

out the State of Ohio. It was formed for the purpose of disseminating information, promoting public relations, and increasing the business of its members. Insofar as appears from the record, it engages in no collective bargaining.

The original petition herein named as the employer the Ohio Association, which was not the association contemplated by the Petitioner. The Columbus Association, which was contemplated, was not designated in the petition; nor did it receive notice thereof. Service of a copy of the petition on Krier did not constitute notice to the Columbus Association, as the petition was addressed to the Ohio Association of which he was the secretary, and made no reference to the Columbus Association, with which he had then had no official connection for over a year. Moreover, six members of the Columbus Association were not designated or served with notice of the original petition.

As a substantial number of the 15 employers who comprise the appropriate unit were neither named in nor notified of the petition, either directly or through an authorized agent, until the filing and service of the amended petition, we find that the filing date of the amended petition is controlling, and that, as it was filed within the 60-day insulated period immediately preceding the termination date of the existing contract, it was untimely.² Accordingly, we shall grant the motion of the Intervenors to dismiss the petition herein.³

[The Board dismissed the petition.]

² *Deluxe Metal Furniture Company*, 121 NLRB 995, 1000, footnote 12; *The Evans Pipe Company, et al.*, 121 NLRB 15, 18; *The Baldwin Company*, 81 NLRB 927.

³ In view of our disposition of this case, we find it unnecessary to pass upon the contentions as to the appropriateness of the unit requested by the Petitioner.

Como Plastics, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO. *Cases Nos. 25-CA-1480 and 25-RC-2094.*
June 26, 1963

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On June 26, 1962, Trial Examiner Thomas F. Maher issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. He also recommended that the objections to conduct affecting the results of election, which were filed by the Union in Case No. 25-RC-2094, be

overruled.¹ Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases, and hereby adopts only those findings, conclusions, and recommendations of the Trial Examiner which are consistent with our decision herein.

The complaint alleged that Respondent engaged in certain conduct during the Union's organizational campaign which violated Section 8(a) (1) of the Act. Specifically, it alleged, *inter alia*, that Respondent unlawfully interrogated employees concerning their union activities; threatened an employee with discharge or other reprisals if he became or remained a member of the Union; promised employees economic benefits if they did not support the Union; and threatened employees that Respondent would discontinue its profit-sharing plan if they selected the Union as their bargaining representative. The Trial Examiner dismissed the complaint in its entirety and overruled the Union's objections to the election results. In doing so, he found that, although Respondent had interrogated employee Lucas concerning his union activities, and although there was an "inference" that Respondent had threatened employee Beverly with loss of employment because of his promotion of the Union, "in the context of Respondent's total conduct," Respondent did not violate Section 8(a) (1) nor did it in any manner affect the employees' freedom of choice in the election. In our opinion, an appraisal of Respondent's "total conduct" compels a contrary result.

As the Trial Examiner noted, Respondent availed itself of numerous opportunities to register its opposition to the Union and its desire that the Union be rejected in the election of November 9, 1961. The first of these occasions arose on November 1. On that date, employee Beverly engaged in a conversation with Foreman Fleetwood. A portion of this conversation, which the Trial Examiner extracted from the totality of Fleetwood's credited testimony, portrays Beverly as ex-

¹ Pursuant to a stipulation for certification upon consent election executed on October 18, 1961, in Case No. 25-RC-2094, an election was conducted among certain employees of Respondent in the stipulated unit. On November 15, 1961, the Union filed objections to conduct affecting the results of the election. On January 12, 1962, the Regional Director issued his report on objections in which he recommended to the Board that a hearing be held on certain issues raised by the Union's objections. On January 29, 1962, the Board ordered that a hearing be held as recommended. Thereafter, on February 5, 1962, by order of the Regional Director, Cases Nos. 25-CA-1480 and 25-RC-2094 were consolidated.

pressing concern that he might lose his job with Respondent because he had promoted the Union at the plant, and drawing from Fleetwood the assurance that "I didn't think he had anything to worry over losing his job and it kind of gave me the impression at that time that perhaps he was trying to change over to the Company and I told him that I would be willing to go and work and do anything in my power to keep him from losing his job . . ." On the basis of this segment of Fleetwood's testimony, the Trial Examiner concluded that "A reading of Fleetwood's account of the incident creates a suggestion that Beverly's job might be in jeopardy because of his union adherence. But to reach such a conclusion I would be compelled to indulge in a series of interconnected inferences, to establish that there was "more to this than meets the eye.'"

We are not convinced that the indulgence in any series of "interconnected inferences" is required in order to find that Fleetwood threatened Beverly's job security because of the latter's union adherence, if all of Fleetwood's credited testimony is considered. The foregoing testimony upon which the Trial Examiner relied was elicited from Fleetwood on direct examination by Respondent's counsel. On cross-examination, Fleetwood admitted relating to Beverly that "if he were telling [Fleetwood] that he was switching over to the Company's side . . . I would try to help him in any way that I could to keep him from losing his job." After being confronted with his pretrial affidavit, Fleetwood also admitted, after first denying, that he told Beverly in this conversation that "if he was going along for the Company I would go to bat for him and that if there was any way I could help him I would see that he didn't lose his job, but if he was lying to me I had no use for a liar." Considering the totality of Fleetwood's credited testimony, we find that Respondent threatened Beverly with loss of employment if he continued to support the Union and thereby violated Section 8(a) (1).

