

Easy-Heat Wirekraft, Division of Bristol Products, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America. Case 25-CA-9248

September 29, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On May 19, 1978, Administrative Law Judge Thomas R. Wilks issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel both filed exceptions and briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Easy-Heat Wirekraft, Division of Bristol Products, Inc., Bristol, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge: This case was heard at South Bend, Indiana, on November 28, 1977. The charge was filed by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, herein called the Union, on September 12, 1977,¹ and the complaint was issued on October 28, alleging violations of Section 8(a)(1) and (2) of the Act by Easy-Heat Wirekraft, Division of Bristol Products, Inc., herein

¹ All dates are in 1977, unless otherwise stated.

called the Respondent, on or about August 23 and thereafter, rendering aid, assistance, and support to its employees for the purpose of forming a labor organization herein referred to as an in-plant committee. Respondent filed an answer and denied the commission of an unfair labor practice.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana.

At all times material herein, the Respondent has maintained its principal office and place of business at Bristol, Indiana, and an office and place of business at Lakeville, Indiana, and is, and has been at all times material herein, engaged at said facility and location in the manufacture, sale, and distribution of electrical products and related products.

During the past year, a representative period, the Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its Bristol and Lakeville facilities goods and materials valued in excess of \$50,000, which were transported to said facilities directly from States other than the State of Indiana.

During the past year, a representative period, the Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed at its Bristol and Lakeville facilities products valued in excess of \$50,000, which were shipped from said facilities directly to States other than the State of Indiana.

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

II. STATUS OF THE UNION

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. Background

Respondent maintains three manufacturing operations in Indiana, located at Lakeville, New Carlisle, and Rolling Prairie. Only the Lakeville facility is involved herein. Respondent's general manager and vice president, Clarence Witsken, is responsible for the three aforementioned operations. His office is located at the Lakeville facility, whereat John Hoke is the plant manager and Charles Webber is the personnel manager.

Approximately 20 years ago, the Lakeville Employees Council, herein called Council, was formed for the purpose

of receiving information from management concerning the then-existing profit-sharing plan. The Council thereafter also evolved into an "employee suggestion committee." In 1964, upon a change of ownership, the profit-sharing plan was abandoned. The Council, however, continued its existence. It is composed of six members, i.e., two production employees from the first shift, two production employees from the second shift, one production or maintenance employee from the third shift, and one clerical employee. Council members are elected every 6 months by their fellow employees upon a secret-ballot election conducted by outgoing council members on company premises during worktime but unfettered by management participation or observation.

The Council meets on a regular, fixed monthly schedule, on the company premises and during working hours, with the plant manager and the personnel manager. Witsken testified that he also attended on occasion in past years. The plant manager conducts the meetings. He reports on the "flower fund," i.e., its status and application, and the status of Respondent's business at the Lakeville facility. Thereafter the floor is opened for questions or complaints from employees that are conveyed to management by the council members. A wide array of employee complaints concerning working conditions, including hours, and rates of pay have been discussed. In the words of Personnel Manager Webber:

We will discuss it. There may be something that we can do. It may be something we can't do. We may not be able to do anything about the problem. If we can, and it is a legitimate problem, we work to solve it.

If meetings extend beyond the shift of a particular employee member, that employee is paid his normal rate of pay. Minutes of the meeting are prepared by management, reviewed by it, and posted on the plant bulletin board.

The Council has no further function or structure, no dues, no constitution, and no bylaws, and it holds no group meetings with employees.

In January the Union initiated efforts to organize the employees. A representation petition was filed with the Regional Director for Region 25 in Case 25-RC-6575 on March 22. The result of the election failed to disclose a majority of votes for the Union. On May 11, objections to the election were filed, but they were withdrawn on July 5. The Council did not participate in the representation proceeding nor in the election. On or about July 15, the Union forwarded letters to employees of Respondent, wherein, *inter alia*, it expressed its intention of renewing its organizing efforts. There is no evidence of Respondent's knowledge of this letter.

