

All-Tronics, Inc. and Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-1233¹

April 29, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA

On February 7, 1969, Trial Examiner James T. Barker issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that Respondent had not engaged in other unfair labor practice conduct alleged in the complaint and recommended dismissal of those allegations. Finally, the Trial Examiner found that certain conduct of Respondent interfered with the election in Case 29-RC-933 and recommended that the election be set aside. Thereafter, the General Counsel and Respondent each filed exceptions to the Decision 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 powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,² conclusions,³ and recommendations⁴ of the Trial Examiner, with the modifications set forth below.

¹This case was previously consolidated with Case 29-RC-933. In the Board's Order of February 7, 1969, the cases were severed and Case 29-RC-933 was remanded to the Regional Director for Region 29 for further appropriate action. On April 9, 1969, the Regional Director set aside the election.

²In adopting the Trial Examiner's Decision, we correct the following inadvertent errors:

(a) The reference in the Conclusions of Law and Recommended Order to Magdalene Williams. Geraldine Williams is the correct name of the discriminatee.

(b) The reference in section III, B, 4, a, first paragraph, to an election on October 6. The election was held on February 6.

(c) The references to Union Business Representative Donald Bruckner as William Bruckner; Supervisor Charles Downs as William Downs, employee George Williams as George Davis.

³In addition to the reasons cited by the Trial Examiner for finding that Respondent's interrogations of employees as to their union sentiments was violative of Section 8(a)(1), we note that these interrogations occurred in a context of other unfair labor practices.

⁴In view of Respondent's extensive violations of Section 8(a)(1) and (3) of the Act, we find that a broad cease and desist order is warranted and we

1. We find merit in General Counsel's exception to the Trial Examiner's failure to find that Respondent violated Section 8(a)(1) on January 12, 1968, when its supervisor, Geiger, threatened employee Krinsky with possible loss of coffee breaks and bathroom privileges if the plant were unionized. The record does not support the Trial Examiner's conclusion that the threats were mitigated by the suggestion that these benefits would become the subject of negotiations.

2. We do not adopt the Trial Examiner's conclusion that the wage increases granted three employees effective January 15, 17, and 19 were unlawful. These wage increases followed on the heels of increases granted to seven other employees; wage increases which the Trial Examiner found were not shown to be unlawful. While the latter three, unlike the initial seven, were instituted effective at the time when Respondent clearly knew that the union organizational drive had begun, we find no evidence in the record which would support an inference that Respondent's reasons for granting these three increases differed from the reasons prompting the earlier increases.

However, we agree with the Trial Examiner that the general wage increase granted in March, following the Union's defeat and while objections were pending, was violative of Section 8(a)(1). While there is some evidence that the wage increase came at a time when Respondent normally conducted a wage review, there is no evidence that this increase was pursuant to such a review. In view of Respondent's union animus, the fact that the increase followed closely in time the January increases, and the fact that the increases came at a time when Respondent faced the possibility of a second election, the inference is warranted that the increases were designed to further erode Union support among the employees.

3. We agree with the Trial Examiner that a bargaining order is necessary to remedy Respondent's violation of Section 8(a)(5). We further find that a bargaining order is necessary to remedy the effects of Respondent's other unfair labor practices in violation of Section 8(a)(1). The record shows that the Union represented a majority of the employees in the appropriate unit when Respondent initiated its course of unfair labor practices aimed at destroying this support. To the extent that the election revealed a loss of union support thereafter, such loss must be found attributable to Respondent's unfair labor practices which were of a serious and extensive nature.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the

shall modify the Recommended Order of the Trial Examiner accordingly.

Recommended Order of the Trial Examiner, as modified herein, and hereby orders that Respondent, All-Tronics, Inc., Westbury, Long Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Add the following to paragraph 1(a) of the Trial Examiner's Recommended Order: "However, nothing herein requires Respondent to rescind wage increases previously instituted."

2. Amend paragraph 1(c) of the Trial Examiner's Recommended Order by substituting for the words "In any like or related manner" the words "In any other manner. . . ."

3. Add the following as paragraph 2(c), and reletter the following paragraphs accordingly:

"(c) Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces."

4. Add the following to the third indented paragraph of the Appendix:

. . . . However, nothing in this order requires us to discontinue the new rates of pay previously given to you.

5. Insert the following as the ninth indented paragraph of the notice:

WE WILL notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES T. BARKER, Trial Examiner: This matter was heard at Brooklyn, New York, on various dates in August and October 1968, pursuant to a charge filed on February 8, 1968,¹ in Case No. 29-CA-1233. By an order and notice of hearing issued by the Regional Director on May 21, the complaint of the same date issued by the Regional Director in Case No. 29-CA-1233 was consolidated for hearing with issues raised pursuant to timely filed objections in Case No. 29-RC-933. The consolidated complaint alleges violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, hereinafter called the Act. The parties timely filed briefs with me.

Upon consideration of the briefs and upon the record in this case² and my observation of the witnesses, I make the following:

¹All dates referred to herein relate to 1968.

²On December 23, 1968, the parties filed with the Trial Examiner a stipulation correcting page 347, lines 16 to 18 of the transcript of this proceeding to reflect that certain named "employees received wage increases effective January 6, 1968, which were received in their pay on January 16, 1968."

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent is and has been at all times material herein a New York corporation maintaining its principal office and place of business at Westbury, Long Island, New York, where it is, and has been at all pertinent times engaged in the manufacture, sale and distribution of electronic equipment and related products.

During the year preceding the issuance of the complaint herein, Respondent, in the course and conduct of its business operations, manufactured, sold and distributed at its Westbury plant, products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New York.

Upon these admitted facts, and the stipulation of the Respondent at the hearing, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Union, is stipulated to be a labor organization within the meaning of Section 2(5) of the Act, and I so find.

III. THE UNFAIR LABOR PRACTICES

A. *The Issues*

This case raises the issues whether (1) upon being presented with a bargaining demand by the Union the Respondent unlawfully laid off an employee and terminated one other because of their respective union activities, and briefly laid off three other employees as a cloak to this allegedly discriminatory conduct; (2) interrogated employees concerning their union activity and threatened employees with changes in working conditions and loss of benefits if they selected the Union as their collective-bargaining representative; (3) granted general and selective wage increases to unit employees and (4) unlawfully refused to recognize and bargain collectively with the Union. This latter issue places in question the majority status of the Union and whether the Respondent's declination was based on a good-faith doubt of the Union's majority status. Additionally, there is raised in this proceeding, the question whether within 24 hours of the Board-conducted election Respondent addressed its employees concerning the Union and the election and whether Respondent's conduct was such as to warrant setting aside the results of the February 6 election conducted in Case No. 29-RC-933.

B. *Pertinent Facts*

1. Prefatory facts

a. *The representation election*

The evidence of record reveals that on January 12 the Union filed a representation petition in Case No. 29-RC-933 and that on January 17 the parties entered into an Agreement for Consent Election which agreement was

approved by the Regional Director on January 18. On February 6 an election was held and on February 8 the Union filed timely objections to conduct affecting the results of the election.

b. Respondent's operations

Harold Westman is president of Respondent and Gilbert Geiger and Charles Downs are, respectively, production manager and foreman. For administrative and payroll purposes the employees at Respondent's Westbury plant are classified as office, technical and factory. The production and maintenance employees fall into the factory category and are those employees pertinent to the instant proceeding.

The total factory area of Respondent's Westbury plant occupies 66 feet by 44 feet. Included in this area is the general assembly area which occupies 30 feet by 30 feet, as well as a small capacitory winding room and a machine shop. Additionally, within the total factory area is housed an impregnation tank room which occupies a 10 foot by 40 foot space. Factory employees only occasionally work in this room.

The credible testimony of Harold Westman reveals that for cost allocation and payroll purposes the factory is divided into six departments. These include the machine shop, designated 360; general production, 362; capacitor winding, 103; receiving and shipping, 401; quality control, 403 and cleaning department, 365.³ Westman further credibly testified that the electrical components produced by Respondent must undergo a machine, assembly, cleaning and winding operation. The payroll records introduced into evidence pertaining to the production and maintenance employees reveal that the designation "factory" department is applied to each employee. There is no reference to any other departmental designation.

Westman testified that pursuant to instructions and company practice, each employee is given a timesheet or timecard upon which he records the departmental designation number of the department in which he performs duties during any given workday. Westman further testified that, if an employee, during any workday, does work in two or more departments he must record on his timesheet or timecard the departmental designation number of each department in which he performs duties other than those determined by the employee himself to be merely incidental to his work in the principal department.

The Respondent introduced into evidence timecards or time tickets of John Echezuria, an alleged discriminatee whose departmental placement is pertinent to his layoff, covering dates between November 10 and January 12.⁴ On each of these cards, Echezuria had recorded the departmental designation number — 360 — of the machine shop. Echezuria credibly testified that he did so because he had been instructed to record this number and had no awareness of the practice of recording the departmental designation number of other departments in which he performs substantial duties during a given workday.

Echezuria testified however that, except for the first week of his employment when he worked exclusively in

³Within the general production department is a general assembly operation which is accorded the same departmental designation number — 362 — as the general production department.