On or about the date of the Fleetwood-Beverly conversation, Respondent President Russell spoke with employee Lucas at the latter's workbench. Concerning this conversation, Russell stated that "I walked up to Lucas and without a great deal of forethought said, 'Ronnie, I believe that you were a Company man in the last election,² and he said to me, 'Yes,' that 'I have not had anything good from the Company this year.' He didn't need to say anything more to me. I did an about face and left." While finding that this interrogation of Lucas had occurred, the Trial Examiner failed to attach any legal significance to this intrusion on Lucas' statutory rights because it presented "too fine a thread with which to spin a fabric of objectionable and unlawful conduct." In view of the total context of Re-

² The Union had lost an election at Respondent's plant prior to the election of November 9, 1961.

spondent's conduct set forth in this opinion, we find that the interrogation of Lucas violated Section 8(a) (1).

In the campaign against the Union, Respondent did not confine itself to the threat aimed at Beverly and the interrogation of Lucas. On November 1 and 2, Weisner, Respondent's director of personnel, and on November 6 and 7, Respondent's president, Russell, assembled Respondent's employees and delivered identical speeches to them. In a portion of his speech, to which the Trial Examiner nowhere adverts, Russell admitted telling the employees that "At this point or an earlier point I had talked about the fact that the employees in this company had beaten the Union in the last election and that following this we had given raises and had improved working conditions . . . and that they could expect this policy of progression to continue." In our opinion, these expressions clearly conveyed to the employees the promise that wage increases would be forthcoming if they again rejected the union, and were plainly violative of Section 8(a) (1).

The record discloses that Respondent maintains a profit-sharing plan in which its employees have participated for some years. In its objections to the election in Case No. 25-RC-2094, the Union alleged that Respondent threatened to eliminate the sharing of profits and, in support of this allegation, submitted evidence to the Regional Director that Respondent "threatened that there would be no profit sharing plan and/or no profit sharing bonus at Christmas if the Union prevailed" In a marginal reference in his report on objections, the Regional Director noted that the "Employer admits stating it would not negotiate with the Union on the subject of profit sharing." Subsequently, the Board agreed with the Regional Director that this allegation, coupled with the Union's proffered evidence in support thereof, raised material issues which should be resolved by a hearing and remanded Case No. 25-RC-2094 for such purpose. This case was then consolidated with Case No. 25-CA-1480 for hearing. The complaint in the latter case alleged, in paragraph 5(b), that Respondent warned its employees "that it would discontinue its profit-sharing plan for its employees and its employees would not receive any profit shares, if they selected the Union as their collective-bargaining representative in the forthcoming election."

At the hearing on the complaint, Director of Personnel Weisner testified that he told the employees that Respondent's profit-sharing plan "was originally set up to compensate for fringe benefits such as paid holidays and more liberal insurance, vacation benefits. It had been management's opinion that the majority of new employees favored such a plan and you will remember that just a few months ago as a result of a questionnaire you expressed your desires by a more than two to one vote to continue the profit sharing plan in lieu

of paid holidays. I just want to inform you that Como's books would never be opened to the public and that the profit sharing distribution was solely a matter of management's discretion. If the Union is elected this profit sharing plan will probably be discontinued in lieu of other fringe benefits which will no doubt equal the average amount of money that had been distributed in past years" On further examination, Weisner testified he told the employees that Respondent "would not negotiate with the Union on the profit sharing plan." President Russell testified that "I would bargain in good faith on wages, working conditions, fringe benefits and hours of work but that profit sharing was a thing that I did not want to talk—I did not want to talk with them about, although I thought it was the best incentive for—to make people work."

Despite the fact that these witnesses were fully examined and cross-examined by counsel for both sides as to whether Respondent threatened to refuse to negotiate over the continuance of profit sharing if the Union won the election; that the General Counsel specifically stated at the hearing that Respondent's threatened refusal to bargain over this issue was part of the case and that he did not desire to withdraw it; that the complaint alleged that Respondent threatened to discontinue profit sharing; and that this matter was encompassed in the Union's objections to the election in Case No. 25-RC-2094 which were consolidated with the complaint proceeding, the Trial Examiner refused to consider the threatened refusal to bargain as "an issue in the case" on the ground that it "was never litigated." While not fully explicated, it apparently was the Trial Examiner's view that the allegation in the complaint, to the effect that Respondent threatened to discontinue profit sharing, did not encompass Respondent's threat to refuse to bargain over continuance of the profit-sharing plan. However, both the Board³ and the courts⁴ have declared that, where an issue relating to the subject matter of a complaint is fully litigated at a hearing, the Trial Examiner and the Board are expected to pass upon it although it is not specifically alleged to be an unfair labor practice in the complaint. On this record, and in light of the above, we conclude and find that the Trial Examiner was clearly in error in failing to consider whether the aspect of the speeches by Weisner and Russell relating to Respondent's refusal to bargain over profit sharing infringed upon the employees' rights guaranteed in Section 7 of the Act.

It is well established that a profit-sharing plan such as Respondent's is an emolument of value which accrued to its employees by reason of their employment relationship and therefore constituted a mandatory subject of bargaining under the Act.⁵ Hence, Respondent could not

³ See, e.g., *Monroe Feed Store*, 112 NLRB 1336, 1337.

⁴ See, e.g., *N.L.R.B. v. American Tube Bending Co., Inc.*, 205 F. 2d 45, 46-47 (C.A. 2).

