

C & J Manufacturing Company and Amalgamated Clothing & Textile Workers Union, AFL-CIO.
Cases 10-CA-13046 and 10-RC-11126

September 29, 1978

**DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION**

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On June 8, 1978, Administrative Law Judge John F. Corbley issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,¹ recommendations, and conclusions² 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, C & J Manufacturing Company, Eastman, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election held on August 12, 1977, in Case 10-RC-11126 be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

¹ 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.

² In the absence of exception thereto, Members Jenkins and Truesdale adopt *pro forma* the Administrative Law Judge's dismissal of the complaint's allegations that remarks included in speeches made by Director of Manufacturing Bundick and President Greenberg to Respondent's employees on August 11, 1977, violated Sec. 8(a)(1) of the Act. Member Murphy agrees with the Administrative Law Judge that the comments alleged to be unlawful constituted permissible campaign propaganda.

DECISION

STATEMENT OF THE CASE

JOHN F. CORBLEY, Administrative Law Judge: The consolidated hearing in this case was held on February 6 and 7,

1978, at Eastman, Georgia, pursuant to: a charge and amended charge filed by Amalgamated Clothing & Textile Workers Union, AFL-CIO, hereinafter referred to as the Union, in Case 10-CA-13046 on August 30, 1977, and November 4, 1977, respectively, which were served on Respondent by registered mail on August 31, 1977, and November 4, 1977, respectively; objections to conduct affecting results of the election timely filed by the Union in Case 10-RC-11126 on August 18, 1977, and duly served on Respondent; a complaint and notice of hearing issued by the Regional Director on November 11, 1977, and an order directing hearing and consolidating cases, also issued by the Regional Director on the latter date, which complaint and order were likewise duly served on Respondent. The complaint, which was amended on the record at the hearing, alleges that Respondent violated Section 8(a)(1) of the Act on dates occurring in July and August 1977, by various acts of interrogation, creation of the impression of surveillance, and threats of plant closure and threats of other reprisals to its employees, including loss of jobs or benefits if they supported the Union or if it became their bargaining representative; and that Respondent violated Section 8(a)(1) and (3) of the Act by restricting the movements of employee Charles Etheridge at the plant. In its answer to the complaint, which was also amended on the record at the hearing, Respondent has denied the commission of any unfair labor practices.

In his order directing hearing and consolidating cases, the Regional Director concluded that the Union's objections to conduct affecting the results of the election were coextensive with the conduct alleged in the complaint and notice of hearing.

For reasons which appear hereinafter, I find and conclude that Respondent has violated Section 8(a)(1) of the Act in certain respects alleged in the complaint, has not violated Section 8(a)(1) in regard to other allegations, and has not violated Section 8(a)(3) and (1) of the Act by restricting the movements of Charles Etheridge. I further conclude that certain of the election objections have merit, and I shall recommend that the election be set aside.

At the hearing all parties were represented by counsel and all parties were given full opportunity to examine and cross-examine witnesses, to introduce evidence, and to file briefs. All parties waived oral argument at the conclusion of the hearing. Subsequent to the hearing, briefs have been received from the General Counsel and Respondent and have been considered.

Upon the entire record¹ in this case, including the briefs, and from my observations of the witnesses,² I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Georgia corporation, with an office located at Eastman,

¹ The transcript of the record is hereby corrected to insert the word "When" prior to "Did" at l. 22 on p. 103. Apparently neither the reporter nor the witness heard this word.

² In crediting certain witnesses who are still employed by Respondent, I have taken that fact into account. *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), enfd. as modified 308 F.2d 89, fn. 2 (C.A. 5, 1962); *The Coca Cola Company* 196 NLRB 892, 893, fn. 5 (1972).

Georgia, where it is engaged in the manufacture and sale of children's clothing.

During the calendar year preceding the issuance of the complaint, which period is representative of all times material herein, Respondent sold and shipped finished products valued in excess of \$50,000 directly to customers located outside the State of Georgia.

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

II. THE LABOR ORGANIZATION INVOLVED

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 PRACTICES

A. Respondent's Relevant Hierarchy

The following named individuals are, and have been at all times material herein, supervisors of the Respondent within the meaning of Section 2(11) of the Act: Herbert Greenberg, president; James Vinson Hendrix, plant manager; Wayne Thomas Bundick, director of manufacturing; Geraldine Barlow, supervisor of pressing and folding; Vera Lee Bell, head training instructor; Mary Alice Hays, supervisor of assembly two; L. Rudolph Law, head mechanic; and Weedy Bell Thomas, supervisor of parts department.

I further conclude that Edward O. Greenberg, Respondent's vice president and chief operating officer, was an agent of Respondent, acting on its behalf, at all times pertinent hereto within the meaning of Section 2(13) of the Act, based, *inter alia*, on his authority to develop a pension plan for Respondent's employees.

B. Sequence of Events

The Union's organizational campaign began about Thanksgiving 1976 among the employees of Respondent's plant at Eastman, Georgia.³

The petition in Case 10-RC-11126 was filed by the Union on June 13, 1977.⁴ A stipulation for Certification Upon Consent Election was thereafter approved by the Regional Director on July 8.

The appropriate unit stipulated by the parties is as follows:

All production and maintenance employees, including shipping and receiving employees and instructors employed by the Employer at its Eastman, Georgia, plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

There is conflicting testimony in respect to the allegations of the complaint that Respondent's supervisors engaged in acts of interrogation, threats, etc. (also alleged as election

objections), during July and August. I will take up these conflicts in my "Concluding Findings," *infra*.