⁴These time tickets do not encompass each day of Echezuria's employment and there is a substantial void of timecards for the first week in January 1968.

the machine shop, he worked in a variety of jobs including work in the soldering department, coil winding and the machine shop.⁵ The testimony of Christine Lahti confirms Echezuria's assertion that he performed work outside the machine shop.⁶

c. The production and maintenance unit

On January 11 and 12, there were employed at Respondent's Westbury plant 27 production and maintenance employees. Included in this group of employees were John Echezuria as well as Jeffrey Batt, Geraldine Williams, Minnie Williams and Christine Lahti, other alleged discriminatees.

d. The organizational campaign

At material times John Echezuria worked both at Respondent's plant and at a firm known as New York Twist Drill. He was, at pertinent times, a member of the Union. At New York Twist Drill he was shop steward. He entered Respondent's employ on November 11, 1967, and shortly before January 9, 1968, he spoke with Donald Bruckner, secretary-treasurer and business representative of the Union, with respect to undertaking organizational efforts at Respondent's plant. On January 9, Echezuria had occasion to speak with George Williams, an employee of Respondent, and a Negro, concerning the benefits of a union. He presented Williams with eight blank authorization cards and urged Williams to endeavor to obtain signatures on the cards and to devote specific attention to obtaining the signature of other Negro employees. Thereafter, efforts were made by George Williams, Echezuria and employee Martin Carrillo to have other production and maintenance employees sign union authorization cards. There were received in evidence 18 signed union authorization cards.⁷ Eight cards were dated January 9, six were dated January 10, three were dated January 11 and one — the card of Jeffrey Batt — was undated.

Fourteen employees testified credibly at the hearing to having affixed their own signature to authorization cards received in evidence bearing their names.⁸ Except for the card of Jeffrey Batt, which was undated, each of the cards bore either a January 9, 10, or 11 date. Batt testified credibly that he was laid off on January 12 and that he signed his authorization card prior to being laid off. He

⁵Soldering is a subdivision of the production department and coil winding is a section of the capacitor winding department.

⁶Additional support for Echezuria's testimony is gained from the testimony of part-time employees Richard Janiec and Thomas Gentile to the effect that, as part-time employees, they performed a variety of work. The functions described by them fall under the jurisdiction of more than one department and would not be exclusively within the work jurisdiction of the machine shop.

⁷The printed portions of the card was as follows:

I, the undersigned, hereby apply for membership in Union Local 868, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and do hereby authorize Local 868 to represent me in collective-bargaining with my employer.

NAME _____ DATE _____

ADDRESS _____ Tel. No. _____

EMPLOYER _____

EMPLOYER'S ADDRESS _____

POSITION _____ SIGNATURE _____

All information kept strictly confidential

⁸These were: Jeffrey Batt, Martin Carrillo, John Echezuria, Frankie

credibly testified further that he executed his card at his home and returned it to George Williams who had given the blank card to him. John Echezuria credibly testified that he delivered the signed authorization card to Batt to the home of Donald Bruckner on January 10, along with 14 other executed authorization cards.

John Echezuria further credibly testified that he observed Oresto Mazzucca fill out and sign an authorization card in the machine shop at the plant. Mazzucca's card was dated January 10. Echezuria further testified credibly that he had spoken with Mazzucca on a prior occasion about joining the Union and he had promised to sign an authorization card. On the day on which Mazzucca executed his authorization card Echezuria had approached him and stated to him, "most of the fellows had joined the union." Mazzucca executed his authorization card in Echezuria's presence and returned it to Echezuria.

Echezuria further testified credibly that on January 10 he presented employee Richard Hummer with a blank authorization card which Hummer signed in his presence and returned to him.⁹

The further credited testimony of John Echezuria reveals that on January 10 he had received 15 executed authorization cards which he personally delivered to the home of Donald Bruckner. Later in the evening of January 10 he conversed with Bruckner and informed Bruckner that he had been successful in signing up a majority of the employees and requested Bruckner to go to the plant the following morning and request recognition.¹⁰ Thus, George Williams credibly testified that he distributed authorization cards he had received from Echezuria to Geraldine Williams, Minnie Williams, Magdalene Williams, Frankie Ephraim and Selita Davis. Williams testified credibly that these cards were returned to him. He put them in an envelope, together with other cards which he had distributed and which had been returned to him. He gave the cards to Echezuria.

Echezuria credibly testified that on January 10 George Williams returned five executed authorization cards to him. Included among these were his own card and those of Magdalene, Minnie and Geraldine Williams as well as that of Frankie Ephraim. He further credibly testified that the card of Selita Davis, dated January 11, was returned to him separately by George Williams on January 11 and that when he received it it was entirely filled out and bore the printed name "Selita Davis" on the signature line.¹¹

⁹Ephraim, Nathan Krinsky, Christine Lahti, George Nartowicz, Carmen Perez, Irma Perez, Anthony Romagnoli, Joseph Secreto, George Williams, Magdalene Williams, and Minnie Williams.

¹⁰Irma Perez testified credibly that she signed her authorization card in the presence of her sister Carmen Perez and that after she had signed her card her sister, Carmen, placed an accent mark over that first letter "e" in the name Perez. Carmen Perez credibly testified that she did this because it was her habit, consonant with her practice in Puerto Rico where she had received her schooling, to include the accent mark.

¹¹That Hummer in signing his card on January 10, 1968, incorrectly wrote "1967" is explainable as a mere inadvertence and is insufficient to overcome the testimony that the execution of the card occurred at the time specified by Echezuria.

¹²The evidence establishes that by January 10, 15 employees had signed authorization cards. They are: Jeffrey Batt, Martin Carillo, John Echezuria, Frankie Ephraim, Richard Hummer, Nathan Krinsky, Christine Lahti, Oresto Mazzucca, George Nartowicz, Anthony Romagnoli, Joseph Secreto, George Williams, Geraldine Williams, Magdalene Williams, and Minnie Williams.

¹³I credit Echezuria's testimony that he received the card of Selita Davis from George Williams at a time subsequent to his receipt of the other five

e. The demand for recognition

William Bruckner credibly testified that on the morning of January 11, at approximately 9 a.m., he went alone to the plant. He met with Harold Westman, president of Respondent. After identifying himself by name and after indicating his affiliation with the Union, Bruckner informed Westman that the Union represented a majority of his employees and stated that he wished to make an appointment with Westman to negotiate a collective-bargaining agreement. Westman disclaimed any knowledge "about unions" and indicated his desire to avail himself of consultation on the matter. Westman stated that he would contact Bruckner with respect to contract negotiations on the following Monday or Tuesday. The conversation then turned to a consideration of the employees to be included in the unit and Bruckner indicated that he was seeking "the factory maintenance and production people." Westman inquired whether office employees and technicians were to be included in the unit and Bruckner answered that he was not seeking to represent the office employees and, while technicians were included, if the Company had "substantial reason" for excluding them he would discuss the matter with Westman.

As the conversation continued Bruckner indicated his willingness to provide evidence of the Union's majority status by submitting the authorization cards to any "impartial person." Westman made no response to this offer.

Upon leaving Westman's office Bruckner stated his expectation of hearing from Westman on the following Monday or Tuesday.

Later in the day on January 11, Bruckner prepared and dispatched by certified mail a demand letter to Harold Westman.

f. Additional cards obtained

John Echezuria credibly testified that on January 11 he received the executed authorization cards of Carmen Perez, Irma Perez and Selita Davis. He delivered those cards to the residence of Donald Bruckner on the afternoon of January 11. Bruckner received the cards upon his return home in the evening of January 11.

g. The representation petition

On January 12 Donald Bruckner, on behalf of the Union, filed a representation petition in Case 29-RC-933 seeking to represent employees in the following described unit:

All hourly rated production and maintenance employees who are regularly scheduled to work 20 hours per week or more, excluding all others under the Act.

Subsequently, in support of this petition, Bruckner on January 16 submitted 18 authorization cards to the National Labor Relations Board.

Thereafter, as found above, on January 18 the Regional Director approved an agreement for consent election executed between the Company and the Union providing for an election to be conducted on February 6 between the

cards. The card of Davis was unique in that it bore a printed "signature" which would explain Echezuria's ability to specifically recall the circumstance of its receipt. To the extent that the testimony of George Williams is susceptible of an interpretation that Davis' card was returned to Echezuria on January 10 with other cards, I reject it

hours of 9:30 a.m. to 10 a.m., at the Company's Westbury plant. The payroll eligibility date established by the agreement was the week ending January 12. The following described unit was that agreed to as the appropriate collective-bargaining unit:

All production and maintenance employees employed by the Employer at 45 Bond Street, Westbury, N. Y., excluding all office clerical, sales, professional and technical employees, watchmen, guards & supervisors as defined in the Act.

In due course, the election was conducted on February 6, and on February 8, the Union filed timely objections to conduct affecting the election.

