Springs Industries, Inc. Bath Fashions Division *and* Union of Needletrades, Industrial and Textile Employees, Local 2608, AFL–CIO. Cases 26–CA–17084, 26–CA–17360, 26–RC–7752, and 26–RD–954

September 13, 2000

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN TRUESDALE AND MEMBERS FOX, LIEBMAN AND HURTGEN

On April 8, 1997, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Charging Party filed a brief in opposition to the Respondent's exceptions. The Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt his recommended Order.

The Respondent excepts to the judge's recommendation that the election be set aside. The Respondent contends that the unlawful threats made by the Respondent prior to the election were insufficient to affect the results of the election and thus to warrant a new election. The judge found that, during the critical period before the election, three statements made by three different supervisors violated Section 8(a)(1) of the Act. The statements involved threats of job loss or plant closure. The record shows that the two employees threatened with job loss told no one about the statements. The third employee, Sandra Bauman, testified that Supervisor Gerrie Shavers told her that Shavers was afraid the plant would close down if the Union came back in. Bauman also testified that she told "everybody on break. Diane Thomas, probably Daisy." There is no evidence concerning how many other employees may have been on break with Bauman.

Unlike our dissenting colleague, we agree with the judge that the election should be set aside.[3] We emphasize that the instant case involves a threat of plant closure, arguably the most serious of all the "hallmark" violations of Section 8(a)(1) of the Act. Although the record shows that there was dissemination of this threat by employee Bauman to "[e]verbody on break," our dissenting colleague would not conclude that this conduct affected the results of the election because he would not presume further dissemination of this threat to other employees. Our colleague's approach is contrary to Board precedent.

The Board's traditional practice is to presume dissemination of at least the most serious threats, such as threats of plant closure, absent evidence to the contrary.[4] As the Board explained in *General Stencils, Inc*., 195 NLRB 1109, 1110 (1972), enf. denied 472 F.2d 170 (2d Cir. 1972), it is a reality of industrial life, long recognized by the Board, that a threat of plant closure, which necessarily carries with it serious consequences for all employees in the event of a union election victory, will, all but inevitably, be discussed among employees.[5] Our dissenting colleague correctly states that the question whether an election should be set aside requires an inquiry that does justice to the particular circumstances involved. If one of those circumstances is a threat of plant closure, however, the common sense presumption that such a threat will be disseminated helps, and does not hinder, such an inquiry.

Admittedly, the Board's precedent has not been entirely uniform on this issue. On the one hand, and consistent with *General Stencils*, supra, the Board has applied a presumption of dissemination of threats of plant closure.[6] See, e.g., *Coach & Equipment Sales Corp*., 228

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] In adopting the judge's finding that the Respondent unlawfully denied the Union access to its facility, we note that the Union requested such access in order to inspect a machine in connection with a grievance involving health and safety issues. In our view, there was not an adequate alternative to such personal inspection.

[3] The election was held on October 18, 1995, pursuant to a Decision and Direction of Election. The tally of ballots shows 219 for and 305 against the Petitioner, with 8 challenged ballots, an insufficient number to affect the results.

[4] The presumption that a threat of plant closure by an employer to one or more employees will be widely disseminated among the employees is a rebuttable presumption. The employer may rebut the presumption by establishing through record evidence either that the employees threatened did not tell other employees about the threat, or that those employees whom they told did not in turn tell any other employees about the threat.

We find it unnecessary to pass on the continuing validity of *Caron International*, 246 NLRB 1120 (1979), in which the Board found that a threat of discharge directed to a single employee in a unit of 850 spread out over five locations did not warrant invalidating the election, where there was no showing that the threat was disseminated to other employees. As stated above, the record in this case affirmatively shows that the two employees who were threatened with job loss told no other unit employees about the threats. Accordingly, even if we were to hold that a presumption of dissemination applied to such threats of discharge, the presumption would be rebutted in this case.

[5] See also *Montgomery Ward & Co.,* 232 NLRB 848 (1977); *Standard Knitting Mills*, 172 NLRB 1122 (1968).