Respondent, however, actively opposed the Union and at supervisory meetings held each day at the times in question instructed its supervisors as to what should be done by them to counter the Union's campaign. The principal affirmative instruction was for them to encourage employees to read materials posted by Respondent on its bulletin boards.⁵

On July 12, Edward Greenberg announced the establishment of a pension plan to both shifts of Respondent's employees at the Eastman plant. Similar announcements were made at other plants operated by companies affiliated with Respondent in New York, Virginia, and Georgia (which companies are not otherwise directly involved herein) on July 11 and 13 by Edward Greenberg or Herbert Greenberg. The employees of Respondent and some of the other plants did not previously have any such plan. This announcement is also alleged as a violation of Section 8(a)(1) of the Act as well as an election objection.

In July the movements of union activist Charles Etheridge in the plant were restricted. This restriction, alleged as a violation of Section 8(a)(3) and (1) of the Act and as an election objection, will also be taken up in my "Concluding Findings."

The election pursuant to the Stipulation for Certification was scheduled to be held on August 12. Beginning at approximately 1:00 p.m. and ending at approximately 1:20 p.m. on August 11, Respondent's director of manufacturing, Wayne Bundick, and its president, Herbert Greenberg, gave consecutive speeches to a majority of the employees present at work that day in which these officials opposed the Union. Certain of Bundick's remarks and those of Herbert Greenberg are also alleged as separate violations of Section 8(a)(1) of the Act and as election objections.

An election by secret ballot was thereafter held under the supervision of the Regional Director among the employees in the appropriate unit on August 12.⁶ The results showed that of approximately 241 eligible voters, 75 cast ballots for and 156 cast ballots against the Union.

There were six challenged ballots (numerically insufficient to affect the result) and no void ballots.

As noted, the Union timely filed objections on August 18. Of Objections I through X, Objections IV and IX were withdrawn pursuant to the approval of the Regional Director in his order consolidating cases issued on November 11. The remaining objections are similar to the allegations of the complaint.

⁵ Plant Manager James Hendrix so admitted.

⁶ This election, I conclude, began more than 24 hours following the complained-of speeches by Bundick and Herbert Greenberg. The purpose of the stipulation appearing at pp. 7-9 of the transcript was to make this clear. Unfortunately, the stipulation did not also include the time of the election. Accordingly, I take official notice of the Board's files and records in Washington, D.C., of the fact that the election began at 3 p.m. on August 12, 1977, more than 24 hours after the instant speeches by Herbert Greenberg and Bundick. The parties may use the period hereinafter (the time period for filing exceptions to the Board) to demonstrate to the Board any facts to the contrary of those of which I have taken official notice. In any event, no *Peerless Plywood* objection (*viz.*, no objection to an election speech during the 24 hours preceding the election on company time to captive audience) has been filed herein, and the time for filing any such objection has long since passed. *Peerless Plywood Company*, 107 NLRB 427 (1953).

³ Edward Greenberg so admitted.

⁴ All dates appearing hereinafter occurred in 1977, unless otherwise noted.

Concluding Findings

1. Allegations in regard to Supervisor Weedy Bell Thomas (par. 7, 9, and 10 of the complaint and Objections I and II)

On or about July 12, that is, when the plant had reopened after being closed for vacation, admitted Supervisor Thomas spoke with employee Rosa Lee Mitchell at the plant. Thomas asked Mitchell whether Mitchell had been to any union meetings. Mitchell replied that she had. Thomas added that Thomas had talked to a lot of ladies and did not know why they wanted a union coming into Respondent's plant, because that plant was on a growing plan and before "they" let it come in they would close the factory.

I conclude that the "they" referred to by Thomas was Respondent's management—the only other "they" possibly referred to in the conversation were union supporters, who obviously wanted to bring the Union *into* the plant.

I further conclude that by Thomas' instant threat Respondent violated Section 8(a)(1) of the Act. By asking Mitchell in this same conversation about Mitchell's union activities, I likewise conclude that Respondent by Thomas coercively interrogated Mitchell in violation of Section 8(a)(1) of the Act.⁷

In the latter half of July, on or about July 20 or 22, Supervisor Thomas approached employee Wanda Lancaster, at Lancaster's machine at the plant, and asked if Lancaster was for the Union. Lancaster responded by inquiring whether Jim (Hendrix, the plant manager) had asked Thomas to speak to Lancaster about this matter, which Thomas denied. Lancaster then admitted that she was for the Union—to which Thomas asked why. Lancaster explained that she thought the Union would help them. Thomas disagreed. Thomas said that a union didn't belong in a town but in a city. Thomas added that if the Union came to Eastman (Georgia, where Respondent's plant is located) it would become a ghost town. Thomas asked Lancaster to think about it and then left.⁸

⁷ These findings are based on the credible testimony of Mitchell in this regard. To the extent Thomas' testimony is contrary, I do not credit it. I found Mitchell to be a slow-speaking and careful witness who testified, in my judgment, forthrightly. She was somewhat uncertain as to the date of this incident but not as to what was said in it. Thomas admitted being present at a conversation with Mitchell and Mitchell's sister in the latter part of July when the Union was discussed, but Thomas denied taking part in the conversation.

I found Thomas somewhat smug in her demeanor on the stand. I also note that there is testimony, to be discussed, of two other similar incidents involving Thomas and other employees occurring at about the same time. I also note, per Mitchell's credited testimony, that Thomas admitted in the incident that Thomas had talked to a lot of ladies about the Union. In one of the other incidents, as to which there is further testimony and which involved Lancaster, Thomas did not deny one aspect of the Lancaster conversation in which, according to the testimony of Lancaster, which I shall credit, Thomas asked Lancaster if Lancaster was for the Union (Thomas merely said Thomas could not recall this—which is not a denial that the incident occurred). Further, Thomas' nonrecall on the stand as to the Lancaster matter was at variance from Thomas' prehearing affidavit, in which Thomas denied asking an employee any such questions. Thomas' testimony about management conferences (that they occur weekly) is at odds with that of Plant Manager Hendrix (which was that such meetings occur daily).

