

Western Waste Industries, Inc. of Florida and Laborers' International Union of North America, Local 517, AFL-CIO. Cases 12-CA-11007 and 12-RC-6417

20 February 1985

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 28 September 1984 Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief. The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions² 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, Western Waste Industries, Inc. of Florida, Cocoa, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following to replace the paragraph ordering that the Union's objections to the election be sustained.

"IT IS FURTHER ORDERED that the election conducted on 2 December 1983 in Case 12-RC-6417 be set aside, and a new election held."

[Direction of Second Election omitted from publication.]

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

² The unfair labor practices in the complaint in this case were further alleged by the Regional Director to be objectionable conduct, not specifically contained in objections to the election in Case 12-RC-6417, in his "Order Approving Withdrawal of Certain Objections and Directing Hearing on Objections and Consolidating Cases." The Respondent has not excepted to the Regional Director's discovery and the judge's consideration of conduct not specifically mentioned in the Union's objections. We agree with the judge that the Respondent's conduct in violation of Sec. 8(a)(1) of the Act consisting of unlawful threats and interrogations during the critical preelection period warrants setting aside the election and holding a second election. For this reason we find it unnecessary to pass on the Union's Objections 1 and 2 to the election in Case 12-RC-6417.

DECISION

FRANK H. ITKIN, Administrative Law Judge. On September 29, 1983, the Union filed a petition with the Board in Case 12-RC-6417, seeking to represent a unit of the Company's employees at its facility in Cocoa, Florida. On October 19, 1983, the Union and the Employer executed a Stipulation for Certification Upon a Consent Election, which was later approved by the Board's Regional Director. The unit, as provided in the stipulation, included employees at both the Employer's Cocoa and Titusville facilities. On December 2, 1983, a Board-conducted election was held. There were approximately 58 eligible voters, 19 votes were cast for the Union; 33 votes were cast against the Union; and 6 ballots were challenged. On December 7, 1983, the Union filed timely objections to the Employer's conduct which, it was alleged, "substantially impaired the fairness and outcome of the instant election." On December 21, 1983, the Union also filed unfair labor practice charges in Case 12-CA-11007. On January 18, 1984, a complaint issued in Case 12-CA-11007, alleging, inter alia, that the Employer had violated Section 8(a)(1) of the National Labor Relations Act by threatening employees that they would have to pay for their group insurance and uniforms if they selected the Union as their bargaining representative; by coercively interrogating employees about their union interests and desires; and by further threatening employees with loss of their insurance and other benefits if they selected the Union as their bargaining representative.¹ On January 19, 1984, the Regional Director entered an order approving the request of the Union to withdraw certain of its objections, and directing a consolidated hearing on the remaining objections with the pending unfair labor practice case. The Regional Director noted:

Although not specifically alleged in the objections, the 8(a)(1) conduct described in the complaint in Case 12-CA-11007 occurred during the critical period, and the evidence bearing on said conduct was presented to or was discovered by the undersigned during the course of the concurrent unfair labor practice and objections investigation. Since said evidence may bear on the Union's objections as well as the unfair labor practice charge . . . [the] cases should be consolidated for purposes of hearing.²

A consolidated hearing in both the unfair labor practice and representation cases was conducted before me in Cocoa, Florida, on March 7 and 8, 1984. On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by counsel, I make the following

¹ The complaint was amended at the hearing to allege additional coercive conduct.

² As will be discussed below, the two pending objections which the Regional Director determined raise substantial and material factual issues involve the failure of the Employer to post a notice of election at its Titusville facility and the Employer's alleged entering and electioneering in the polling area.

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICE CASE

Respondent Employer is engaged in the business of trash collection for commercial and residential customers, with facilities in Cocoa and Titusville, Florida. Respondent is admittedly an employer engaged in commerce, as alleged. The Union is admittedly a labor organization, as alleged. The evidence pertaining to the Employer's alleged coercive conduct is summarized below.

Albert Pearson Jr., employed by Respondent Employer as a driver, testified that about mid-November 1983, following the filing of the representation petition by the Union and the initiation of its organizational effort, Company Supervisor James McGlashan approached him while he was on his assigned route, and then had the following conversation with Pearson and his coworkers:

He [McGlashan] said to me [Pearson], and the group, "How do you stand?" I said, "What do you mean, how do I stand?" He said, "About the Union, are you for it or against it?" I said, "Well, I am for whatever betters me. If the Union will put money in my pocket, I will go with the Union. If the Company will better me . . . I will go with them."

