Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Tale-Lord Manufacturing Company, Inc. Case 29–CB–1178 [1]

October 12, 1973

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On February 22, 1973, Administrative Law Judge Thomas S. Wilson issued the attached Decision in this proceeding. Thereafter, the General Counsel and Charging Party filed exceptions and supporting briefs.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The unfair labor practice charges in this case arise out of Respondent's activities during an organizational campaign among employees of Tale-Lord Manufacturing Company, Inc. (hereinafter Tale-Lord), in the spring of 1972. Specifically, Respondent is alleged to have violated Section 8(b)(1)(A) of the Act by: (1) threatening, in the presence of employees of Tale-Lord, officers of Tale-Lord with bodily injury and damage to their property; (2) threatening employees of Tale-Lord with bodily injury and damage to their property if they refused to honor a picket line set up by Respondent at the Tale-Lord plant, or otherwise refused to support and assist Respondent, and carrying out these threats; (3) attempting to prevent and preventing employees from entering and leaving the Tale-Lord plant; and (4) throwing eggs and other objects at employees as they attempted to enter and leave the Tale-Lord plant.

The Administrative Law Judge recommended dismissal of all the allegations as not supported by credible evidence, and, in the case of some of the threats to Tale-Lord officers, as provoked by similar threats and name-calling directed by officers of Tale-Lord toward Respondent. For the following reasons we find merit in the Charging Party's and General Counsel's exceptions to the Administrative Law Judge's recommended dismissal of the complaint.

The Threats to Tale-Lord Officers

Jack Fecter, Respondent's president, was alleged to have made threats to Ira Boshnack (hereinafter I. Boshnack), production manager of Tale-Lord and son of Teddy Boshnack (hereinafter T. Boshnack), Tale-Lord's president, to the effect that some of Respondent's adherents were going to knife him, and he was going to end up in a hospital. These threats were made in the course of a confrontation between Fecter and T. Boshnack at the plant gate, several days after employee supporters of Respondent struck Tale-Lord and were picketing the premises. While the two men had agreed to meet concerning the execution of a contract that would settle the strike, T. Boshnack would meet with Fecter only, whereas Fecter insisted that he be accompanied by an in-plant negotiation committee and other agents of Respondent. The threats were attested to by T. Boshnack and his other son and Tale-Lord attorney, Dennis Boshnack (hereinafter D. Boshnack), all of whom were standing next to I. Boshnack and Fecter during this time. Fecter denied making the threats.

The Administrative Law Judge, conceding that the threats may have been made, concluded that they did not violate the Act because they were provoked by the following actions by Tale-Lord officers: (1) T. and D. Boshnack arrived at the plant to meet with Fecter 5-1/2 hours late, a delay caused by their personal convenience; (2) T. Boshnack then refused to allow the in-plant employee committee and other Respondent agents to accompany Fecter at the negotiations, after D. Boshnack had earlier assured Fecter their presence would be permitted; (3) immediately prior to this confrontation, I. Boshnack, according to Fecter, was taking pictures of the Respondent's delegation as well as the employees on their picket line, and (4) as T. Boshnack and Fecter faced each other, I. Boshnack urged his father not to speak to these "gangsters" and "hoodlums." Such name-calling by I. Boshnack, concluded the Administrative Law Judge, reduced the alleged unlawful threats by Respondent to "mutual caterwauling" by both sides. He therefore recommended that this allegation of the complaint be dismissed.

We disagree on two grounds. First, the record does not support the Administrative Law Judge's conclusion that Respondent's threats were provoked. While Fecter had arrived for the meeting 5-1/2 hours before the Boshnacks appeared at the plant, there is no evidence that any specific time for the meeting had been

[1] Case 29–RC–1956 was originally consolidated with the instant case for the resolution of certain issues arising with respect to an election conducted pursuant to an agreement for consent election. Prior to the transfer of Case 29–CB–1178 to the Board, Case 29–RC–1956 was severed and remanded to the Regional Director for further appropriate action. Accordingly, Employer's exceptions insofar as they relate to the Administrative Law Judge's findings and recommendations in Case 29–RC–1956 are not before the Board for determination, and we make no findings as to them.

arranged. Nor is there evidence to suggest that the Boshnacks' so-called "delay" was caused by their own personal convenience. The record shows only that they were detained at the Board's Regional Office in New York City, and that Fecter was not angered by the delay. As for the reversal by T. Boshnack of D. Boshnack's assurances to Fecter that he could be accompanied in negotiation sessions by the employee committee and other Respondent officers, there is not evidence in the record that I. Boshnack took pictures on the day the threats were made by Fecter. He admitted he took some pictures during the strike but couldn't recall specifically if he took pictures that day. And Fecter testified that he did not see him taking any pictures that day. Finally, there is no evidence whatsoever that I. Boshnack referred to Fecter or any of his associates as gangsters or hoodlums or any other names. At most, there is testimony by T. Boshnack that I. Boshnack warned him that Fecter was trying to browbeat him, but nothing more.[2]

In summary, there is very little evidence, if any, tending to establish that the threats by Fecter to I. Boshnack were in any way provoked by either T. Boshnack or his two sons.

Secondly, assuming *arguendo* that such provocative conduct did occur, conduct by a union agent otherwise coercive and thus violative of Section 8(b)(1)(A) of the Act cannot be justified merely because an employer agent also engaged in unlawful activity.[3] We find Fecter's threats to I. Boshnack to be unlawful.

The complaint also alleges that I. Boshnack was threatened with a gun by Respondent Organizer Frank Roman one day during the strike. I. Boshnack testified that Roman took from the front seat of his car a small object resembling a revolver covered with a handkerchief and carried it toward him in the palms of his hands, after which he removed the handkerchief, revealing a gun, and said, "You see this, this is for you." I. Boshnack then yelled for his father, and Roman put the gun back in the car. Roman denied ever threatening I. Boshnack with a gun, but did admit making a mock threat towards him with a half-eaten banana; i.e., pointing the banana at Ira and saying, "Pow! Pow!" Roman maintained that the banana was always in plain view, never hidden by a handkerchief.

The Administrative Law Judge credits neither I. Boshnack's nor Roman's version of what happened. Instead, he finds that Roman approached I. Boshnack with a banana covered by a handkerchief, an event that does not appear in the record at all. Evidently, the Administrative Law Judge has combined elements of both I. Boshnack's testimony (an object covered by a handkerchief) and Roman's testimony (the banana) into a confused and unwarranted synthesis which we find unacceptable.

We are thus faced with two diametrically opposed versions of Roman's alleged threat against I. Boshnack. Roman's story appears improbable. Roman testified that he pointed the banana at I. Boshnack so as to make a fool of him. This makes no sense at all. Moreover, I. Boshnack testified, and the Administrative Law Judge found, that after Roman brandished the banana, I. Boshnack called for his father, who was working nearby. It strains credulity to believe that an adult would be moved to panic and fear upon being confronted with a half-eaten banana. I. Boshnack's story, on the other hand, appears much more consistent with the other facts in the record. Thus, if Roman wanted to make a fool of I. Boshnack, or scare him, a gun, toy or genuine, covered by a handkerchief, would effectively accomplish this purpose, especially if the handkerchief was suddenly removed, leaving the gun for I. Boshnack to behold. Moreover, the fact that I. Boshnack, a 23-year-old man, was frightened enough to call for help leads one to believe that such fear was justified. An exposed gun in the palm of Roman's hand could reasonably engender fear.

Moreover, we are not unmindful of Roman's lack of credibility as manifested elsewhere in the record. At one point at the hearing, Roman specifically denied ever throwing eggs while on the picket line. However, the Administrative Law Judge credited the testimony of an employee who testified to having seen Roman throw an egg which hit another employee. And, as will be set forth in detail below, there is evidence in the record that Roman threw eggs on other occasions as well. Furthermore, while Roman, during his testimony, acknowledged his status as a union organizer for Respondent, and while, in a pretrial affidavit, he admitted that he was a business representative for Respondent, in a sworn affidavit pertaining to a collateral state court litigation,[4] Roman denied being either a business agent or organizer of Respondent. These inconsistent statements, made under oath, do not enhance Roman's credibility as a witness.

Having credited I. Boshnack, we find that Roman's exhibition of a gun constituted a threat. It matters not whether the gun was a toy or the genuine article. Nor does it matter that Roman merely showed

[2] There was one reference to Fecter as a hoodlum, but that was by T. Boshnack *after* Fecter's threats to I. Boshnack were made.

[3] *United Steelworkers of America, AFL–CIO, and its Local 2118 (Worcester Stamped Metal Company)*, 153 NLRB 1561; *Communications Workers of America, AFL–CIO (Ohio Consolidated Telephone Company)*, 120 NLRB 684.

[4] Tale-Lord had filed a civil suit against Fecter and Roman in the New York Supreme Court, County of Queens. Roman's affidavit, sworn to in August 1972, was submitted to the court in an effort to have his name stricken as a party defendant. This affidavit was admitted at the hearing as a General Counsel's exhibit.

it to I. Boshnack rather than menacingly pointing it at him. The accompanying words, "this is for you," could only have one meaning to I. Boshnack or any person in his position; i.e., that Roman was threatening to use the gun on him. The Administrative Law Judge's speculation that Roman's words connoted a gift of the gun to I. Boshnack flies in the face of reality.

This threat by Roman was made in the presence of at least one Tale-Lord employee, Elizabeth Martinez, who was sitting in the car from which Roman originally took the gun to show to I. Boshnack.