⁸ These findings are based on the credible testimony of Lancaster in this regard. I found Lancaster to be a straightforward witness. I do not credit Thomas' version nor her denials of Lancaster's testimony. Thomas' credibility I have already commented upon, noting, among other things, that

I, accordingly, conclude that, by Thomas' instant comments, Respondent threatened an employee with plant closure if the Union came in, thereby violating Section 8(a)(1) of the Act. Inasmuch as Thomas asked Lancaster whether Lancaster was in favor of the Union in this same conversation, I further conclude that Respondent coercively interrogated Lancaster in violation of Section 8(a)(1) of the Act.

On or about August 5, Thomas spoke to employee Viola McNair at McNair's machine at the plant. Thomas asked if McNair had read the plant bulletin board, which McNair admitted. McNair said, however, that she did not believe the material there. Thomas responded that "the government" would not tell lies on the bulletin board. Thomas then asked if McNair had been to any union meetings, which McNair also admitted. Thomas then went on that unions are alright for big towns but that if a union came into a small place like Eastman, there wouldn't be any other place to go, hence "we" should try to keep the Union out. Thomas suggested that McNair think about it and walked away.⁹

I conclude that Thomas' statement to McNair that if the Union came in there would be no other place to go to be an implicit threat to McNair that the Respondent would shut down its plant, putting McNair out of work and leaving her with no place to find another job. I find that such threat violated Section 8(a)(1) of the Act. Inasmuch as Thomas also asked McNair in the same conversation whether McNair had been to any union meetings, I further find that Respondent, by Thomas, thereby coercively interrogated McNair in violation of Section 8(a)(1) of the Act.

2. Allegations in regard to Head Training Supervisor Vera Lee Bell (par. 7 and 9 of the complaint and Objections I, II, and VI)

On or about July 22, Bell spoke to employee Lotsie Gordon at the plant and, after beginning the conversation on a personal matter, asked Gordon if the employees had changed their minds about the Union. Gordon responded that the people she had talked to kept their mouths closed. Bell then told Gordon that if the Union came in, there would be negotiations for a contract and the plant would close because the owner, Herbert Greenberg, had the right to decide who came in and went out. Bell added that there would be no work for the employees to do because there was a rumor in the plant that Penney's and Sears would not buy shirts from a company which was under a union.

Several days later, about July 27, Bell again approached Gordon at the plant and asked Gordon if the latter had been to a union meeting. After Gordon admitted that she

Thomas, when on the stand, did not deny asking Lancaster if Lancaster was for the Union. Thomas, in any event, admitted speaking to Lancaster concerning the Union at about this time. Thomas' version of the conversation, however, is otherwise too disjointed to make sense. For example, according to Thomas, Lancaster asked Thomas if Thomas thought the Union would come in, to which Thomas said she responded, "Only if we can't stay competitive. That's the only reason the factory will close."

⁹ These findings are based on the credible testimony of McNair in this regard. To the extent Thomas' testimony is contrary, I do not credit it. I found McNair to be a straightforward witness. I have already commented on Thomas' credibility. I further note that Thomas, in any event, admitted that this conversation occurred and corroborated the testimony of McNair in respect to certain aspects of it.

had, Bell asked Gordon if employee Lois Brown had also been to the union meeting. When Gordon asked the reason for this inquiry, Bell replied that Bell wanted to know for personal reasons. Gordon suggested that Bell ask Brown but Bell said that Brown had lied to Bell in a similar situation in the past. To this Gordon stated that she was not going to tell who was at the union meeting. Bell then continued that if the Union came in Respondent would lose contracts. Bell repeated that there would be a strike and the plant would close because Herbert Greenberg had the right to decide whom he wanted in or out.¹⁰

In view of the foregoing, I conclude that by Bell's threat to Gordon on July 22 that the plant would close if the Union came in Respondent violated Section 8(a)(1) of the Act. I further conclude that by Bell's querying of Gordon in this same conversation about any change in employee sentiment regarding the Union, Respondent coercively interrogated Gordon in violation of Section 8(a)(1) of the Act.

Against the background of Bell's threat on July 22 of plant closure and a similar threat on July 27, I further conclude that Bell's questioning of Gordon on July 27 was likewise coercive interrogation in violation of Section 8(a)(1) of the Act.

3. Allegations in regard to Supervisor Mary Alice Hays (par. 7 of the complaint and Objection I)

On or about August 8, Hays spoke to employee Shirley Mann, told Mann that Hays was under a strain because of the union campaign, and asked Mann how Mann felt about the Union. Mann replied that she did not feel that she, Mann, should discuss that with anyone.¹¹

Against the background of Respondent's opposition to the Union, its prior unfair labor practices, and Hays's statement that the Union caused a strain, I conclude that Hays's instant questioning of Mann constituted coercive interrogation in violation of Section 8(a)(1) of the Act.

4. Allegations in regard to Director of Manufacturing Wayne Bundick (par. 8 and 9 of the complaint and Objections II and III).

On or about July 20 or 24, Bundick met with a group of employees including Joeline Flowers in the plant confer-

¹⁰ The findings as to these two incidents are based on the credible testimony of Gordon in this regard. To the extent that the testimony of Bell is contrary, I do not credit Bell. Gordon seemed to me to be an honest, straightforward witness. While there was some confusion in her prehearing affidavit on a related personal matter, whether Bell was the aunt or niece of one Monzell Studstill (Bell is the niece), the confusion is understandable inasmuch as Bell is older than her aunt. Bell blinked noticeably on the stand in denying certain testimony of Gordon. Bell, in any event, admitted both conversations with Gordon and further admitted discussing the Union with Gordon in the second one. Bell's prehearing affidavit also disclosed admissions by her that she had engaged in discussions about the Union with other employees.