B. Evidence of Respondent's Union Hostility

On March 10, an unfair labor practice charge was filed against Respondent in Case 25-CA-8730 which culminated in a settlement agreement on July 5. The General Counsel was permitted, over the objection of Respondent, to adduce evidence of conduct by the Respondent which had been part of the subject matter of the aforesaid settlement agreement. The purpose of this evidence was not to litigate the subject of the settlement agreement, which was not set aside

by the Regional Director, but only to afford a background to evaluate subsequent post-settlement conduct of Respondent, in light of its motive or object. No inference was argued, nor is any raised, with respect to the execution of a settlement agreement. The Board has held such presettlement conduct admissible for the purpose of object and motivation of postsettlement conduct. *Local Union 613 of the International Brotherhood of Electrical Workers, AFL-CIO (M.H.E. Contracting, Inc.)*, 227 NLRB 1954, fn. 1 (1977); *Steves Sash & Door Company*, 164 NLRB 468 (1969); and *Northern California District Council of Hodcarriers and Common Laborers of America, AFL-CIO (Joseph's Landscaping Service)*, 154 NLRB 1384 (1965).

Mary Cornelius, an employee of 22 years' tenure, testified credibly and without contradiction that on March 6 she engaged in a conversation at breaktime in the plant, in the presence of other employees, with Witsken wherein Witsken stated that Respondent and the employees got along without a union in the past and could get along without one now and that, if a union did obtain recognition, "there would be a few—some eliminated and someone would get hurt, the very ones that wanted it in would be the ones that would get hurt. . . . this is not my dad fighting your dad, this is for real."

Betty Brown, an employee of 12 years' tenure, testified credibly and without contradiction that Larry Lemert, an admitted supervisor, summoned her to his office in the first week of March shortly after she had distributed union literature in the parking lot, ordered her to refrain from distributing union literature any further in the company parking lot, and told her that she could neither solicit union support nor distribute union literature during worktime in the work area. When she protested that an antiunion employee had freely campaigned against the Union during worktime, he ordered her to limit her union literature distribution to the public highway. Up to that point, there had been no rules at the Lakeville facility as to solicitation or distribution. A no-solicitation, no-distribution rule was posted.

C. The August Council Meetings

A regular council meeting occurred on August 24. Employee members present were Mary Gerhart, Theresa Hartstein, Betty Hoof, Larry Sumpter, Doris Walters, and Mary Garless. In addition to Hoke and Webber, Witsken, who had not attended these meetings in recent years, was present.

Witsken testified that the Easy-Heat Wirekraft Division had recently been acquired by Bristol Products, Inc.; that he had recently toured and familiarized himself with the Bristol operations elsewhere; that he was present at the August 24 meeting to explain the Bristol operations to the Council; that he explained Respondent's financial report; and that after he did so he departed but was summoned back by Webber and Hoke to respond to an employee member's question "regarding an employee committee arrangement with other Bristol Product [plants]."

Hartstein testified that after Witsken left the meeting resumed its normal business when thereafter Hoof raised a question "about organizing an in-plant bargaining commit-

tee" and said that she had been asked by a "friend" to inquire of a committee because she had heard of their existence at other companies. Hartstein opined that it was illegal, but Hoke and Webber stated that they did not think so.

Witsken therefore reappeared. He told the Council that he had not visited plants where such a committee existed and that he was not knowledgeable about employee committees; that he did not "know the ins and outs of how they were formed under the law, exactly how they were eventually formed and the contract was arrived at." Witsken testified that he told them ". . . that there was an attorney who we were acquainted with, namely Marvin Breskin who might be able to lead or at least expound upon those elements under the Act that lead to such a committee."

Hartstein testified that they were asked if they desired to hear the attorney and all employee members agreed that "it wouldn't hurt." The meeting recessed and the next day resumed to continue its normal business.