For the foregoing reasons, we find, contrary to the Administrative Law Judge, that Fecter's and Roman's threats of bodily harm to I. Boshnack, made in the presence of Tale-Lord employees, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and therefore are violative of Section 8(b)(1)(A) of the Act.[5]

The Threats to Tale-Lord Employees and the Consummation Thereof

The General Counsel adduced at the hearing a substantial amount of evidence in support of the allegation that Respondent threatened certain employees of Tale-Lord who did not participate in the strike called by Respondent, and, in one instance, carried out the threat. The Administrative Law Judge addressed one such incident; i.e., the flattening of the tires of nonstriker Manuel Perez' car. He considered but discredited the testimony of General Counsel's witness, Tale-Lord employee Maria Hernandez, to the effect that she saw one of the strikers, Ada[6] flatten Perez' rear tires with a nail.

Ordinarily, the Board will defer to the factual credibility resolutions of the Administrative Law Judge, unless the preponderance of all evidence convinces the Board that his resolution was incorrect.[7] Here, we are presented with one of those few occasions in which we find the evidence preponderating against the Administrative Law Judge's credibility resolution. Hernandez testified categorically, through a Spanish interpreter, that one day during the strike she saw Ada pick up a nail in the gutter outside the plant and kneel behind each of Perez' two rear tires and stick the nail therein after which the air started coming out. Hernandez testified to seeing police making their rounds around the plant area, but Ada managed to puncture the tires while the police were walking away from that specific spot toward some other part of the premises.

The Administrative Law Judge summarized Hernandez' testimony as the "story of a seamstress crawling around an auto while police wandered around and puncturing a tire with her bare hands and a nail" and concluded that this testimony was "so inherently improbable as to be unbelievable." [8] Aside from the fact that we find nothing "inherently improbable" about a woman puncturing a tire with her bare hands and a nail, the Administrative Law Judge has apparently misread the record. Hernandez never testified that Ada was crawling around under the car. The Administrative Law Judge seemingly relies on Hernandez' testimony that Ada "went under" the car. However, she immediately went on to say that when she referred to going under the car, she meant that Ada "bent down to the side near where the tire was." Given the fact that Hernandez spoke Spanish and had to testify through an interpreter it is easy to explain her semantic confusion. But the thrust of her testimony is clear: Ada knelt beside the car as she punctured the tires.

The Administrative Law Judge cites no testimony to contradict Hernandez. Indeed, there was no rebuttal testimony in the record, by Ada or anybody else. The preponderance of the evidence convinces us that striker Ada flattened Perez' tires.

We likewise find that Ada's act of vandalism was tolerated, if not encouraged, by Respondent Organizer Roman. Hernandez testified that Roman, standing nearby, gestured to Ada that there were nails in the street. Again, the Administrative Law Judge concludes that the story is "inherently improbable." However, we find nothing improbable about Roman's gestures. If police were walking nearby, Roman would be foolish to call out to Ada to pick up a nail. A surreptitious gesture, i.e., pointing the nails out to Ada, would be a much more probable course of action. Roman acknowledged seeing Perez' tires in a flattened state but denied either authorizing or ever having seen their flattening; this denial was seemingly credited by the Administrative Law Judge. However, there is evidence in the record, totally ignored by the Administrative Law Judge, which would, if credited, establish Roman's tacit, if not explicit, approval of Ada's tire puncturing.[9] Harvey Berman, Tale-Lord shipping clerk, testified that when later witnessing the flat tires on Perez' car, Roman warned him that the same thing would happen to him if he persisted in crossing the picket line and going to work. Roman, in his testimony, never denied making that threat to Ber-

[5] *Communications Workers of America, supra.*

[6] Ada's last name is unknown.

[7] *Standard Dry Wall Products, Inc.,* 91 NLRB 544.

[8] ALJD, sec. III, B, 1.

[9] Roman's status as agent for Respondent is not questioned. He himself testified that he was sent by Respondent to Tale-Lord, after the employees struck, in order to organize and administer the picket line. While he was not officially designated as in charge of the picketing, he told all the pickets what to do, as the picket line was made up of predominantly Spanish-speaking Puerto Rican women and he, unlike the picket captain, spoke Spanish. Roman, by his own admission, was present on the picket line for virtually the entire time the line was in operation.

man.[10] We therefore credit Berman's testimony and find that Respondent Agent Roman sanctioned the flattening of Perez' tires.

Aside from the flattening of Perez' tires, the record contains more testimony that Respondent agents threatened nonstriking employees with damage to their persons or their property if they continued to work for Tale-Lord. All of this testimony is uncontroverted; yet the Administrative Law Judge fails to cite or discuss it in his Decision. There is the threat by Roman to Berman discussed above. Berman also testified that, shortly after he himself was threatened, he heard one of the strikers, Elizabeth Martinez, call out to Perez that he would get beaten up if he continued going to work. This threat, according to Berman, was made in Roman's presence. Based on the foregoing we find that Respondent threatened employees of Tale-Lord with injury to their persons and property if they did not participate in a strike in support of Respondent, and, in the case of Manuel Perez, Respondent carried out this threat by flattening Manuel Perez' tires. In engaging in this conduct, we find that Respondent violated Section 8(b)(1)(A) of the Act.[11]

Blocking Ingress and Egress of Tale-Lord Employees

The Administrative Law Judge summarily dismissed this allegation of the complaint, finding no evidence in the record to sustain any such charge. But there is substantial testimony by employee witnesses that Respondent, by acts of violence, attempted to prevent nonstriking employees from entering or leaving the plant. Manuel Perez testified that, on two occasions during the strike, he offered to drive two female employees home from work. As he was attempting to drive out of the plant premises in the late afternoon, his car was pelted with eggs and rocks and was confronted by several strikers who proceeded to rock the car, pound on the windows, and scream at him. On another occasion during the strike, as Perez was trying to leave the factory to take a shipment of goods to the Post Office, striker Martinez smashed a bottle against his tires. During each of these incidents, Perez testified, Roman was present and did nothing to stop the strikers. To be sure, Perez' testimony is not uncontroverted. Roman, in his testimony, denied in a general way participating in or authorizing the throwing of stones or eggs. However, as he never specifically rebutted Perez' testimony concerning the attempted blockage or the smashing of the bottle, we will accord his testimony little weight. We therefore credit Perez and find that Respondent physically attempted to block access of nonstriking employees to and from the plant, thus violating Section 8(b)(1)(A) of the Act.[12]

Egg-Throwing Incidents

Upon analyzing the record in this case, we cannot concur with the Administrative Law Judge's conclusion that the flurry of egg-throwing ceased shortly after the strike began, when Roman told the strikers such activity would be counterproductive, and that Roman at no time, but for "a single proved aberration," participated in or sanctioned the egg-throwing.

The record is replete with instances of egg-throwing, not only during the first few days of the strike, but throughout the entire strike period.[13] None of these latter incidents were mentioned by the Administrative Law Judge in his Decision, nor were they specifically rebutted by Respondent. Harvey Berman testified to having seen eggs thrown at Manuel Perez' car after the first week of the strike. Nonstriking employees Fortunata Anderson testified to seeing eggs thrown as she left the plant on April 24 and 25. Another nonstriker, Barbara Williams, testified to seeing Roman himself throwing an egg sometime during the last week in April. And, as was noted earlier, Perez testified that eggs were thrown at his car as he attempted to drive away from the plant on April 24 and 25.

That all of these egg-throwing incidents were attributable to strikers is not open to serious question. The fact that identity of some of the egg throwers was unknown is of little importance, given the fact that the nonstriker witnesses invariably identified the eggs thrown as coming from the direction of the strikers. The Administrative Law Judge's hypothesis that the eggs might have been thrown by male employees of a nearby factory who frequently visited with strikers at the picket line is pure speculation. There is no evidence in the record that any of those men ever threw any eggs or showed any other hostility to those employees of Tale-Lord who chose not to honor the picket line.

[10] Roman did deny generally that he ever warned employees that they would be visited with the same damage that occasioned other employees who crossed the picket line. We will not, however, give weight to such a general denial, when a specific allegation goes rebutted

[11] With regard to the threat by Martinez, the mere presence of Respondent Agent Roman is sufficient to establish Respondent's responsibility for the threat *Food Store Employees Union, Local 347 (Davis Wholesale Co., Inc),* 165 NLRB 264, fn. 1.

[12] The General Counsel also adduced considerable testimony to the effect that, on numerous occasions during the strike, nonstriking employees were pelted with eggs as they arrived for work in the morning and left for home in the afternoon We find, for the reasons set forth in a separate section below, that such egg-throwing did occur, was sanctioned by Respondent, and thus constitutes another example of Respondent's blocking ingress and egress. These incidents are more fully discussed in a separate section due to the existence of a separate allegation in the complaint dealing with egg-throwing.

[13] The strike began on March 28, 1972, and ended on May 2, 1972

Also beyond serious question is Respondent Agent Roman's responsibility for this egg-throwing. It is indeed true that Roman, during the first week of the strike, told the strikers to cease their egg-throwing. However, subsequent developments rebut the Administrative Law Judge's conclusion that Roman's injunction was bona fide and thus absolved Respondent from all responsibility for the egg-throwing. We note that, on two separate occasions after Roman told the strikers to cease their egg barrage, he threw eggs himself. This hardly comports with the image of a concerned union agent trying to control unruly strikers. Furthermore, whether or not this egg-throwing by Roman is an "aberration," as the Administrative Law Judge phrases it, is immaterial, given Roman's presence on the picket line during all of the egg-throwing incidents and his failure to take action to stop them. It is well settled that where picket line misconduct takes place in the presence of a union agent, and the agent does nothing to disavow such misconduct or discipline the offenders, the union assumes responsibility for such misconduct.[14] In view of the foregoing evidence, we find Respondent responsible for the throwing of eggs at nonstriking employees, and thus in violation of Section 8(b)(1)(A) of the Act.

