

Save Mart Supermarkets and United Food & Commercial Workers Union Local 1036, AFL-CIO.
Cases 31-CA-21899 and 31-RC-7356

September 29, 1998

DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION

BY MEMBERS FOX, LIEBMAN, AND BRAME

On September 30, 1997, Administrative Law Judge Frederick C. Herzog issued the attached decision. The Respondent and the Charging Party filed exceptions and supporting briefs.

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

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Save Mart Supermarkets, Tehachapi, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.²

Substitute the following for paragraphs 2(a) and (b).

“(a) Within 14 days after service by the Region, post at its Tehachapi, California facility copies of the attached notice marked “Appendix.”¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 20, 1996.

“(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

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

² We shall modify the recommended Order to comply with the Board's decision in *Indian Hills Care Center*, 321 NLRB 144 (1996), as modified by *Excel Container, Inc.*, 325 NLRB 17 (1997).

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.”

[Direction of Second Election omitted from publication.]

Gary Freelan Ellison, Esq., for the General Counsel.
Robert L. Zaletel, Esq. (McQuaid, Metzler, McCormick & Van Zandt), of San Francisco, California, for the Respondent.
David Rosenfeld, Esq., of Oakland, California, and *James G. Varga Esq. (each of Van Bourg, Weinberg, Roger & Rosenfeld)*, of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge. This case was heard by me in Bakersfield, California, on July 29-31, 1996, and is based on a charge¹ filed in Case 31-CA-21899 by United Food & Commercial Workers Union Local 1036, AFL-CIO (the Union or the Petitioner), on March 21, 1996, alleging generally that Save Mart Supermarkets (the Respondent), committed certain violations of Section 8(a)(1), (2), and (5) of the National Labor Relations Act (the Act). On June 1, 1996, the Acting Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations of Section 8(a)(1) of the Act. The Respondent thereafter filed a timely answer to the allegations contained within the complaint, denying all wrongdoing.

On December 12, 1995, the Union filed a petition in Case 31-RC-7356.² Following a hearing, the Regional Director for Region 31 issued a Decision and Direction of Election.

Pursuant thereto, an election by secret ballot was conducted on March 8, 1996, by the Regional Director. Of approximately 50 eligible voters, 49 cast ballots, of which 18 were cast for the Petitioner, 28 were cast against the Petitioner, and 3 ballots were challenged. The Regional Director found that the challenged ballots were not sufficient to affect the results of the election.

On March 15, 1996, the Petitioner filed timely objections to the conduct of the election and to conduct affecting the results of the election. Thereafter, following an investigation, the Regional Director issued a report on objections, and an order directing hearing concerning the allegations contained in the Petitioner's Objections 2 and 7, a portion of Objection 3, and certain “other investigative disclosures.” He also ordered the consolidation of Case 31-RC-3356 with Case 31-CA-21899.

In due time, the complaint and the remaining objections to election, as consolidated, came on for hearing before me.

All parties appeared at the hearing, and were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file

¹ Subsequently twice amended.

² The petition concerned the Respondent's store in Tehachapi, California, in a unit that was ultimately described as:

Included:

Full-time and regular part-time employees of the (Respondent) at its facility in Tehachapi, California.

Excluded:

Office clerical employees (including bookkeepers), confidential employees, professionals, all other employees, managers, guards and supervisors as defined in the Act.

briefs. Based on the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, and the answer admits, that the Respondent is a corporation with corporate offices located at Modesto, California, and a retail grocery store in Tehachapi, California, where at all times material it has been engaged in the business of retail sales of groceries; that in conducting its business it annually purchases and receives at the store goods or services valued in excess of \$5000 directly from points outside the State of California, and that it annually derives gross revenues in excess of \$500,000.

Accordingly, I find and conclude that the Respondent is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is now, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Issues Arising from the Complaint

The complaint alleges that during the critical period³ the Respondent maintained a system of "teams" headed by "team leaders," and that it used this system to solicit grievances from employees and impliedly promise benefits to employees, and also to engage in surveillance of employees' union activities. It is also alleged that during late February or early March 1996, the Respondent informed employees several times that it would be a futility to select the Union as their bargaining representative. Finally, it is alleged that during late February and/or early March 1996, and on March 8, 1996, the Respondent solicited complaints and grievances from employees and impliedly promised increased benefits to employees.