Contact was made by Respondent with Breskin, a Detroit labor attorney experienced in contract negotiations and a member of the Bristol board of directors. Arrangements were made for his appearance at a special council meeting on September 8. Breskin subsequently appeared at the behest of Respondent and was compensated by Respondent for his time and his presentation at the September 8 meeting. He concededly appeared in the capacity of an attorney.

D. The September 8 Meeting

Council members were notified that a meeting would be held by means of a personal message from Plant Manager Hoke. The regular monthly meetings are announced on the bulletin board. At the September 8 meeting, the same council members were present, as was Witsken, who introduced Breskin as a friend, an attorney, a member of the Bristol board of directors, and a former Hoosier.

According to Hartstein, Breskin stated to the group that he was brought to speak in regard to

. . . these organized committees and that he had organized others? . . . factories, and he started outlines . . . committees, what their function is and that an organization like this is recognized by the NLRB and that it is legal and that the question was asked how do you get in and he said . . . it's like a majority rule that you would have to vote on it like you would a union and that this could be done in a number of ways—secret ballot or show of hands whatever you elected to do. He suggested the secret ballot, that more people like that.

She testified that Breskin compared "organized committees" with unions in that he pointed out that unions have dues and assessments and bylaws but that a committee could not collect dues unless its structure was more formalized and it complied with Federal financial disclosure laws. Breskin pointed out that once committees are selected by a majority of employees for representation purposes they elect their officers, and "then the company would give the

officers a letter of recognizing them as bargaining for the other [employees]."

An employee asked whether a committee could avail itself of "lawyers and arbitrators." Breskin said that committees had a "right" to utilize arbitration as a means of settling disputes with management but that the cost of arbitration would be equally shared. A member asked how the employees could raise money to finance the arbitration mechanism, and Breskin thereupon set forth examples of how employees elsewhere arranged for financing, e.g., deduction of "2¢" from their wages to be set in a fund for this purpose, or bake sales.

According to Hartstein, Breskin said that a committee could not hold meetings "or anything like this" during company time "but that in some of the plants, it could possibly be worked out at Easy Heat, they had set aside a Sunday a month for you to have meetings without supervisors there." The plant at Lakeville is nonoperative on Sunday.

Hartstein inquired whether a committee could have legal assistance, particularly at contract negotiations, to which Breskin responded that they could but that the committee would have to pay for it, not the Company. Hartstein protested that employees had no money, especially for the initial contract negotiation, and furthermore were not "educated enough in business matters" to be able to negotiate. In response, Breskin stated "that the company could help to educate the committee on business matters, that that was the kind of nice thing about these organizations, that the company was on a more friendlier term." She explained, however, that the offer to help, i.e., educate, was made with respect to the "business matters of the company."

Pursuant to a question from counsel for the General Counsel as to whether Breskin offered written recognition to the Council, Hartstein reiterated her prior testimony relative to Breskin's explanation of how recognition was granted by employers in general, i.e., after majority status was reached by way of an election. In response to a leading question as to whether Breskin stated that Respondent would grant recognition to a committee after a majority of its own employees "want this organization," she responded "yes." Clearly, her own account of what Breskin stated reflected that he narrated what the practice was in general.

Hartstein testified that there was no specific reference to contracts by Breskin, that employees are guaranteed the right to strike "by law," and that nothing was said about the NLRB conducting the election.

On cross-examination, Hartstein was asked:

Okay. Now, when Mr. Breskin talked with you, did he suggest to you that he was not recommending the committee system for you but that he was merely discussing how committee systems worked?

She responded, "I would say no. He seemed to be in favor of committees for small companies."

In redirect examination she explained that Breskin had stated in comparing the two entities that unions "had the power to put small companies out of business and that in smaller companies these organized committees seemed to work out fine." He did not describe any particular plant.