Conclusions of Law

1. Tale-Lord Manufacturing Company, Inc., the Employer herein, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent herein, Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees of Tale-Lord Manufacturing Company, Inc., and, in the presence of employees of Tale-Lord, threatening officers, supervisors, foremen, agents, and representatives of Tale-Lord, to inflict bodily injury to them, and threatening to inflict, and inflicting, damage to their property, attempting to block entrances to and exits from Tale-Lord's plant and premises and attempting to prevent employees of Tale-Lord from entering and leaving the said plant and premises, and throwing eggs at employees of Tale-Lord as the said employees attempted to enter and leave Tale-Lord's plant and premises, the Respondent has restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

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

The Remedy

The Respondent, having violated Section 8(b)(1)(A) of the Act by (1) threatening employees of Tale-Lord Manufacturing Company, Inc., and, in the presence of employees of Tale-Lord, threatening officers, supervisors, foremen, agents, and representatives of Tale-Lord, to inflict bodily injury to them, and threatening to inflict and inflicting damage to their property, (2) attempting to block entrances to and exits from Tale-Lord's plant and premises and attempting to prevent employees of Tale-Lord from entering and leaving the said plant and premises, and (3) throwing eggs at employees of Tale-Lord as the said employees attempted to enter and leave Tale-Lord's plant and premises, will be ordered to cease and desist from said violations of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Threatening employees of Tale-Lord Manufacturing Company, Inc., and, in the presence of employees of Tale-Lord, threatening officers, supervisors, foremen, agents, and representatives of Tale-Lord, to inflict bodily injury to them, and threatening to inflict and inflicting damage to their property.

(b) Attempting to block entrances to and exits from Tale-Lord's plant and premises and attempting to prevent employees of Tale-Lord from entering and leaving the said plant and premises.

(c) Throwing eggs at employees of Tale-Lord as the said employees attempt to enter and leave Tale-Lord's plant and premises.

(d) In any like or related manner restraining or coercing employees of Tale-Lord in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action:

(a) Post at its offices, hiring halls, and meeting halls copies of the attached notice marked "Appendix." [15] Copies of said notice, on forms provided by the Re-

[14] *Davis Wholesale Co., Inc., supra: Teamsters Local #115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent (E. J. Lavino & Company),* 157 NLRB 1637.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the

gional Director for Region 29, after being duly signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the said Regional Director copies of the aforementioned notice for posting by Tale-Lord, if willing, at its place of business in Brooklyn, New York, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, after being signed by a representative of Respondent Union, shall be forthwith returned to the Regional Director for posting.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent Union has taken to comply herewith.

APPENDIX

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

WE WILL NOT make threats against any officer, supervisor, foreman, agent, or representative of Tale-Lord Manufacturing Company, Inc., in the presence of any employees of Tale-Lord.

WE WILL NOT through our pickets, or our agents, make any threats against any Tale-Lord employees who attempt to cross the picket line maintained by us at Tale-Lord Manufacturing Company, nor will we damage the property of any employee who so attempts to cross said picket line.

WE WILL NOT through pickets at Tale-Lord who are subject to our control attempt to block entrances to and exits from the Tale-Lord plant and premises and attempt to prevent employees from entering and leaving there.

WE WILL NOT through pickets at Tale-Lord who are subject to our control throw eggs at any employees of Tale-Lord who attempt to enter and leave the Tale-Lord plant.

WE WILL NOT in any like or related manner restrain or coerce employees of Tale-Lord in the exercise of the rights guaranteed by Section 7 of the Act.

LOCAL 918, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Labor Organization)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Fourth Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 212–596–3535.

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

DECISION AND REPORT OF OBJECTIONS

STATEMENT OF THE CASE

THOMAS S. WILSON, Administrative Law Judge: Upon a charge filed on March 31, 1972, by Tale-Lord Manufacturing Company, Inc., herein referred to as Tale-Lord, Charging Party, or Employer, the General Counsel of the National Labor Relations Board, referred to herein as the General Counsel [1] and the Board, respectively, by the Regional Director for Region 29 (Brooklyn, New York), issued its complaint dated May 10, 1972, against Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union, 918, or Respondent.

This complaint alleged that Respondent Union had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act of the Labor Management Relations Act, 1947, as amended, herein referred to as the Act.

Respondent duly filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practices.[2]

By order dated July 7, 1972, Regional Director for Region 29 consolidated the above case for the purposes of "hearing, ruling and decision by a Trial Examiner" [3] with the

[1] This term specifically includes the attorney appearing for the General Counsel at the hearing.

[2] Neither Local 169 nor Local 178 appeared at the hearing In fact, Local 169, had previously withdrawn its objections to the election. Local 178 had filed none.

[3] The title of "Trial Examiner" was changed to "Administrative Law

Employer's Objections 2,3, 4, and 5, made to an election held May 5, 1972, by said Region pursuant to petition for certification filed by the Union in Case 29–RC–1956 on March 31, 1972, for the alleged reason that said objections were "substantially similar" to some of the issues involved in Case 29–CB–1178.[4]

Pursuant to notice, a hearing on such issues was held before me in Brooklyn, New York, on October 24, 25, 26, 27, 31, and November 1, 1972. All parties, except the Intervenors in Case 29–RC–1956, appeared at the hearing, were represented by counsel, and were afforded full opportunity to be heard, to produce and cross-examine witnesses, and to introduce evidence material and pertinent to the issues. At the conclusion of the hearing, oral argument was waived. Briefs have been received from General Counsel, Employer, and Respondent Union on December 14, 1972.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. BUSINESS OF RESPONDENT

The complaint alleged, it was admitted, and I find that:

Tale-Lord Manufacturing Company, Inc. is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York. At all times material herein, the Employer has maintained its principal office and places of business at 56–23 Cooper Avenue, Ridgewood, Borough of Brooklyn, in the city and State of New York, herein called the Ridgewood plant, where it is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of dungaree trousers and related products. During the past year, 1971, which period is representative of its annual operations generally, Employer, in the course and conduct of its business, purchased and caused to be transported and delivered to its Ridgewood plant textiles, finishings, and dungaree cloth and textile, sewing machinery, and other goods and material valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its Ridgewood plant in interstate commerce directly from the States of the United States other than the State of New York.

Accordingly, I find that the Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE RESPONDENT

Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization admitting to membership employees of the Employer.

The same can be said for the other locals named.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Basic Facts*

The warp and the woof of this case follows:

The president of Tale-Lord is Theodore (Teddy) Boshnack, who will be referred to herein by his nickname "Teddy" in order to distinguish him from his two sons who figure prominently in the facts under consideration here, Dennis Boshnack, the attorney for the Tale-Lord, and Ira Boshnack. The sons will also be referred on a first name basis herein for the same purpose. The business was founded many years ago by Teddy's father. Teddy became the owner and operator thereof some 35 years ago or at about the time the Wagner Act was declared constitutional. With the business Teddy also inherited a contract with Local 178. In 1962, the business was incorporated under its present name with Teddy as its president. Teddy still operates and manages the business, *albeit* in a self-proclaimed "semi-retired" status, i.e., working only 20 days per month. On those occasions when Teddy is absent from the plant, Ira becomes the plant manager, otherwise he is the shipping clerk. Such has been his position for 4 years. He is now 23 years of age.

Dennis was recently admitted to the New York bar. To date the present matter is Dennis' self-proclaimed "biggest case." Except as its present attorney, Dennis has no official capacity with the corporation.

At its Ridgewood plant, Tale-Lord employs about 70 persons of whom all but a few are women, mostly of foreign extraction who generally speak little, if any, English. As it developed, a few of these employees had no "residency permits" and, therefore, according to the United States Immigration Service, were immigrants residing illegally in the United States.

This matter began on the afternoon of Monday, March 27, 1972,[5] when Frank Roman, an organizer for 918 who was born in Puerto Rico and is fluent in both English and Spanish, started to hand out leaflets to some of the employees of Tale-Lord. Roman was seen doing so by Teddy and Ira. Teddy ordered him off the company property and called for a policeman to execute that order. Teddy told Roman that 918 could not get into the plant because the Company had a contract with 178.[6] Roman and a group of Spanish-speaking employees thereupon moved onto the sidewalk. Ira then came out and bothered the group, also repeating that 918 could not get into the plant because it has a contract with 178. The group then moved further away from the plant and continued their discussion. No authorization cards were signed that day.

Upon his return to the plant, Teddy checked and discovered that only 18 of the employees had ever belonged to 178. He thereupon telephoned the offices of 178 and, all officers being on vacation, told the office secretary about the organizing effort being made by 918. The secretary then agreed to send 178 application cards to the Company immediately.

Judge" effective August 19, 1972.

[4] The fact that the issues raised by these obejctions were not similar to those alleged in the unfair labor practice case created numerous procedural difficulties throughout this hearing.

[5] All dates are in the year 1972 unless otherwise specified.