He told us, "if we went Union, that our insurance, family plan insurance which the Company pays half . . . they won't pay half, we will have to pay it. The other insurance, which the Company furnishes free for the employees, he says that we will have to pay for that. He said the uniforms, we will have to pay for that."

I said, "Well they are not paying for that now. I pay for my own." He said, "Also, they are going to cut you back to minimum wage if we go Union."

McGlashan and Pearson then "argued back and forth." Pearson stated: "If they cut me back to minimum wage, I quit, they wouldn't have to fire me"

Pearson also testified that "sometime in November," while at the Employer's facility, Company Supervisor Gerry Orders, accompanied by Supervisor McGlashan, had the following conversation with him.

He [Orders] wanted to know how I stand on the Union part. . . . Was I for the Union or not. . . . He asked me how I was to vote. Was I going to vote for the Union or the Company. . . . I asked him, "Well, we are not supposed to talk about the Union in the compound," and he said, "Well don't worry about that." Mr. McGlashan said ". . . don't worry about that. That has already been arranged." Well, I said, "I am for whoever is the best. If the Union is the best, I'll go with the Union. If the Company is the best, I'll go with them."

Supervisor Orders "said that the Company asked him to find out who was for or against . . . the Union"

Pearson, about this same time, attended a company "safety meeting" at the Holiday Inn in West Cocoa, Florida. There, according to Pearson, Company Representative Henry Brown told the assembled employees:

"[I]f we went Union, we would have to be paying for all insurance and uniforms and stuff like that?"³

Nicky Chapman, employed by the Company as a driver, testified that he too attended a "safety meeting" about mid-November 1983. Chapman recalled that Company Representative Brown "was reading" from a "prepared statement, and he said . . . if the Company went Union we would have to pay for our own insurance things. . . ." Chapman was asked: "Do you know whether or not Mr. Brown was reading something at the time that he made the [above] statement?" . . . Chapman explained: "He had papers in his hand . . . I have no way of knowing . . . if he was reading or . . . just speaking."

Chapman further testified that about a week before the representation election, Supervisor Orders approached him "in front of the coffee room" at work, "and asked me how I felt about the Union." Chapman recalled:

I [Chapman] told him [Orders] that I was going for either side that would give me the best financial deal. The most benefits and you know, like I said, better off for me.

Orders "just kind of walked away."⁴

William Anderson, employed by Respondent, testified that during mid-November, while he was working his route with driver Pearson, Supervisor McGlashan approached the employees and had the following conversation:

I was working and putting some garbage in containers All of a sudden I [Anderson] seen [McGlashan] come up. And he was over there talking to Albert Pearson and Isaac Thomas, who I work with. And he was asking, "How do we stand with the Union?" I did not reply to tell the truth. I know that it wasn't right to ask us that

He [McGlashan] asked us, "How did we stand for the Union?" I told him that I was for it, for whatever was best for my family. And he said, "You should not go for the Union because you know there is so much disadvantage."⁵

Isaac Thomas, employed by Respondent, testified that during mid-November Supervisor McGlashan approached him and coworkers Pearson and Anderson,

³ On cross-examination, Pearson acknowledged that periodically, during this campaign, he wore a union button at work and he was a union observer at the election. Pearson explained his role at the election as "I was a poll sitting"

⁴ On cross-examination, Chapman acknowledged that he wore a union button "about two days" before the election

⁵ On cross-examination, Anderson agreed that McGlashan, during this conversation, stated "You ought to be against the Union, and if the Union gets in you may lose insurance and you may lose safety equipment" Anderson insisted "He said whatever we had right then would be taken from us" Anderson explained

He didn't say bargain. He said that everything would be taken from us, and we would have to start back over

. . . and then he [McGlashan] asked me [Thomas] if I was for the Union or against it. I told him I was for the Union, and then him and Albert had a conversation, and I overheard them saying that if the Union gets in here, they was going to fire the men . . . there was going to be a big decrease in wages.⁶

Thomas further testified that about 4 days after a "safety meeting," which was held "around November 16, 1983," Supervisor McGlashan, while driving Thomas to a truck site,