The Respondent, both by its answer and by its evidence at trial, disputes each of these allegations.

B. The Evidence

Union activities at the Respondent began in September 1995. On September 26, 1995, 8 to 10 employees met at the home of Debbie Northcut, a former employee. Among those in attendance was year employee Rhonda Cleeland, a bakery clerk. Cleeland and the others met with union organizer Eddie Pope, to whom Cleeland submitted her signed union authorization card.

Regarding the allegation that the Respondent instituted or maintained a system to solicit grievances, and to imply that they would be remedied, the Respondent acknowledges that its manager at the store started a practice that predated the filing of the petition. However, as explained, the Respondent contends

³ As previously shown, the petition was filed on December 12, 1995, and the election was held on March 8, 1996, thus defining the critical period.

that the practice is merely consistent with good management, and is not violative of the Act.

Thus, on October 18, 1995, Thomas Sarkesian, a 22-year employee, who was then store manager at the store, called a meeting at the Lamp Post Pizza Parlor, inviting department heads, their assistants and the key carriers—employees who close the store and who are in charge during Sarkesian's absence. There was no discussion of the union or of its activities at the meeting. In Sarkesian's view there were a lot of hurt feelings about layoffs, and reduction of hours and salaries, and he wanted to solve that problem. He admitted that teams were not in existence prior to this meeting. At the meeting Sarkesian appointed Gilbert Toledo, Linda Canard, Arnie Gonzalez, and Larry McDonald as team leaders. (Gilbert Toledo was the former produce manager, and was out on disability at the time.) Linda Canard was a key carrier. Arnie Gonzalez was the manager of the bakery/deli. Larry McDonald was manager of the meat department.⁴

Sarkesian had the leaders pick five to seven team members by raising their hands as he read off a roster of all store employees. Team leaders were to select team members based on their "comfort level." According to Sarkesian's credible testimony, the team leaders were given responsibility for letting their team members know about company policies and procedures and what was discussed at team meetings, such as better customer service. They were also made responsible for gathering employee ideas and suggestions. Sarkesian also distributed various written materials describing new store policies regarding express lanes, training, and procedures for handling robberies. Sarkesian told the team leaders to take each of these documents to each of their team members, and to be sure that each was fully understood. In fact, the team leaders were told to have the team members sign a paper indicating that these policies were talked about. Before this meeting such information had been disseminated either by giving it to managers at weekly manager meetings or to the employees individually by the managers or by posting one on the bulletin board.

The team leaders were also told by Sarkesian to have team members sign off if they had any suggestions for improvements or information. If an employee had a complaint the team leader was to write it down and bring it to Sarkesian's attention. However, the team leaders were specifically told to tell the employees they could not fix their problems. Sarkesian credibly denied ever telling the team leaders to solicit grievances of complaints, problems, or telling the team leaders to make any representations about their ability to remedy any complaint.

Gilbert Toledo, an apparently credible witness, stated that Sarkesian said the purpose of the team leaders and teams was to give the employees the opportunity to discuss their problems with someone else other than management. This, according to Toledo, was Sarkesian's way of solving the employee's problems with the store, the store manager, or other employees, and getting them out in the open. It was Toledo's further understanding that he was to make himself available to the employees to discuss their problems at the store, by directly confronting them. He admitted, however, that he was never instructed of the specific problems he was to inquire about.

Employee Rhonda Cleeland, a highly implausible and biased witness, testified that sometime in January, she was in the bakery department when Canard approached her with a note-

⁴ Notwithstanding his reluctance to serve in that position.

book—one she had never seen in the store before—with Cleeland's name on it and told Cleeland that she was on Canard's team. At that time Canard made her sign a piece of paper inside that stated she read items on a list, and if she had any problems she was to go to Canard with them, and Canard would, in turn, write them down and give them to Sarkesian. The paper she signed was read to her. At the hearing she did not remember its specific contents nor its purpose. Thus, so Cleeland testified, when Cleeland's vacation was taken away from her, she took the problem to Canard as previously instructed, but Canard failed to do anything about it. She followed up with Sarkesian, who said he would get back with her, but never did. Prior to the organizing campaign there was no process in place for problem solving such as the team leader concept.