¹¹ These findings are based on the credible testimony of Mann in this regard. To the extent that the testimony of Hays is contrary, I do not credit it. I found Mann to be a quiet, self-confident witness. Hays I found evasive. In any event, Hays admitted discussing the Union with employees on a number of occasions. She also changed her testimony in respect to the conversation. At first Hays said she could not recall it. She later denied that it occurred. Respondent notes in its brief that Mann testified that this conversation was with "a lady." The identity of "a lady" was clarified on a cross-examination to be Hays.

ence room. He told the employees, among other things, that if the Union came in the Respondent and the Union would probably negotiate a contract and that if the Union and the Respondent could not reach an agreement and if the Union called the employees out on strike, causing Respondent to lose its customers, then Respondent would have to shut down because of losing its customers. Later on in the same meeting, Bundick told the employees that he, Bundick, knew who the union pushers were and he would not want them representing them.¹²

I conclude that Bundick's statement in respect to the closure of the plant (if the Respondent lost its customers following a strike) was a legitimate prediction of the possible consequences of unionization, and was therefore not unlawful.¹³ Hence I shall recommend dismissal of this allegation of the complaint.

His further statement, however, that he knew who the union pushers were, created the impression of surveillance of employees in violation of Section 8(a)(1) of the Act.

5. Allegations with respect to Plant Manager Hendrix (par. 11 of the complaint and Objection VI)

Near the end of July, that is, about 2 or 3 weeks before the election of August 12, Hendrix spoke to a group of about 12 employees, including Shirley Mann, in the conference room at the plant. Hendrix told the employees that some of the ladies had been complaining about the work and that the reason for the problem was because the Union was trying to come in and everyone was under a strain. Hendrix went on that without a Union employees could come directly to him but that if the Union came in there would be a third party and employees would not be able to come directly to him and talk to him.¹⁴

During the week of August 5, Hendrix spoke to another group of about six employees at the plant, which included Viola McNair. Hendrix told this group that if the Union

¹² These findings are based on the full and credible testimony of Flowers in this regard. To the extent that the testimony of Bundick is contrary, I do not credit Bundick. I found Flowers to be a sincere witness, who testified, in my judgment, in a straightforward manner. Bundick, on the other hand, struck me as something of an advocate, hence I did not feel I could rely on his testimony. In any event, Bundick admitted speaking to employees on this occasion and admitted that the Union was discussed. Bundick further admitted that he could not recall all that was said at the meeting. He likewise admitted that he made mention of the *internal* union organizers and asked the employees whether the employees would want these people to represent them in negotiating for wages and fringe benefits. The rhetorical import even of Bundick's version of his statement in regard to the *internal* union organizers is that such people were not of sufficient caliber or quality to represent the employees. If he knew they were purportedly of low caliber, he must have known who they were - hence he suggested such knowledge to the employees by what he said to them in this respect.

¹³ See *Chrysler Airtemp South Carolina, Inc.*, 224 NLRB 427 (1976).

¹⁴ These findings are based on the credible testimony of Mann in this regard. I have already commented on the credibility of Mann. To the extent the testimony of Hendrix is contrary, I do not credit Hendrix. Hendrix I found to be a nervous witness who answered questions mechanically and defensively, hence not, in my judgment, convincingly. His denials that he spoke to employees in groups about the Union are also at odds with a statement in his prehearing affidavit in this same regard.

got in, the employees would have no right to speak for themselves but would have to go to the Union.¹⁵

I conclude that in each of the foregoing instances Hendrix misrepresented to employees what their individual rights of redress from management would be if the Union became their exclusive bargaining representative. Section 9(a) of the Act specifically preserves the rights of individual employees or groups of employees to approach management in respect to grievances without the intervention of their exclusive bargaining representative as long as any adjustment of such grievances is not inconsistent with any collective-bargaining agreement and provided the bargaining representative is given the opportunity to be present. Hendrix's statements in both incidents described above suggest that the employees' right to approach management would be extinguished upon their selection of the Union as their exclusive bargaining representative.

By indicating that these employee rights would be done away with if they selected the Union, I conclude that Respondent, by Hendrix, violated Section 8(a)(1) of the Act.¹⁶

6. Speeches of Director Bundick and Herbert Greenberg (par. 9 and 11 of the complaint and Objections II and VII)

As noted, Director of Manufacturing Bundick and President Greenberg spoke in succession to employees between 1 p.m. and 1:20 p.m. on August 11 (the day before the election).

The General Counsel urges that remarks in both speeches are violative of Section 8(a)(1) of the Act. I disagree.

I will take up each speech in turn.

As to Bundick's speech,¹⁷ the General Counsel takes issue with the first two complete sentences on page 3 thereof. The sentences are, as follows:

Someone reported to me that the Union had started a rumor that if you didn't vote for the Union, you were going to be fired. Again let me tell you this is an outright lie and I can personally promise you that not one—not a single employee will ever be fired just because he or she votes no in this election.

The General Counsel contends that this statement conveys to employees (apparently by implication) the contrary notion that a "yes" vote would jeopardize the jobs of employees. Thus, the General Counsel points out that Bundick explicitly insures employees only that employees who will vote "no" will not be fired. Whereas, notes the General Counsel, Bundick continued later in the same speech (on p. 4) that:

... you will vote NO against union strikes. You will vote NO against the Union taking money out of your paychecks—and you will vote NO against Union control over your job. I don't believe that a single one of

you honestly wants to risk your future and put your job and your future in the hands of a group of outsiders who don't really care anything about you at all.

By this last comment, in the light of the foregoing, the General Counsel says that Respondent conveyed the thought that engaging in unionization would threaten the employees' future with Respondent. I reject this contention.