2. The alleged interference, restraint, and coercion

a. *The events of January 11*

On January 11, at the 10 a.m., coffee break, Harold Westman spoke with Supervisors Gilbert Geiger and William Downs and informed them that a representative of the Union had met with him and claimed to represent a majority of the employees. He informed Geiger and Downs that he had rejected the Union's demand and stated that he was not certain what his next move was. He instructed Geiger and Downs to speak with the employees without threatening or intimidating them so that they might gauge the general atmosphere in the shop.¹²

Subsequently, on the morning of January 11, Gilbert Geiger spoke with employees Mia Nastri, Mary DiRocco, and Oresto Mazzucca. Geiger separately approached Nastri and DiRocco, informing them that the Company had been contacted by the Union which was seeking to represent the employees. He asked Nastri and DiRocco how they felt about the Union. On the other hand Geiger was approached by Mazzucca who volunteered that he had signed an authorization card. However Mazzucca stated that he had been informed that the card did not mean anything because he was free to vote either yes or no "when the election came." Geiger made no comment in response to Mazzucca.

Also on January 11, William Downs spoke with employees DiRocco, Romagnoli, and Lahti. He informed DiRocco that the Union had contacted Westman seeking to represent the employees and asked DiRocco to give her views on this matter. She responded that no one from the Union had contacted her and she stated that she desired to "hold her own views to herself." Downs approached Romagnoli at his work station and informed him of the contact from the Union and the Union's desire to represent the employees. Downs asked Romagnoli's view on the Union and Romagnoli stated that he was for the

Union. Downs asked the reason.¹³ Romagnoli answered that he wanted to increase compensation and benefits. He also volunteered the statement that he had signed an authorization card.

At this point in the conversation, Downs recounted to Romagnoli that the employees presently enjoyed certain advantages such as free coffee and liberal bathroom privileges which, if the Union came in, would be subject to negotiation and be governed by contract. Romagnoli became effusive and John Echezuria who was working nearby interjected. Echezuria observed that under state law the Company could not limit bathroom privileges. Romagnoli made a pungent observation concerning the inability of the Company to control the bodily processes of its employees. Thereupon, Downs observed that he was not threatening employees with the loss of bathroom privileges or anything else but that if the Union got in it was going to have a contract and "everything [would] be negotiated." He made specific reference to another company wherein the union had organized the employees and it was provided in the resulting contract that the employees would have to gain permission from supervisory personnel in order to go to the bathroom. The conversation appears to have ended on this note.¹⁴

The conversation which Downs was having with Romagnoli, merged into a conversation between Echezuria, Downs and Geiger, and in the factory area of the plant the three carried on a conversation. Geiger observed that he did not blame Echezuria for his efforts in endeavoring to organize the employees because he was a "union official" but that employee Martin Carillo had no business bringing the Union in because he was leaving the Company's employ. Geiger stated, in effect, that in conversing with the employees as they were presently doing they were fulfilling the instructions which Westman had given them and added that because of Echezuria and Carillo the employees in the plant would be hurt. Geiger explained that as a result of the Union the Company would have to resort to layoffs, tighten up on production and could not countenance people coming in late and taking days off. Geiger also expressed apprehension that the Union through its contract demands could have an adverse economic impact upon the Company and upon the many military contracts which the Company had. Geiger explained that the Company had suffered a severe economic loss due to uninsured fire damage which had

¹³Downs credibly testified that when Romagnoli was hired he worked closely with Romagnoli in training him. He further testified credibly that during this period of time Romagnoli often voluntarily stated his opposition to joining a union. He testified that, as a consequence, he was surprised by Romagnoli's statement.

¹⁴While I credit the testimony of Romagnoli and Echezuria to the effect that in speaking with Romagnoli, Downs outlined several benefits and privileges which the employees presently enjoyed, I credit Downs and not Romagnoli or Echezuria, that he stated that privileges and benefits would be subject to negotiation and would be governed by the contract with the Union. I make this determination because I am convinced, upon a careful analysis of the record testimony, that Downs undertook his interviews and discussions with employees pursuant to specific instructions of Westman to avoid direct threats and promises of benefit. I am convinced that Downs endeavored to do so and was thus circumspect in phrasing his comments to employees. Downs impressed me as a credible witness. On the other hand, while Romagnoli testified without intention to mislead, he was a loquacious and imprecise chronicler of events whose expansive qualities were marked and whose testimony must be reviewed with substantial skepticism. Although Echezuria tended to support Romagnoli to the effect that Downs threatened loss of benefits and privileges, he conceded that, "(I)n general, he [Downs] said the contract will limit the employees' rights."

¹²I credit the testimony of Charles Downs that this conversation with Westman transpired on the morning of January 11. Testifying in response to questions posed to him by counsel for the General Counsel, Harold Westman stated that the conversation transpired on January 12. However, I do not credit this testimony, for related events found to have transpired on January 11 in the plant indicate that Downs, rather than Westman, is correct in his placement of the date of this meeting.

Counsel for Respondent, by use of leading questions, elicited from Downs the response that at the meeting in question Westman had indicated his wish to have Westman and Geiger ascertain employee sentiment for the purpose of permitting him to determine whether he should sign a collective-bargaining agreement with the Union immediately, or go to an election. While this may have been the purpose of Westman's instructions, I am not convinced that he articulated this purpose in the clear manner suggested by Downs' answers to these leading questions.

occurred earlier in the year. He further expressed the opinion that two other companies which had been organized had been "broken" by the Union and equated unions with socialism. He observed that the employees, under a union contract, would receive only one raise a year.

The observations of Geiger were rebutted by countervailing contentions of Echezuria and the conversation which had been an extended one terminated at the lunch hour.¹⁵

On the afternoon of January 11, Downs spoke with employee Christine Lahti. Lahti credibly testified that Harold Westman spoke to her in the morning and inquired if she had ever belonged to a union. She had answered in the affirmative. Downs approached her and informed her that the Union had contacted Westman concerning representation. She answered that Westman had already spoken to her concerning this. Downs shrugged his shoulders and walked away. As he departed Lahti observed, "(B)y the way, I am for the union and I think you're a lousy boss." Geiger answered that he was not engaged in a popularity contest.¹⁶

b. The events of January 12

On the morning of January 12, prior to 8 a.m., Gilbert Geiger and Charles Downs appeared at the plant premises and opened the factory. It had been the practice of both Geiger and Downs, prior to January 12, to arrive at the factory after 8 a.m. and of employee Oresto Mazzucca to open the factory in the morning.¹⁷ Later in the day, during the lunch hour, contrary to his usual practice Downs ate lunch in the factory with the employees. He was joined at lunch in the factory by the bookkeeper. Neither the bookkeeper nor Downs had eaten their lunch in the plant with the employee on prior occasions during Echezuria's job tenure.¹⁸

In the meantime, during the workday on January 12, Downs engaged in conversation concerning the Union with Irma and Carmen Perez and with George and Magdalene Williams. Downs testified he told each employee that the Union had contacted Westman and he asked for the employees' "views on it." The response of the Perez sisters is not revealed in the record, but Magdalene Williams informed Downs when he spoke with her that he would have to speak with her husband concerning this. Downs then asked George Williams his views concerning the Union and he answered that he was undecided and

¹⁵The foregoing is predicated upon the testimony of John Echezuria which is not refuted.

¹⁶The foregoing is based upon the credited testimony of Charles Downs. To the extent that the testimony of Christine Lahti is inconsistent with that of Charles Downs concerning this incident I reject it. Specifically, I do not credit the testimony of Lahti to the effect that on January 11 Downs spoke with her and threatened her with a limitation upon bathroom privileges and a loss of cleanup time at the end of the workday. Rather, I am convinced that Lahti's testimony to this effect was influenced by subjective considerations arising from her status as an alleged discriminatee in this proceeding, and by reason of her admixture into her recount of the events of January 11, descriptions of a conversation which transpired, as Downs credibly testified, a week or 10 days prior to Christmas 1967. On that occasion, Downs called in to question her frequent absences from her workbench for the purpose of visiting the bathroom. I am convinced that this December incident partially explains why Lahti, who impressed me as a soft-spoken and quiet woman, responded so bluntly to Downs on January 11.

¹⁷The foregoing is based upon the credited testimony of John Echezuria and Christine Lahti.

¹⁸John Echezuria so credibly testified.

that he would vote as he saw fit.

Downs also broached the subject of unionization to George Nartowicz. He passed Nartowicz at his work station and said, "George, you signed a card?" Nartowicz answered that he had and Downs walked by without commenting further.

Additionally, on January 12, Gilbert Geiger spoke with employee Nathan Krinsky. Krinsky credibly testified that Geiger approached him in the shop and asked the reason for the union activities. Krinsky answered that he thought the employees were seeking an increase in wages and benefits. Geiger responded that the Company accorded the employees a coffee break which could be taken away from them and that the Company could ask the employees to increase their production because no production quotas had been set. In this regard, Geiger stated that if the Company were unionized management would ask employees to increase their production. He also asserted that the Company could limit the bathroom privileges of employees.¹⁹

Harold Westman testified that on January 12 he spoke with employees Mary DiRocco, Oresto Mazzucca, and Mia Nastri and asked each how he or she felt about the Union.