[6] No such contract was produced at the hearing. This contract apparently was the one which Teddy inherited from his father at the time Teddy took over the business. In his 4 years at the plant, Ira has never seen any union representative at the plant. In fact, he thought the Local 178 representative had died many years ago.

Ira's testimony indicated that, in fact, he personally went to the offices of 178 and secured such application cards.

On the afternoon of Tuesday, March 28, Teddy had the 178 application cards distributed to the employees for those who "cared to" to sign. Teddy also spoke over the plant loudspeaker system, telling the employees that Tale-Lord had "a 100 percent union shop" contract with 178 so that those who signed 178 cards could work the next day "but that, if you don't sign the card, you may not be able to work tomorrow." [7]

At this point, employee Elizabeth Martinez stood up at her machine and said, "Let's not wait for tomorrow, girls, let's go on strike today." Thereupon some 30 Spanish-speaking women and two or three men left the plant. This exodus was reported to Roman. He proceeded to the plant, produced picket signs, and the strike was on. The strikers signed application cards for 918. Maria Hernandez, who spoke Spanish but no English, was among the strikers at this time.[8]

According to Teddy, "more than half" his employees signed the 178 application cards at this time.[9] He then sent the signed 178 application cards together with his check in a sum less than $1,000 as payment of initiation fees to 178.[10]

The next day, Wednesday, March 29, Dennis, the lawyer, having learned of Teddy's patent unfair labor practices of the previous day, wrote the following letter in "legal language" for Teddy's signature:

> Ladies and Gentlemen:
>
> We are sorry that some of you went on strike yesterday. Each of you may return to work immediately.
>
> No one is fired. No one shall lose pay or otherwise be penalized for the time already spent on strike by him.
>
> Further under no circumstances shall we benefit or penalize anyone because he joined or refuses to join any labor union.
>
> I trust that this letter will eliminate any misunderstanding that may exist between us and that all of you will return to work without delay.

After this letter had been signed, Ira attempted to distribute copies to all the strikers. Most of the strikers refused to accept them. Thereupon Tale-Lord got out accelerated paychecks for the money then due its employees to which they attached copies of this letter. However most strikers, upon receiving their paychecks with the letter attached, detached the letter and left it in the Tale-Lord office. Nobody deserted the picket line.

Also, on March 29, Dennis telephoned President Jack Fecter of 918 and inquired what "it would take" for him to call off the strike. Fecter answered either a signed contract or a consent election. Dennis replied that he "would get back" to Fecter.

About 10:30 a.m. on March 30, President Jack Fecter, together with 918 Officials Charles Mauro and Joseph Barresi, arrived outside the Tale-Lord plant to keep an appointment with Teddy and Dennis. As the group parked in front of the plant, Ira came out and informed them that Teddy and Dennis had been unavoidably delayed but would be there soon for the appointment.[11] About 4:30 p.m., after a number of other similar announcements of further delays by Ira, Teddy and Dennis arrived at the plant. The union group was still waiting in the parked automobile. Dennis came to the car and asked if Fecter "still" wanted to talk. Fecter was willing, provided he could be accompanied by an employee committee. Dennis agreed. Fecter, the two other union officials, and an employee committee of three approached the plant entrance. Ira was taking movies of this group and of employees on the picket line, a daily occupation of his. At the plant entrance, Teddy and Ira refused the group admission. A few pleasantries to be discussed hereinafter were exchanged between the groups. The union group then retired. The schedule meeting was never held.

On April 3, Dennis requested a meeting with Fecter at the 918 office. He kept that appointment and remained in Fecter's office for 6 hours. During that time, Dennis acknowledged to Fecter that he knew nothing about labor relations and requested Fecter's help on that subject.[12] Finally in the afternoon, while studying a form contract given him by Fecter, Dennis apparently asked again what it would take to call off the strike. Fecter thereupon sent to the plant for an employees' committee. Upon the arrival of this committee at the office, the committee told Dennis that they wanted either a signed contract or a consent election. They got neither at that time.

On or about April 5, Dennis got in touch with the Federal Bureau of Investigation about his labor problem. He and Teddy had admittedly been "in constant contact with the FBI" since the strike began.[13] Ultimately, as will be developed, this contact led Teddy and Dennis to the Immigration Service.[14]

On April 6, Teddy closed down the production portion of the plant for a 2-week vacation. Ira and the cutter, Manuel Perez, continued to operate the shipping department.

On April 25, the parties hereto agreed upon a consent election with the election to be held on May 5.

The plant reopened again for production on April 26. At this time, one operator, Maria Hernandez, deserted the

[7] The above quote is Teddy's version of his statement. Other versions were even more definite about not having work the following day. Signing application cards under either version can hardly be classified as a "voluntary" act.

[8] Hernandez testified that she joined the strikers at this time because they "threatened" not to help her with her English

[9] Teddy was not sure whether this was half of his whole complement of employees or half of those who remained in the plant.

[10] It is noteworthy that 178 received no votes in the election.

[11] Who requested this meeting could not be determined at the hearing. That information was a bit of the "trivia," Teddy's word, which neither Teddy nor Fecter could recall Nor could any of the other witnesses.

[12] Fecter testified that during this period Dennis was asking for a "sweetheart" contract

[13] During his testimony, Teddy refused to divulge the name of Tale-Lord's contact with the FBI on the grounds that this was "privileged information" and that, even the night before he testified, this contact had convinced him that "2 years of investigation" would be wasted if his name were divulged Thereupon counsel for 918 announced that 918 had known for 2 years that one Sam Dukes of the FBI had been investigating labor racketeering and that 918 was included in Duke's investigation. Dennis acknowledged that Dukes was his contact.

[14] Prior to the hearing, two Tale-Lord striking employees had been deported and a third, Maria Hernandez, was at the time of the hearing scheduled for deportation on November 8, 1972.

picket line and returned to work because, as she testified, she needed the money.

The picket line remained otherwise intact with Roman still in charge.

On May 1, Roman offered to call of the strike and to have the strikers return to work.

On May 2, the strikers returned to work.

On May 4, Ira and Teddy accused Elizabeth Martinez, a long-time employee and a leader of the 918 faction, of "sabotaging" production with bad work and discharged her. Immediately the discharge became known and all the 918 adherents, with the exception of Maria Hernandez, followed Elizabeth Martinez out of the plant and on strike again.

On May 5, the consent election was held. It resulted in 30 votes for 918, 29 votes for 169, 0 votes for 178, and 1 no-union vote.

B. *Allegations of the Complaint*

1. Threats to employees and supervisors

The first violation of the Act alleged in the complaint was that Respondent 918:

> (a) Threatened various employees of Tale-Lord and in the presence of employees of Tale-Lord threatened various officers, supervisors, foremen, agents and representatives of Tale-Lord to inflict and inflicted bodily injury and other harm to their persons, and threatened to inflict and inflicted damage to their property.

As the first—and most important—incident under this heading in his brief [15] General Counsel cited the testimony of Dennis as his leadoff witness. Dennis testified that on March 30 President Jack Fecter in the presence of employees made the following three threats against Ira, presumably, within a period of, in his estimation, 3 minutes without any other intervening conversation so far as Dennis could recall in his direct testimony:

> 1. "If he [Ira] continues that [taking pictures]—these guys are going to knife him";
> 2. "Someone is going to knife him"; and
> 3. Ira "has a big mouth and he is going to wind up in a hospital."[16]

Ordinarily threatening words such as these by a union official would be sufficient to hold that the Union had violated Section 8(b)(1)(A).

However, it soon became apparent through cross-examination that Dennis had not testified on direct to all there was to this incident.

It developed that Fecter, according to Dennis, made these remarks between 4:30 and 5 p.m. on March 30 as Fecter, two union officials, and three employee committeewomen were approaching the plant gate for the long-scheduled conference with Dennis and Teddy. This conference had been postponed from time to time by Dennis' calling the plant on numerous occasions and informing Ira that he and Teddy were "inadvertently delayed" in New York City but would reach the plant shortly. Ira had conveyed these messages to Fecter and his two union officials from time to time during the day as they sat in the automobile awaiting the conference, until Dennis and Teddy finally arrived back at the plant about 4:30 p.m. At that time, Dennis had walked to the automobile where the union party had been waiting since 10:30 or 11 a.m. and inquired if Fecter "still" wanted to talk. Fecter agreed to talk if he could have a three-person employee committee present. Dennis agreed. Thereupon Fecter, the two union officials, and the three-employee committee then walked the 60 feet from the parked automobile to the plant gate. Fecter noted that Ira was then taking pictures of the employees on the picket line as well as the group approaching the plant entrance. As he approached the entrance, Dennis testified that Fecter made his first remark. When the group reached the entrance, Teddy, over the objection of Dennis, refused to permit anyone but Fecter in the plant. In this refusal, Ira aided and abetted his father by urging him not to speak to these "gangsters" and "hoodlums." At this point (and not in the total silence the testimony of Dennis implied), Fecter made the other two alleged remarks, according to Dennis.

I do not intend to condone the use of such threatening language by union officials or company officials. But the fact of the matter is that Fecter's remarks were definitely not unprovoked. He and his party had been kept waiting from 10:30 or 11 a.m. until 4:30 p.m. for the sole convenience of the Boshnacks. Ira was taking pictures of not only the group, but also the employees of the picket line, a rather palpable unfair labor practice in, of, and by itself.[17] Then Dennis agreed that Fecter and the union officials could be accompanied by three employee committeewomen, but at the plant door Dennis was overruled by Teddy, who stated that he would only talk to Fecter alone while, finally, Ira kept urging Teddy not even to only talk to these "gangsters" and "hoodlums." [18]

First, contrary to Dennis' most innocent testimonial version of this affair, Fecter's threats, even if made,[19] were far from being unprovoked.