On cross-examination she testified that she could not recall whether Breskin said that he was not recommending the formation of a committee but only explaining it. She

² Not contradicted by Breskin.

then freely admitted that he said that the Company cannot participate in the formation of a committee and that the Council or the employees must handle it by themselves; that he never stated that the Council could organize a committee but instead explained how other committees had organized elsewhere; that he did not state that they should follow those methods; and that he stated, "We are not encouraging you or discouraging you to form an employee committee, that is a matter for you to decide." When asked whether Breskin in fact alluded to the recent union demand for recognition and stated that if a committee similarly demanded recognition the Company would demand proof of majority, "just like the UAW," she responded that she did not recall. She further explained that Breskin's references to meetings on company premises had nothing to do with the election of a committee but only related to contract ratification meetings.

Hartstein testified that she requested Hoke to provide her with a written account of Breskin's talk which she could convey to fellow employees. Instead Hoke posted a written summary which had been prepared by the Respondent on the bulletin board.

Breskin testified that he was presented to the Council, *inter alia*, as "an attorney who has had experience with employee committees" and that the Council was told that Witsken arranged for his appearance because of his "experience." He advised the employees that he represented several employers whose employees were represented by employee committees and that one of those employers was Bristol Products, Inc. He cited a specific example. Breskin further testified that he told the employee members that a committee enjoys the same labor law status as a union; that employees have the right to join or not join a union or to choose or not choose self-organization; that employee committees are formed by employees without management involvement, participation, or encouragement; and that the process used by other employees in selecting committee representation has been carried out by a variety of means, including NLRB elections, non-NLRB elections by secret vote, or some other means of accurately demonstrating a majority status.

He responded in answer to a question that employees under committee representation retain the right to strike. He testified that a request was made to compose a written account of his talk, that the meeting lasted for 1-1/2 hours, and that he had no further independent recollection of what was said. He identified the written account of his talk that was subsequently posted as an accurate document consisting of the "minutes and summaries" of the meeting. After refreshing his recollection by reading the notice, he further recalled mentioning to employees the 2-cent payroll deduction mechanism utilized by employees at another employer's plant in order to raise funds for arbitration expenses. He testified that the notice "pretty well reflects everything that was said" and "I can't attempt to recall anything to add to it."

On cross-examination he conceded that the notice was not a verbatim account of his speech and that several elements were not included therein. Thus, his testimony on cross-examination showed that he told the employees that although meetings could not be held on company time or property, one employer did permit use of a plant on Sunday

for committee meetings. He denied offering them the use of Respondent's plant on Sunday. The notice states, in part, "Mr. Breskin pointed out that meetings would have to be held on the employee's own time, but they could use a meeting area in the plant."

On cross-examination Breskin further conceded that Hartstein raised a question as to the ability of employees to negotiate intelligently, but he testified that he responded that some committees educated themselves through the use of Federal mediation services and the NLRB. He denied that he told her it was possible for the Respondent to educate employees but said he told them that the employees who had selected committee representation had either acquired knowledge or had the self-confidence to represent themselves.

Breskin also admitted that there was a discussion as to the subject of dues, i.e., he told them that if they collect dues it is necessary to have a constitution and bylaws, which must be filed with the Department of Labor, whereas he was aware of one committee that did not file such reports because it did not collect dues.

With respect to whether he compared unions with committees, Breskin, on cross-examination, at first denied making any comparison. However, he conceded that in making the reference to the employees' right to strike, he told them there was no difference between union representation and committee representation. When asked whether he could then recall any other comparisons that he made in his speech, he testified hesitantly, "I don't, I don't remember." He then conceded that he did indicate to employees that unions collect dues and that committees do not. He further conceded making a reference to unions and committees in the context of negotiations in the following sequence of testimony:

Q. (By Mr. Gatzke) Do you recall saying anything about how you like or preferred or thought that committees were better suited for small plants than unions were, committees of the type that we are talking about on that day?

A. I think the only reference that was made, was again, I was asked or a comment was made whether the employees could do it themselves, whether they would know enough to negotiate a contract and I think I indicated that it wasn't like the big company negotiations, it wasn't General Motors that we were talking about. And that other employee committees that I was familiar with had gone out and educated themselves and felt comfortable doing it.