. . . asked me again, was I for the Union or against. And, I told him again that I was for the Union. And then he said, "Your brother said he ain't for the Union," and then he started talking about gloves, 'cause I ain't wearing the gloves.⁷

Clarence Stanley, previously employed by Respondent, testified that "about two or three weeks before the election," Supervisor McGlashan had the following conversation with him and two coworkers while they were "collecting garbage":

We was on the route picking garbage. Jimmy [McGlashan] comes in front of us, got out of the truck, and called for me to get out, and come to the back of the truck. He said, "If the Union comes in, we will have to pay for all of our uniforms and our own insurance" . . . He asked me, "Which way are you going to vote?" I told him that I would be independent, that I wouldn't be for the Union or the Company

J. C. Green, employed by Respondent, testified that during November 1983, Supervisor McGlashan "came out to the truck and asked us if we was going to vote for the Union, and I walked off." Coworkers Clarence Stanley and Leroy Scott were present. Green further testified that Company Manager Charles Armstrong, "when we came in with the truck . . . asked me which way we was going, and I walked off." Green placed this incident "on the voting day." In addition, Green recalled that, at a "safety meeting," Company Representative Brown "said that if the Union came in we would have to pay for our own insurance."

Johnny B. Ingram, employed by Respondent, testified that about November 22 or 29, 1983, Supervisor McGlashan approached him and his coworkers "on their route," and they had the following conversation:

Well, we was loading trash and garbage in the back of the truck . . . He [McGlashan] pulled up behind us . . . and then he asked us, how did we feel about the Union. . . . I didn't say anything. . . . He was telling us, if we get the Union, that all of our benefits that they was now paying, like the insurance,

⁶ On cross-examination, Thomas recalled McGlashan stating, *inter alia*, "that there would be a cut in wages if the Union gets in" and "he was going to fire a lot of guys"

⁷ On cross-examination, Thomas recalled that another employee was present during the above conversation

and I was already paying for my clothes, that we were going to have to pay for all of that.

Employee Robert Blackmon testified that he was present during the above incident involving Supervisor McGlashan. Blackmon explained:

Well, I was in the cab at the time he [McGlashan] drove up . . . and so he said, "I [McGlashan] want to talk with your men about something." He said. "This Union, I want to talk to you all about this Union . . . How do you feel about the Union." I told him, I didn't know. He said. "Well, if you get the Union you would lose your uniform and insurance."

Employee Willie Jeff Kimbrough also witnessed the above incident. Kimbrough recalled that Supervisor McGlashan

asked us what we thought about the Union. I told him, I don't know. He said that if we had the Union that we would have to pay for our uniforms.⁸

Charles C. Armstrong, operations manager for the Employer, testified that he had received written instructions pertaining to the role of supervisors in opposing an organizational drive by the Union. (See, e.g., R. Exh 11, "The Supervisor's Handbook On Maintaining Non-Union Status," and R. Exh. 10, "Confidential Supervisory Manual For Fleckinger Refuse, Inc.") Armstrong claimed that on December 2, the date of the election, he in fact had a "conversation" with employee Green and his coworkers. Armstrong spoke to Green and his coworkers about the removal of Christmas ornaments from their trash removal vehicle, because such ornaments could impede the flow of air "around the radiator." Armstrong added that Green was "really mad about it." Armstrong also noted: Green "was wearing a Union button indicating that he was for the Union." Armstrong denied saying "anything about the Union or the election to any of those employees."

Henry Brown, general manager for Respondent during the pertinent period, testified that he addressed the assembled employees at the Cocoa and Titusville facilities on November 16 and 17, 1983, respectively. Brown identified Respondent's Exhibit 12, a 15-page document, as the text of his "remarks," from which he read Brown explained:

I told the employees that I was going to deliver a talk that was prepared to be given by Charles Wilson, who is the regional vice-president but who was called out of state. . . . And I proceeded to read the text.

Brown acknowledged that, after "reading the text," he "asked if there were any questions." Brown claimed that he apprised the assembled employees:

⁸ On cross-examination, Kimbrough explained that McGlashan "said, if we win, the Union, that we would have to pay for our own uniforms"

I want you to understand that I cannot answer any of your questions that could be attributed as making a promise or a threat to you.