The 5-1/2-hour delay of the scheduled meeting caused solely for the personal convenience of the Boshnacks,[20] the

[15] In this portion of the Decision, I will refer to those incidents cited in General Counsel's brief which he considered important. Unfortunately the Tale-Lord brief consists of only five pages in which counsel sets forth the "facts" by days without any indication as to which he considers to be important or why. Some of the "facts" cited were not proved. The remaining five pages of this brief consisted of mere transcript citations.

[16] Fecter denied making any such statements.

[17] See *Tennessee Packers, Inc.*, 124 NLRB 1117.

[18] Perhaps Fecter and party were "hoodlums" and "gangsters," although at the hearing Dennis never attempted to prove more than that Fecter had had his name legally changed by court action, which hardly justified the terms bandied about by Ira. Moreover, even actual gangsters and hoodlums resent being referred to as such.

[19] I was not impressed with Fecter's honesty as a witness, but, on the other hand, as will be explained hereinafter, the Boshnack credibility was sorely shaken by the testimony of both Dennis and Teddy, particularly in regards to their contacts with the Immigration Service and other matters.

[20] Inconveniencing others proved to be a strong characteristic of the Boshnack family.

unfair labor practice moving picture taking, the strange and sudden reversal of the agreement to allow an employee committee to be present at the conference, together with the uncalled for name-calling, was sufficient to provoke some retaliation in kind on the part of Fecter. Name-calling hardly ever remains one-sided during labor disputes unfortunately. The present instance proved to be no exception. However, any employee who might have been within hearing distance would recognize this for what it was: merely a mutual caterwauling.

Under the circumstances here, this mutual caterwauling can hardly be realistically dignified by being found to constitute a violation of Section 8(b)(1)(A). I so find.

The second episode which General Counsel finds of sufficient importance to mention in his brief under this allegation of his complaint is the testimony of nonstriking employee Evelyn Gravesande, who testified that during the week the factory reopened (April 24) she saw Frank Roman throw an egg at a named employee entering the plant. This egg-throwing and the Union's responsibility therefor will be discussed in a subsequent section of this Decision.

The next incident cited in General Counsel's brief is an incident occurring during the week of April 17[21] when, according to the brief, Frank Roman "threatened" Ira with a gun. Ira's testimony is that on this occasion Roman stated to him, "I have something to show you" or "I got something for you," thereupon returned to his car and returned with a "revolver" covered by a handkerchief in his outstretched palms with a comment, "This is for you."

Characterizing this testimony as a "threat" to Ira seems to be absurd on its face. There is in this incident, even as described by Ira, no showing of any intent in anyway on the part of Roman to harm Ira in any fashion. At best the incident is ambiguous, as perhaps Roman merely wanted to show Ira a nice "revolver" or perhaps make him a present of it—until Ira panicked and yelled for help from Teddy. This becomes even more apparent when, on cross-examination of Ira, it developed that at the time Ira saw and recognized the covered object to be a "revolver," Roman was admittedly 30–40 feet away from him with an object wrapped in a handkerchief lying flat in his two outstretched palms. Ira testified that he assumed it to be a revolver by its shape under the handkerchief. Roman did flip the covering part of the handkerchief back for a moment so that Ira "knew" that it was a revolver, real or toy. Even assuming the object was a real revolver, it constituted no threat to Ira while lying in Roman's two outstretched hands in the position Ira described it to be. In fact, even if it had been a real revolver, in the position Ira described it to be, it never became dangerous. But Ira panicked and yelled for Teddy. Roman's prank had succeeded, probably beyond his wildest hopes. Teddy did not see the object.

Roman testified that the object covered by the handkerchief was, in fact, a banana. I am inclined to agree with Roman.

The apparent reason for this testimony by Ira seems to have been to cover up the fact that during the strike Ira admittedly did carry a shotgun from his truck to the factory. Ira testified that the shotgun was loaded which, in turn, means that the shotgun was assembled. Teddy testified that the gun was unassembled and unloaded at all times to the best of his knowledge. Neither could agree as to when or why the shotgun got to the plant. The Boshnack testimony regarding this shotgun did not help to enhance the credibility of either witness.

This whole gun episode must be dismissed because it is quite obvious that Ira's youthful imagination once again ran away with him.

Ira testified that he and Roman had daily "nose-to-nose," Ira's description, arguments during which Ira acknowledged that he retaliated threat for threat with Roman. Hence I cannot take seriously Ira's testimony that Roman said, "I wouldn't be surprised if there was a shooting here" or that on another occasion Roman said that he would not be surprised "if the plant went" and then made gestures which Ira interpreted to mean "blown up." Ira further testified that Roman made threats to harm Ira's and Teddy's automobiles, with Ira retaliating again in kind. Any employee hearing this caterwauling between Ira and Roman would have recognized it for exactly what it was: mutual caterwauling. In addition, Ira proved himself to be an imaginative, and well coached, witness whose testimony indicated that he thought he knew what testimony was necessary and sought to supply it. However, Ira did admit to taking pictures of the striking employees on the picket line daily.

As is not unusual in a strike of this sort, some six or eight tires were flattened by person or persons unknown. The sole attempted identification of any individual responsible for such action was made by Maria Hernandez as an employer's "rebuttal" or "newly discovered evidence" witness, after she had previously testified in Employer's case in chief without having mentioned the incident or the purported identification.

Hernandez testified that she had seen striking employee Ada pick up a nail in the gutter, after Roman who was walking around talking to the striking employees some distance away "made a gesture" that nails were there, and then "went under the car" and punctured two tires with the nail and her bare hands. In fact, according to Hernandez, due to the presence of police wandering around, Ada had to go under the car twice in order to accomplish this trick.

This story of a seamstress crawling under an auto while the police wandered around and puncturing a tire with her bare hands and a nail appears to be so inherently improbable as to be unbelievable even with tires as old as the owner of the car testified they were. This same applies to the "gesture" which Roman was supposed to have made with his hands to indicate nails in the gutter. Further comments on the credibility of Hernandez will be made hereinafter.

The fact is that four of Manuel Perez' tires were flattened. I am not so naive as not to suspect that perhaps a striker did the deed even though Teddy paid for the repairs. But I cannot accept Hernandez' description of the method used nor the individual allegedly involved. Nor can I make a finding based on mere suspicion or surmise that Respondent Union was in fact responsible for these actions. Thus

[21] Originally Ira set the date as May 5 but ultimately, with the request that we not hold him to the dates, set the event as occurring between April 6 and 24.

this portion of General Counsel's case has to be dismissed for lack of probative proof.

General Counsel argues in his brief, however, that I should believe that the Union's "designated agents" did all of the above because Roman and Ada, for instance, failed to deny what evidence the General Counsel presented and in part because Roman was not a truthful witness. This argument puts the cart before the horse. Before Roman's lack of credibility, if any, enters the picture, there must be some probative evidence of union responsibility and union identification. There was none such presented as to the allegations of paragraph 8(a) of General Counsel's complaint. Hence, I will dismiss this allegation of the complaint.

2. Blocking ingress and egress

Paragraph 8(b) of the complaint alleges that the same union officials and agents "attempted to block and blocked, entrances to and exits from Tale-Lord plant and premises and attempted to prevent and prevented employees of Tale-Lord entering and leaving the said plant and premises."

General Counsel does not even argue this point in his brief. In this he was correct. There is no evidence in this record to sustain any such charge.

Accordingly, I will dismiss the allegations of paragraph 8(b) of General Counsel's complaint.

3. Egg-throwing

By amendment General Counsel added paragraph 8(c) to his complaint, alleging that Respondent by Jack Fecter, Frank Roman, and "by other agents whose names are presently unknown" 918:

> (c) threw eggs and other objects at employees of Tale-Lord as the said employees attempted to enter and leave Tale-Lord's plant and premises.

Admittedly there was considerable egg-throwing during the first 2 or 3 days of this strike. The testimony showed that these eggs appeared to come from the direction of the picket line and landed on or near employees entering or leaving the plant. This is just about the sum and substance of the testimony presented by General Counsel and Employer.

Thereafter there was little, if any, egg-throwing following the first few days when Roman said, "No, no" to the strikers and told them that they were not doing their cause any good by such tactics. This action by Roman appeared to practically stop all egg-throwing.

Of course egg-throwing should not be countenanced even during a strike. If the Union is responsible for egg-throwing at nonstriking employees, then the Union is violating Section 8(b)(1)(A).

The identification of the throwers of these eggs in this record is practically nil. The proof of the Union's responsibility for the egg-throwing is even less.

One witness, Maria Perez, testified that in the first 2 days of the strike three named strikers threw eggs. She also heard Roman tell these three, "No, no" regarding their throwing eggs. Thereafter these three aparently ceased their efforts along this line because, according to her, eggs were only thrown the first 2 days.

There was one incident about the same time when striker Rominita Marero threw an egg from a distance of about 6 feet and hit nonstriker Eva Watt as she and others then working were leaving the plant. Watt thereupon knocked Marero flat by hitting her with her handbag which had previously been loaded with metal filings for just such a purpose.

There is no showing that the Union or Roman authorized, suggested, or otherwise sanctioned Marero's action on this occasion. In fact it appears to have been an instantaneous, spontaneous incident or, perhaps, a personal vendetta between the two combatants.