I conclude rather that the speech in its full context is a propaganda-type attack upon the Union as an unreliable bargaining representative. Thus, elsewhere in the speech Bundick says the Union is a group whose organizers are "willing to promise, lie, cheat and do whatever they think is necessary to get your vote." He continued that the Union has done the same thing at other plants. He addressed himself to what he considered specific Union misrepresentations in the election campaign (e.g., if an employee did not vote for the Union he would be fired—if an employee had signed an authorization card he would have to vote for the Union). He went on to speak of dirty tricks by the Union. It was at this point that he asked the employees to vote "no" against strikes and putting their futures in the hands of the union outsiders.

I perceive nothing in the foregoing exhortation that would suggest an implicit threat of reprisal by the Respondent against the employees for their selection of the Union in the election. Fairly construed, these remarks indicate only that—in Respondent's mind—the Union is unreliable and that the employees would be unwise to select an unreliable exclusive representative for their future dealings with the Respondent.

I conclude that the above comments, in their full context, are not unlawful threats of any reprisal by Respondent but are merely an attack upon the Union's integrity as a bargaining representative.

The General Counsel also questions that portion of Greenberg's speech wherein, the General Counsel says, Greenberg mentioned that Respondent had closed a plant in West Virginia because of Union problems. The General Counsel contends that Greenberg's comments, coupled with other threats of plant closure by supervisors, conveyed to the employees that the closure of Respondent's plant herein at Eastman, Georgia, was a strong possibility if the Union won the election.

Again I conclude that the General Counsel's argument fails to consider the full context of the speech in which these comments were made. The entire text of Greenberg's remarks on this occasion is in the record.¹⁸

A reading of these remarks readily reflects that Greenberg did speak of his plant in West Virginia. He said the same Union came in and made unreasonable demands to which Respondent had to say "No." He added that after Respondent said no, the Union caused violence with broken windows on autos and in the plant. He continued that eventually the situation became so bad that Respondent lost customers and was "forced to close the plant for economic reasons." He then named other employers whose plants were forced to close for economic reasons or whose employees lost their jobs because of various acts by this Union.

¹⁵ These findings are based on the credible testimony of McNair in this regard. I have already commented on the credibility of McNair. To the extent the testimony of Hendrix disagrees, I do not credit it. I have also commented on the credibility of Hendrix.

¹⁶ E.g., *Graber Manufacturing Company, Inc.*, 158 NLRB 244, 248-249 (1966), enfd. 382 F.2d 990 (C.A. 7, 1967).

¹⁷ G.C. Exh. 3.

¹⁸ G.C. Exh. 4.

Here again, the remarks upon which the General Counsel relies as conveying the threat that Respondent will close its plant if the employees select the Union as their bargaining representative do not bear that meaning. The meaning is rather that, in Respondent's eyes, the Union again is an unreliable bargaining representative which has caused strikes and violence and that such Union (and not this or other employers) has caused plants to close or employees to lose their livelihoods.

Hence, I conclude that Greenberg's instant remarks constituted an attack upon the Union, as did Bundick's, and that neither's remarks, relied upon by the General Counsel, constituted a threat by Respondent to close the plant if the employees selected the Union as their bargaining representative. I further conclude that the remarks of neither constitute a basis upon which to set the election aside.¹⁹ And I shall recommend that these allegations of the complaint be dismissed, and I shall overrule the Objections insofar as they relate to these allegations of the complaint.

7. Respondent's announcement of the pension plan (par. 14 (as amended) and 15 of the complaint and Objection V)

As I have previously pointed out, Respondent's employees did not previously have a pension plan. Nor did the employees of L & H Shirt, a corporation affiliated with Respondent, which is located at Cochran, Georgia. A union campaign was also in progress among the employees of L & H at the time the advent of the new pension plan was announced there by Edward Greenberg on July 13,²⁰ the day after Edward Greenberg announced the plan at Respondent's plant in Eastman, Georgia.

Although employees of Respondent and L & H and other corporations affiliated with Respondent had never previously had a pension plan, the employees of two affiliated corporations—Charles Greenberg & Sons and Lucky Girl Shirts—had a deferred profit-sharing plan from 1970 to 1975. In 1976, as the results of changes in the Internal Revenue Code, these plans had to be amended. Amendments were in fact filed in 1976.

However, in October 1976, these amendments were rejected by the Internal Revenue Service because that Service considered Respondent, L & H, and another company to be part of a controlled group of companies affiliated with Charles Greenberg & Sons and Lucky Girl Shirts. That is, the first three companies had no comparable pension plan to those for which amendment had been sought, whereas apparently, under the law, all companies in such a controlled group must have the same plan.

There followed a flurry of activities by Respondent's corporate officials (who are the same for all the affiliated companies), their attorneys, and pension consultants to submit pension proposals which would be acceptable to the Internal Revenue Service, and to accomplish said mission in 1977 because of the necessity to file tax returns for Charles Greenberg & Sons and Lucky Girl Shirts during that year.

A meeting of the board of directors of the affiliated com-

panies was held on March 11, and Edward Greenberg, Respondent's executive vice president and chief operating officer, was commissioned to investigate several alternative pension proposals.

On April 11, at another meeting of the Board of Directors, it was decided to institute pension and profit-sharing plans for all the companies. Again Edward Greenberg was the officer directed to handle the matter and work out the details.

Edward Greenberg did as requested, and his efforts carried him into early July, at which time (after consultation with attorneys, accountants, and pension advisers) basic formulas and requirements for the plans were developed which, it was hoped, would satisfy the Internal Revenue Service.

During this period the pension attorneys also advised Edward Greenberg in respect to two matters—first, that a written announcement of each plan would have to be posted at the plants of each company no more than 21 days nor less than 7 days prior to submission of the plan to Internal Revenue—the date for which was expected to be September 15, which coincided with the granted extended date for filing the Greenberg & Sons tax return. Pension counsel also advised Edward Greenberg to announce the plans orally to employees of those companies (like Respondent) that never had previously had such a plan, because such employees were presumably unfamiliar with such matters.