Stephanie Brooks, a bakery clerk who worked for the store for 7 years, was one of the first employees to have an individual meeting with Sarkesian. This meeting took place on February 20, 1996. Brooks previously had been part of management for 2 years as the bakery/deli manager, and during this time had gone to Sarkesian whenever she had any type of problem. This, however, was the first time she had ever been summoned to Sarkesian's office to discuss any problems she may have been having as an employee. It was Brooks's understanding that certain other unspecified employees also were paged to Sarkesian's office that day, but did not hear him page anyone else. Brooks credibly testified that during the meeting with Sarkesian, she told him she was having scheduling problems, and that the schedule was unfair in her view, as her hours were insufficient, and under company policy she felt she was entitled to more hours as a more senior employee. Sarkesian increased her hours and said it was within his discretion to do so.

As to whether it was unusual for Sarkesian to be dealing with Brooks on this level, the evidence was that the chain of command in place at the store dictated that Brooks go first to her bakery manager with her scheduling complaints, and if the complaint was not resolved at that level only then to go to upper management. However, the bakery manager, Arnie Gonzales, had been terminated on February 2, 1996, and Brooks thought it was logical to speak with Sarkesian about her problems. Sarkesian did not write the schedules after Gonzales left, but rather, Steven Dieterle, the grocery manager did. However, Brooks did not go to him and complain about her schedule even though it was company policy to do so. Sarkesian stated he was the proper person for Brooks to come to with a scheduling problem.

Beverly Jones, a generally credible witness, and a produce clerk at the store, attended an individual meeting with Sarkesian at the store sometime in February. She was aware that other employees were summoned to his office like she was; having spoken to employee Delana who went to Sarkesian's office about an hour before her. Sarkesian told her that he had asked her to come to his office so he could inquire whether she had any concerns or problems. She told him that she was frustrated at being stepped down to a service clerk from her position as a cashier. Sarkesian told her he could not step her back up because sales were down, due to Albertson's moving in across the street in 1994. Jones came away from the meeting disappointed that she couldn't be stepped back up. Sarkesian stated he did not have the authority to step her up. As to Jones' problems with the other service clerks, Sarkesian remarked that they had a maturity problem; he told her that he had set guidelines for them, but they were not following them, and there was

nothing more he could do. He asked Jones what he she thought he might do, but she had no suggestions.

Jones did not recall ever being previously summoned to the manager's office to be asked about any problems. Sarkesian, on the other hand, claimed he had discussions with her about this issue every two to three months, and that this started well before the union campaign. Sarkesian also disputed her testimony by stating that, prior to the union campaign, he would walk the floor of the store two to four times per week and solicit grievances and problems from the employees he came in contact with. Sometimes such discussions took place in his office for privacy reasons. He stated that his meetings did not change in any fashion before or after the union campaign. Although he claimed that he was careful not to hold the employee's he questioned "captive," i.e., to be careful during the meeting to make promises to them he couldn't resolve or inquire as to their position on the union, he admitted that he also did not believe it necessary to tell the employees they didn't have to answer questions. Sarkesian stated that he felt it necessary to call Brooks, among other employees he previously discussed problems with, because of an altercation which had broken out between two employees in the store, and he wanted to call everyone on staff that day to ease the tension and friction in the store. Even though there were team leaders on staff on the day of the altercation, and it would be more expeditious for them to handle it, this was something to be handled by Sarkesian solely.

Lavonne McMurrey was a grocery clerk employed for 5 years. McMurrey, a generally credible witness, attended an individual meeting with Sarkesian in his office, sometime in late February. She was summoned to this meeting by a fellow employee, possibly Linda Canard. Prior to this she had never been called into his office before and asked about problems she may have been having. She heard from other employees that Sarkesian was calling everyone up and observed this on and off during the day of her meeting, but did not know how they were being summoned. Sarkesian asked if she had any problems they could work out. She said that the clerks needed another calculator to use when they were closing out their tills in order to get out of the store on time. She also brought up problems she was having with Steve Dieterle, the assistant manager.⁵ However, she told Sarkesian she was working these problems out by herself and did not want his assistance, and he said he would honor her wishes.