Employee John Jablonski testified that in January Geiger approached him and stated that the employees were thinking about a union and asked Jablonski how he felt. Jablonski testified that he answered that he had "no use for unions" because of a prior employment experience. The conversation terminated on this note.

c. The January wage increase

The Respondent's weekly payroll period runs from Saturday through the following Friday. The employees receive their pay on the first Tuesday following the end of the payroll period. On January 6, 1968, six employees received wage increases which were reflected in their paychecks covering the payroll period commencing January 6. Moreover, one employee received a wage increase effective January 1 reflected in his paycheck for January 9; one received a wage increase on January 15 which was reflected in his January 23 paycheck; one received a wage increase on January 17 which was reflected in her January 23 paycheck and another employee received a wage increase on January 19 which she received in her paycheck of January 23.

It is Respondent's practice not to notify employees of the decision to grant a wage increase and employees usually become aware of an increase in their hourly rate when it is reflected in their paycheck. However, the testimony of John Jablonski, Richard Janiec and Thomas Gentile establishes that, pursuant to their specific inquiry, Supervisors Geiger and Downs have informed them of the decision to grant them wage increases.²⁰ There is no evidence to suggest that the six employees who received

¹⁹The foregoing is based upon the uncontradicted testimony of Nathan Krinsky. I am convinced that Geiger was not as circumspect in the nuances and phrasing of his statements to employees as was Downs. This is most graphically gleaned from the testimony of Echezuria. Also, Krinsky specifically testified that Geiger did not tell him that the modification in working conditions which Geiger mentioned in his conversation with him would result merely by reason of a contract negotiated with the Union.

²⁰Christine Lahti testified she received three increases in pay during her employment, was informed in advance by Geiger of the last one and was "almost certain" she had been informed in advance of the other two. It was not revealed whether or not this information was disclosed to her pursuant to her inquiry.

wage increases on January 6 to be reflected in the paycheck of January 16 received advanced notification of the decision.²¹ Harold Westman credibly testified that it was not his practice to notify employees in advance of the wage increase granted them and he testified that he personally did not notify employees of the January increase. He testified further, however, that it was possible that his supervisors had advised "one or two" employees concerning the wage increase and asserted further that if an employee should ask if a wage increase were imminent he was told.²²

d. *The March 9 wage increase*

On March 9 the 22 employees comprising all of the production and maintenance employees of Respondent received a wage increase to be reflected in their paycheck of March 19. The hourly increase ranged from 5 cents to 25 cents per hour and average approximately 13.5 cent per hour.

The credited testimony of employee Thomas Gentile who entered Respondent's employ in April 1967, reveals that Respondent conducts a semiannual review of wages at which time employees may meet with supervisory personnel and participate in a review and evaluation of their work performance and progress. This semiannual wage review would, in normal course, have occurred in the month of March 1968.

3. The discriminatory layoff

a. *The layoff of John Echezuria*

John Echezuria testified credibly that on January 5 in the work area of the plant he conversed with Oresto Mazzucca and informed Mazzucca that he would not be at work on the following Monday because he had an executive board meeting of the Union which he was required to attend in his capacity as recording secretary of the Local. Gilbert Geiger joined the conversation at this point. Mazzucca remarked in the presence of Geiger and Echezuria that Echezuria was able to make money "from all angles" because he worked at New York Twist Drill, worked part time at the Company, and was recording secretary of the Union. Echezuria answered facetiously that he was secretary-treasurer of Local 868 and had all of the dues sent to his house. Geiger looked at Echezuria but said nothing.

On January 9, Echezuria witnessed a mild dispute between employee George Williams and an office girl distributing paychecks. As found above, he followed Williams to the employee restroom and there discussed with him the advantages of union membership. He gave

²¹These six employees are Irma Perez, Carmen Perez, Magdalene Williams, Isabel Salna, Selita Davis, and Frankie Ephraim.

²²The General Counsel offered as proof that the employees were given no notice concerning the pay increases of January 16, a selective portion of the pretrial affidavit of Harold Westman. The portion read into the record and relied upon by the General Counsel reads, in part, as follows:

We had a few people for whom wage increases had been approved before January 11, 1968, and I did not rescind these increases.

These increases became effective on January 6, 1968 but the employees did not learn about it until January 16, 1968, which was a payday. The decision was made to grant the raise in the first week in January.

I do not deem this statement to be inconsistent with Westman's recount of his own conduct, his generalization covering the possible conduct of his supervisor or the above finding with respect to the lack of advanced notice to the six benefactors of the January wage increases.

Williams some authorization cards and urged him to have employees sign them. Prior to January 9 he had spoken with five other employees concerning the Union. As previously found, on the evening of January 9 Echezuria contacted Union Business Representative Donald Bruckner and during the ensuing 2 days he distributed authorization cards, solicited employee signatures and received cards back from employees. Much of this activity transpired in the plant.

On the afternoon of January 12, at approximately 2 p.m., when John Echezuria was preparing to leave the plant at the termination of his workday, he was approached by Gilbert Geiger who asked him if Charles Downs had spoken with him. Echezuria answered that Downs had not and Geiger said, "Well, John, we are going to lay you off. Business is slow." Echezuria answered, "I know what you are doing, and I am going to file an unfair labor practice against you. I think the company is making its moves." Geiger answered, "Well, you make your moves and Mr. Westman tells me what to do. I hope you don't hate me for this." Echezuria left the plant at this point. He has not been recalled to work.

Upon being laid off, John Echezuria informed Donald Bruckner of what had transpired. They arranged to meet and to go together to the company premises for the purpose of speaking with Harold Westman concerning the layoff. In due course they did so and during the morning hours of January 15 they met with Westman in Westman's office. Bruckner was the principal spokesman at the meeting and commenced the conversation by observing that he had assumed from his last meeting with Westman that the Company and Union were going to sit down and negotiate a contract. Westman inquired as to the status of the election and Bruckner stated that there would be no election until Echezuria had been reinstated and until Westman told his "two supervisors to quit threatening and making promises to the people." Bruckner then asserted that Echezuria had been laid off because of union activities and further contended that the layoff was "against the law." Westman replied that he had laid Echezuria off because of a decline in business and he further asserted that he had spoken to his supervisors. Bruckner suggested that Westman bring his two supervisors into the office and reiterate his instructions in front of him. Westman declined to do so. The meeting terminated and Echezuria and Bruckner left the plant.

At approximately 12 noon on January 15, pursuant to previous arrangements, Echezuria stationed himself outside the entrance to the plant preparatory to meeting with George Williams. Echezuria was accompanied by Donald Bruckner. At approximately 12 o'clock Charles Downs came out of the plant door and looked around. He observed Echezuria and Bruckner and they exchanged greetings. Downs went back into the plant.

Approximately 15 minutes later employee Richard Hummer came out of the plant and Echezuria asked him if any of the employees would be coming out. Hummer asserted that he did not know and got in his car and drove away. Subsequently, a coffee wagon arrived at the plant premises and the horn was sounded and some of the employees came out of the plant and gathered around the coffee wagon. Among them were Tony Romagnoli and George Williams. Echezuria approached them and stated that he had the business delegate of the Union on hand and invited them to meet him. George Williams went to the station wagon where Bruckner was seated and they sat together and conversed. While they were engaged in conversation Charles Downs walked by, looked in and continued on by.

b. The other layoffs on January 12

In the meantime, on January 12 Geraldine Williams, Minnie Williams and Jeffrey Batt had been laid off. The layoff of Minnie Williams and Jeffrey Batt occurred at the end of the workday on January 12 when they were informed by Gilbert Geiger that they were being laid off for lack of work. They were informed that this was a temporary matter and that they would be recalled when work picked up.²³

The record establishes that on January 17, Geraldine Williams was recalled and on January 19 Minnie Williams was recalled to work.

On June 21 the Respondent sent to Jeffrey Batt the following telegram which he received:

Contact Mr. Geiger in reference to employment, no later than 6-25-68.

Batt did not respond to the telegram. Westman testified that on June 21 an opening in the general assembly department existed for Batt.

c. The termination of Christine Lahti

Christine Lahti testified credibly that she was absent from work due to illness from January 15 until January 19. During her absence she made no contact with the Company but returned to work on Monday, January 22. Upon reporting to work, she found that her timecard was not in its usual place in the rack. However, she entered the plant and in due course she approached Gilbert Geiger. She observed that her timecard was not in the rack. Geiger responded, "Oh, didn't you get a letter in the mail?" Lahti answered that she had not and Geiger stated, "I guess you will get it in the mail this afternoon." Lahti responded, "Well, I am just as happy." Lahti left the plant and went home immediately and received the letter in the afternoon mail. The letter advised her that she had been terminated.

Lahti had been absent from work due to illness on prior occasions but these absences had been for 2 or 3 days and had never encompassed an entire workweek. She had always, during previous absences, called in at least once to inform the Company of her illness.²⁴

4. Additional objectionable election conduct

a. The alleged breach of the 24-hour rule

On February 6, an election was conducted in Case 29-RC-933. The consent election agreement executed by the Company and Union in the representation matter provided that the election would be conducted between the hours of 9:30 and 10 a.m. Eight employee witnesses testified to having attended an informal meeting

²³The record contains no evidence with respect to the instructions given to Geraldine Williams at the time of her layoff on January 12.