Another pressure on Edward Greenberg at the time was from employees of Herbert Greenberg & Sons and Lucky Girl Shirts, who had learned that the profit-sharing plan they had enjoyed from 1970 to 1975 was in trouble with the Internal Revenue Service.

Greenberg also consulted with his labor attorneys with respect to the proposal and announcement to his employees of the plan. The labor attorneys, according to his testimony, informed him that he could not announce a change in benefit during a union organizational campaign that was designed to or had the effect of interfering with union activities. Further, according to his testimony, the labor attorneys advised him, on the other hand, that under NLRB rulings it was also illegal to withhold the institution of a benefit because of a union organizational campaign.

By the first week of July, the major aspects of the new pension and profit-sharing plans (but not the final details) were worked out. Again Edward Greenberg consulted with his pension attorneys and his labor attorneys. The pension attorneys reviewed with him the technical requirements (7-21 days) for written notices of the plans to employees at each plant. They again advised him to make an oral announcement to the employees as a demonstration of good faith to the Internal Revenue Service, in case the final written proposals were not ready by September 15 and in order to justify a request for a further extension of the time to file tax returns after that date.

Edward Greenberg thus decided that he and his father would make speeches at all the plants to announce and explain the plans. He reviewed these speeches with his labor attorneys. The announcements of the new plans were made by Herbert and Edward Greenberg at all plants during the period July 11 to July 13 (e.g., Respondent on July 12 and L & H at Cochran, Georgia, on July 13). Edward Green-

¹⁹ *Chrysler Airtemp South Carolina, Inc.*, *supra*.

²⁰ Greenberg admitted that an election petition was expected momentarily at L & H.

berg's speech to Respondent's employees noted that the same announcement was given to the employees of other plants at about the same time.

Edward Greenberg's announcement of the pension plan to the employees of Respondent on July 12 was their first awareness that Respondent was developing a pension plan for their benefit.

The written announcement of the plan was posted at Respondent's plant on September 7 or 8. The written plan, designed to go into effect as of July 1, 1977, was submitted to the Internal Revenue Service on September 15. The plan had not, however, been approved by the Internal Revenue Service as of the date of the hearing herein, in February 1978. Nor has the Respondent relinquished moneys from corporate control to support the plan.

Respondent contends that the announcement of the plan was made for business purposes unrelated to the organizational campaign. It urges that the General Counsel has not made out a *prima facie* case that the announcement of the plan had an unlawful purpose. I reject Respondent's contentions.

The granting of benefits by an employer²¹ or his announcement of a grant of benefits immediately preceding an election²² is not *per se* a violation of the Act nor grounds for setting an election aside, but the burden is upon the employer to establish that there were factors other than pendency of the election which prompted the employer's actions.²³ The test is not whether the employer's motive is unlawful or whether the claimed interference was successful, but it is rather whether the conduct may reasonably be construed to interfere with the free exercise of employees' rights under the Act.²⁴

In the present case, the General Counsel has established, or Respondent has admitted in its answer to the complaint, that the pension plan was announced to Respondent's employees on July 12, after the election petition was filed by the Union.

The burden then shifted to Respondent to explain that the announcement of the plan was prompted on the basis of reasons other than the election.

I reject the reasons advanced by Respondent.

Respondent still has no effective pension plan. For, as I have noted, the plan has not yet been approved by the Internal Revenue Service. Even as of July 12, when the announcement was made, the full details of the plan had yet to be worked out. While written announcement of the plan was required under Internal Revenue Service rules²⁵ 7 to 21 days before the plan's submission to Internal Revenue on September 15, the 21st day before September 15 was August 25—that is, some 2 weeks after the election. While an oral announcement may well have demonstrated Respondent's good faith to the Internal Revenue Service for submission of the plan (and for a possible request for further extension of the time to file tax returns pending submission of the plan) after September 15 (if it had not been completed by that date), there was more than a month's time between the date of the election, August 12, and the

September 15 deadline in which the oral announcement could be made. The date of the election—August 12—was known to Respondent before it made the pension plan announcement (i.e., the election stipulation had been approved by the Regional Director on July 8).

Nor am I persuaded that Respondent was trapped in a dilemma caused by its interpretation of the Board's rules; i.e., its claim that it would be improper to withhold the announcement of benefit because of the Union's campaign versus its claim that the announcement of the benefit before the election might be construed as interference with that election. For again, Respondent did not—as of July 12—have a plan (it had only determined the types it wanted for all its companies), and although the details of the plan or plans were later worked out after the election, the plan has still not been approved by the Internal Revenue Service.

Nor do I agree that the plan was routinely announced to the employees of all five companies in circumstances where the companies other than Respondent were not involved in a union campaign. To the contrary, Edward Greenberg candidly admitted that an election petition was expected any day at L & H from the same Union and he wanted to reveal the pension plan to the employees there before that petition, because after the petition, "it would be far worse to make an announcement" of the plan at that plant. Greenberg was, of course, correct under Board law that it would be "far worse" to make such an announcement after the petition. That is, by announcing the plan at L & H before the petition, he got in the announcement for whatever effect it would have upon the employees prior to the time that any such announcement could be used against him to set aside a later election at that plant.²⁶ The same situation had previously developed at Respondent's plant here directly involved in Eastman, Georgia. Thus, as Edward Greenberg admitted, he became aware of the Union's campaign around Thanksgiving of 1976. Thereafter (in "this year"—1977), according to Herbert Greenberg's preelection speech to employees on August 11, Respondent added the benefits of an additional paid holiday and an increase in insurance benefits—the latter, at least, going into effect "early this year." The increase in insurance benefits— "early this year"—obviously preceded the election petition filed in mid-year (on June 13).