⁵ See *Dickten & Masch Mfg. Company*, 129 NLRB 112.

lawfully refuse to bargain with the Union over this subject if the Union became the majority representative of Respondent's employees.⁶ Consequently, the statements by Respondent's officials that they would not negotiate concerning the profit-sharing plan, and that they would discontinue its operation if the Union won the election, constituted a clear threat of economic reprisal against the employees if they selected the Union.⁷ That the employees considered the plan as a highly desirable aspect of their remuneration which they wished to retain is manifested by the testimony of Weisner that the employees had voted "two to one" to continue it in lieu of other fringe benefits which Respondent had threatened to substitute for the plan if the Union insisted on bargaining over it, and by Russell's testimony that the plan was "the best incentive for—to make people work." Accordingly, by threatening that it would refuse to bargain with the Union over continuance of profit sharing and that the profit-sharing plan would be discontinued, we find that the Respondent violated Section 8(a)(1).

THE REMEDY

The Respondent, having interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act by interrogating them concerning their union adherence and sympathies, by promising them economic benefits if they rejected representation by the Union, by threatening them with loss of employment if they supported or assisted the Union, and by threatening that Respondent would refuse to negotiate with the Union concerning the continuance of the profit-sharing plan and would discontinue the plan, thereby violated Section 8(a)(1) of the Act. We shall therefore order that Respondent cease and desist therefrom. By the foregoing acts, the Respondent also engaged in conduct affecting the results of the election in Case No. 25-RC-2094 by interfering with employees' freedom of choice. We shall therefore order that the election conducted on November 9, 1961, be set aside, and that Case No. 25-RC-2094 be remanded to the Regional Director for the purpose of conducting a second election at such time as he determines that the effects of Respondent's unfair labor practices and interference with the previous election have been dissipated.

ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Como Plastics,

⁶ See *Dickten & Masch Mfg. Company*, *supra*.

⁷ *Lee-Rowan Manufacturing Company*, 129 NLRB 980.

Inc., Columbus, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating any of its employees concerning their adherence to or sympathies for International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, or any other labor organization.

(b) Promising its employees economic benefits if they rejected representation by said Union.

(c) Threatening any employee with loss of employment for supporting or assisting said Union or any other labor organization.

(d) Threatening that it would refuse to negotiate with said Union concerning the continuance of its profit sharing or that the plan would be discontinued in the event the Union achieved majority representation status.

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

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

(a) Post at its plant in Columbus, Indiana, copies of the attached notice marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by an authorized representative of Respondent, be posted 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 that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED THAT the election held on November 9, 1961, in Case No. 25-RC-2094, among the employees of Como Plastics, Inc.

[Text of Direction of Second Election omitted from publication.]

MEMBER RODGERS, concurring:

I concur in the result.

⁸In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, you are notified that :

WE WILL NOT interrogate our employees concerning their adherence to or sympathies for International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, or any other labor organization.

WE WILL NOT promise our employees economic benefits if they reject representation by said Union.

WE WILL NOT threaten our employees with loss of employment for supporting or assisting said Union or any other labor organization.

WE WILL NOT threaten our employees that we will refuse to negotiate with said Union concerning the continuance of our profit-sharing plan in the event the Union becomes their bargaining representative, and we will not threaten to discontinue the plan.

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

All our employees are free to become or remain members of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, or any other labor organization, or to refrain from becoming or remaining members of said Union or any other labor organization.

COMO PLASTICS, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, 46204, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge dated November 14, 1961, filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, herein referred to as the Union, the Regional Director for the Twenty-fifth Region of

the National Labor Relations Board, herein called the Board, issued a complaint on behalf of the General Counsel of the Board on January 26, 1962, against Como Plastics, Inc., Respondent herein, alleging violations of Section 8(a)(1) of the National Labor Relations Act, as amended (29 U.S.C., Sec. 151, *et seq.*), herein called the Act. In its duly filed answer Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice.

Pursuant to Board order the proceeding referred to above was consolidated with Case No. 25-RC-2094 wherein a representation petition in behalf of Respondent's employees had been filed by the Union on October 3, 1961, and an election held on November 9, 1961; said consolidation being for the purpose of holding a hearing and taking evidence in connection with certain objections filed by the Union in respect to conduct affecting the results of the aforesaid election.

Pursuant to notice, a hearing of the consolidated cases was held before Trial Examiner Thomas F. Maher at Columbus, Indiana, on March 13, 1962. All parties were represented and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs with me. Briefs were filed by the General Counsel and Respondent on April 10, 1962. Upon consideration of the entire record, including the briefs of the parties, and upon my observation of each of the witnesses,¹ I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Como Plastics, Inc., Respondent herein, is an Indiana corporation with its plant and principal place of business located in Columbus, Indiana, where it is engaged in the manufacture, sale, and distribution of thermoplastics. In the course and conduct of its operations Respondent annually manufactured, sold, and shipped from its Columbus, Indiana, plant products valued in excess of \$100,000 to points outside the State of Indiana. Upon these conceded facts, I find the Respondent to be an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, the Union herein, is conceded to be a labor organization within the meaning of the Act, and I so find.

III. THE ISSUES

1. The protected character of Respondent's speeches to its employees.
2. Whether there is substantial evidence of statements which would interfere with, restrain, or coerce employees and affect their free choice in a Board election.²

IV. THE UNFAIR LABOR PRACTICES

A. Sequence of events

Following an organizing campaign in September 1961 the Union filed its representation petition with the Board on October 2, and thereafter on October 18 entered into a stipulation agreement with the Respondent whereby the parties agreed to a certification of the Union as representative of Respondent's employees, conditioned upon its securing of a majority vote in an election to be conducted under the Board's auspices. The election was scheduled for November 9, 1961.