Sarkesian later told the key carriers that it was unacceptable that the checkers were staying overtime to count out their tills at night and they were to remedy it, even though it's his personal responsibility for running the check stands properly.

In addition to the evidence concerning individual meetings, the Petitioner also adduced evidence concerning certain "small group" meetings.

Edith McCasland, a service clerk employed by the store for 3 years, testified that she was present at a "small group" meeting in Sarkesian's office approximately 3 weeks before the election. The other employees in attendance were Lavonne McMurrey, Larry McDonald, Penny Veehard, Cheryl Myers, and Dan Mullin. At the meeting Michael Silveira, vice president of human resources & law, spoke about what would happen if the Union were elected. Using a pie symbol, he said no matter what the Union promised, only so many pieces of the pie

⁵ Relating to the death of a family member.

could be allotted to labor, and they wouldn't get them all. He also explained that negotiations could take a long time, and things wouldn't change overnight. McCasland also stated that Silveira also said he was in charge of negotiations and he was not willing to negotiate, and that that negotiations could take up to 2 years. However, as she testified, it became clear that she could not recall whether Silveira's statements were couched as mere possibilities, or were, instead, couched as certainties based on his own decisions. After hearing her testimony it seemed clear that, while she is a truthful person, her recollection of details tends to be faulty.

Employee Rhonda Cleeland attended a "small group" meeting in late February, approximately 1 week after Cleeland's birthday of February 20.⁶ It took place in Sarkesian's office, with Silveira, Strickland, Fugate, Questa, and Strader in attendance, along with employees Farinas, Larry Morphis, and Alexis Martinez. Strickland came down to the floor and summoned her to the meeting. When she explained to him that she was in the middle of baking and could not attend, he said he would have Sarkesian find someone to cover her. She didn't know if anyone did, but she attended the meeting anyway. She spent approximately 45 minutes at the meeting and left before it ended. She recounted that Silveira asked why the employees wanted to pay union dues when they "already had their cake." He indicated that he had complete control over the length of the negotiations by saying that he would take 20 seconds to 20 years to negotiate. He also suggested that if the union wasn't in within a year it would go away. According to Cleeland, Sarkesian stated that his position during the negotiations would involve wearing his "meanest hat." She recounted that he spoke sternly to the employees "like a parent would do when [their] children have done something wrong." However, her testimony was marked by a number of inconsistencies with her pre-trial affidavit which she, unconvincingly, attributed to having been distracted at the time she gave it.

Employee Cleeland testified about a meeting held in mid-January 1996, at Old Town Pizza,⁷ which was attended by various managers including Dan Strickland, Beth Fugate, Mike Silveira, and Dave Questa. She did not recall what was discussed, as it did not pertain to her.

However, McCasland testified she was at a meeting held sometime in February at Old Town Pizza, where Silveira, Strickland, Fugate, and Questa, were present. According to McCasland, Silveira spoke with the employees individually, asking them if they had any problems.⁸

Additionally, the Union introduced evidence of an informal meeting between Sarkesian and Cleeland. In late December during the union campaign, employee Cleeland had a discussion with Sarkesian about the bonus program. During her 4-year tenure she had always received a quarterly bonus, which was for avoiding on-the-job injuries and having a good sales quarter. However, Sarkesian told her as of January 1st they would not be getting bonuses anymore. Although she received a bonus at the end of January, but thought it was for the quarter prior to the year end quarter in light of what Sarkesian had said. She learned that the bonus system was still in place when she saw a memo, which had been faxed to the store the day of her

"small group" meeting of March 6, which contradicted Sarkesian's statements about discontinuing the bonus system. Her concerns about the bonus system continued nevertheless. Although she eventually received a bonus for the first quarter of 1996, it arrived at least 2 months after it was owed to the employees, long after the election.

