

solicitation and distribution; promises of benefits and promotion; imposing more onerous working conditions; and threatening employees with plant closure, loss of light duty and unspecified reprisals.

By November 2, 42 of the 72 unit employees had authorized the Union to represent them. The next day, the Union filed a petition for a Board election. In response to the Union's petition, the Employer intensified its antiunion campaign, directing its unlawful conduct to the entire unit. The Region has determined that in November and December the Employer committed additional violations of Section 8(a)(1). These included the removal of the EN-114 hinge machine, the granting of a wage increase to third shift employees and repeated threats of plant closure if the employees voted for the Union. The plant closure threats were made by President Joseph Blancato in several large, mandatory meetings. Blancato told employees about neighboring plants represented by the Union that had closed or reduced operations. He then stated that the Employer "could" or "might" close too, or that the "history" at these plants could be repeated at the Employer. Blancato never articulated any objective economic basis for his prediction of closure of the Employer's facility. The Employer's postpetition misconduct also included violations of Section 8(a)(3) by eliminating overtime work for one of the Union organizers and laying off lead organizer Viterbo Pimentel on November 15.

During most of the preelection campaign, the Employer displayed a large poster in a prominent location near the timeclock and cafeteria. The poster had a heading that stated: "These are just a few examples of plants where the UAW used to represent employees" (emphasis in original). Beneath that were photographs of 5 Hartford-area factories, identified by name and location, with the word "CLOSED" stamped across each picture. The bottom of the poster stated "Is this What the UAW Calls Job Security?" and "VOTE NO" next to a box with an "X" through it, simulating a "NO" vote on a ballot.

On December 12, the Union's petition was blocked by the charges alleging the violations described above. On December 13, the Employer held a meeting where it told employees that the Union did not want an election and was "going to court" so that it could "win automatically." After this meeting, employees circulated an antiunion petition that was signed by 54 employees, including 23 who had previously authorized the Union to represent them.

ACTION

We conclude that the Region should allege the Employer's poster as a Section 8(a)(1) violation because the poster implied that the Union would cause plant closure, without providing an objectively-based economic explanation for that prediction. The poster is also unlawful because it was a visual complement to the threats of plant closure made by Company President Blancato at the mandatory meetings. [FOIA Exemption 5

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1. The poster is an unlawful threat of plant closure.

The poster's depiction of the Union-represented closed plants, the reference to job security, and the concluding prompt to "vote no," sends the clear message that employees have to vote against the Union to avoid the closing of the plant. Thus, the poster implies a causal relationship between unionization and plant closure that might repeat at the Employer's plant. The poster provides, however, no objective economic basis for the implied connection between the Union's presence and the closure of the other plants. It also fails to provide any objective basis for the suggestion that the Employer's plant would likewise close after unionization. Because the poster does not explain what the Union allegedly did at the other plants that led to their closure, nor what factors beyond the Employer's control will also lead to closure of the Employer's plant, the poster constitutes an unlawful threat.⁴ Similar posters or displays have been found unlawful on these grounds.⁵

⁴ NLRB v. Gissel Packing, 395 U.S. at 618-20 (when predicting plant closure, employer must provide a "basis of objective fact to convey [his] belief as to demonstrably probable consequences beyond his control"); Eldorado Tool, 325 NLRB 222, 223 & n. 6 (1997).

⁵ See, e.g., NLRB v. Gissel Packing, 395 U.S. at 588, 618-20 (pamphlet with mock obituary of union plants and cartoon with open grave for employer's plant); Overnight Transportation Co., 329 NLRB No. 91, slip op. at 21 n. 10 (1999) ("Teamsters Graveyard" poster including Overnite gravestone with a question mark on it); Eldorado Tool, 325 NLRB at 223 ("UAW Wall of Shame" tombstone display including employer tombstone with question mark); Laser Tool, Inc., 320 NLRB 105, 111 (1995) (poster showing closed