Thus, by his response Breskin admitted that his speech encompassed matters beyond those recited in the notice; that his independent recollection of the speech was limited; and that he did make comparisons with labor organizations. At least on one point, the offer of the use of the company plant, he is apparently contradicted by the notice. When questioned as to matters not encompassed in the notice, his demeanor was uncertain. Finally, he did not specifically contradict the testimony of Hartstein in regard to her testimony that he told the committee "that was the kind of nice thing about these organizations, that the company was on a more friendlier term" and "they [unions] had the power to put small companies out of business and that in

smaller companies these organized committees seemed to work out fine." Neither Hoke, Webber, nor Witsken testified as to Breskin's speech, despite their presence at the meeting.

Hartstein impressed me as a responsive, spontaneous, and candid witness. In many instances she readily made admissions which were damaging to the General Counsel's case, and she was not easily influenced by some of his leading questions. But in other areas, she testified with self-assurance and certitude. Hartstein, moreover, possessed a greater overall independent recollection of the speech than did Breskin, and her demeanor, by and large, was far more certain. I therefore conclude that her account is more reliable and therefore more credible wherever it conflicts with Breskin's testimony, particularly in regard to testimony regarding Breskin's comparison between unions and committees.

E. Analysis and Conclusions

There is no evidence of further conduct by the Respondent *vis-a-vis* the Council subsequent to September, aside from the usual tender of meeting place and paid time for meeting. Up to that time, neither the Respondent nor the council members conceived of the Council as an exclusive collective-bargaining agent in the usual layman's understanding of that term. The complaint does not allege the Council to be a labor organization within the meaning of the Act and perforce does not allege that Respondent illegally dominated, interfered with, or assisted it as a labor organization. Indeed, the complaint alleges that Respondent violated the Act by rendering unlawful aid, assistance, and support to its "employees" for the purpose of forming a labor organization. Elsewhere the complaint refers to the "potential organizers of an in plant committee." No conduct of Respondent prior to August 23 is alleged to have violated the Act. The General Counsel argues in his brief that the Council is a labor organization within the meaning of the Act and that Respondent, by its conduct on August 24 and September 8, unlawfully assisted and supported it in violation of Section 8(a)(2) of the Act. Respondent's argument in its brief is that as of August 24 and September 8 no labor organization was in existence and, *ergo*, there could be no violation of Section 8(a)(2).

The nature and function of the Council was fully litigated, despite the absence of an explicit allegation in the complaint as to its status as a labor organization. From the undisputed evidence in the record, the Council clearly constituted a labor organization within the meaning of the Act. Section 2(5) of the Act defines a labor organization as:

[A]ny 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.

In *N.L.R.B. v. Cabot Carbon Company and Cabot Shops, Inc.*, 360 U.S. 203 (1959), the U.S. Supreme Court held that the term "dealing with" is not coextensive with the less comprehensive phrase "bargaining with." Therefore, the

absence of any "bargaining" in the usual sense of that word is immaterial. It is well settled that the phrasing of the statutory definition is in the disjunctive. Accordingly, "dealing with" an employer concerning one (or more) of the matters enumerated in Section 2(5) is a function sufficient in itself to constitute an entity as a labor organization within the meaning of the Act.

Therefore, the Council, by meeting with the Respondent in a representative capacity to present and discuss complaints of wages, hours, and working conditions concerning employees as a whole, in fact did function as a labor organization. *Alta Bates Hospital*, 226 NLRB 485 (1976); *Money Oldsmobile Company*, 201 NLRB 155 (1973); *North American Rockwell Corporation*, 191 NLRB 833 (1971); and *FTS Corp. (Division of Hitco)*, 184 NLRB 787 (1970). I therefore conclude that the Council was at all times material herein a labor organization.

