribute financial or order support to such labor organization, or any other labor organization, or give effect to any agreements reached with the organization; provided however, that WE WILL NOT vary or abandon any wage, hour, seniority, or other substantive benefit that we have established for our employees because of any such agreements or by the assertion by our employees of any rights they have derived as a result of the agreements, without prior notice to and bargaining with the Union.

WE WILL NOT recognize the Employee Committee, or any successor, as the representative of our employees concerning wages, hours of employment, or any other term or condition of employment.

WE WILL NOT discharge, lay off, or refuse to recall from layoff any of our employees, or in any other by discriminate against our employees in their terms or conditions of employment, in order to discourage membership in the Union.

WE WILL NOT impose more onerous work rules on our employees in order to discourage membership in, or activities on behalf of, the Union.

WE WILL NOT terminate our attendance bonus program, or any other program of employee benefits, in order to discourage membership in, or activities on behalf of, the Union.

WE WILL NOT, without prior notice to and bargaining with the Union, lay off or delay or deny recall to employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees employed by us at 900 Anderson Road, Litchfield, Michigan, including general laborers, assemblers, welders, painters, tool and die employees, jig and fixture employees, shipping and receiving employees, cold storage employees, fork truck drivers, truck drivers, janitors, quality control employees, electricians, machine operators, and machine set-up employees, but excluding office clerical employees, sales persons, draftspeople, professional employees and guards and supervisors as defined in the Act.

WE WILL NOT establish and enforce disciplinary attendance control procedures, drug-testing procedures, or any other procedures which affect the terms and conditions of employment of our employees in the above bargaining unit without prior notice to and bargaining with the Union.

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

WE WILL offer to Thomas McClughen, Robert Belknap, Boyd Cox, Glidden Wallen, Clifford Johnson, and Lawrence Cornell immediate and full reinstatement or recall 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 make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, and WE WILL remove from the files of Thomas

McClughen any reference to his discharge; WE WILL remove from the files of Robert Belknap, Boyd Cox, Glidden Wallen, Clifford Johnson, and Lawrence Cornell any reference to our denials of their recalls; and WE WILL notify all of those employees that these actions have been taken and that evidence of the actions will not be used as a basis for future personnel actions against them.

WE WILL, to the extent we have not already done so, recall those employees who were laid off on June 8, December 12 and 22, 1989, and January 12, 1990, and WE WILL make those employees whole, with interest, for any loss of pay and other benefits suffered by them as a result of those layoffs, WE WILL offer to Kirk Henning, Kurt Loomis, and Michael Wilkes, and any other employees who have been discharged pursuant to our disciplinary "point system" of attendance control, or our drug abuse program, that we established without notice to, or consolation with, the Union, 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 make whole, with interest, such employees; and WE WILL make whole, with interest, Kirk Henning, Kurt Loomis, and Michael Wilkes, or any other employees who have been suspended, or who have otherwise suffered a loss of earnings as a result of our enforcing our unilaterally imposed disciplinary procedures; WE WILL also remove from the files of all of those employees any reference to their discharges, suspensions, or other adverse action that we have taken against them pursuant to our unilaterally imposed disciplinary procedures, and WE WILL notify all such employees that this has been done and that evidence of the discharges, suspensions, or other adverse actions will not be used as a basis for future personnel actions against them.

WE WILL notify the Union, and give it an opportunity to bargain, before we make any changes in any terms or conditions of employment of our employees in the above-described bargaining unit, including conditions such as procedures for layoffs and recalls and programs for disciplinary attendance control and drug abuse.

WE WILL rescind our unlawfully upset disciplinary "point system" of attendance control and our drug abuse procedures.

WE WILL withdraw and revoke the work rules that we unlawfully established on or about August 24, 1989.

WE WILL withdraw and withhold recognition from the Employee Committee, and WE WILL completely disestablish the Employee Committee, or any successor thereto, as a representative of our employees for matters concerning wages, hours of employment, or any other term or condition of employment.

WE WILL reinstate our attendance award program that we unlawfully discontinued on or about October 1, 1989, and WE WILL make whole, with interest, any of our employees who would have earned a monetary award pursuant to that program

YUKON MANUFACTURING COMPANY