"There were some questions." Brown was asked, on cross-examination, "Do you recall talking about any benefits?" He responded

No. If it was in the speech, I read it. But I would have to look at it again and read it through.

Jimmy McGlashan, supervisor for Respondent, has some nine refuse trucks under his "direction," each truck having a crew of one driver and two toters. McGlashan testified that he had received Respondent's Exhibits 10 and 11, pertaining to union organizational activities, and he "followed the guidelines outlined in those exhibits." McGlashan acknowledged that he met with driver Pearson and toters Thomas and Anderson on their route during November 1983. McGlashan testified.

Well, I went out and talked to them about the Union. And I go up to them and I tell them that they are grown men, and I cannot tell them how to vote. That they can vote whichever way they wanted, but I would like for them to vote for the Company good.

In addition, McGlashan referred to "insurance and all,"

I told them that the Company paid for that now, and it just may be that I didn't know how the bargaining went between the Company and the Union, but, you know, if there may be differences, they may have to pay all the insurance.

McGlashan denied, *inter alia*, statements attributed to him by the above employee witnesses.

McGlashan, as he further testified, also met with employees Stanley, Green, and Scott on their route. McGlashan assertedly "said the same things to them, that [he] did to the others." McGlashan denied, *inter alia*, statements attributed to him by these employee witnesses. McGlashan asserted: "In fact, J. C. [Green] won't talk. He went down to the next stop." In addition, McGlashan, as he recalled, met with employees Blackmon, Ingram, and Kimbrough on their route. McGlashan assertedly made similar statements to them. He again denied, *inter alia*, statements attributed to him by these employee witnesses. He assertedly told the employees that "if the Union came in" they "may have" "to keep paying for their uniform" — "it was just according to the way the bargaining . . . went." Further, McGlashan denied, *inter alia*, interrogating employee Thomas.⁹

Robert Gerry Orders, a supervisor for Respondent, testified that he too read Respondent's Exhibits 10 and 11, pertaining to organizational activities. Orders claimed that employee Pearson wore a union button "a day or two before" the election, that Pearson was "openly outspoken in favor of the Union"; that he spoke with Pear-

son, with McGlashan present; and that "I [Orders] just asked him how he felt, you know, about the Union or whatever" Pearson "basically . . . said that he didn't know, or something like that." Orders denied, *inter alia*, other statements attributed to him. Orders, in addition, recalled asking employee Chapman "how he felt" — Chapman "basically . . . said he was going to think it over." Orders claimed "I didn't ask him anything out of line, I don't think "

Edwin J. Rosinski, general manager for Respondent, testified that Brown, when he delivered his speech to the assembled employees on November 16, "read the speech." The "same" speech was said for both the Cocoa and Titusville employees. Rosinski also testified that he witnessed the "heated argument over Christmas decorations" involving employee Green

I credit the testimony of employees Pearson, Chapman, Anderson, Thomas, Stanley, Green, Ingram, Blackmon, and Kimbrough, as detailed *supra*. They impressed me as trustworthy witnesses. Their testimony is in significant part mutually corroborative of management's repeated acts of interrogation and threats of loss of benefits. Their testimony is even substantiated in part by admissions and acknowledgements of Respondent's witnesses. And, insofar as the testimony of Manager Armstrong, Manager Brown, Supervisor McGlashan, Supervisor Orders, and Manager Rosinski differs from or conflicts with the testimony of the above employee witnesses, I am persuaded on this record that the testimony of the latter witnesses is more complete, reliable, and trustworthy. The testimony of Armstrong, Orders, Brown, McGlashan, and Rosinski was, at times, vague, incomplete, and unclear. I am not unmindful of, as counsel for Respondent notes in his brief, variations and omissions in the testimony of employee witnesses. Nevertheless, on balance, I find that these cited defects are not material and are attributable in large part to the limited education of the employee witnesses. In short, I find that the cited testimony of these employee witnesses represents a credible compendium of management's repeated acts of interrogation and threats, as alleged.

Discussion

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees" in the exercise of their right to self-organization. Section 8(c), in turn, provides.