[6] Contrary to our dissenting colleague's suggestion, the Board, in *General Stencils*, cited no record evidence of actual dissemination, but

NLRB 440 (1977) (election overturned because of one-on-one plant closure threats where union lost election 46–69 with one nondeterminative challenge). On the other hand, in *Kokomo Tube Co*., 280 NLRB 357 (1986), the Board found that a supervisor's threat of plant closure to an employee was insufficient to set aside an election in a unit of 75 to 80 employees with no evidence of dissemination.[7]

Here, the record establishes that Bauman discussed the threat of plant closure with "everybody on break." Consistent with the principle of *General Stencils*, it is reasonable to presume that this "hallmark" threat, which would severely and equally affect all employees in the plant, was discussed more widely among employees than just among those employees "on break."[8] In other words, we presume that those employees in turn told other employees about the threat. Further, the Employer introduced no evidence to rebut this presumption. Accordingly, in these circumstances, we find that the Employer's conduct was sufficient to affect the results of the election, and we affirm the judge's recommendation that the election be set aside.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Springs Industries, Inc., Bath Fashions Division, Nashville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

MEMBER HURTGEN, dissenting in part.

I am in accord with my colleagues, except with respect to their Direction of a Second Election. I note that the Union lost the election by 86 votes, with 8 challenged ballots. The administrative law judge recommended that the election be set aside, based on three statements made by three different low-level supervisors. Each statement was made to one employee. Two of the employees told no one about the statements. The third employee testified that she told "everybody on break. Diane Thomas, probably Daisy." There was no testimony concerning how many employees (if any), other than Thomas and "Daisy", were on break. Nor is there definitive testimony that "Daisy" was told.

Unlike my colleagues, I would not overrule *Kokomo Tube*[1] and I would not presume that threats of plant closure (or other threats) are disseminated. In my view, the question of whether an election should be set aside requires a fact-specific, case-by-case inquiry that does justice to the particular circumstances involved. If, as my colleagues assert, dissemination of the threat is "all but inevitabl[e]," one would reasonably expect that some employee(s) would testify to the dissemination. The fact that no one has done so in this case speaks more loudly than does a legal presumption. In sum, I would decide these cases based on facts, not on legal presumptions. And, I would follow the well-established principle that the burden of proof is on the objecting party. Finally, I note that a presumption of dissemination would also mean that, unless an employee were to affirmatively testify that he did *not* tell other employees about a threat, the Board will find that he did so.

I also note that the continued viability of *Kokomo Tube*, supra, has been acknowledged in recent Board decisions. See, e.g., *M. B. Consultants, Ltd.,* 328 NLRB 1089 (1999); *Antioch Rock & Ready Mix*, 327 NLRB 1091 (1999).[2] Thus, *Kokomo Tube*, which overruled the older cases relied on by the majority, is still good law (or at least was, until the issuance of the instant case). I therefore disagree with my colleagues' view that the precedent on this issue (i.e., nonpresumption of dissemination), is mixed.

Although my colleagues overrule *Kokomo Tube*, they do not pass on *Caron International,* 246 NLRB 1120 (1979). The result is that *Caron International* remains unreversed Board law. Thus, a threat to close is presumed to be disseminated, while a threat to discharge is not. There is no empirical basis for the distinction, and no empirical basis for the presumption regarding a threat to close. Rather, the Board has simply stated, ipse dixit, that it will impose a presumption, after having not done so for 14 years. Although an administrative agency can change its mind based on experience, it should not do so in the absence of such experience.[3]

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instead clearly relied on a presumption that the threat of plant closure was disseminated among unit employees. The Board in that case simply noted circumstantial evidence which supported the "general validity" of the presumption. *General Stencils*, supra, 195 NLRB at 1110. The Board made it clear that "while there may exist a situation in which a serious threat may, in fact, remain isolated, the burden of proving such an unlikely event rests with the Employer. Here that burden was not discharged." Id.