Respondent's dealings with the Council prior to August 24 are not alleged nor argued to be violative of the Act. Indeed, the Board has held that it is not unlawful, *per se*, for an employer to provide some facilities to a labor organization or a plant committee in a spirit of cooperation. *Sumner Products, Inc.*, 189 NLRB 826 (1971); *Ladish Company, Texas Division*, 180 NLRB 582 (1970); and *Heston Corporation, Inc.*, 175 NLRB 96 (1969). The complaint, in paragraph 5, alleges that Respondent unlawfully aided, assisted, and supported "its employees" (the Council) for the purpose of forming a labor organization.

Clearly, several contentions of the General Counsel are not supported by the testimony of the General Counsel's own witness, i.e., Hartstein. Breskin did not, according to Hartstein, discuss the particularities of a labor contract nor give advice concerning the detailed terms of any specific collective-bargaining agreement (par. 5(f)). He did not offer instructions as to specific negotiating conduct (par. 5(e)). With respect to the allegation that Respondent explicitly offered to recognize and bargain with a committee in the absence of an NLRB election (par. 5(e)), I cannot find Hartstein's testimony to support such a conclusion. Although she testified that Breskin did not refer to an NLRB election, whereas he said he did, her testimony, as I have concluded above, reveals that Breskin had talked in generalities as to how other plant committees had been organized and that he did in fact specifically refer to the necessity to demonstrate a majority status by some means, preferably a secret-ballot election. Within the same context, she recalled that he did refer to a committee's legal status in relation to the NLRB. Even within the context of the speech as Hartstein recalled it, I cannot find that Breskin was explicitly precommitting the Respondent to recognition and bargaining with a committee without benefit of an NLRB-conducted election. What he implied is another matter.

With respect to the alleged offer of financial advice (5(d)), Breskin admittedly responded to questions by citing detailed examples of how other committees provided themselves with support. He also, according to the testimony of Hartstein, which I credit, offered the assistance of the Respondent in educating the committee as to the business and finances of the Company within the context of negotiations, and he did suggest within the framework of that discussion that "that was the kind of nice thing about these organizations, that the company was on a more friendlier term."

Clearly, the implication therein was that Respondent also would take a more cooperative posture in any negotiations that might occur with an in-plant committee than it would with an outside labor organization. He was, after all, understood by his audience to be a member of the board of directors of the parent corporation, and though ostensibly present as an attorney, he cannot be characterized as a mere detached outsider. Indeed, he told them that he had organized other committees. Management representatives were present and tacitly adopted his presentation. Breskin's reference to the consequences of a plant shutdown that sometimes occurs when small plants deal with outside labor organizations, whereas "organized committees seemed to work out just fine," further enhance the conclusion that he intended to and did in fact imply that Respondent would be more cooperative with an in-plant committee than with an outside labor organization. It is noteworthy that in no comparison did Breskin cite any advantage of an outside labor organization.

Although Breskin took care to sprinkle his speech with disclaimers and professions of detachment and matter-of-fact allusions to other committees, I conclude that the thrust of the speech was calculated to impel the Council to take steps to convert itself into a more formalized labor organization, for which ready recognition and bargaining was implied.³

Respondent argues that the use of company facilities and payment of council members is not *per se* violative of the Act. However, the *Sunnen* case and others of its genre involve an entirely different situation, i.e., one in which there is an arms-length dealing with an independent, self-sustaining plant bargaining committee. In this case, the Council was provided company facilities and company time, on September 8, to make a fundamental change in the nature of its structure and purpose. An attorney was provided at Respondent's expense to "lead" it, in the words of Witsken, and answer any questions put to him. Whatever the arguable innocence of that conduct alone may be, it must be viewed within the context of the total conduct of Respondent in this case.⁴

Although the Respondent on August 24 responded to an inquiry of an employee, and did not initiate the subject of transforming the Council into an in-plant committee, its subsequent conduct constituted no mere accommodation to an employee's request for information.⁵

The Breskin speech, as I have found, was calculated to and did in fact encourage the formation of an in-plant committee with an implied promise of a more receptive bargaining posture by Respondent. That speech followed a recent union organizing effort wherein Respondent conducted a campaign in which it admittedly opposed the Union in a course of speeches and letters to employees. That campaign

³ Compare *Doces Sixth Ave., Inc.*, 225 NLRB 806 (1976), wherein expressions of ostensible detachment by management representatives were viewed in the context of that respondent's conduct and behavior, which demonstrated the actual message intended to be conveyed to employees.