The expressing of any views, argument, or opinion, or the dissemination thereof . . . shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit

Read together, these provisions leave an employer free to communicate to his employees his views respecting unions, so long as that communication does not contain a "threat of reprisal or force or promise of benefit." The Supreme Court stated in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617, 619 (1969):

⁹ On cross-examination, McGlashan admitted that the "owner, boss man, Mr. Wilson, Mr. Brown . . . told" him "to talk to the employees about the Union." McGlashan, however, denied that he was told "to find out how they [the employees] feel about the Union."

Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely, as those rights are embodied in § 7 and protected by § 8(a)(1) and the proviso to § 8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear. . . .

. . . an employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control" and not "threats of economic reprisal to be taken solely on his own volition" *NLRB v. River Togs, Inc.*, 382 F.2d 198, 202 (2d Cir. 1967).

The Supreme Court further noted in *Gissel*, supra at 620:

[A]n employer . . . cannot be heard to complain that he is without an adequate guide for his behavior. He can easily make his views known without engaging in "brinkmanship" when it becomes all too easy to "overstep and tumble into the brink," *Wausau Steel Corp. v. NLRB*, 377 F.2d 369, 372 (7th Cir. 1967). At least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees.

In addition, it is settled law that persistent and unwarranted attempts by an employer to pry into employee protected union activities, when accompanied by threats of reprisal for exercising such statutory rights, constitute the kind of coercive interrogation proscribed by Section 8(a)(1) of the Act. See, e.g., *Rossmore House*, 269 NLRB 1176 (1984), *NLRB v. Gladding Keystone Corp.*, 435 F.2d 129, 132-133 (2d Cir. 1970), and *NLRB v. Novelty Products Co.*, 424 F.2d 748, 751 (2d Cir. 1970).

The credible evidence of record, as recited supra, makes it clear here that management's representatives repeatedly quizzed employees about their union sympathies and, at the same time, threatened the employees with loss of insurance benefits and uniforms and related reprisals if they selected the Union as their collective-bargaining agent. Thus, for example, employee Pearson credibly related how Supervisor McGlashan pressed him at work to disclose, "how do you stand." Pearson attempted to avoid this interrogation by responding: "I am for whatever betters me." McGlashan countered that the employees would lose their insurance benefits, their uniforms, and sustain wage cuts if they voted for the Union. Employee Pearson credibly related how Supervisor Orders, in like vein, questioned him at work about his union sympathies, and how Manager Brown, in addressing the assembled work force, again warned that employees would be paying for insurance and uniforms if they voted for the Union. I reject as incredible here management's assertions that they, in effect, were making only casual or isolated noncoercive talk with their employees and, further, that their cited admonitions were reasonable state-

ments by the Employer of "what he reasonably believes will be the likely economic consequences of unionization that are outside his control" (*Gissel*, supra at 619.) On the contrary, the credible testimony of Pearson, as well as the credible testimony of Chapman, Anderson, Thomas, Stanley, Green, Ingram, Blackmon, and Kimbrough as summarized above, makes it clear that Respondent, in an attempt to defeat the Union's organizational campaign, resorted to repeated and persistent acts of coercive interrogation and threats of reprisal, in violation of Section 8(a)(1) of the Act, as alleged.

II. THE REPRESENTATION CASE

The Regional Director, as stated, consolidated with this unfair labor practice case the Union's two objections in the pending representation proceeding. In addition, the Regional Director also noted, with reference to "other conduct," that the "evidence bearing on" the Employer's unfair labor practice conduct, as found in section I above, "was discovered . . . during the course of the concurrent unfair labor practice and objections investigation" and "may bear on the Union's objections" (See G.C. Exh. 1(o).) Objection 1 pertains to the Employer's failure to post the required notice of election at its Titusville facility. Objection 2 pertains to certain conduct in and about the polling area. I note, however, before discussing these objections, that the Employer's repeated acts of coercive interrogation accompanied by threats of loss of benefits if the employees selected the Union as their bargaining agent, as found in section I above, occurred during the critical preelection period and, on this record, clearly prevented the holding of a fair and free election. The additional objectionable conduct, as discussed below, assessed in the context of the Employer's coercive conduct, provides additional reasons to require the holding of a new election.