Sarkesian denied saying that bonuses were being discontinued. As to the timeliness of the 1996 bonus, Sarkesian stated it normally takes 6 to 7 weeks after quarter's end to pay the bonuses. He further testified that the question about the timeliness of the bonus payments came up when he was walking through the bakery and stopped and had a casual conversation with Cleeland. As noted elsewhere, Cleeland was not a credible witness, and I accordingly resolve this conflict between her testimony and that of Sarkesian in favor of Sarkesian.

The Respondent presented substantially different accounts of the "small group" meetings. Alexis Martinez, a credible witness, was the stocking crew manager of the Tehachapi store, and worked there for 4 years. On one occasion, she was told by two union representatives she cannot name that she would no longer be receiving bonuses. She was outraged because Sarkesian did not discuss this with her or post a notice, which was the usual manner of alerting employees to changes in benefits. The next day, she went to Sarkesian to discuss the bonuses, at which time he prepared and photocopied a statement denying the Union's alleged information about the bonuses.

Martinez was present at the March 6, 1996 meeting which Cleeland described in her testimony. She apparently found out about the meeting by a posting. It was her understanding that these meetings were voluntary. According to Martinez, even though Silveira talked about the negotiations he never made any of the comments Cleeland attributed to him. I credit this testimony over that of Cleeland.

Tari Sickler, an apparently credible witness and a checker for 3 years, attended a meeting prior to the election whose other attendees were Llavonne McMurrey, Dan Mullin, Larry McDonald, and Edith McCasland. This, apparently, is the same meeting described by McCasland and McMurrey. The meeting began between 9:30 and 10 a.m. and lasted approximately 45 minutes. Management personnel in attendance were Silveira, Questa, Fugate, and Strickland. According to Sickler, someone asked Silveira how long the negotiations would take, and he responded it would depend. He never gave any specific indication of time; all he said was that it was the Union's position was that if a contract was not reached within a year they would redo the election. She also denied that Silveira used the labor pie analogy or said that he wasn't willing to negotiate. In fact Silveira said he would be willing to negotiate almost anything except the terms of the Southern California union agreement.

Lawrence (Larry) McDonald has been the meat manager for the past 3 of his 7-year tenure at the store. He attended a meeting shortly before the election at which Cleeland and Jones were also present. He testified that when Silveira was asked how long it would take to get a contract, he said that you look at both sides and take it from there. He never heard Silveira say the process was futile. He denied that Silveira made any of the statements Cleeland attributed to him, at least not while he was there. He did hear Silveira tell Cleeland it could take 1 to 2 weeks to reach a contract.⁹

⁶ According to Silveira, the meeting was March 5 or 6.

⁷ Although she was less than clear concerning the exact location.

⁸ It is unclear whether this is the same meeting involved in Cleeland's testimony.

⁹ Apparently due to tension caused by what he viewed as the ordeal of testifying, this witness abruptly left the witness stand in the midst of his

Michael Silveira gave the following account of his statements regarding union negotiations. He explained that on February 27, 1996, he drafted and distributed a memo regarding the union election. The main purpose of the March 5 and 6 meetings was to cover the February 27 memo and to present the Respondent's position that it preferred not to have union representation. He claims his standard comments at all of the meetings was that there was to be an election by secret ballot held March 8, 1996, that the employees are free to choose, and that the Company was opposed to it. In response to questions as to how long it would take to negotiate the contract he said there was no way of knowing, emphasizing that the employer has an obligation to bargain in good faith. It could take a short or long time—it depended on the issues. He then showed the employees a binder of other contracts they could look at. If people didn't ask questions, he would start off by discussing some of the questions described in the February 27 memo. He denied ever asking anyone if they had problems. He just asked for questions, and denied saying that things won't change overnight if the Union wins the election. He testified that at the meetings he told the employees it was more likely store #64 would follow the northern California stores' master food agreement, not the southern California stores' standard contract. As to the pie chart, he said that Questa came up with a pie chart they used on one occasion to explain the negotiations, which was in response to a question at one of the previous meetings.