The evidence shows that after this incident the nonstrikers followed the lead of Watt by putting hard metal objects and/or salt and pepper in their handbags for protection. The evidence further showed that none of this protective equipment was thereafter ever used, except in the Marero-Watt incident.

Ira also testified that he once saw Roman during the first days of the strike "throw an egg" at him but that the egg burst in air. On a separate occasion, Ira testified that he saw Roman "cock" his arm but could not see what, if anything, Roman held in his hand—except that Ira "thought" he saw a rock drop from Roman's hand behind his back on this occasion.

Ira's final identification of a thrower or throwers was as follows:

> A. . . . and then when she walked into the place, I saw Elizabeth Martinez and Frank Roman throw *an egg* at the car, at—
>
> JUDGE WILSON: Did they both throw the same egg?
>
> THE WITNESS: I saw them throw the eggs.
>
> JUDGE WILSON: The egg or eggs?
>
> THE WITNESS: Eggs.
>
> JUDGE WILSON: At?
>
> THE WITNESS: At her car—you know, at her son's car.
>
> By Mr. Friedman:
>
> Q. And who threw the first egg?
>
> A. Well, I saw the eggs come flying. *You know, it could have been one or the other.* [Emphasis supplied.]

This rather characteristic type of testimony from Ira is hardly probative.

With one exception this is as far as General Counsel and Employer proceeded in identifying the guilty parties. It falls far short of proving the Union responsible for the egg-throwing. This is especially so as the undisputed evidence proved that male employees from a nearby paper factory, over whom the Union had no control, were frequently in and about the picket line of striking women employees of Tale-Lord. It is also a well-known physiological fact that male throwing arms are much better than the female variety. This is further corroborated by the fact that at Respondent's request the strike area was almost always under the eyes of the New York police department and it was admitted that no arrests were ever made during the period of the strike.

However, nonstriker Evelyn Gravesande positively identified Frank Roman as having thrown one egg which hit an

employee as she entered the factory on April 25 or 26. Gravensande was an obviously careful and truthful witness whose testimony I credit over Roman's denial that he threw any egg.

Roman was a generally honest witness. However, in his affidavit given to a Board agent prior to the hearing he denied having seen any eggs thrown. At the hearing, he admitted that eggs were, in fact, thrown but was unable to identify anyone who threw them. He continued to deny, as stated in his affidavit, that he had thrown any eggs. I am convinced from Granvesande's credited testimony that he threw one egg on or about April 25–26 even though it was well established that few, if any eggs, were thrown after the first few days of the strike.[22]

This single proved aberration, however, is an isolated incident which would not create responsibility on the Union for the other eggs previously thrown by persons unknown, especially in the light of the undisputed testimony that Roman had instructed the strikers not to throw eggs, as previously noted.

As General Counsel and Employer failed to produce any probative proof that union agents engaged in, authorized, endorsed, or encouraged the throwing of eggs in any way, I cannot hold the Union responsible for the eggs which were thrown. The burden of proof was on General Counsel and Employer to produce such proof of union responsibility. This they have failed to do. As I am not permitted to speculate or surmise, I must, therefore, dismiss this allegation of the complaint.

4. Further cited episodes

General Counsel's brief next cites an incident which also occurred apparently the same day on which Manuel Perez, the nonstriking cutter at Tale-Lord, heard through an anonymous call, according to his testimony, that the tires of his automobile had been flattened. That day, March 29, he went to lunch with a friend but returned to the plant alone carrying a full coke bottle in a paper sack. As he attempted to pass the picket line, which that day was led by two women carrying a strike banner and a Puerto Rican flag, Perez claimed that he was "surrounded" by 10–15 women strikers in the presence of the police. "Somehow" he managed to break through this line of women and ran from the girls to the factory. As he arrived at the plant door, an individual named Jesus Padilla swore at him. According to Perez, Perez then said, "I'm telling you that you are a man and you shouldn't call me like. We have to see about this later on." Then, still according to Perez, as Padilla walked towards Perez, he "made a move" so Perez struck Padilla in the mouth whereupon Padilla hit Perez back.

According to the strikers, as Perez went past the picket line on this occasion, he made an attempt to strike Alma Guzman who was carrying the Puerto Rican flag, the corner of which may have brushed Perez as he was passing. It was this attempt by Perez to strike Guzman with the coke bottle which brought Padilla and the police to the scene.

The only thing clear in this little fracas is that Perez struck the first blow. This incident also appears to be one of those spontaneous personal affrays which will occur during strikes. Even accepting the Perez testimony at face value, there is no proof here of union responsibility therefor. In fact, the episode was too insignificant for even police action. Subsequently, on May 5, Perez and Padilla shook hands.

The final incident relied on in General Counsel's brief is that, when Maria Hernandez returned to work on or about April 26 when the plant reopened after the 2-week holiday, a striker, Ana Rivera, told Hernandez that she "was going to see blood."

For reasons which are not altogether clear, General Counsel does not appear to rely on other testimony by Hernandez which, if believed, constitutes probably the most viciously coercive threat I have ever encountered in a Labor Board hearing. It would appear that he, like I, do not believe that that threat was made by 918. This last threat is treated under the objections section of this Decision.

Suffice it to say here in regard to the present threat, which General Counsel does appear to rely upon, that this alleged threat does not appear to have bothered Hernandez for the simple reason that on May 4 Hernandez was invited by the same persons to attend a preelection meeting of 918 and willingly attended that meeting with them. It is apparent that this alleged threat, even if made, did not bother Hernandez. In fact it is doubtful that Hernandez would have attended the meeting if the alleged threat had been made.

Again General Counsel and Employer have failed to establish by any probative evidence the Union's responsibilities for any of the incidents which General Counsel considers important enough to cite in his brief. In fact General Counsel's argument on the question of union responsibility amounts to no more than the following:

> The cases have held that where a picket line is the scene of repeated acts of misconduct, to the knowledge of the Union conducting the picketing, the Union has the duty to take steps reasonably calculated to curb the misconduct and failing this the Union may be held responsible for resulting restraint and coercion of employees. *Local 5881, United Mine Workers (Grundy Mining Co.,)* 130 NLRB 1181 enf. 296 F.2d 734, *United Steel Workers of America (Vulcan—Cincinnati)* 137 NLRB 95.

I agree with this principle of law but find it inapposite here. General Counsel forgets that the proof shows that the only thing which Roman knew about, according to the evidence presented, was the egg-throwing and that it is undisputed that he told the egg throwers, "No, no," and that such tactics would not aid their cause. Thereafter there was little, if any, egg-throwing.

Actually for a strike lasting from March 29 to May 5 the number of untoward incidents was very small and, with one exception covered in the objections section hereof, hardly worthy of note.

[22] Despite its present expense, egg-throwing during crises appears to be endemic to New Yorkers. The New York papers were full of accounts of egg-throwing during school busing crises in the Canarsie district of New York which occurred simultaneously with the present hearing Such may soon go out of style because of its increasing expense

Accordingly, although some of these incidents should not have occurred, General Counsel and Employer have failed in their burden of proving that the Union was responsible for such untoward acts. I will, therefore, dismiss Case 29–CB–1178 *in toto.*

C. *Objections to Election*

Following the election on May 5 with the results previously noted herein, together with challenges to 12 voters, which fortunately are not at issue here, Employer by its attorney, Dennis, by letter dated May 10, filed the following "Objections to Election":

> With respect to the election conducted by the National Labor Relations Board at Tale-Lord Manufacturing Co., Inc. on May 5, 1972, Tale-Lord objects to the conduct of the election and to conduct effecting [sic] the results of the election.
>
> The reasons for this objection include, but are not limited to, the following:
>
> 1. All or a substantial number of the voting instructions given by the Board's agents to prospective voters on May 5, 1972, were inaudible and therefore also either unintelligible or misleading to many of these voters.
>
> 2. Teamsters Local 918 committed the following offenses between March 30 and May 5, 1972:
>
> (a) Conversations with prospective voters who were waiting to vote in the polling area on May 5, 1972,
>
> (b) Electioneering at the polls on May 5, 1972.
>
> (c) Dissemination of illegitimate campaign propaganda between April 27 and May 5, 1972, e.g., misrepresentation of benefits obtained from other employers and of Tale-Lord's disciplining of employees.
>
> (d) Intimidation of prospective voters between March 30, and May 5, 1972, e.g., breaking eggs on these voters, damaging their cars and threatening their lives, threatening to get five of these voters in trouble with various governmental agencies if they voted in the election or if they did not vote for Teamsters Local 918, slashing Fortunada Anderson's coat in the locker room at Tale-Lord on May 4, 1972, and placing poster containing threats of violence in this locker room on May 4, 1972.[23]

On July 7, in his Report on Objections, the Regional Director considered the Employer's objections, which he restated and numbered as follows:

> *EMPLOYER OBJECTIONS*
>
> 1. All or a substantial number of the voting instructions given by the Board's agent to prospective voters on May 5, 1972 were inaudible and therefore also either unintelligible or misleading to many of the voters.
>
> 2. Local 918 converged with prospective voters who were waiting to vote in the polling area on May 5, 1972.
>
> 3. Electioneering at the polls on May 5, 1972 by Local 918.
>
> 4. Local 918's dissemination of illegitimate campaign propaganda between April 27, 1972 and May 5, 1972, e.g., misrepresentation of benefits obtained from other employers and of Tale-Lord's disciplining of employees.
>
> 5. Local 918's intimidation of prospective voters between March 30, and May 5, 1972, e.g., breaking eggs on these voters, damaging their cars and threatening their lives, threatening to get five of these voters in trouble with various governmental agencies if they voted in the election or if they did not vote for Teamsters Local 918, slashing Fortunada Anderson's coat in the locker room at Tale-Lord on May 4, 1972, and placing posters containing threats of violence in their locker room on May 4, 1972.