[7] Contrary to our dissenting colleague, *Kokomo Tube* did not even discuss, much less overrule, *General Stencils* or *Coach & Equipment Sales Corp*. Further, *M. B. Consultants, Ltd*., 328 NLRB 1089 (1999), and *Antioch Rock & Ready Mix*, 327 NLRB 1091 (1999), cited by the dissent, are distinguishable. Neither case involved a threat of closure. Moreover, in *Antioch Rock & Ready Mix*, the threats were made to employees in a different bargaining unit, and there was no evidence that the threats were known to any employee in the voting unit.

[8] We overrule *Kokomo Tube Co.* to the extent that it is inconsistent with our finding in this case that threats of plant closing are presumed to be disseminated among employees.

[1] 280 NLRB 357 (1986).

[2] I recognize that *M. B. Consultants* and *Antioch Rock* can be factually distinguished from the instant case. I cite those cases only because they cite *Kokomo*, thereby clearly indicating the continuing viability of that case.

[3] My colleagues' effort to distinguish *Caron* is unsuccessful. The effort boils down to the point that one employee was threatened in *Caron* and three employees were threatened here. The more salient point is

My colleagues rely on *General Stencils, Inc.*,[4] for the proposition that a threat of plant closure will be discussed among employees. However, the Board in *General Stencils* was not content to rest on an assumption that a threat to close would be discussed among employees. Rather, the Board went on to note *the record evidence* that supported that premise.[5] In the instant case, there is no such evidence. As discussed above, if it were so clear that the threat was discussed among employees, one would think that the General Counsel would have adduced record evidence of that fact.[6]

My colleagues also cite *Coach Equipment.*[7] That case was decided before *Kokomo* and thus has no validity after *Kokomo*. My colleagues contend that *Kokomo Tube* did not overrule that case. In *Kokomo Tube*, however, the Board explicitly declined to presume dissemination of a remark by a supervisor, who had said that he guaranteed the company would shut down if the union came in. This explicit holding overruled the case sub silentio.

Because I would not presume dissemination, I find that, in view of the margin of loss, this is clearly a case in which "the violations are such that it is virtually impossible to conclude that they could have affected the results of the election." *Westek Fabricating*, 293 NLRB 879 (1989).[8] Accordingly, I would not set aside the election.

Rosalind Thomas, Esq., for the General Counsel.
W. Melvin Haas, Esq. and *Jeffery L. Thompson, Esq*., of Macon, Georgia, for the Respondent.
Ira Katz, Esq., of New York, New York, and *Walter Szymanski,* of Nashville, Tennessee, for the Charging Party.

DECISION

ROBERT C. BATSON, Administrative Law Judge. This matter was heard in Nashville, Tennessee, on July 8, 9, and 10, 1996. Case 26–CA–17084 charge was filed on October 16 and amended on December 6, 1995. Case 26–CA–17360 charge was filed on March 25 and amended on May 2 and 17, 1996. A consolidated complaint issued on May 31, and was amended on July 8, 1996. On December 14, 1995, the Acting Regional Director issued a Supplemental Decision in Cases 26–RC–7752 and 26–RD–954. He directed consolidation with Case 26–CA–17084, for receipt of evidence regarding the Petitioner's objections to conduct of the October 18, 1995 election.

Respondent, the Charging Party, and the General Counsel were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent and the General Counsel filed briefs. On consideration of the entire record and briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admitted that at material times it has been a corporation with an office and place of business in Nashville, Tennessee, where it has been engaged in the manufacture and sale of bath linens and accessories; that during the 12-month period ending April 30, 1996, it sold and shipped from its facility goods valued in excess of $50,000 directly to points outside Tennessee; and, during the same 12-month period, it purchased and received at its facility goods valued in excess of $50,000 directly from points outside Tennessee. Respondent admitted that it has been engaged in commerce as defined in Section 2(2), (6), and (7) of the Act. In view of the full record I find that Respondent has been an employer engaged in commerce.

II. LABOR ORGANIZATION

Respondent admitted that the Charging Party (the Union) has been a labor organization at material times.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The 8(a)(1) Allegations

1. Threat of plant closure

a. October 1995 (Nick Ballard)

Sandra Bauman is employed by Respondent as a packer. Jody Snell is her supervisor. Nick Ballard is the distribution center manager. She testified that Respondent opposed the Union during a campaign leading to the October 18, 1995 election. Respondent held one-on-one and group meetings in opposition to the Union.