¹ Unless specifically indicated to the contrary, any credibility evaluation I make of the testimony of any witness appearing before me is based, at least in part, upon his demeanor as I observed it at the time the testimony was given. Cf. *Retail Clerks International Association, AFL-CIO, Local 219 (National Food Stores, Inc.)*, 134 NLRB 1680, footnote 3; *Bryan Brothers Packing Company*, 129 NLRB 285. To the extent that I indicate that I do not rely upon or reject in part or entirely the testimony of any given witness, it is my intent thereby to indicate that such part or whole of the testimony, as the case may be, is discredited by me. *Jackson Maintenance Corporation*, 126 NLRB 115, footnote 1, enf'd 283 F. 2d 569 (C.A. 2).

² By footnote reference in his report on objections the Regional Director states that "The employer admits stating it would not negotiate with the Union on the subject of profit sharing." As this item is not included among the objections of the complaint, and was never litigated at the hearing, I do not consider it an issue in this case.

Meanwhile Respondent availed itself of numerous opportunities to convey to the employees its objections to the Union and its hopes that they would vote against the Union in the coming election. Thus at meetings held on each of the three working shifts of November 1 and 2 and November 6 and 7, Respondent's Director of Personnel William J. Weisner, and President James L. Russell, respectively, addressed the assembled employees on each shift. Both Weisner and Russell repeated their speeches three times, in what appears to have been identical form. During the same period two of Respondent's foremen, Floyd Douglas and Winfer Fleetwood, engaged in conversations with a number of the employees, the effect of which, the Union complains, was to influence the outcome of the election held thereafter.

The election was held as scheduled on November 9, the Union losing by a vote of 30 to 56. Thereafter, on November 15, it filed objections to this election, claiming that the substance of the speeches of Weisner and Russell, their private conversations with employees, and the conversations of Fleetwood and Douglas with employees unduly influenced the results of the election.

B. The speeches

1. By Director of Personnel Weisner

Weisner's three identical speeches to the employees were delivered with the aid of notes which were introduced into evidence. He referred to them constantly as his hour and a quarter speech progressed. Included among the main topics in the notes in the speech itself, as recounted credibly by Weisner, were comments on overtime policy, call-in-pay, job classifications, shift differentials, merit ratings, promotion policy, vacation program, the effect of seniority on layoff and recall, loan and savings plans, group insurance, and many other items of vital interest to the employees.³ In addition to the foregoing Weisner also spoke on subjects directly connected with the Union and its effect on the plant and on the employees. Thus he said that if the Union came in and a strike was eventually called,⁴ the suppliers with whom Respondent was doing a "custom" business, such as RCA, Western Electric, and Arvin, would, if Respondent could not make deliveries, pull out their molds and take them to other molders; and that if these customers should do this it would be some time before Respondent could hope to get the molds back in the shop. In consequence, once this happens the business of that customer would be lost for some time to come.⁵

With respect to the profit-sharing plan, Weisner credibly testified that he told the employees that they had worked out a profit-sharing plan that had functioned in each of the years that Respondent had made a profit, and that if the Union was elected this plan would probably be discontinued in lieu of other negotiated benefits that would equal the average amount of money previously distributed. Weisner credibly denied that he announced that a Christmas bonus would be withdrawn in the event that the Union won. After explaining at the hearing that there was no such thing as a Christmas bonus, but that one of the semiannual profit-sharing payments were made during the yearend period, Weisner then described what he did say to the employees relative to the loss of *compensation* at Christmas time. Thus he described to the employees how the neighboring Cosco plant went on strike several weeks after the advent of the Union, and how if the Union was to be voted in by the employees in the November election they would be coming into the Christmas season. Thus he equated "Christmas money" with the paychecks that could conceivably be lost if a strike were to occur then as it did at the neighboring plant.

³ The foregoing résumé of topics covered is based upon Weisner's notes and his supporting testimony, both of which I credit. Employees Ronald Lucas and LaDonna Evans, whose testimony I do not rely upon generally (*infra*), likewise conceded on cross-examination that Weisner spoke on all of the foregoing topics during the course of his speeches.

⁴ I specifically do not credit the testimony of employees Hoover and Beverly to the effect that if the Union got in it would be the Company that would "strike." Apart from my general evaluation of the testimony of these witnesses, no one appearing before me appeared so confused in their understanding of labor relations as to imagine that an employer, as distinct from an employee, would go on strike; and at no time did counsel for the General Counsel feel called upon to put the record in order by suggesting the proper term—lockout.

⁵ Corroborated by the credited testimony of employees Anna Miller, Ronald Welsh, and Harold Ayres.

During the course of his talks Weisner also made reference to the "grievance committee," a group of apparent long standing but evidently quite dormant. Upon being told by employees at one of the meetings that there was no functioning grievance committee he asked who represented them on the midnight shift and was told that no one did. Whereupon he suggested that "something would be done about it."⁶ Thereafter at the meeting of the day shift Weisner stated that he had found out that the grievance committee had not been functioning as it was supposed to and "if the Union did not get in we would have an election for a new grievance committee."⁷

And finally, Weisner, in answer to inquiries from the employees at the meeting suggested that because of the procedures employed in the conduct of elections, whereby challenges of ballots could be made, it would be possible to learn how everyone voted. Specifically, Weisner referred to the previous Board election in which the Union challenged three votes and it developed that the three individuals, whom Weisner identified at the meeting, had voted for the Company. Weisner credibly testified, however, that as he progressed in his speech at this point he assured the employees that both the Union and the Employer had agreed that they would make no challenges in this coming election.⁸

2. By President James Russell

President Russell's three substantially identical speeches delivered to the employees on November 6 and 7 were of the same tenor as Weisner's, urging that the employees reject the Union in the forthcoming election. As a means of emphasis Russell used a pack of large display cards, or "flash cards," on each of which was printed a key phrase which served to accentuate the point upon which Russell was then speaking to the employees and which also served as a set of notes for the speaker himself.