In his first report, after considering the evidence presented, Regional Director dismissed Objections 1 and 4 and combined the remaining objections for "hearing, ruling and decision by a Trial Examiner" along with Case 29–CB–1178. By letter dated July 13, Employer requested reconsideration of that first report of the Regional Director, particularly as to its Objection 4. In the Regional Director's Second Report on Objections dated August 15, 1972, the Regional Director ruled that "the [new] allegations that the petitioner [918] circulated a marked facsimile of the Board's official ballot" created a issue of fact and consolidated the same for hearing as above.

By letter dated August 22, Employer "offered further evidence in support of its Objections No. 5," i.e., the alleged "intimidation of prospective voters" by 918. In his Third Report on Objections dated September 15 said Regional Director overruled this new allegation "without considering the timeliness of the new evidence."

With this past history the merits of, and Employer's good faith in, filing its objections must also be viewed in the light of the following admission made by its attorney during the instant hearing:

> MR. BOSHNACK: Your Honor, if I may be heard? I say in late May or early June I spoke to the Department of Justice.
>
> *I would point out that in making objections, the party who makes them does not necessarily or need to know the facts on which the objections are based at the time he makes them.*
>
> JUDGE WILSON: What?[24]
>
> MR. BOSHNACK: He must make objections within five days in order to protect his right to make objections.
>
> MR. GOLDBLATT: No matter what they are?

[23] During the hearing, Dennis handed me a photostatic copy of this letter, which at that time I assumed to be a copy of an exhibit already admitted in evidence. However, I find no such letter among the exhibits. Therefore, because of certain minute differences between this letter and the Regional Director's description thereof in his Report on Objections, I hereby take the admittedly unorthodox step of marking my photostatic copy of the letter as "Trial Examiner's Exhibit 2" and admitting same in evidence. I can perceive no prejudice to any party by this action.

[24] This was an exclamation of astonishment and incredibility which phonetically probably would be more accurately written as "wha-a-at!"

MR. BOSHNACK Yes.

So I made an objection on a ground that I thought might have existed.

Most of the information I had was on, you know, hearsay.

When I went to investigate these things, when I went to get the facts, this was all in October after our last hearing was adjourned, you know, between then and now. [Emphasis supplied.]

This verges upon an abuse of the Board's processes.

So now we turn to the Tale-Lord Objections to the Election.

Employer's Objections 2 and 3

In the Regional Director's original report he found that Objections 2 and 3 were so similar that they could be, and were, treated together. I agree. However, it is obvious that the evidence on this point mentioned in the Regional Director's report is *not* the evidence which was presented at the instant hearing. According to the Regional Director's report, the evidence before him indicated that there were groups, large and small, of unnamed, but alleged, 918 adherents wandering in and about the polling area talking to prospective voters waiting in line to cast their ballots and that these conversations continued for substantial periods of time.

At the instant hearing, these alleged "groups of women" appeared to have been reduced to one woman, Postacia Rodrigues.

According to the evidence presented in the instant matter by a few Employer witnesses who themselves were loafing in or near the polling area throughout the 2 hours during which ballots were cast, Postacia spent that same time either waiting in line to vote or walking close to others in the line and speaking to them. Not one witness was produced to testify that Postacia had spoken to her or him while in the line or that Postacia had had anything to say to them, except one witness who testified that Postacia had offered to permit him to go ahead of her in the line of voters.

These same witnesses also testified that during the above alleged endeavors Postacia also flashed to prospective voters a paper containing four boxes (the official ballot also had four boxes) with an "x" marked in the last box (the 918 box). This "paper" was variously described as an ordinary piece of paper or as a facsimile copy of the official ballot. Not one witness was produced who testified that he or she saw this while waiting to vote. The witnesses also testified that Postacia held this paper, whatever it was, folded up in the palm of her hand. Under these circumstances, it is impossible that she was palming a copy of the official ballot due to size alone. In fact, it is impossible to believe the testimony presented. Even if true, this evidence would not invalidate the election.

The election of May 5 was conducted by two Board agents. Local 918 requested permission of the Regional Director to produce these two Board agents as witnesses. The request was refused. Local 918 thereupon made telephonic and telegraphic request to the Board in Washington for the right to produce these two Board agents as witnesses. The request was denied. Such denials did not assist the search for the truth.[25]

Postacia herself denied the allegation against her except that she was for a considerable period in the same area as that occupied by the witnesses against her.

Under the circumstances here, I have to credit the denial of Postacia and find no violation of the Board's rules concerning the conduct of election.[26]

On the evening of May 4, the night before the election, a group of striking Spanish-speaking 918 adherents, including Maria Hernandez, gathered in the home of another Spanish-speaking employee where Roman and Elizabeth Martinez, using a sample facsimile ballot, explained to the group in Spanish the voting procedures which could be followed the next day. Maria Hernandez testified that this sample ballot contained a *printed* "x" in the 918 box. Another witness saw this same sample ballot after Roman's talk with a *penciled* "x" in the 918 box. Others at the meeting saw no "x" in any box at any time. Nobody testified to seeing anyone place an "x" printed or penciled, on this sample ballot. Under these circumstances, especially the circumstances in which Maria Hernandez unfortunately found herself, which will be more fully developed hereinafter, I am unable to credit the testimony that 918 used a *marked* sample facsimile ballot, or marked a sample ballot, for this explanation of the voting procedures.[27]

Not being able to credit the evidence presented on this point by the Employer, I cannot find that there was any "illegal electioneering" at the polls and, therefore, dismiss this objection.

In its letter of May 10, the Employer objected to what it chose to call "illegitimate campaign propaganda" by "misrepresentation of benefits obtained" by 918. The Regional Director dismissed this objection. No such evidence was presented at the instant hearing. Hence I agree with this dismissal.

However, Employer did put in evidence a cartoon posted in the ladies' room of the plant on May 4. This cartoon depicted a Tale-Lord employee holding two cats by their tails, one labeled "Local 169" and the other "Local 178." The employee is saying, "We want Teamsters Local 918 to represent us. You cats belong in the river with our boss." The 169 cat is saying, "It looks like they know Boshnack brought us in. They're wise to us." The 178 cat says, "We're all wet anyway."

Originally the Regional Director dismissed this objection but apparently reversed himself in part in his August 15, 1972, second report. I see no reason for that reversal in

[25] In fact the Employer's original objections included criticism of these Board agents for not giving their election instructions in a loud enough voice so that the instructions could be heard and understood. This objection was rather cursorily dismissed by the Regional Director. Many Board agents, including this one, do not care for such "administrative white washes."

[26] It is noteworthy that the claims made here against Postacia were apparently not presented to the Regional Director or, if they were, he decided the issue *sub silentio* against the Employer.

[27] In Employer's original objections this marked ballot claim was not made but arose only on July 13 in Employer's motion for reconsideration. At that time, the claim was made that such marked facsimile of the official election ballot was "distributed or mailed" to the employees. No such contention was made at the instant hearing. Instead the above testimony as to this election meeting in May was presented. This evidence had not been presented previously

regard to the above cartoon. In the light of Teddy's loudspeaker announcement to the employees on March 29, the cartoon constitutes "fair comment," if not the absolute truth.[28]

Accordingly, the evidence requires the dismissal of Employer's Objections 1, 2, 3, and 4.

That brings up Objection 5.

At the hearing, Dennis contended that the egg-throwing, the threats, the rip in Fortunada Anderson's coat, and the cartoon "containing threats of violence," plus another allegation to be discussed immediately hereinafter, created such an atmosphere of "chaos and fear" as to deprive the employees of their ability to freely choose their representative in the election of May 5. Yet every voter who testified here, with the exception of Maria Hernandez, testified credibly that she freely voted her choice at that election.

I have already found heretofore that eggs were broken, automobiles were damaged, and names were called, as well as the cartoon posted. Except for the cartoon, none of these things should accompany a strike—but unhappily they do.

Also heretofore I have found that there is no evidence in this record upon which the Union can be held responsible for the above-mentioned activities, with the exception of one egg thrown by Roman on April 25–26. As noted, I am not so naive as not to suspect that perhaps strikers were involved in other incidents. But the courts refuse to allow me to speculate and, therefore, I must base my findings on proven facts, not on speculation. General Counsel and Employer both failed to prove facts sufficient to hold 918 responsible.

Moreover, the type of misconduct listed above is unfortunately endemic to labor disputes and is insufficient to create the "fear and chaos" which would deprive the voter of his freedom of choice. If this were not so, our working people would be of much weaker fibre than they are in fact—and in addition, few, if any, elections, Board or national, could ever be held.

Also, as a matter of fact, the "violence" alleged here was relatively mild, a few eggs thrown the first few days of the strike, six or eight flat tires, and a few unpleasant personal remarks. Nothing here is sufficient to set aside the present election—even if those events could be held to be the responsibility of 918 which, of course, legally they can not be.

There was the strange incident to Fortunada's coat. It was ripped by person or persons unknown. Nobody saw anyone rip the coat. It is an interesting sidelight that, among the employees inside the plant, the strikers were blamed for the incident—but Teddy took $50 dollars out of his pocket and paid Fortunada for her coat.