Bauman testified about a conversation she had with Nick Ballard around October 19, 1995. Ballard came to her and said that he was glad the Union did not come back in. Ballard said that if the Union came back in he was afraid for his job. He said that he shouldn't be saying this but, had the Union come back in that the Company had made plans to close the plant. Bauman told other employees about that conversation.

Melvin Dewayne James has worked for Respondent for 12 years. He works in shipping under Supervisor Scott McKinley. James saw Nick Ballard talking with Sandra Bauman after the NLRB election. Later that evening Sandra Bauman told James that Ballard had told her that they were going to close the plant if the Union came back in. In a prehearing affidavit, James testified that he overheard Ballard tell employees that the plant would be closed. He admitted at the hearing that he did not actually hear Ballard say that.

Nick Ballard was called by Respondent. He is the distribution center manager at Respondent's Nashville facility. Ballard testified that he did not recall having a conversation with Sandra Ballard the day after the election. He denied that he told Bauman that if the Union came back in he was afraid for his job. He denied that he threatened to move the plant.

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that there is no presumption in *Caron*, and my colleagues impose a presumption here.

[4] 195 NLRB 1109, 1110 (1972).

[5] Supra at 1110.

[6] My colleagues say that the Board in *General Stencils* noted the "general validity" of the supposition that employees will likely discuss threats to close. The complete quote is that "the general validity of the supposition *is attested by the record here*." (Emphasis added.) As suggested by the quote, I would look to record facts rather than simply a general supposition.

[7] *Coach & Equipment Sales Corp.,* 228 NLRB 440 (1977).

[8] Although I do not necessarily subscribe to the "virtually impossible" standard, I find that, in the instant case, even that stringent standard is satisfied.

Credibility Determinations

I credit the testimony of Sandra Bauman. I found her to be a straightforward candid witness under both direct and cross-examination. I make my findings on the basis of her demeanor and the full record. Bauman is currently employed by Respondent where she has worked on two occasions. Her most recent employment started in 1989. I also credit the testimony of Melvin James to the extent his testimony corroborates that of Bauman. I do not credit the testimony of Nick Ballard to the extent it conflicts with the credited testimony of Sandra Bauman. I make those findings in view of the full record and Ballard's demeanor.

b. September 2, 1995 (Gerrie Shavers)

Sandra Bauman talked with Supervisor Gerrie Shavers at work about September 2, 1995. It was uncommon for Shavers to be in Bauman's work area but she was there on occasion during the union campaign. Bauman was working around others but she doubted that anyone overheard her and Shavers. Shavers came to Bauman and said that Bauman was a good cheerleader for the Union. Shavers said that she could not understand why Bauman was not a good cheerleader for the Company. Shavers told Bauman that she was afraid the plant would close down if the Union came back in. She told Bauman about how good it was to work for Respondent. Bauman told other employees about her conversation with Shavers.

Geraldine Shaver testified that she is a first-line supervisor over approximately 65 employees. She is acquainted with Sandra Bauman. Shaver admitted that before the election she was "bugging" Bauman about her being such a good cheerleader for the Union. She admitted telling Bauman, "You know, I really would like to have you cheerleading for my team and I really don't understand why you're not." Bauman replied that she really didn't trust Springs. Shaver responded that she felt like Bauman should give them a chance.

Shaver denied that she ever told Bauman that she thought the plant would close if the Union came back in.

Credibility Determinations

As shown above I credit the testimony of Sandra Bauman. I do not credit the testimony of Gerrie Shavers to the extent it conflicts with the testimony of Bauman. I make that finding on the basis of the full record and in view of Shavers' demeanor. Shavers' testimony that she was out of her work area when she talked with Bauman supports Bauman's testimony as does Shavers testimony regarding much of their conversation.

c. October 20, 1995 (Mike Scott)

Brenda Watson has worked for Respondent for over 15 years. She works in the shower curtain department. Around 2 days after the October 18, 1995 election while Roger Hatfield was working on the heat seal machine, Mike Scott came in. Scott is over Roger Hatfield. Scott told Watson that he had not talked to her too much since the election has been going on because he knew he could not change her mind. Scott said that what he was about to say was just between friends. Scott said they had been meeting all week long with Jay Ward, Jim Wills, and Bill Mosier. Ward is the human resources manager. Wills is Respondent's president and Mosier is the vice president.