David Questa worked as the personnel supervisor for the southern Division for 9 years. His primary duties were grievance procedures, and he worked on labor negotiations. He assisted in all the group meetings and testified that Strickland and Strader were not present at all of them. He did not recall the dates and times of certain of the meetings, but categorically and credibly denied all of Cleeland's allegations as to what Silveira said. According to Questa, Silveira mentioned the pie but did not make the labor allocation statement, nor state that he was too busy to negotiate. Silveira also never said it would take 2 or more years to negotiate the contract. Silveira only responded to a question asked by an employee whether they would automatically get the southern California contract by saying, "No. What you are voting on is union representation, and then you go into the whole negotiating process, what you get wouldn't be automatic." If the Union won, the Union and Silveira would set up the meetings to negotiate and it would take an unknown period of time. When an employee specifically asked Silveira how long the negotiating process would take, he responded he didn't know—it could take any period of time. To illustrate, he referred to the ongoing negotiations with another union which had started in January.

Beth Fugate, the benefits administrator for the nonunion plans, worked for Save Mart for 7 years. She attended "small group" meetings at which Cleeland, McCasland, and McMurrey were present. She credibly denied that Silveira made any of the statements Cleeland alleged. She testified the pie was used to answer questions as to whether unionizing would result in greater pay and/or benefits. Silveira used the pie to demonstrate that the basic pie was always the same size whether before or after the union. Silveira said, "[H]ere's your pie now, here's what it looks like after negotiations." Silveira always

testimony. He returned when instructed to do so. Despite his emotionality, I found his testimony to be credible.

said there was no way to project how long negotiations would take.

Dan Strickland, the Save Mart recruiter, credibly testified he assisted in the "small group" meetings, but didn't attend them all. His role was to get the list of employees and go down and tell people, including Cleeland, that there was a voluntary meeting upstairs they were welcome to attend. He testified that Cleeland couldn't come upstairs right away, as she was baking, so he asked Sarkesian to find her a replacement to enable her to attend. He testified that he wanted every employee to attend, not just Cleeland. He didn't know who covered her absence from the bakery department.

Sifting through all this, and bearing in mind the conflicts between the various witnesses, what is clear is that there was a great deal of misunderstanding by employees during the campaign.

However, I accept it as proven that the practice of having team leaders was established almost 2 months preceding the beginning of the critical period preceding the election, but approximately 3 weeks following the beginning of union activities among employees. While that timing may well serve to arouse suspicion about why it was established, it cannot by itself demonstrate illegality in the act of establishing such a system.

Nor, on balance, does it seem to me that the evidence demonstrates that the way in which the team leaders were actually utilized was violative. Sarkesian credibly denied that he ever instructed team leaders to solicit grievances, or to resolve them, much less grant or promise benefits. Even Toledo failed to go so far. At worst his testimony was that team leaders were to discuss problems with employees on their teams, and get them into the open. He admitted that he was never instructed as to any specific problems he was to inquire about. Moreover, I regard Cleeland's testimony about her interaction with her team leader, Canard, as too vague to prove a violation.

Similarly, I conclude that Cleeland's testimony concerning Silveira saying that negotiations would be conducted with him wearing his meanest hat, or would be futile, cannot support a finding of a violation. As stated elsewhere, Cleeland was not credible. And the denials of such conduct by Silveira, Sickler, McDonald, Questa, and Fugate were each quite credible. Nor does the testimony of any other witness, including that of McCasland, prove that Silveira's remarks about the length of time to be spent in negotiations, or about a "pie" amounted to a threat that negotiations would be futile, or so protracted as to amount to a futility.

In my opinion, the only violations established in this case are those of Sarkesian.

While he denied doing so, I have determined to credit the testimony of McMurrey over his denial. Thus, I find that in late February 1996, during the critical period, Sarkesian, unlike anything he had previously done, called her into his office and directly asked her if she had any problems that they could work out. Though they did not actually work out a solution to any problems, that does not detract from the violative nature of Sarkesian's solicitation to her.

Similarly, Beverly Jones credibly testified as to being solicited to state her concerns or problems by Sarkesian when he summoned her to his office sometime in February, during the critical period. I have determined to credit her testimony concerning this event over that of Sarkesian.

Finally, the testimony of Stephanie Brooks was highly credible that on February 20, 1996, she was summoned to Sarkesian's office. While it is not clear that her grievance was actually solicited by Sarkesian, it is quite clear that he remedied her complaint about securing insufficient hours.