I, accordingly, reject Respondent's explanation and conclude that it made the announcement of the pension plan on July 12 for the purpose of interfering with the employees' free choice in the election and that Respondent thereby violated Section 8(a)(1) of the Act.²⁷

²⁶ For purposes of filing objections, the election period begins at the time the petition is filed. *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961).

²⁷ *American Freightways Company, Inc.*, *supra*. Cases relied upon by Respondent for a contrary result are distinguishable on their facts. Thus, in *Domino of California, Inc.*, 205 NLRB 1083 (1973), the decision to institute the pension plan, unlike here, preceded the union's organization campaign. Further, unlike here, the complained of announcement of the plan followed the plan's approval by the Internal Revenue Service. In *Havatampa Cigar Corporation Manufacturing Division*, 175 NLRB 736, 737 (1970), the schedule for the Board of Directors meeting at which a pension plan was to be considered for approval was set more than a month before the union filed an election petition—hence the date of this meeting occurred, coincidentally, just before the election. The plan was *adopted* at that meeting and was routinely announced to all the employees of the employer, including those in the unit in which the election was to take place.

²¹ *Glosser Bros., Inc.*, 120 NLRB 965, 966 (1958).

²² *Cadillac Overall Supply Company*, 148 NLRB 1133, 1136, (1964).

²³ *American Freightways Co., Inc.*, 124 NLRB 146, 147 (1959).

²⁴ *International Shoe Company*, 123 NLRB 682 (1959).

²⁵ Which are in evidence.

8. Restriction of Charles Etheridge (par. 16-18 of the complaint; Objection IX), alleged threat by head mechanic Law (par. 10 of the complaint and Objection II)

A. The Restriction

Etheridge, the parts clerk, was a prime union adherent among Respondent's employees. He attended all the union meetings, talked to employees about the Union, obtained 50-75 signed authorization cards, signed one himself, placed an advertisement in the county newspaper to encourage employees to vote for the Union, and was the Union's observer in the election. Prior to July 14, he was permitted to move freely about the plant in his parts work and to go outside the plant to pick up parts. However, on July 14, his movements were restricted to the parts area. This restriction was later removed.

The General Counsel, I conclude, has established a *prima facie* case in respect to this allegation of the complaint. Respondent concededly opposed the Union. Etheridge's union activities were numerous, and Respondent was aware of these activities.²⁸

Respondent asserts in essence that Etheridge's movements were restricted, but only to the extent necessary to require Etheridge to keep up with the plant inventory which had fallen behind at the time.

In view of Respondent's defense, the question becomes whether Respondent restricted Etheridge to thwart his union activities or to require him to do his job, the work of which was not up to date. I conclude the latter.

I found Etheridge's testimony to contain a number of significant contradictions and uncertainties.²⁹ Consequently, my findings as to his restriction in late July are based largely on the testimony of Respondent's witnesses, whom I found to be more reliable in respect to this matter.³⁰

Head Mechanic L. Rudolph Law noticed a shortage of machine parts in June and July. This caused him to fall behind in carrying out his responsibility for machine repair. Law complained to Plant Manager Hendrix about this matter. Law asserted the problem was the inventory.

Hendrix had been after Etheridge for several months to straighten out the parts inventory, but Etheridge did not do this, claiming he was too busy. Finally, on July 14,³¹ in the face of Law's complaint, Hendrix assigned employee Broom to help Etheridge with all of Etheridge's work except the actual paperwork, for which Broom was not qualified.³² Thus, Broom helped Etheridge count parts (as well as

thread and other supplies) and ran errands outside the plant for Etheridge. Etheridge then concentrated his time on the inventory, which was completed in 2 to 2-1/2 weeks, that is, I find, on or about August 1. I conclude that Etheridge's confinement or restriction to the inventory work concluded at that time, which was more than 10 days before the election.³³

I further conclude that the restriction of Etheridge's movements at the time was to insure that Etheridge completed his inventory work—his outside pickup duties being assigned to Broom, who also helped Etheridge with the inventory work—and I further conclude that any such restriction came to an end well before the election.

Since I do not find that the purpose of this restriction was to restrain Etheridge from engaging in union organizational activities, I shall recommend that this allegation of the complaint be dismissed.

B. The Alleged Threat by Law

On or about August 11, an advertisement appeared in the Times Journal Spotlight (the county newspaper), placed there by Etheridge and attributed to him by name, which urged Respondent's employees to vote in favor of the Union. After the paper came out, employee Ronnie Moore and Etheridge were standing in Respondent's machine shop, and Supervisor Law was 12-15 feet away. Moore, referring to the advertisement, told Etheridge that Etheridge had signed his death warrant. Law made no such statement to Etheridge.³⁴

There is no indication in the record that Moore enjoys the status either of a supervisor or as Respondent's agent within the meaning of the Act. I find nothing unlawful in such a remark by a rank-and-file employee in the circumstances. I shall, accordingly, recommend dismissal of this allegation of the complaint.

9. In further regard to the objections to the election

I have adverted to the election objections in treating the various allegations of the complaint which generally track the objections. I have not, however, ruled on the objections, because they have recurred in several instances in different places where I have treated the allegations of the complaint primarily under separate headings for each supervisor involved.

I will now rule on the objections.

I find merit in objections I and II—the alleged interrogations and threats of plant closure (see "Concluding Findings," sees. 1, 2, 3, and 4, *supra*); also in Objection III—alleged impression of surveillance ("Concluding Findings,"

in his (parts) office and that Etheridge could not leave to get a drink of water or go to the bathroom without being escorted.

²⁸ Etheridge said his restriction ended "after July [or] after the election."

³⁴ These findings are based upon the credible testimony of Moore and Law in this regard. To the extent the testimony of Etheridge is contrary, I do not credit Etheridge. I have commented on the credibility of Law. Moore also struck me as an essentially reliable witness. I have likewise commented on the credibility of Etheridge, whom I have discredited. Etheridge, in any event, directly contradicted his testimony as to this incident—saying at one point in his testimony that Moore made no such statement to Etheridge but admitting later that Moore had made such a statement.