²⁴Consideration of Lahti's testimony on cross-examination, including statements contained in her pretrial affidavit, reveals that, contrary to her testimony on direct examination, Lahti had never previously failed to call the Company to inform management that her absence was due to illness.

Lahti's undenied testimony to the effect that in September 1967, Geiger notified her of a wage increase and gave as one of the justifications the fact that she "was always there and . . . was always on time" modifies not at all Lahti's other record testimony to the effect that she had on prior occasions absented herself from work for 2 or 3 days and had called in to notify the Company.

conducted on the plant premises wherein Harold Westman spoke to employees. The employee witnesses variously placed the meeting as having transpired between the hours of 8:30 a.m., on the one hand, and between 9:30 a.m. and 10 a.m., on the other. Three witnesses testified with apparent certitude that the meeting transpired on the day prior to the October 6 election. Four witnesses were not certain whether the meeting occurred on the day of the election or the day previous. One ventured no estimate. Westman's remarks at the meeting are not alleged as constituting violations of Section 8(a)(1) of the Act, nor as warranting, by virtue of their content, setting aside the election.²⁵

5. The decision to lay off

Harold Westman testified that in the late morning hours of January 12, just prior to the noon hour, he met with Gilbert Geiger concerning the "production status" of the Company. That morning he had received records from his bookkeeper pertaining to production, back log of orders and profit position which he had translated into further records maintained in tabular or graphic form. The data revealed a steep reduction in orders to be filled and indicated to Westman that there should be a "cutback" of some personnel.

In meeting with Geiger, Westman stated that an analysis of the decrease in backlog and the profit picture he was of the opinion that there would be a decrease in the volume of work in the future and that a "few people" should be laid off. In consultation with each other, Westman and Geiger agreed that four individuals should be laid off. The decision was made that the layoffs should be made in the general assembly department and in the cleaning and machine shop. The determination was made that the layoffs should be made in inverse order of hire. Thus, assertedly applying this criteria, John Echezuria was selected for layoff in the machine shop, Jeffrey Batt was designated in the general assembly department and Minnie and Geraldine Williams were selected from the cleaning department. Geiger was instructed by Westman to accomplish the layoffs at the close of that day's shift.²⁶

Geraldine and Minnie Williams were called back to work on January 17 and January 19, respectively. Harold Westman testified that the need to recall an employee in the general assembly department arose and that Jeffrey Batt was sent a telegram instructing him to contact the Company. He further testified that subsequent to January 12, there has been no need to recall any employee in the machine shop.

Westman testified that he first learned that John Echezuria was a "union official" in the late afternoon of January 12. However, Gilbert Geiger testified that, without mentioning the name of the union, on either January 11 or January 12 Charles Downs had informed him that Echezuria was "a union official."

Harold Westman testified that the records which he received and upon which he based his decision to effectuate layoffs, were data relating to production, backlog of orders and "profit situation." This data is information which the bookkeeper has, since 1959,

²⁵Colloquy of record amply reveals the limits claimed by the General Counsel for this evidence. Thus I reject the urgings of the General Counsel in his brief that the substantive comments of Westman at the meeting, separate and apart from the timing of the meeting, accord grounds for setting aside the election.

²⁶This coincided with the end of the Respondent's workweek.

routinely supplied to Westman within the first 2 weeks after the end of each month. After receipt of this data, it is Westman's routine practice to analyze the information and to prepare records in tabular or graphic form to service an aid to him in visually determining trends.

One such graph prepared by Westman from data supplied him by the bookkeeper was a graph relating to the backlog of filter orders. According to representations of Respondent, it was upon this information relating to decline in backlog of orders that the determination was made to effectuate the layoffs. Westman testified that the information given him by the bookkeeper, which he plotted on the graph relating to backlog of filter orders, revealed a decrease in the total dollar volume of backlog of "firm orders" from \$127,000 at the beginning of December 1967 to \$97,000 at the end of December.

It was stipulated that the dates of entry into employment of the four employees who were laid off on January 12 were as follows:

John Echezuria	Nov. 10, 1967
Minnie Williams	Nov. 28, 1967
Geraldine Williams	Nov. 30, 1967
Jeffrey Batt	Dec. 8, 1967

Harold Westman testified that the workload varies as between departments and that as a consequence the selection of employees for layoff was made on the basis of departmental workload. He further testified that skills of the employees were not completely interchangeable as between departments.

The record establishes that, excluding the four employees laid off on January 12, the employees last hired prior to January 12 were as follows:

George Williams	Nov. 13, 1967
Selita Davis	Nov. 14, 1967
Isabel Salna	Dec. 4, 1967
Joseph Secreto	Jan. 8, 1968

The record establishes that Isabel Salna was employed in department 362, the general assembly or production department.

Conclusions

The Appropriate Unit

The Respondent admits and I find that the following described collective-bargaining unit is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of Respondent employed at its Westbury plant, exclusive of all office clerical, sales, professional and technical employees, watchmen, guards, and all supervisors as defined in Section 2(11) of the Act.

The Demand for Recognition

I further find that, on January 11, the Union made a valid demand for recognition as exclusive collective-bargaining representative of the employees employed in the above-described appropriate bargaining unit. In this regard, I find that William Bruckner, a representative of the Union, made known to Harold Westman the Union's claim of a majority and described with sufficient specificity the unit in which the Union sought recognition and bargaining rights. Bruckner offered to support his majority claim by submitting the authorization card upon which were based the Union's claim of majority to a card check by a neutral third

person.

I also find that the effect of Bruckner's January 11 demand was not dissipated by Bruckner's grant of 4 or 5 days' time to Westman to permit him to weigh or consult concerning the bargaining demand. Neither was the effectiveness of the January 11 demand affected by the Union's filing of the January 12 representation petition.²⁷

The Union's Majority

Additionally, I find that when the Union made its initial bargaining demand on the morning of January 11, the Union possessed 15 valid authorization cards of employees in a unit comprised of 27 employees. Thus, at the time of the oral demand the Union represented an uncoerced majority of Respondent's employees. This majority was augmented later during the day of January 11 when Echezuria came into custody of three additional valid authorization cards. By letter the Union renewed its bargaining demand. Nothing in the record suggests that in executing these cards in the possession of the Union the signators were not fully aware of the purpose of the card as expressed to them either by the individual soliciting their signature or by the unambiguous language contained on the face of the card which they executed. Specifically I find that Carmen Perez, whose understanding of English was not good, learned from her sister and coworkers, the purpose of the card and the effect of her execution of it.

Specifically, included in my computation of the Union's majority, are the cards of Richard Hummer and Oresto Mazzucca by reason of the credited testimony of John Echezuria revealing that he was present and witnessed them execute their respective cards.²⁸

I shall also include in my computation the authorization cards of Geraldine Williams and Selita Davis. The record testimony reveals that George Davis gave blank authorization cards to each of these employees and, although he did not witness their signature, he received their cards back from them and transmitted them to John Echezuria. Echezuria testified convincingly and without contradiction that when he received these two cards from George Williams they had been filled out and that of Geraldine Williams bore a signature in script. The authorization card of Selita Davis had been filled out and bore the printed name "Selita Davis" on the signature line when Echezuria received her card from George Williams. Under what I deem to be controlling precedent, the chain of custody is sufficiently established to warrant validation of these cards.²⁹

I find no warrant for rejecting the authorization card of Oresto Mazzucca by reason of Echezuria's remarks to him, made just prior to Mazzucca's signing of the card, to the effect that most of the employees "have joined the union." There is no significant evidence of record warranting a conclusion that Mazzucca's signature was other than voluntary and that Echezuria's representation caused him to sign his card.³⁰ Further, in light of the convincing testimony of Jeffrey Batt at the hearing concerning the circumstances and timing of his execution of an authorization card, his card is not invalidated by reason of his failure to date it.

²⁷See *American Compressed Steel Corporation*, 146 NLRB 1463, 1470-71, enfd. in pertinent part 343 F.2d 306 (C.A.D.C.).

²⁸See *Thrift Drug Company of Pennsylvania*, 167 NLRB No. 57.

²⁹*McEwen Manufacturing Company and Washington Industries, Inc.*, 172 NLRB No. 99.

³⁰See *I. T. T. Semi-Conductors, Inc.*, 165 NLRB No. 98.

Interference, Restraint, and Coercion

I further find that, upon being presented with a bargaining demand by the Union, the Respondent engaged in unlawful interrogation of employees concerning their union preferences. Thus, on the day of the demand, and during the following day, President Westman and his two principal assistants, made inquiry of a substantial number of unit employees as to their feelings about the Union. The activities of assistants Geiger and Downs was at the specific instruction of Westman. While, under the Act, an employer faced with a bargaining demand from a labor organization, may interview and poll employees concerning their union preference when the interview or poll is for the specific and exclusive purpose of assisting the employer to determine the validity of the labor organization's claim of majority status, these inquiries must be conducted in a manner which informs the interviewed employee that his freedom of choice under the Act in the selection of a bargaining representative is not in any direct or indirect manner being impinged.³¹ Here, Respondent invoked no safeguards but undertook undisguised inquiry into the employees' union preferences. These inquiries alone were sufficient to constitute violations of the Act, and I so find.