Scott told Watson that they had been meeting all week long and they had informed him that they had already made plans to close the plant down if the Union got in. They said they planned to make an example of the plant for the other plants. Watson told Kay Robinette and "Ski" about her conversation with Scott.

Mike Scott is a maintenance supervisor. Scott admitted talking to Brenda Watson regarding the Union. He recalled the conversation occurred 2 days after the October 18, 1996 election. Scott recalled that Watson said that Moser had lied to the employees. He replied that he didn't think that Moser lied because Moser had said to supervisors that if lying is "what it took to win this election, we won't win it." Scott testified that Watson asked him if they would shut the plant down if the election had gone the other way. Scott replied that if a strike had occurred we'd had a different option. He testified, "[W]e had the Calhoun plant and the Sartis plant and I said what do you think?"

Scott denied that he told Watson that they had been in a meeting with company officials and they said they would close the plant if the union came in. He denied telling her that if the Union came in the Company intended to set an example by closing the doors.

Mike Scott admitted that he did attend supervisory and management meetings during the union campaign.

Credibility Determinations

I credit the testimony of Brenda Watson in view of her demeanor. Watson has continued to work for Respondent for over 15 years. I do not credit the testimony of Mike Scott to the extent it conflicts with credited evidence. Scott admitted that he talked with Watson about the Union.

2. Threat to cut wages

a. April 10, 1996 (Jody Snell)

Sandra Bauman testified about a conversation she had with Supervisor Jody Snell, around April 10, 1996. Snell was going around telling employees whether they were going to get an adjustment in their pay. Snell came to Bauman and said that the packers would not get a pay adjustment. Baumen replied that she knew they were not going to get an adjustment. Snell said that is not to say that you will not get a pay increase. Snell said that Respondent gave raises every 15 months. Bauman disagreed and said it was every 18 months. She then said to Snell that the only way they (the employees) were going to get a pay increase is if we try to get the Union back in here and Respondent would give them a little money to shut them up. Shell said that if the Union came back in, these people that were getting these adjustments, that that money would be taken away from them. Snell then said that union plants make more money than nonunion plants.

Snell walked over to Marie Matthews' packing station. Bauman heard him say the same things to Matthews that he had said to her. Bauman walked over and said that it did not make sense that union plants make more money. Snell said let me put it this way, "If the Union comes back in here, the Plant is going to close down."

Joseph Snell is the supervisor over approximately 51 packers, staplers, and pickers. He admitted that he had conversations with employees on April 11, 1996, but denied that he told Sandra Bauman that the wage adjustments would be taken away if the Union came back in.

Credibility Determinations

I fully credit the testimony of Sandra Bauman. In view of his demeanor and the full record I do not credit the testimony of Jody Snell to the extent it conflicts with the credited evidence. Snell admitted that he did talk to employees including Sandra Bauman, on April 11, 1996.

3. Threat of loss of jobs

a. October 19, 1995 (Nick Ballard)

As shown above, Sandra Bauman testified about a conversation she had with Nick Ballard around October 19, 1995. Ballard came to her and said that he was glad the Union did not come back in. Ballard said that he was afraid that if the Union came back in he was afraid for his job. Ballard also told Bauman that he shouldn't be saying this but, had the Union come back in that the Company had made plans to close the plant.

Nick Ballard testified that he did not recall having a conversation with Sandra Ballard the day after the election. He denied that he told Bauman that if the Union came back in he was afraid for his job.