⁴ Compare *Duquesne University of the Holy Ghost*, 198 NLRB 891 (1972), wherein the Board considered the factual context in evaluating when cooperation becomes interference.

⁵ Compare *Wisco Industries, Inc.*, 188 NLRB 326 (1971), where employee initiation was found to provide the employer with no license to encourage, support, and promote an in-plant committee.

was marked by an expressed hostility to outside union representation. The representation efforts by the Union culminated only on July 5. Barely 2 months later, Respondent moved with alacrity and arranged a special meeting of the Council, during working hours. That meeting, with Breskin, was chaired by the Respondent and led by it. The meeting itself did not concern the normal business of the committee, i.e., no business matters were discussed and no complaints of working conditions presented. Rather, the only subject matter dealt with was the transformation of the Council into a more structural labor organization, after 20 years of existence. Notices summarizing Breskin's speech were posted quickly by Respondent. Within a few days, while the subject was being discussed by the employees, Hartstein, who had expressed doubts and raised questions at the Breskin meeting, was interrogated by Plant Manager Hoke as to whether or not the employees appeared willing to organize an in-plant committee.

Under the full factual context of this case, I conclude that Respondent's conduct exceeded that of mere cooperation and, in fact, constituted unwarranted interference with the Council by means of advice, support, and assistance to it, rendered on September 8, which was given for the purpose of forming a labor organization, i.e., an in-plant bargaining committee, and thus violated Section 8(a)(1) and (2) of the Act.

CONCLUSIONS OF LAW

1. Easy-Heat Wirekraft, Division of Bristol Products, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Both International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, and Lakeville Employees Council are labor organizations within the meaning of Section 2(5) of the Act.

3. Since on or about September 8, and at all times thereafter, Respondent has interfered with the administration of the Lakeville employees committee and has contributed financial and other support to it in violation of Section 8(a)(1) and (2) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (2) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁶

The Respondent, Easy-Heat Wirekraft, Division of Bristol Products, Inc., Bristol, Indiana, its officers, agents, successors, and assigns, shall:

⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings,

1. Cease and desist from:

(a) Recognizing the Lakeville Employees Council as the representative of its employees unless and until such time as the Lakeville Employees Council has been duly certified by the Board as the exclusive collective-bargaining representative of nonexempt employees in an appropriate unit or units.

(b) Unlawfully contributing any financial or other support or assistance, or acting in any advisory capacity, to the Lakeville Employees Council.

(c) In any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other unilateral aid or protection, or to refrain from any and all such activity.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold recognition from the Lakeville Employees Council as the representative of its employees for the purpose of dealing with it in respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until the Lakeville Employees Council has been duly certified by the Board as the exclusive collective-bargaining representative of employees in an appropriate unit or units.

(b) Post at its Lakeville, Indiana, facility copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that

said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

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

WE WILL NOT unlawfully furnish financial or other support or act in any advisory capacity to the Lakeville Employees Council of our employees.

WE WILL NOT in any other like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL NOT recognize the Lakeville Employees Council as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the Lakeville Employees Council has been duly certified by the National Labor Relations Board as the exclusive bargaining representative of our employees in an appropriate unit or units.

WE WILL withdraw and withhold all recognition from the Lakeville Employees Council as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until the Lakeville Employees Council has been duly certified by the National Labor Relations Board as the exclusive bargaining representative of our employees, in an appropriate unit or units.

conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

⁷ In the event that 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."

EASY-HEAT WIREKRAFT, DIVISION OF BRISTOL
PRODUCTS, INC.