Consistent with the foregoing, I find that Respondent violated Section 8(a)(1) of the Act when on January 11 and 12, one or more members of supervision questioned employees DiRocco, Nastri, Romagnoli, Lahti, Carmen and Irma Perez, Magdalene Williams, Nartowicz, Krinsky, Mazzucca, and Jablonski concerning their feelings concerning the Union.³²

Moreover, I find violative of the Act, Geiger's assertion to Echezuria to the effect that because of the Union the Company would resort to layoffs and limit pay increases, and Geiger's separate statements to Echezuria and Krinsky that unionization would bring about more stringent work discipline.

The Act was not violated however when Mazzucca volunteered to Geiger that he had signed an authorization card, nor do I find violative of the Act that portion of Geiger's January 12 conversation with Krinsky wherein Geiger stated that the Company could discontinue the coffee break and limit bathroom privileges. This is so because in his dispassionate conversation with Krinsky, Geiger did not project these as inevitable or predicated eventualities of unionization. In like vein, I find that Downs did not violate Section 8(a)(1) of the Act when he asserted to Romagnoli that such matters as free coffee, bathroom privileges and other privileges presently enjoyed by the employees in the event of unionization would be subject to negotiation.

To sustain his burden with respect to the wage increases which were reflected in the paychecks received on January 16, the General Counsel did not undertake to establish by direct proof when the decision to grant the wage increase was made. Rather, the General Counsel appears to rely on an inference to be drawn from evidence purportedly establishing that the January 16 wage increases received no advanced notoriety. This, the General Counsel appears to contend, creates a sufficient inference from which it may be concluded, as a fact, that the wage increases were belatedly decided upon as a counteraction to the Union's organizational effort and demand for recognition on

January 11. The General Counsel asserts that proof of non-notification is found in the pretrial affidavit admission of Harold Westman.³³ However, I view the evidence as permitting no such inference. Rather, the inference to be drawn from the record as a whole, is that it is not Respondent's policy to announce wage increases prior to their accrual in the form of an additional increment of pay, but that, occasionally, resourceful and inquisitive employees often seek and receive advance notification. I am unable to conclude that, merely because no special undertaking was made to inform employees of the pendency of the wage increase prior to January 11 when the Union's demand was articulated, there is no basis for concluding that an earlier decision, antecedent to the Union's organizational efforts, had been reached by management with respect to the pertinent wage increases. I find that the record does permit an inference that the increases had been decided upon prior to the advent of the Union. Accordingly, with respect to them, I find that the General Counsel has failed to sustain his burden of proof.

However I am differently disposed with respect to the grant of wage increases to three employees in mid and late January after the Union had made its bargaining demand and during the pendency of the representation election. An employer is not required to defer or cancel wage decisions merely by reason of the viability of union activity in his establishment or the pendency of a representation election among his employees so long as the wage action is not designed to influence employees in the choice of bargaining representatives or serve as an allurement for employees not to join a union.³⁴ There is no evidence here to reveal that the wage increases here discussed, like the aforesaid wage increases, had been decided upon when the Union entered the picture. Neither are they revealed to fall into the category of increases previously promised or periodically granted pursuant to a predetermined schedule or policy.³⁵

Accordingly, absent explanatory proof by the Respondent, I find violative of Section 8(a)(1) of the Act the wage increases granted three employees effective from January 15, January 17 and January 19, respectively, which were reflected in their January 23 paycheck.

The general wage increase granted all production and maintenance employees in March is governed by the same principal. In March, when the general increase was granted, the Respondent had successfully combated the Union, invoking, in the process, conduct not countenanced by the Act. Moreover, in the time period that followed, it had significant stake, as the General Counsel contends, "in solidifying the nonunion position it had attained," for there was pending at the time of the wage action, objections to the election, incorporated in the instant proceeding, which may have rendered a second election necessary. In this circumstance, considering the class of employees affected, the General Counsel adduced *prima*

³¹In passing it must be noted that by placing reliance upon the designated portion of the pretrial affidavit of Harold Westman, the General Counsel is in the anomalous position of urging the Trial Examiner to accept only selected portions of a paragraph which he defines as salient, while ignoring accompanying explanatory statements in the affidavit which runs strongly counter to the very fact which the General Counsel seeks to prove by submission of the statement.

³²See *Derby Coal & Oil Co., Inc.*, 139 NLRB 1485, 1486; *Gary Steel Products Corporation*, 144 NLRB 1160, 1165; *N.L.R.B. v. Douglas & Lomason Co.*, 333 F.2d 510 (C.A. 8).

³³Cf. *Briggs IGA Foodliner*, 146 NLRB 443; *T.L. Lay Packing Co.*, 152 NLRB 342; *Bishop McCormick & Bishop*, 102 NLRB 1101, 1102; *Derby Coal & Oil Co., Inc.*, *supra*; *Gary Steel Products Corporation*, *supra*.

³⁴See *Strucksnes Construction Co., Inc.*, 165 NLRB No. 102.

³⁵The question posed by Downs to George Nartowicz as to whether he had signed a union card was but a different form of the same inquiry.

facie evidence of a violation of the Act. While there is evidence of record that the general wage increase came at a time proximate to the semiannual wage review normally undertaken by Respondent, there is no showing that it was a product of any such review;³⁶ or that it followed previous established practice; or that it redounded purely from business motive free from union animous.³⁷

Upon the foregoing considerations, and in light of other record evidence and findings of unlawful conduct herein, I conclude and find that the general wage increase granted in March to all production and maintenance employees in the unit which the Union sought to represent violated Section 8(a)(1) of the Act.³⁸

The Alleged Discrimination

Additionally, I find that Respondent violated Section 8(a)(3) of the Act in laying off John Echezuria on the day following receipt of the Union's demand for recognition and bargaining. Echezuria was, as the evidence amply establishes, the principal proponent of the unionization among the employees. His affiliation with the Union as well as his incumbency as an officer of the Union, was known to Gilbert Geiger prior to January 12 when Respondent asserts the determination to effectuate Echezuria's layoff was made. While Harold Westman earnestly contends that he had no knowledge of Echezuria's union affiliation at the time he made the decision to lay off Echezuria and other employees, I am persuaded that his testimony in this regard cannot be given full credence. The layoff of Echezuria and others transpired within 24 hours of Westman's receipt of a demand for recognition by the Union. Bruckner, on behalf of the Union, had proffered authorization cards to support his demand and at Westman's instructions, principal supervision had undertaken prior to the layoff decision to interrogate employees concerning their union preferences. Westman and Geiger must have known when they met together and consulted concerning the layoffs to be effected, that the card signing activities had had some organized direction. In this circumstance, a fair, if not mandatory inference, to be drawn is that when Geiger and Westman met on the morning of January 12 and discussed layoffs, Echezuria's union activities and his official status with the Union was communicated to Westman by Geiger.

The layoff of Echezuria was decided upon in context of manifest concern on the part of management over the effects of unionization and was precipitous in nature. Thus, the early arrival of Geiger and Downs at the plant on January 12 and their departure from practice with respect to opening the plant reveals this concern. Moreover in their respective conversations with employees, Supervisors Geiger and Downs not only undertook to determine whether employees were disgruntled but they endeavored to dissuade employees as to the value of a union. Geiger did so in a manner coercive under the Act. The Respondent's avowed reason

for laying off a known leading union advocate, in these circumstances, requires close scrutiny.

The Respondent's explanation of its motivating reasons for effecting the layoff of John Echezuria is not convincing. While I accept as factual Harold Westman's testimony that the data revealing the severe December decline in the backlog of filter orders came into his possession on the morning of January 12, there is strong reason for inferring that, by reason of Westman's familiarity with all facets of the operations of his Company, the data disclosed expected trends. It is true that, the December decline was a substantial one and there is no countervailing evidence of record to establish that a reduction in force would not have been a prudent economic counteraction to the reduced backlog. However, it is to be remembered that two of the four employees laid off on January 12 were recalled to work within a matter of a few days, even though the elapsed time between their layoff and recall had manifestly been too brief to enable Westman to have detected a meaningful improvement in the trend of the backlog of filter orders. The Respondent undertook no explanation of why it so quickly recanted from the layoff. As a consequence, the purported economic motivation for the January 12 layoffs immediately becomes suspect.

Close scrutiny of the record evidence reveals that from April through September 1967, the on-balance backlog of filter orders steeply declined. During this period of time no layoffs were effectuated. If normal attrition had made layoffs during this period unnecessary, or if the level of backlog in filter orders during the 1967 period had remained at a level sufficient not to require layoffs, it is not shown by evidence adduced by the Respondent. The conclusion reasonably to be drawn from the record evidence is that the January 12 layoffs were a departure from normal personnel practices of the Respondent and this becomes a further consideration casting doubt upon the legitimacy of Respondent's actions.