Russell's speech consisted of an appeal to the employees for an understanding of Respondent's problems of running a plant. During the course of it, Russell sought to answer a number of accusations directed at the Company by the Union in a letter sent several days before, and as he did so he sought to correct any wrong impressions which, according to the Union's letter, Weisner's previous speech may have created. Thus, for example, he made it clear that the Union dues were not, as previously understood to have been said, \$3, or \$4 weekly, but actually \$60 a year. Similarly, he pointed out to the employees that, contrary to any impressions they may have received, the Company had no intention of striking—but a strike was the principal economic weapon of the Union and that its use could result in the loss of profits, profit-sharing, and wages.⁹ And, in this respect he emphasized to the employees that the additional payment they received at Christmas time, as they received it at mid-year, was not a gift or a Christmas bonus, but their share of the profits due them under a previously established incentive plan. And it was this, he suggested, that would be curtailed as production dwindled should a strike occur. He likewise elaborated on what could be expected of their customers if a strike were called and they were required to have their molding jobs processed elsewhere. This followed Weisner's earlier statement on the subject.

In addition to the foregoing, Russell's credited testimony, as well as the admissions contained in the testimony of General Counsel's witnesses, make it abundantly clear that Russell was opposed to unions and to the unionization of his employees. Thus he quoted extensively to the assembled employees from reports and studies on labor relations, delivered himself of some succinct observations concerning named union leaders, and read from, and recommended further reading of, a current book, "The Enemy Within," dealing with the activities and consequences of recent congressional investigations of extracurricular labor activities.

Finally, at one of the three meetings, as an emotional highlight to his appeal, President Russell secured a Bible from one of the employees in the group and after

⁶ Credibly corroborated by employee Ronald Welsh.

⁷ Corroborated by the testimony of employee Evans whom I do not rely upon generally (*infra*).

⁸ It appears from the confused testimony of employee James Banks that Weisner's statements at the meeting conformed to Weisner's credited testimony with one exception—Banks attributed to Weisner the statement that the Union would challenge their votes in the coming election. It is to be noted that in such circumstances the identity of voters would be disclosed not by company action, but by union challenge and by the resulting disclosures on the ballots themselves.

⁹ Credibly corroborated by employee Ayres.

recommending the Sermon on the Mount as appropriate spiritual reading, placed his hand on the Bible and said that as long as he was an officer of the Company he would do his very best to give the employees of the Company the best wages and working conditions possible.¹⁰

C. Other alleged threats, interrogation, and grants of economic benefits

On November 1, a week prior to the election, employee Isaac Beverly sought out Foreman Fleetwood and told him "he was into some trouble with this union thing, he was afraid that if the Union didn't get in he was going to lose his job." Fleetwood credibly stated his answer to Beverly, thus:

If it did not get in and I told him that I didn't think he had anything to worry about as far as his work was concerned; that he did a good job and I didn't think he had anything to worry over losing his job and it kind of gave me the impression at that time that perhaps he was trying to change over to the Company and I told him that I would be willing to go and work and do anything that was in my power to keep him from losing his job and I think that I believe I told him that several years things came up and I tried to get the Union in. It's been oh, I would say thirteen, fourteen years ago and I was very conscientious worker for the Union. I was trying to get the Union in and the Company all knew it and I didn't hear anything out of it. The Union didn't get in and I wasn't fired so I didn't think that Beverly had anything to worry about being fired.

About the same time President Russell had a conversation with employee Ronald Lucas at Lucas' workbench. Russell described the incident thusly:

I habitually visit the people at their work places, the molding machines and other places and I often speak to them about family affairs and so forth, and on this occasion I walked up to Lucas and without a great deal of forethought said, "Ronnie, I believe that you were a Company man in the last election," and he said to me, "Yes," that "I have not had anything good from the Company this year." He didn't need to say anything more to me. I did an about face and left.

And finally, Foreman Douglas was alleged to have stated that Respondent had given raises to certain women employees who did not deserve them for the purpose of keeping them happy during the turbulent preelection season. In addition to my crediting of Douglas' denial that he told anyone that raises were given for such a purpose,¹¹ I accept as the credible explanation of the pay raise the testimony of Director of Personnel Weisner.

During this question period that followed in the talk with the women, one of the women—I don't remember which particular one—said that she had not been given the increase that she had been promised after six months. I explained to her at the time that there was no increase after six months. There was one at thirty days and then they would automatically go into semiannual merit rating program. She said that she had been promised a nickle at the end of six months also and I said I definitely disagreed with her at the time. Shortly after she said it there were two or three others that joined in with her at that time saying that they had been promised a nickle at the end of six months. I informed them that if that had been the promise, if that was their story I would check into it and come back and have a decision for them. I did check it through and found out that we had no proof that we did not promise them the nickle increase at the end of six months period. I presented it to management. They took it under advisement and decided that a wrong had been committed and they corrected that wrong by giving them the nickle increase retroactive to their six months' period whenever that might have been.