Objection 1. The Employer admittedly failed to post the "notice of election" at its Titusville facility, as instructed by the Regional Director. This notice (C.P. Exh. 1) is not simply a notice of the time and place of the election. One-third of the printed document explains to the employees the purpose of the election, the secret ballot, eligibility rules, challenges, authorized observers, and related information. In addition, one-third of this document restates the "rights of employees" under Section 7 of the National Labor Relations Act, explains that "it is the responsibility of the [NLRB] to protect employees in the exercise of these rights"; and provides numerous examples of conduct, including threats of loss of benefits, "which interferes with the rights of employees and may result in setting aside the election."¹⁰

The Board majority explained in *Thermalloy Corp.*, 233 NLRB 428 (1977):

There were no notices, in any language or at any time, posted in the Hanse Avenue location. The Regional Director concluded that this deficiency was

¹⁰ The remaining portion of this document states the unit, hours, and place of election, the rights of employees to leave their work stations to vote during scheduled working hours "without further notification," and also contains a "sample" official ballot.

cured because the Hanse Avenue foreman advised his entire work force, in both English and Spanish, of the election date and the voting procedures. The Employer does not agree that such a meeting ever took place. Even if it did, it seems clear that this is an inadequate substitute for an official Board notice of employee rights.

The Regional Director also overruled this objection because all eligible employees voted. This finding is contrary to the Board's decision in *Kilgore Corporation*, 203 NLRB 118 (1973), where it held that even a large percentage turnout is not dispositive of the issue, since the official election notices contain important information with respect to the rights of employees under the Act.

There is no question of fault on the part of the Employer. In this situation there was no way to post both Spanish and English notices in both locations. The Regional Director found evidence that perhaps some, but not all, of the Hanse employees might have seen the notices while attending a meeting at the Albany Avenue building the day before the election. Other than that opportunity, the only time all of the Hanse employees could have seen any notice was the morning of the election just before they voted. This case falls squarely within the holding of *Kilgore* in that the posting failed to give all the employees sufficient advance official notice of the election and thus the laboratory conditions for holding a fair election were not met.

One of the reasons for advance notice is to assure employees of time for reflection, and an understanding of the public and protected character of their voting, or of not voting if they so choose. The inadequacy of the notice posting here prevented this. Accordingly, we shall reverse the Regional Director's order for a hearing. We conclude that in these circumstances it will effectuate the policies of the Act to direct another election.

In the instant case, the notice's provisions pertaining to the rights of employees and cited examples of improper conduct were particularly significant in view of the Employer's repeated acts of coercive interrogation and threats, as found above. Further, as will be discussed below, Company Supervisor Irving Stokes, from the Titusville facility, entered the Cocoa voting area with one or more Titusville employees, who had asked for the vote-no ballot, created confusion in the polling area, and was repeatedly directed to leave. Under all these circumstances, the requirement of notice posting at Titusville was important and material here, the failure to comply with this directive prevented the holding of a fair and free election; and this objection is therefore sustained.¹¹

¹¹ Counsel for Respondent notes in his brief that "all eligible voters voted", Titusville voters "had occasion to visit the Cocoa facility where the notice had been posted", and the Company and the Union "apprised the voters concerning information about their rights and the details of the election process." This record is not entirely clear as to how effective the Union was in reaching or communicating with the Titusville workers. The record is also not entirely clear as to the extent and effectiveness of contacts or trips by Titusville employees to the Cocoa facility during the critical preelection period. Cf. the testimony of Union Representatives

Objection 2 Pearson, who served as a poll-watcher for the Union, testified that a number of employees, presumably from Titusville, had entered the polling area, that two of this group had no identification, that Pearson suggested that the two persons talk to their supervisor Irving Stokes; that Stokes thereafter entered the polling area; and that Stokes was repeatedly asked to leave. Pearson recalled that, when this "group" "walked in, the first thing they wanted to know, where were the no-ballots"; there was "confusion"; and one of the group said: "I don't want no God-damned Union 'cause I have child-support to pay." Further, Pearson noted that, when the Board agent told Stokes "please get out,"

he [Stokes] was trying to give her some lip and all this other confusion, and she asked him again, nicely, to git. She asked him a third time to git.

Supervisor Irving Stokes testified that he works at Titusville; that he entered the polling area on December 2 "only at the time we were challenged . . . one of my workers"; that he had driven one worker to the polling area; and that he immediately left the polling area when told to do so.