Thus, summarizing, I find and conclude that the Respondent violated Section 8(a)(1) of the Act during February 1996, by soliciting grievances from employees under circumstances which gave rise to an implication that the Respondent would remedy them. I also find and conclude that the Respondent violated Section 8(a)(1) on February 20, 1996, by remedying the grievance of its employee.

IV. THE OBJECTIONS

The Petitioner's second objection states that, "The Employer, by its agents, intimidated eligible voters with loss of employment opportunities if they supported the Union."¹⁰

The Petitioner's third objection stated that, "The Employer, by its agents, made promises of benefits to those eligible voters who would vote against the Union, and made promises of benefits to all eligible employees as an inducement not to vote for the Union, and promised benefits if the Union lost."

The Petitioner's seventh objection was that, "The . . . employer, by its agents, interfered with, restrained, and/or coerced its employees in the exercise of their rights guaranteed by Section of the Act."¹¹ He further concluded that, because of conflicting factual evidence on this objection, it should be resolved by a hearing thereon. However, no evidence was offered to support this objection at the hearing.

The Regional Director also noted that the investigation disclosed other factual matters that raised substantial and material factual and legal issues, and which are closely related to and involve the same evidence as certain allegations set forth in paragraphs 6, 7, and 8 of the complaint.¹² Accordingly, he concluded that these other administrative disclosures would best be resolved by referral to hearing, and he so ordered.

Summarizing the reasons for the Regional Director taking the actions that he did in referring these objections for hearing, and taking into account the evidence heard by me at trial of the issues arising from the complaint, it is clear that the evidence to support the objections is identical to that which must be considered in determining the proper outcome of the hearing on objections.

In light of my findings concerning the unfair labor practices, which are tracked by the objections, I recommend that all the objections be overruled, except that dealing with the Respondent's having solicited and granted grievances during the criti-

¹⁰ In his report the Regional Director explained that this allegation concerned events alleged to have occurred at an employee meeting at the Respondent's store in early March 1996, and involving some statements of Director of Operations/Southern Division Drake Straeter, to the effect that employees would obtain less hours of work if the Union was voted in. Additionally, it concerns an allegation that an employee was told around February 1996, by the store manager of the store that employees would have fewer work hours if the Union were voted in. The Regional Director stated that he referred these allegations to hearing because of conflicting evidence.

¹¹ The Regional Director concluded that, because of conflicting factual evidence on this objection, it should be resolved by a hearing.

¹² Accordingly, the Regional Director concluded that these other administrative disclosures would best be resolved by referral to hearing, and he so ordered.

cal period, and that the election's results be set aside, and that it be rerun on a date to be set by the Regional Director.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices, it shall be recommended that the Respondent be ordered to cease and desist from its unfair labor practices; be ordered to post the notice provided for herein; and be ordered to take certain affirmative action designed to effectuate the policies of the Act.

Regarding the consolidated representation case, it will be recommended that the representation case be returned to the Regional Director with the direction to set aside the results of the election and to rerun the election on a date to be set by him.

CONCLUSIONS OF LAW

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

2. The Union, United Food & Commercial Workers Union Local 1036, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by soliciting grievances from employees and implying that they would be granted, and by actually remedying a grievance, in order to induce employees to not support the Union.

4. The Respondent has not violated the Act in any other respect.

5. The Respondent engaged in objectionable conduct warranting that the election conducted in Case 31-RC-7356 be set aside and rerun on a date to be set by the Regional Director following the Respondent's having remedied the unfair labor practices found above.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

The Respondent, Save Mart Supermarkets, located in Tehachapi, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Soliciting or remedying grievances of employees in order to induce them to abandon their support for the Union.
 - (b) In any like or related 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) Post at its offices and facility in Tehachapi, California, copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized

¹³ All outstanding motions, if any, inconsistent with this recommended Order are denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommend 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.

¹⁴ If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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 solicit you to tell us your grievances or imply that we will remedy them, nor will we actually remedy them, in order to induce you to not support the Union.

SAVE MART SUPERMARKETS