The Respondent contends that the layoff of John Echezuria resulted from an evenhanded application of layoff criteria based on departmental seniority. However, the convincing evidence of record is to the effect that the departmental designations were aids to bookkeeping and accounting practices and defined no work jurisdiction or boundaries in Respondent's integrated work operation. Thus, Echezuria, a part time employee, like other part time employees, Thomas Gentile and Richard Janiec, during his tenure of employment performed a variety of jobs classified as general production or capacitor winding operations. Accordingly, I am convinced that the designation of Echezuria as a machine shop employee was an artificial one, and Respondent's insistence upon treating him as exclusively a machine shop employee arose not out of an accurate description of his actual job assignment but from an effort to lend plausibility to its selection of him for lay off. As against the record testimony revealing that Echezuria worked a substantial portion of his time outside the machine shop during his relatively brief tenure, the timecards upon which Echezuria conceded he entered the departmental designation number of the machine shop, are insufficient to establish, as a fact, that Echezuria was a machine shop employee, and was considered to be such by management.

In any event, as an assessment of motive, the alleged departmental placement of Echezuria loses much of its significance and the Respondent's contention that the layoffs were effected in inverse order of departmental seniority becomes suspect, when it is considered that

³⁶Cf. *Aircraft Engineering Corporation*, 172 NLRB No. 218.

³⁷Cf. *Cromwell Printery Incorporated*, 172 NLRB No. 212.

The backlog data in evidence is not determinative, one way or the other, of the business motive question, but there is clearly no affirmative showing supportive of the Respondent's wage action.

³⁸See *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405; *Amalgamated Clothing Workers of America, AFL-CIO v. N.L.R.B. (Edro Corp.)*, 345 F.2d 264 (C.A. 2); *The Shelby Manufacturing Company* 155 NLRB 464, 473; *Admiral Semme Hotel and Motor Hotel* 154 NLRB 338, 349-350; cf. *N.L.R.B. v. Ambox, Incorporated*, 357 F.2d 137 (C.A. 5); *M & W Marine Ways, Inc.*, 165 NLRB No. 24.

Minnie Williams was laid off even though Isabel Salna had less seniority in the cleaning department than did Minnie Williams.

Further, evidence tending to establish the discriminatory nature of Echezuria's layoff is the failure of Geiger during his lengthy discussion with Echezuria on the morning of his layoff, to mention the pendency of the layoff; and Geiger's statement to Echezuria at the time he informed Echezuria of his layoff that he hoped Echezuria would not "hate him" for the action. It seems apparent that, in light of the extended nature of the conversation between Echezuria and Geiger on the morning of the layoff, if the layoff had had legitimate economic foundations Geiger would have made some reference to the decision which had been made and which so immediately affected Echezuria. Similarly, Geiger's solicitation of Echezuria's understanding and indulgence over the layoff implies that the layoff was accomplished for reasons other than that stated to Echezuria.

In sum, I find that, faced with a union demand for recognition, Westman seized upon the steep decline of backlog in filter orders as a pretext for removing from his employment John Echezuria, the leading proponent of unionization among the employees. Echezuria was selected, I am convinced, to chill and defeat the unionization effort of employees. His selection for layoff and Respondent's subsequent failure to recall him violated Section 8(a)(3) of the Act.

I further find that, as an inseparable element of that discriminatory scheme, and to cloak its unlawful action, Respondent laid off Geraldine Williams, Minnie Williams and Jeffrey Batt using the decline in backlog of filter orders as a pretext. The brevity of the layoff of both Geraldine and Minnie Williams, and their recall before sufficient time had elapsed to enable Westman to gauge any improved backlog trend and before more recent data had come into Westman's possession,³⁹ reveals the pretextual nature of Respondent's conduct. The inference is strong that Respondent abstained from recalling Batt because to do so would be too patently revealing of the nature of its discriminatory design and would leave the union activist Echezuria alone as the only deposed employee.

It is significant that Batt, Minnie Williams and Geraldine Williams had all signed union authorization cards, and in the environment of interrogation and open discussion of unionization which prevailed at the plant at the time of the layoffs, there is strong reason for concluding that the union propensities of the laid off employees was known to management. But in any regard, the effectuation of these layoffs within a day of the Union's demand, and their interrelationship to the discriminatory layoff of Echezuria establishes the presence of union animus. Moreover, the Respondent had previously shown restraint in its resort to layoffs and, so far as Harold Westman could recall, had resorted to them only incident to a destructive fire in November 1966. I find that the layoffs were discriminatory and accomplished in violation of Section 8(a)(3) of the Act.

On the other hand, while the termination of Christine Lahti creates a suspicious circumstance, I am unable to conclude that the evidence preponderates in favor of a finding favorable to the General Counsel. The record amply establishes Lahti's discharge occurred after she had absented herself from work without notifying the

Company or offering any explanation for her absence. Moreover, she had displayed a marked tendency to be absent from her work station for smoking and personal reasons, as is revealed by the conversation which she had with Downs in December, nearly a month prior to her discharge, and before the advent of the Union. Thus, she could not be said to have been a model employee in terms of work performance. While the Respondent had permitted a certain degree of latitude on the part of Lahti and other employees in taking days off, there is nothing of record to suggest that it had ever countenanced unexplained absenteeism or that Lahti had ever absented herself for an entire workweek. Clearly Respondent was justified in discharging Lahti and the only question is whether there is sufficient evidence from which it may reasonably be inferred that, absent union considerations, Lahti's week long absence would have been condoned. I find that there is not. Lahti's admission to supervision that she had signed a union card and Respondent's manifest hostility to the Union must be taken into account, as must Geiger's statement to Echezuria that a union could bring about a cessation of Respondent's liberalism in permitting employees to take days off and come in late. But Geiger's comment may not reasonably be construed as relating to prolonged, unexplained absences of the variety of Lahti's, and the absence of Lahti was so presumptuous and of such duration as to render too conjectural a determination that in other than an organizational atmosphere Lahti's employment status would have been left undisturbed. In the circumstances, I shall dismiss the allegations of the complaint pertaining to the termination of Christine Lahti.

The Good-Faith Doubt

In context of Respondent's unlawful interrogation into the union preferences of its employees and the accompanying discriminatory discharge of Echezuria and unlawful layoff of three employees, I reject Respondent's contention that it was motivated by a good-faith doubt of the Union's majority in refusing to honor the Union's demand for recognition and bargaining. The conduct of Respondent immediately subsequent to the Union's demand was clearly designed to dissipate the Union's claimed majority, and warrants the conclusion that Respondent's failure to accord the Union recognition arose not out of any doubt as to its majority status but to enable the Respondent to gain time to defeat the Union. The grant of a wage increase, as found, to three employees, in January, within a week after the Union's demand, was in furtherance of this design. It is no defense to such a finding that the Respondent on January 17 consented to a Board election. This is so because by then the Respondent had chilled the union effort and created a coercive environment. "Certainly it is not one of the purposes of the election provisions [of the Act] to supply an employer with a procedural device by which he may secure the time necessary to defeat efforts toward organization being made by a union."⁴⁰

It is well established that an employer may decline to recognize the union on the basis of proffered cards and may insist upon a Board-conducted election as a means of determining the wishes of his employees if his actions are motivated by a good-faith doubt of the union's majority.⁴¹ The only evidence of record from which it may be

³⁹In any event the backlog of filter orders continued its downward spiral throughout January, and beyond.

⁴⁰See *Joy Silk Mills v. N.L.R.B.*, 185 F.2d 732 (C.A.D.C.)

⁴¹See *Aaron Brothers Company of California*, 158 NLRB 108.

concluded that Respondent gained some insight into the union preferences of his production and maintenance employees is garnered from the testimony of record revealing that supervision undertook a systematic interrogation of employees concerning their union desires. The record evidence reveals that some few employees avowed their opposition to unionization. The Respondent, at the hearing, undertook no more specific definition of the degree or numerical extent of this communicated opposition. Moreover, it may be speculated whether an employer would be warranted in placing reliance upon expressions of preference conveyed by employees subjected to such supervisory confrontation.

In light of the modicum of evidence tending to reveal the existence of a good-faith doubt, and in view of the abundant evidence of record establishing Respondent's bad-faith rejection of the Union's card-supported bargaining demand, I conclude and find that Respondent's refusal to recognize and bargain collectively with the Union on and after January 11, violated Section 8(a)(5) of the Act.⁴²

IV. THE OBJECTION TO THE ELECTION

Initially, the evidence adduced by the General Counsel with respect to the alleged violation of the 24-hour rule fails to sustain the objection upon which it is based. The testimony of the General Counsel's witnesses concerning this meeting was such as to preclude a definitive determination of precisely when the meeting transpired. As the evidence considered as a whole is as consistent with a determination that the meeting transpired on the day prior to the election and more than 24 hours before the commencement of the election, I shall overrule this objection to the conduct of the election.