¹⁰ In credibly testifying to this statement of his speech Russell specifically denied saying that he would do his best for the employees "if the Union did not get in," as attributed to him by witnesses whose testimony I do not rely upon.

Furthermore, I find no statement or suggestion in *any* evidence adduced at the hearing that President Russell in the speeches delivered to the employees promised them a ham dinner if they would vote against the Union, as alleged by the Union in its objections.

¹¹ Employee Betty Jane O'Haver, one of the employees who received an increase, credibly testified that she was given it to correct a misunderstanding arising at the time she was hired, 6 months previously. I credit her denial that this raise had any connection with her vote for or against the Union in the forthcoming election.

D. Analysis and conclusions

1 Credibility evaluation

General Counsel's case rests upon the testimony of employees Lucas, Evans, Hoover, Banks, and Beverly, all of whom testified to their active and known participation in the organization campaign of the Union. Upon my observation of these witnesses, and for the further reasons set forth hereafter, I do not credit their testimony except insofar as it is corroborated by the testimony of the credible witnesses or constitutes what might be construed as an admission against the interest of the Union.

On the other hand I have, after careful review of the record, credited the testimony of Respondent's witnesses Weisner, Russell, Fleetwood, and Douglas, corroborated as it was in substantial part by the credited testimony of plant employees, and in many instances by the admissions made on cross-examination by the employees called by the General Counsel.

Each of the five witnesses called by the General Counsel testified without hesitation to statements and portions of speeches alleged to be objectionable. They did not, however, indicate in their direct testimony that what they were testifying to was a series of isolated subjects, taken out of context of speeches that ran for an hour or an hour and a half on each occasion. Illustrative of this zeal to emphasize the antiunion flavor of Respondent's speeches and statements was the fact that it was necessary for Respondent's counsel in the cross-examination of each of the five to develop by a series of questions the admission from each, for example, that the several speeches to the employees were each at least an hour in duration, and covered a multitude of subjects dealing with plant personnel relations, little of which reflected opposition to the Union. A further illustration of the same condition is employee Beverly's testimony to the effect that Weisner, in his speech, had stated, "If the Union got in the Company was going to strike." Thereafter, on cross-examination when asked if Weisner had said who would call the strike, Beverly testified that he did not remember, and then continued his testimony with a confused account of the incident, not indicating whether it was the Company or the Union that was supposed to have called the strike.

The manner in which three of these witnesses (Evans, Hoover, and Beverly) testified on direct examination adds further emphasis to their lack of reliability. Thus, after a series of questions and answers developing evidence on some, but not all, of the allegedly unlawful conduct to which they had knowledge, their recollection dimmed. Whereupon they were presented with sworn statements previously executed by them, were permitted to read these statements to refresh their respective recollections, and then proceed fluently with further details of the alleged improper statements made by Respondent's officials and foremen. Under the circumstances under which this occurred, I am disposed to attach no weight to the resulting testimony. Particularly is this so upon reflection of the manner in which, according to all five witnesses, their statements were procured in the first instance.

It appears from the testimony elicited from these witnesses on cross-examination that the statements previously given to the Board agent, and used by three of them on the witness stand to recall their stories, were not the essence of accuracy to begin with. Thus, Lucas' original statement dealt in part with President Russell's promise to do better by the employees in the future (*supra*) and this item appeared in the typed statement. Added in penned handwriting thereafter by the Board agent who took the statement was the phrase "if you vote the Union out," which insertion Lucas thereupon initialed.

Employee Banks testified that the basis for his affidavit to the Board agent was "mainly" a statement previously given by him to the Union's representative when that individual was preparing to file objections to the conduct of the election.

Employee Evans also testified to this same type of procedure; that a similar prior statement to the Union was used as the basis for her pretrial statement to the Board's agent. And employee Beverly testified that when approached by the Board's agent for a statement he was shown his previous statement to the Union, and after Board's agent had asked him if the statement was "correct" proceeded to prepare a statement which Beverly read and signed.

Apart from the relaxed manner in which these witnesses gave their sworn statements to agents of the Board it is more significant that before that time they willingly signed *prepared* statements given to them by representatives of the Union. While all five witnesses testified to such a procedure in the procurement of statements by the union representative, Employee Evans' description of the event is most revealing:

Q. . . . So some statements you sign without reading them carefully, is that correct?

A. I didn't do that sir. I had forgotten why I went ahead and signed the first statement.

Q. Well, the statements that you have signed without reading very carefully are the statements that the Government man used to refresh your recollection,¹² is that correct?

A. Part of them.

* * * * *

I read it and at the time I questioned him, I said, "Well part of that I'm not sure of and part of it I don't agree with," and he said, "Well, that was the general gist of it," and he said that the field man or whatever you call him would come around and get more of my words and what I remembered.

Similar testimony by employee Hoover is equally revealing:

A. He (the Union representative) had a statement and he asked me to sign it.

Q. He had a statement, is that what you said?

A. Yes.

Q. And this was something he had prepared before he even talked to you, wasn't it?

A. Yes.

Q. All right, and you went ahead and signed it, is that correct?

A. I read it and then signed it.

Q. But you didn't read it very careful, did you?

A. Not too careful.

And employee Banks testified:

A. I told him (the Board agent) that I forgot part of it. He had an earlier statement with him.

Q. And as—if you forget things did he give you some ideas or, "Did Mr. Russell say this or Mr. Weisner say this"?

A. He took the other statement and read what was wrote on it and said is this so and any statements to be added or anything.