²⁸ As I have previously found, Bundick admitted to a group of employees on July 20 and 24 that he knew who the union pushers were.

²⁹ E.g., he contradicted himself on whether employee Moore told him on August 11 that by placing the newspaper ad Etheridge had signed his death warrant, as will appear; he denied anyone was assigned to help him with inventory, but said later that Broom was assigned to help him; he said he could not recall being out of parts, then admitted that he had been; he was evasive on the question whether Respondent and I. & H exchange inventory parts—finally admitting that Respondent does call I. & H for parts; and he was uncertain about other help Broom may have given him.

³⁰ Law, whom I found to be an essentially straightforward, although somewhat nervous, witness, and Hendrix. While I have discredited Hendrix elsewhere in this decision, I credit him here because his testimony is consistent with that of Law.

³¹ After the plant reopened following the summer vacation.

³² I do not credit Etheridge's testimony, essentially denied by Hendrix, that Hendrix told Etheridge at the time that Etheridge would remain locked

sec. 4); in Objection V—announcement of the pension plan on July 12 (“Concluding Findings,” sec. 7); in Objection VI—alleged threat of loss of benefits (“Concluding Findings,” sec. 5); and in Objection VII—alleged threat of loss of jobs (“Concluding Findings,” sec. 2). I shall therefore sustain these objections.

I find no merit in Objection VIII—alleged restriction of movements of employees (“Concluding Findings,” sec. 9)—and Objection X (a general objection as to which no evidence was offered). I shall therefore overrule these objections. The remaining objections (besides those I have sustained or overruled), as noted, were withdrawn.

In sustaining Objections I, II, III, V, VI, and VII, I have considered the total weight of Respondent’s misconduct involved in these objections and the fact that said misconduct further involved unfair labor practices within the meaning of Section 8(a)(1) of the Act. In assessing the merits of the instant objections and their impact upon the election process, I have taken into account that the alleged acts of interrogation, threats of plant closure, and creation of the impression of surveillance concerned some 9 incidents, involving some 5 supervisors and at least 23 employees (plus whatever number was in the group addressed by Bundick on or about July 20 or 24), which cannot be considered isolated in the unit of the approximately 237 employees who voted in the election. I have also considered the impact of the announcement of the pension plan on July 12, which occurred a month before the election, thereafter was adverted to in the speech of Herbert Greenberg on the day before the election, and by its benefit (pension) nature had an impact on the entire employee complement.³⁵

I shall therefore recommend that the election be set aside and a new election directed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

³⁵ See *Spotlight Company, Inc.*, 188 NLRB 819 (1971), enf.d. 462 F.2d 18 (C.A. 8, 1972); *Detroit Plastic Molding Co.*, 213 NLRB 897, 907 (1974), enf.d. 519 F.2d 816 (C.A. 6, 1975).

3. Respondent has violated Section 8(a)(1) of the Act: by threatening to close down its plant if the Union came in; by coercively interrogating its employees about their own or their fellow employees’ union activities; by creating the impression that it was engaged in surveillance of the union activities of its employees; by announcing a new benefit to its employees during the critical period; by threatening its employees with loss of existing benefits and with loss of jobs if the Union succeeded in its campaign to organize Respondent’s employees.

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

5. Respondent did not violate Section 8(a)(3) and (1) of the Act by restricting Charles Etheridge to his inventory function in July 1977.

6. Election Objections I, II, III, V, VI, and VII are meritorious objections, are therefore sustained, and warrant setting the election aside in Case 10 RC-11126. The remaining objections, VIII and X, which have not been withdrawn lack merit and are overruled.

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

ORDER³⁶

The Respondent, C & J Manufacturing Company, Eastman, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Announcing to employees beneficial changes in their working conditions to influence them not to support Amalgamated Clothing & Textile Workers Union, AFL-CIO, or any other labor organization; coercively interrogating employees about their own or their fellow employees’ union activities; threatening to shut down Respondent’s plant if the employees are organized by a union; creating the impression among its employees that it is engaged in surveillance of their union activities; and threatening employees with loss of existing benefits or jobs if a union succeeds in organizing them.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

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

(a) Post at its plant in Eastman, Georgia, copies of the attached notice marked “Appendix.”³⁷ Copies of this notice on forms provided by the Regional Director for Region 10, after being duly signed by Respondent’s representative.

³⁶ 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, 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.

³⁷ 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.”

shall be posted by it 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS HEREBY FURTHER RECOMMENDED that the complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not found herein.

IT IS ALSO HEREBY RECOMMENDED that the election held in Case 10-RC-11126 on August 12, 1977, be, and it hereby is, set aside; and that case is hereby severed herefrom and remanded to the Regional Director for the holding of a new election at such time as he deems that circumstances permit the free choice of a bargaining representative.

APPENDIX

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

After a hearing at which all sides had the chance to give evidence, it has been decided that we, C & J Manufacturing Company, have violated the National Labor Relations Act,

as amended, and we have been ordered to post this notice.

The National Labor Relations Act gives you, as employees, these rights:

- To engage in self-organization
- To form, join, or help unions
- To bargain collectively through a representative of your own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT announce beneficial changes in your working conditions in order to influence you not to support Amalgamated Clothing & Textile Workers Union, AFL-CIO, or any other union.

WE WILL NOT coercively interrogate you about your own union activities or those of your fellow employees.

WE WILL NOT threaten to close our plant if a union succeeds in organizing you.

WE WILL NOT create the impression that we have been spying on your union activities.

WE WILL NOT threaten to take away your existing benefits or your jobs if a union succeeds in organizing you.

WE WILL NOT in any like or related manner interfere with any of your rights set forth above.

C & J MANUFACTURING COMPANY