Karen Umstatted testified that she was the company observer on December 2. She explained, as follows:

Q. Were you in the polling area at time when a Mr. Stokes entered the polling area?

A. Yes.

Q. How many persons were in the polling area at that time?

A. Approximately 12.

Q. Did you say 12?

A. Right.

Q. How many persons did Mr. Stokes enter the polling area with?

A. Approximately 12.

Q. You are certain that it was more than one?

A. More than one, yes.

Q. And you can tell me where Mr. Stokes went when he walked into the room?

A. He walked in with the men up towards the timeclock as they were clocking out at that time, when they came in.

Q. Were any statements made to Mr. Stokes that you heard as soon as Mr. Stokes entered the room?

A. Yes.

Q. And who made those statements?

A. Albert Pearson and the woman from the government.

Q. Are you referring to the Board agent?

A. Right. I don't know her name.

Q. What did Mr. Pearson say to Mr. Stokes?

A. He told him that he is not supposed to come in there.

Q. How long after Mr. Stokes entered the room was it before Mr. Pearson said that?

A. As soon as he entered, he told him.

Q. Did Mr. Pearson say anything else to Mr. Stokes?

A. He told him twice.

Q. Twice. What?

A. To leave the room.

Q. Did anyone else tell him to leave the room?

A. The women from the government told him.

Q. Did he leave immediately?

A. After she told him, he did.

Q. How many times?

A. She told him once.

Q. Was there any confusion or commotion at that time?

A. Yes there was.

Q. Did any of those employees have ballots at that time?

A. I don't think so.

Q. Do you know?

A. I don't remember if there was anybody voting at that time.

Q. Do you recall, exactly, what the Board agent said to Mr. Stokes?

A. She told him that he must leave the room.

Q. Did he respond?

A. He left when she told him.

Q. Did he make any statement before he left?

A. He told her that he was in to verify that these men worked for Western Waste.

I credit the testimony of Pearson as recited above. His testimony is corroborated in significant part by the testimony of Umstatted, the Company's observer. As stated above, I find Pearson to be a credible and reliable witness. I do not credit Stokes. His testimony was at times confusing, contradictory, incomplete, and unclear.

I would not find Stokes' conduct in the polling area, without more, to constitute a sufficient reason to recommend the holding of a new election. However, in the context of management's coercive interrogation and threats and the failure to post the required notice at Titusville so that Stokes' workers could be adequately apprised of their rights, I find and conclude that Stokes' conduct in and about the polling area is objectionable and provides additional reason for directing a new election.¹²

CONCLUSIONS OF LAW

1. Respondent Company is an employer engaged in commerce as alleged.

2. The Union is a labor organization as alleged.

3. Respondent Company violated Section 8(a)(1) of the Act by coercively interrogating employees about their protected union activities and by threatening them with the loss of insurance, uniforms, and other benefits if they chose the Union as their bargaining agent.

4. Respondent Company also engaged in the conduct alleged in Objections 1 and 2 in the consolidated representation case and by its conduct as found above, pre-

vented the holding of a fair and free election on December 2, 1983. The election should therefore be set aside and a new election held.

REMEDY

To remedy the unfair labor practices found above, Respondent will be directed to cease and desist from engaging in such conduct or like or related conduct and to post the attached notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation¹³

ORDER

The Respondent, Western Waste Industries, Inc of Florida, Cocoa, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their protected union activities.

(b) Threatening employees with loss of insurance, uniforms, and other benefits if they voted for Laborers' International Union of North America, Local 517, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

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

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

(a) Post at its facilities in Cocoa and Titusville, Florida, copies of the attached notice marked "Appendix"¹⁴. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 12 in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the Union's Objections 1 and 2 are sustained and that the election conducted on December 2, 1983, in Case 12-RC-6417 be set aside, and a new election held.

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁴ 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."

¹² At the hearing, the Union argued that the Employer engaged in other improper conduct in and about the polling area. It is unnecessary to consider whether such conduct was included in the specific objections and provides an additional basis for directing a new election.

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

WE WILL NOT coercively interrogate our employees about their protected union activities.

WE WILL NOT threaten our employees with loss of insurance, uniforms, or other benefits if they vote for Laborers' International Union of North America, Local 517, AFL-CIO, or any other labor organization, as their collective-bargaining agent.

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

WESTERN WASTE INDUSTRIES, INC. OF
FLORIDA