Q. Now, that other statement was wrong that you gave to the Union man, is that correct?

A. Yes.

Q. You didn't even read the Union man's statement when you signed it, did you?

A. It was made about a half hour, the statement was made about a half hour before time for me to go to work.

Q. And it was already made out, the Union statement was already made out when you signed wasn't it?

A. Yes, it was typed up.

Q. It was just a blank space for you to put your name in in it, isn't that correct?

A. Yes.

Under all the circumstances considered above I have no alternative but to reject the testimony of these witnesses and rely on those whom I have designated as credible throughout the foregoing findings.

2. Concluding findings

"Respondent, through its supervisors, was privileged to try to dissuade employees from supporting the Union so long as threats of reprisal or promises of benefit were not employed."¹³ *A fortiori*, the same privilege extends to the activities of Respondent's officials. It remains to be determined, therefore, whether the statements of the officials and supervisors detailed in the foregoing findings could be viewed as other threats or promises proscribed by the Act.

a. The speeches

As noted in the findings above a substantial portion of each of the speeches delivered by Messrs. Weisner and Russell consisted of informational materials not seriously objected to by anyone. A number of items, however, do not fall into this category, but are such as to raise a serious question as to their inclusion within the

¹² Counsel is referring to the occasion when the witness' pretrial statement was obtained, and not to the hearing.

¹³ *Southwest Shoe Exchange Company*, 136 NLRB 247.

area of protected free speech guaranteed by Section 8(c) of the Act. I refer particularly to (1) the references to the possibility of customers withdrawing their business in fear of strikes that may occur in the event of a union victory, (2) the effect of a union victory and possible subsequent strikes upon future production and profit-sharing income, (3) the statement of Weisner respecting the reactivation of the "grievance committee," and (4) Weisner's remarks to the employees suggesting the lack of secrecy in the forthcoming balloting.

With respect to the statement that in the event of a union victory and a strike thereafter, customers for whom Respondent was doing custom molding would withdraw their molds and have the work done elsewhere, it has been held by the Board that such a statement predicts the economic effect of union activity upon the economic future of the Respondent and constitutes an expression concerning the known working policy of Respondent's principal customers.¹⁴ There is no claim by the General Counsel, either by testimony or argument, that the working policy of RCA, Western Electric, or Arvin in this respect was otherwise, and as I believe Weisner and Russell, generally, it necessarily follows that their particular statement cannot be singled out as a misrepresentation. Moreover, it is to be noted that in his speech President Russell pointed out two known instances where molds were withdrawn under similar circumstances—in the Hoosier Cardinal plant in Evansville, Indiana, and the Erie Resistor plant in Erie, Pennsylvania. Nor does the reference in the speeches to a probability of strikes in the event of a union victory savor of a false alarm. Included in the speeches was a further statement that upon the advent of the Union in the nearby Cosco plant a strike was called shortly thereafter—a statement presumed to be a true account of an event presumed to have been known by the employees.

Under such circumstances as I have thus detailed, I do not believe that the references to loss of business, made in the context of these speeches, partakes of misrepresentation. As material misrepresentations appear to have been a controlling factor in the Board's most recent decision on this subject, *Haynes Stellite Company, Division of Union Carbide Corporation*, 136 NLRB 95, I would consider that case to be inapplicable, and would rely instead upon the previously cited *Super Sagless Spring* case where misrepresentations were found *not* to be present.¹⁵

With respect to the statement that future strikes would create a loss of production, with an attendant loss of profits, shares in the profits, and wages, I am inclined to the view that this is no less a legitimate and reasonable economic prediction than the one concerning loss of customer business previously considered.

With respect to the suggestion that Respondent sought to reactivate a dormant labor organization, all that appears in the credible evidence is that upon learning that a long-established grievance committee was not functioning Personnel Director Weisner said that "something would be done about it" and that "if the Union did not get in we would have an election for a new grievance committee."

I am referred to *New England Upholstery Co., Inc.*, 121 NLRB 234, 236, in which the Board held that an employer's urging of a known union leader to forsake the petitioning union and form a "committee" constituted an infringement upon employee rights. That conduct, however, occurred in a context of threats, the like of which does not occur here. I am disposed, therefore, to suggest that the *New England* case stands upon different footing not applicable to the facts herein. In the absence of any more persuasive authority I would find nothing improper in Respondent's statements concerning a grievance committee.

And finally with respect to Weisner's remarks to the employees indicating his knowledge of how certain challenged voters voted in the previous Board-conducted election, I find nothing in his speech or attendant remarks that would suggest an intent to use the challenge as a device to learn the vote of the employees, thereby threatening them. The substance of Weisner's remarks were that, unlike the Union in the previous election, the Company would not use the challenge at all in the coming election. Indeed he indicated that both the Company and the Union had mutually agreed not to use the challenge. I fail to see anything objectionable in such assurances, constituting as they do Respondent's and the Union's voluntary abstention from using the challenge procedure made available to each by the Board's own Rules and Regulations.¹⁶

Upon consideration of the total speeches of both Weisner and Russell and upon particular consideration of the foregoing specific elements of those speeches considered objectionable, I conclude and find that there is nothing contained therein that

¹⁴ *Super Sagless Spring Corporation*, 125 NLRB 1214

¹⁵ See also *Plaskolite, Inc.*, 134 NLRB 754, footnote 3

¹⁶ Series 8, Section 102.69(a).

would constitute interference, restraint, and coercion of employees in violation of Section 8(a)(1) of the Act; nor am I persuaded that the speeches or any part of them in any way contributed to the deprivation of free choice on the part of any employee eligible to vote in the election of November 9, 1961. I shall accordingly recommend that so much of the complaint in Case No. 25-CA-1480, and of the objections to the election in Case No. 25-RC-2094 as refer to these speeches be dismissed and overruled, respectively.

b. *Other alleged threats, interrogation, and grants of economic benefits*

As detailed above I have found that there occurred three incidents which present questions of propriety respecting both the effect upon the outcome of the election and the protection of the rights of employees under Section 7 of the Act.