This last was apparently not known to the employees inside the plant. Also it was apparently not known to Dennis, who started to impeach his own father as a witness on the stand because, as Dennis then stated, Fortunada had denied to him that Teddy paid for the coat. Dennis was right about one thing: somebody lied.

Teddy's immediate $50 payment for the coat creates even further doubt as to who tore Fortunada's coat and why. But the coat tear did serve to solidify feelings against 918 among the nonstriking employees.

The Employer's final allegation is the *piece de resistance:* that 918 was "threatening to get five of these voters in trouble with various governmental agencies if they voted in the election or if they did not vote for Teamsters Local 918."

If true, this is, without doubt, the most vicious type of coercion I have yet encountered in my many years with the Board, especially in a plant manned so nearly completely with individuals recently immigrating to the United States. "Residency permits" are worth more than gold to these recent immigrants. So valuable are they, in fact, that some are afraid to carry them on the streets of New York for fear of losing them. Without them the immigrants are subject to deportation.

From the results it appears that some such threat was indeed made—and carried out. The Immigration Service raided the plant on June 22, 1972. Two employees had been deported by the time of the hearing and Maria Hernandez and family were scheduled for departure on November 8, after having been given a delay since October 19 so that she could testify on behalf of Employer here. The two deportees were strikers. Maria Hernandez had started as a striker but returned to work on April 24. No nonstrikers were deported.

Although General Counsel failed to cite the incident in his brief, he called Maria Hernandez as a witness in his case-in-chief. On this occasion on the witness stand, Hernandez testified that she went out on strike with the 918 supporters on March 29 but abandoned the strike on or about April 24 or 25 and returned to work. At the time of her return to work, she testified, "There was a little group there [i.e. in front of the factory], that was Gladys [?], Ada [Siebens ?], and I don't remember the other names of strikers" who she testified said to her, "For example, if 918 didn't win, they were going to send Immigration there because they knew we didn't have it [i.e., residency permits]."

Hernandez was the only witness called who testified that any striking employees—admittedly not in the presence of any 918 agent—made such a threat to her or in her presence. Hernandez further testified that Margareta Perez, Esparanza Perez, and Ettervina were present when this threat was made. Yet these three named individuals were either not called as witnesses or failed to corroborate Hernandez's testimony as to this threat.

I make this finding in the disjunctive solely because this record proves that many of the women in the plant were referred to in the record by two or more different names. Two women witnesses named Perez testified at the hearing, but neither corroborated this part of Hernandez's testimony. Nor did any other witness. Nor were any of these individuals proved to be available. In this state of the record, it is a fair inference that, if called, the testimony of these named individuals would have been unfavorable to General

[28] Employer's description of this cartoon as a "threat of violence" is certainly farfetched.

However there is no evidence here as how 169 got into the picture. The fact that 169 took over all the votes from 178 despite Boshnack's efforts on behalf of 178 on March 29 is cause for suspicion at least.

It appears that Employer secured the Regional Director's reversal of his dismissal of Objection 4 with the claim that 918 "distributed a marked facsimile" of the Board's official ballot. Yet Employer presented not one word of testimony in the instant case regarding any "distribution" of a marked ballot. Thus, it appears that the "distribution" claim was another objections based on what "might have happened." Therefore this change appears to be nothing more than a delaying tactic and a further abuse of the Board's processes.

Counsel and/or Employer. I draw this inference.

Thus Maria Hernandez is the sole witness who testified that any threat regarding the Immigration Service was made by any adherent of 918.

Logically it would seem that this vicious threat, if made by 918, would have caused Hernandez to remain on the picket line with the 918 adherents because Hernandez did not have a residency permit and was thus subject to deportation. Yet promptly after the threat was allegedly made, Hernandez deserted the picket line and returned to work despite the threat and allegedly because she needed money. In addition, although Hernandez testified that this threat caused her to be "afraid," she was invited to, and did attend the preelection meeting of 918 held on the evening of May 4.[29]

There is also a statment by Dennis in the record to the effect that on or about April 24 he was told by Manuel Perez that three girls in the factory were talking about this threat. Manuel Perez did not so testify. Nor were the three girls Manuel Perez was supposed to have overheard talking about this threat called to testify as witnesses. Thus Maria Hernandez still remains the only witness in this proceeding who testified to any threat regarding immigration made by any adherent of 918.

Yet, on June 22, the Immigration Service did raid the Tale-Lord plant looking for illegal immigrants with the result above noted.

Maria Hernandez had originally been scheduled for deportation on October 19, but that date was postponed by the Immigration Service when notified by Dennis that he had subpenaed Hernandez to testify on behalf of Employer at the instant hearing. According to Dennis, Hernandez was his "best witness" on the allegedly marked facsimile ballot.

There is in this record not one word of evidence that 918 ever approached the FBI or the Immigration Service.

But this record is replete with testimony that Employer was "in constant touch with FBI since the strike began."

At page 755 of the transcript Dennis testified as follows:

> But later on, 918 was doing things in the factory—well, we thought they were; I don't say that you were. You know, sabotaging work, causing disruptions, dissentions and I called up a government agency, the FBI. *I said on the 5th of April* when the locks were jammed with nails. I said that they were sabotaging the work. I said that they were threatening, you know, by extortion to get people to vote for them by saying that they would report them to Immigration if 918 didn't win the election, you know, these girls. If they would find this out, they'd get something on, you know, Jack Fecter whom I believe was being investigated by various agencies.
>
> It could have been that based on my statement, they contacted Immigration, and Immigration came down to the factory. [Emphasis supplied.]

However on page 759 of this same transcript Dennis testified as follows:

> I said that Local 918 was threatening—and I want to make on thing clear; *my conversations* with the—with anyone regarding Immigration in any way occurred *in early June or late May,* you know, well after the election of May 5. [Emphasis supplied.]

Teddy's testimony on this point is slightly different. He testified that he was not in touch with any representative of Immigration Service about this manner until "late May—early June." He also testified that the raid of June 22 occurred after the Immigration Service had notified them that the raid would be made.

It is noteworthy that, if Dennis' first above-quoted testimony can be believed, he was complaining to FBI as early as April 5 about the alleged threat by 918 to bring in the Immigration Service, although the only witness to whom that threat was supposedly made by adherents of 918 placed the date of the threat as about April 24–25. Employer's objections, dated May 10, contained the following item:

> —threatening to get five of these voters in trouble with various governmental agencies if they voted in the election or if they did not vote for Teamsters Local 918,—

In addition, Dennis acknowledged receipt of hearsay information from Manuel Perez about April 24 that three employees inside the plant had been talking about this alleged threat. In the light of his avowed purpose to help FBI "get something on" Jack Fecter, it is difficult to believe that persons "in constant contact" with FBI from the inception of the strike, or at least April 5 at the latest, would withhold this choice item from FBI until "late May or early June." The aforementioned conflicting testimony did not enhance the Boshnack credibility.

So now it appears obvious that the Employer was responsible for the lead given to the Immigration Service which resulted in the raid of June 22. This fact, however, does not establish necessarily the identity of the party responsible for the original threat, if made, to bring in the Immigration Service.

According to the only testimony of probative value, adherents of 918 made this alleged threat to bring in the Immigration Service to Maria Hernandez and three other named employees in the same conversation. According to some hearsay testimony here, three other named employees were overheard in the plant talking about this same alleged threat. Yet Maria Hernandez was the only one of the seven witnesses who testified to the alleged threat in the instant hearing. Furthermore, Dennis admitted to having interviewed all the employees at the plant, except Maria Aguilar, in July or October. But these interviews produced no other witness to testify to this threat. This causes one to pause before accepting Hernandez' testimony at face value. This pause is extended when one recalls her almost unbelievable testimony regarding the puncturing of tires by a seamstress

[29] As found heretofore, Hernandez testified to the allegedly marked facsimile official ballot used in the discussion of the voting procedures by Roman and Elizabeth Martinez. Hernandez' testimony regarding this event was at variance from that of other witnesses

with her bare hands and a nail. It is further extended by the very unfortunate circumstances Hernandez found herself awaiting deportation at the time she gave testimony. As Hernandez did not want to leave the United States and as her stay here had once before been extended through the efforts of Dennis, I fear that Hernandez testified as she did and as the Employer wanted her to in the forlorn hope of perhaps being able to secure further help from the same source for extending her stay in the United States. She was the unfortunate victim of circumstances beyond her control. Because of her unfortunate plight, I can not help but sympathize with her, but under all the circumstances I cannot credit her testimony.

This finding eliminates the only probative evidence in this record that 918 was in any way responsible for this alleged, and vicious, threat to bring in the Immigration Service which, in turn, along with the findings above made, eliminates Employer's Objection 5. Accordingly I must, and hereby do, dismiss Employer' Objection 5.

Accordingly, I find no merit in any of the Employer's objections to the election as made on May 10, 1972, or as subsequently added to by the Employer.

Conclusions of Law

1. Tale-Lord Manufacturing Company, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has not been proved to have committed any violation of Section 8(b)(1)(A).

4. The evidence fails to sustain Employer's Objections 1, 2, 3, 4, and 5 to the election of May 5, 1972, and also fails to sustain Employer's contention that an atmosphere of chaos and fear existed at the time of the election depriving the employees of their freedom to vote their choice in said election.

[Recommended Order omitted from publication.]