The General Counsel contends, however, that the unlawful conduct of the Respondent violative of Section 8(a)(1) and 8(a)(3) of the Act warrants setting aside the results of the election. Having found that the Respondent engaged in unlawful interrogation and threats on January 12, the day on which the representation petition was filed, and having further found that the Respondent unlawfully granted selective wage increases during the period preceding the representation election, I find that the General Counsel's contention must be sustained. The Board has consistently held that conduct violative of Section 8(a)(1) is, *a fortiori* conduct which interferes with the free and untrammelled choice of an election. *Dal Tex Optical Company Incorporated*, 137 NLRB 1782. The aforesaid unlawful conduct may have affected the free choice of employees in the February 7 election, and their freedom of choice was additionally inhibited by the unlawful layoff which were effectuated on January 12, the day upon which the representation petition was filed, and which in two instances, were perpetuated throughout the period thereafter. Accordingly, I shall recommend that the election be set aside. However, in view of my further recommendation that, in order to adequately remedy the unfair labor practices found herein, the Respondent be ordered to bargain with the Union, upon request, I shall recommend that the petition in Case 29-RC-933 be dismissed and that all proceedings held in connection therewith be vacated and set aside.⁴³

⁴²*Joy Silk Mills Inc.*, 85 NLRB 1263, enf'd. in relevant part 185 F.2d 752 (C.A.D.C.), cert. denied 341 U.S. 914; *Noma Lites Corp.*, 170 NLRB 142, cf. *Aaron Brothers Company of California, supra*; *NLRB v. River Togs, Inc.*, 382 F.2d 198 (C.A. 2)

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation 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.

VI. THE REMEDY

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

Having found that Respondent has violated Section 8(a)(3) of the Act by laying off Geraldine Williams and Minnie Williams I shall recommend that Respondent make them whole for any loss of pay they may have suffered because of the discrimination against them, by payment to them of a sum of money equal to that which they normally would have been paid in Respondent's employ from the date of their respective layoffs to the date of their respective reinstatement, less their net earnings, if any, during said period. Additionally, having further found that Respondent violated Section 8(a)(3) of the Act by laying off and failing to reinstate Jeffrey Batt and John Echezuria, I shall further recommend that Respondent offer each of them immediate and full reinstatement to their former or substantially equivalent position of employment, and make them whole for any loss of pay they may have suffered because of the discrimination against them, by payment to them of a sum of money equal to that which they would normally have been paid in Respondent's employ from the date of their layoff to the date of Respondent's offer of reinstatement, less their net earnings, if any, during said period. Loss of pay for each of the aforesaid four employees shall be computed upon a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

I specifically conclude and find that Respondent failed to proffer to Jeffrey Batt unconditional reinstatement to his former or substantially equivalent position of employment by its June 21 telegram to Batt. The telegram merely instructed Batt to contact Respondent "in reference to employment" and did not define the nature of the employment, if any, which would be the subject of Batt's inquiry. Well established is the principal that, "where employees have been discriminatorily separated from their jobs, the Employer's intention to offer him reinstatement is no substitute for the actual making of such an offer." See *Crown Handbag of California*, 137 NLRB 1162, 1164. Only when an employee who has been discriminatorily separated from his job is offered reinstatement to his former or substantially equivalent position of employment is an employer relieved of his duty to reinstate. *Crown Handbag of California, supra*. Respondent's June 21 telegram did not relieve it of its responsibility under the Act to make an unconditional

⁴³*Bernel Foam Products, Co., Inc.*, 146 NLRB 1277; *Northwest Engineering Company*, 148 NLRB 1136, 158 NLRB 624, *Irving Air Chute Co., Inc., Marathon Division v. NLRB*, 350 F.2d 176 (C.A. 2)

offer of reinstatement to Jeffrey Batt. See *Laminating Services, Inc.*, 167 NLRB No. 32; *Leeding Sales Co., Inc.*, 155 NLRB 755; cf. *Kenny Construction Company of Illinois* 143 NLRB 1260, 1264, 1267; *Ertel Manufacturing Corp.*, 147 NLRB 312, 332-333. The implications, if any, upon Batt's continued availability for employment by Respondent on and after June 21, deriving from his failure to respond to the June 21 telegram may be explored at the compliance stage of this proceeding.

Having found that Respondent has refused, and continues to refuse, to bargain with the Union in violation of Section 8(a)(5) of the Act, I shall recommend that it cease and desist therefrom and, upon request, bargain with the designated representative of the employees.

Upon the basis of the foregoing findings of fact and upon the record in this case, I make the following:

CONCLUSIONS OF LAW

1. All-Tronics, Inc., is an employer engaged in commerce within the meaning of the Act.

2. Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of the Act.

3. In laying off Magdalene Williams, Minnie Williams, Jeffrey Batt and John Echezuria Respondent engaged in discriminatory conduct in violation Section 8(a)(1) and (3) of the Act.

4. By interrogating its employees concerning their union activities, by granting selective wage increases to three employees in January 1968, after the Union had filed a representation petition; by threatening employees with a resort to layoffs, a limitation upon pay increases and imposition of more stringent work discipline should the employees select the Union as their bargaining representative, and by granting a unilateral wage increase in March to all production and maintenance employees the Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

5. By interfering with employees in the exercise of rights guaranteed under Section 7 of the Act, as alleged, *inter alia*, by the Union in its objections to the conduct affecting the results of the election, the Employer improperly affected the results of the February 6, 1968, election.

6. At all times material since on and after January 11, 1968, Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been, and now is, the exclusive collective-bargaining representative of a majority of the Respondent's employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

7. The following described collective-bargaining unit is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of Respondent employed at its Westbury plant, exclusive of all office clerical, sales, professional and technical employees, watchmen, guards and all supervisors as defined in Section 2(11) of the Act.

8. By refusing, on and after January 11, 1968, to bargain collectively with Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of all its employees in an appropriate collective-bargaining unit, Respondent has

engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

10. The Respondent did not violate the Act by discharging Christine Lahti or in any manner not specifically found herein.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that All-Tronics, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union activities; threatening employees with more stringent work discipline, limitation upon pay increases, and a resort to layoffs in the event the employees should choose a union as their collective-bargaining representative; and unlawfully granting selective and general wage increases for the purpose of undermining the Union.

(b) Discouraging membership of any employee in Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of their own choosing, by laying off employees or discriminatorily failing to recall employees from layoff, or in any like or related manner discriminating against any employee with regard to his hire or tenure of employment, or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the right to self-organization, to form their own labor organization, to join or assist the Union, or any other labor organization, to bargain collectively with representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or for other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by agreements requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

(d) Refusing to bargain collectively with Local 868, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of its employees in the following described appropriate unit:

All production and maintenance employees of Respondent employed at its Westbury plant, exclusive of all office clerical, sales, professional and technical employees, watchmen, guards and all supervisors as defined in Section 2(11) of the Act. with respect to wages, hours, and other terms and conditions of employment.

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

(a) Offer John Echezuria and Jeffrey Batt immediate reinstatement to the positions which they held at the time of their respective layoffs, without prejudice to their rights and privileges of employment, and make them whole for any loss of pay they may have suffered as a result of the discrimination against them, in the manner set forth in the section entitled "The Remedy."

(b) Make whole Magdalene Williams and Minnie Williams for any loss of pay they may have suffered as a result of their discriminatory layoffs, in the manner set

forth in the section entitled "The Remedy."

(c) Preserve and, upon request, make available to the National Labor Relations Board, or its agents, all records necessary for the computation of backpay which may be due under the Recommended Order.

(d) Upon request, bargain collectively with the Union as the exclusive bargaining representative of its employees in the unit found appropriate with respect to wages, hours, and other terms and conditions of employment.

(e) Post at its Westbury, Long Island, New York, plant, copies of the attached notice marked "Appendix."⁴⁴ Copies of said notice, on forms to be provided by the Regional Director for Region 29, shall, after being duly signed, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the service of this Decision, what steps Respondent has taken to comply herewith.⁴⁵

IT IS RECOMMENDED that the election held on February 6, 1968, in Case 29-RC-933 be set aside, and that all prior proceedings held thereunder be vacated and set aside.

"In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words, "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of the United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

"In the event this Recommended Order be adopted by the Board this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT interrogate our employees concerning their union activities or preferences.

WE WILL NOT threaten our employees with more severe work discipline; with a limitation upon the frequency of pay increases; or a resort to layoffs because of their selection of a labor organization to act as their collective-bargaining representative.

WE WILL NOT unlawfully grant wage increases to our employees for the purpose of interfering with their rights to join or belong to a union.

WE WILL NOT refuse to recognize and bargain collectively, upon request, with Local 868, affiliated with International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of our employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The appropriate unit is:

All production and maintenance employees of All-Tronics, Inc., employed at its Westbury plant, exclusive of all office clerical, sales, professional and technical employees, watchmen, guards and all supervisors as defined in Section 2(11) of the Act.

WE WILL NOT lay off employees because of their union or concerted activities, or fail to recall from layoff employees because of such activities.

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

WE WILL make Jeffrey Batt, John Echezuria, Magdalene Williams, and Minnie Williams whole for any loss of earnings that they may have suffered as a result of their respective layoffs and our discrimination against them.

WE WILL offer Jeffrey Batt and John Echezuria reinstatement to their former or substantially equivalent positions of employment, without prejudice to any seniority or other rights and privileges enjoyed by them.

WE WILL, upon request, bargain collectively with Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of all employees in the appropriate unit, with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

All of our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named organization, or any other labor organization.

ALL-TRONICS, INC.
(Employer)

Dated _____ By _____ (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.

If employees have any question concerning this notice or compliance with its provisions they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 212-596-5387.