Several women employees were alleged to have been given raises as an incentive to vote against the Union in the forthcoming election. The credited testimony in the record does not support such a contention. Upon this testimony, by employees Gassaway and O'Haver and Foreman Douglas, it appears that one of the union adherents, Evans, sought to publicize among her fellow employees the fact that Douglas was recommending a wage increase be given the women who would vote against the Union. Both Douglas and employee Gassaway, the alleged recipient of the raise, denied to the other employees at the time that the raise was for such a purpose, and credibly denied it again at the hearing. Indeed the credited testimony of Personnel Director Weisner satisfies me that the raise was given to correct an error and settle a dispute, and I so find.

With respect to Foreman Fleetwood's alleged threat to employee Isaac Beverly, Fleetwood's testimony indicates that he would assist Beverly in retaining his job if the occasion demanded. A reading of Fleetwood's account of the incident creates a suggestion that Beverly's job might be in jeopardy because of his union adherence. But to reach such a conclusion I would be compelled to indulge in a series of interconnected inferences, to establish that there was "more to this than meets the eye." As this and President Russell's admitted question to Lucas—"Ronnie, I believe you were a Company man in the last election?" (*supra*)—are the only established incidents of questionable propriety, I am firmly of the opinion that they are each too fine a thread with which to spin a fabric of objectionable and unlawful conduct. While, therefore, I find the basis for an inference of a threat in Fleetwood's remarks, and an intrusion upon Lucas' rights in Russell's question to him, I find that in the context of Respondent's total conduct they do not constitute either a violation of Section 8(a)(1) of the Act nor did they affect in any manner the freedom of choice in the November 9, 1961, election.¹⁷ I therefore recommend that so much of the complaint as alleges a violation of Section 8(a)(1) in these and other remaining respects be dismissed and that the objections relating to this and the remaining alleged conduct not found by me be overruled as not affecting the outcome of the election in Case No. 25-RC-2094.

c. *Summary*

In summary, Respondent's conduct is found to be neither unlawful nor objectionable. Upon credited testimony the speeches and statements have been established as factual and without misrepresentation. This then does not even approximate the propaganda used and excused in many representation elections.¹⁸ Nor does it contain the hyperbole, exaggerated claims and inaccurate attacks that are part of the tradition of American campaigns, both in the political and the union representation arena. On the contrary, the facts presented herein were within the knowledge of the employees to whom they were addressed and who could readily evaluate them.¹⁹ I conclude upon the record of this case, therefore, that nothing contained in these speeches or statements of Respondent's officials or foremen affected the fairness of the election conducted by the Regional Director nor did it interfere with, restrain, or coerce Respondent's employees in the exercise of their statutory rights. I shall accordingly recommend that the complaint be dismissed in its entirety and that the objections be overruled.

Upon the above findings of fact, and upon the entire record in the case, I make the following:

¹⁷ *Valley Feed and Supply Co., Inc.*, 135 NLRB 778.

¹⁸ "Prattle rather than precision is the dominating characteristic of election publicity and even this situation is not an exception." *Olson Rug Company v. NLRB*, 260 F 2d 255, 257 (C.A. 7).

¹⁹ *Stewart-Warner Corporation*, 102 NLRB 1153, 1158; *Weil-McLain Company*, 130 NLRB 19, 21.

CONCLUSIONS OF LAW

1. The Respondent is 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.
3. The Respondent has not engaged in unfair labor practices as alleged in the complaint.
4. The Union's objections as set forth in the Regional Director's report on objections, are without merit and should be overruled.

RECOMMENDATIONS

Having concluded that Respondent has not engaged in unfair labor practices as alleged, and having found the Union's objections to conduct affecting the election to be without merit, I recommend that the complaint be dismissed in its entirety, that the Board overrule the Union's objections, and proceed to issue a certification of results of election.

New York Printing Pressmen's Union No. 51, International Printing Pressmen's Union and Assistants of North America, AFL-CIO and Stuyvesant Press Corporation. Case No. 2-CD-262. June 26, 1963

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act, following a charge filed by Stuyvesant Press Corporation, herein called the Company, alleging that New York Printing Pressmen's Union No. 51, International Printing Pressmen's Union and Assistants of North America, AFL-CIO, herein called the Pressmen, had violated Section 8(b) (4) (D) of the Act. A hearing was held before Carl G. Coben, hearing officer, on April 10, 1963. All parties who appeared at the hearing were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed. The Pressmen filed a brief with the Board.

Upon the entire record in this case, the Board makes the following findings:

1. The business of the Company

Stuyvesant Press Corporation, New York, New York, is engaged in the printing of books and publications. Annually, it sells printed products and services valued in excess of \$50,000 to customers located outside the State of New York. We find that the Company is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.