Moreover, the context of unlawful conduct in which the Employer displayed the poster clarified and magnified the poster's threatening message. Like the poster in Laser Tool, supra, the Employer's poster itself did not state, in words or pictures, that the Employer's plant would close if employees voted for the Union.⁶ We believe, however, that the statements "Is This What the UAW Calls Job Security?" and "VOTE NO" implicitly conveyed this message just as clearly as the message in Laser Tool, "Do You Want This To Happen To You? VOTE NO." Any ambiguity or omission in the poster itself was made plain by Blancato's contemporaneous statements at the employee meetings. At these meetings, Blancato clearly stated that the closing of the other Union plants was a "history" that could repeat itself at the Employer; that if the employees selected the Union, the Employer could also shut down. Blancato's comments thus colored and gave meaning to the poster. When viewed against this background, there can be little question that the poster suggested that unionization would result in closure. Indeed, the poster served as a graphic complement to Blancato's threatening statements; it was part of the same unlawful message.⁷

The lack of an objective support for the prediction of plant closure and the context of Blancato's statements distinguishes this case from the ones relied on by the Employer. In J.L.M., Inc.,⁸ the poster included a copy of a newspaper article that provided an economic explanation for the closure of a neighboring hotel. Although the poster identified the hotel as a unionized facility, the newspaper report attributed the hotel closure to increased competition from new hotels that opened nearby. So, unlike the Employer's poster, the poster in J.L.M. cited factors beyond the employer's control - competition from new hotels - to support the employer's message that its own facility had a precarious future.

union plant and caption "Do You Want This To Happen To You? VOTE NO").

⁶ Compare to the other cases at n. 5, supra, where the posters depicted not only tombstones or graves of plants already closed, but the future grave of the employer's plant.

⁷ See Harrison Steel Castings Co., 293 NLRB 1158, 1159 & n. 4 (1989) (ambiguous statements or predictions coercive given context of other unlawful conduct).

⁸ 312 NLRB 304, 339 (1993), enfd. in rel. part, 31 F.3d 79 (2d Cir. 1994).

EDP Medical Computer Systems Inc.,⁹ which the Employer contends involved a poster similar to its own, is also distinguishable. In EDP, the poster had the heading "Is this Job Security" and showed several unionized plants that had shut down. That poster was lawful because there was no suggestion, in the poster itself, nor in other communications by EDP, that EDP's plant would close if employees unionized. Id., 284 NLRB at 1264. The Employer's poster, however, contained an implicit threat not present in the EDP poster. The "vote no" directive, missing from the EDP poster, tied the past closures to the upcoming Union election and implied the possibility of the Employer's closure resulting from a "yes" vote. In this respect, the Employer's poster is more like the unlawful one in Laser Tool than the lawful ones in EDP or J.L.M. But more importantly, as discussed above, the implicit threat of closure in the Employer's poster is made plain when the poster is viewed in the context of Blancato's statements. Thus, unlike the EDP poster, the Employer's plant closure poster is unlawful based on its content as well as its context.¹⁰

2. [FOIA Exemption 5 .]

[FOIA Exemption 5

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⁹ 284 NLRB 1232 (1987), *enfd. mem.* 959 F.2d 1101 (D.C. Cir. 1992).

¹⁰ Similarly distinguishable is the Board's dismissal of the 8(a)(1) plant closing threat based upon a "tombstone" placard in Electromation, Inc., 309 NLRB 990, 1019 (1992), *enfd.* 147 LRRM 2257 (7th Cir. 1994). In that case the employer merely indicated that the prior plant closings proved that the union could not provide job security and did not also state that the same thing would happen to its facility in the event of unionization.

¹¹ [FOIA Exemption 5

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¹² [FOIA Exemption 5

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Accordingly, the Region should include in its complaint a Section 8(a)(1) violation based on the plant closure poster and [FOIA Exemption 5 .]¹⁵

B.J.K.

13 [FOIA Exemption 5 .]

14 [FOIA Exemption 5

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15 [FOIA Exemption 5 .]