Credibility Determinations

I credit the testimony of Sandra Bauman and do not credit the conflicting testimony of Nick Ballard.

b. October 1, 1995 (Fred Hibdon)

Graple Sue Henson testified that she worked in the fast sewing rug department. Her supervisor was Charlie Kemble. She served as shop steward for the Union. Around the first of October 1995, Henson had a conversation with Fred who was a management supervisor, rug sewing, the dye house, and warehouse. The conversation was in his office at the plant. Henson was in the office to present grievances from two employees. Fred told Henson that he would get the grievances signed and back to her the next week. As she was leaving his office Fred asked her how strong she thought the Union was. Henson replied that the Union was strong. Fred said that Henson knew him and that if the Union came back in that either he or Henson might not have a job. Fred asked Henson why she didn't come over to their side. She replied that it was too late for that. During her cross-examination Henson admitted that in her prehearing affidavit she testified that Fred told her that if the Union comes back in and "they decide to move the plant, we're not going to have a job."

Freddy Hibdon is the manufacturing manager in rugs. He has over 150 employees. He recalled talking with Sue Henson about grievances before the election. Henson was the union steward. She came in and told him that was her first occasion to present a grievance. Hibdon responded that all that was new to all them. Hibdon denied that he told Henson that if the Union came back in that he was afraid he might not have a job. He denied saying that if the Union came back in the plant would close.

Credibility Determinations

Graple Sue Henson appeared to testify truthfully. She is currently employed by Respondent where she has worked for 25 years. I was impressed with her demeanor. I do not credit the testimony of Freddy Hibdon to the extent it conflicts with credited evidence. I was not as impressed with Hibdon's demeanor as that of Henson.

c. October 13, 1995 (Freddie Ellis)

I find that the record failed to prove that Respondent engaged in unfair labor practices as alleged in this instance. There was no evidence in the record regarding comments by Freddie Ellis.

d. October 17, 1995 (Joyce Hicks)

Ellen Kondan has worked for Respondent since April 1994. She is a tustan operator. She talked with Supervisor Joyce Hicks about the Union on several occasions. On the night before the NLRB election Hicks came over to Kondan's work station and told Kondan "to vote no because she was too old to be looking for a job some place else." About an hour after that conversation Kondan talked with Nick Ballard. Ballard told her that the plant would not close if the Union came in.

Joyce Hicks testified that she is the supervisor over distribution and shipping. She did not recall any specific conversation with Ellen Kondan during the 1995 union campaign. Hicks denied telling Kondan that she was too old to look for another job. She denied that she talked to any employees about the Union other than to just say that she would appreciate it if they would vote no.

Credibility Determinations

I find that Ellen Kondan was a candid witness. In view of her demeanor I credit her testimony in full. Kondan admitted that when she asked Nick Ballard, he told her that the plant would not close if the Union came in. Kondan is currently employed by Respondent. I do not credit the testimony of Joyce Hicks to the extent it conflicts with credited evidence.

4. Conclusions

a. Threats of plant closure

Sandra Bauman proved that Distribution Center Manager Nick Ballard talked to her on the day after the October 18, 1995 election. Ballard told Bauman that he was afraid that if the Union came back in he was afraid for his job. Ballard told Bauman that Respondent had made plans to close the plant if the Union came back in. Bauman's testimony illustrates that this was not merely an exchange of opinions. Ballard, a high-ranking official, was one of many Respondent officials and supervisors that informed employees of the danger of plant closure. I find that evidence shows that Respondent engaged in activity in violation of Section 8(a)(1) of the Act. Threats of plant closure are hallmark violations and are among the most flagrant of unfair labor practices (*Somerset Welding & Steel, Inc*., 304 NLRB 32, 33 (1991), remanded 987 F.2d 777 (D.C. Cir. 1993), supplemented by 314 NLRB 829 (1994).

The credited testimony of Sandra Bauman also proved that Gerrie Shavers, a supervisor, threatened employee Bauman around September 2, 1995, that she was afraid the plant would close down if the Union came back in. That constitutes a violation of Section 8(a)(1) of the Act.

Brenda Watson credibly testified that Supervisor Mike Scott talked with her 2 days after the October 18, 1995 election. Scott told Watson that he had been in meetings all week and that Respondent had already made plans to close the plant if the Union came in. Scott said Respondent planned to make an example of the plant. I find that constitutes conduct in violation of Section 8(a)(1) of the Act.

b. Threats of loss of jobs

Sandra Bauman credibly testified that Distribution Center Manager Nick Ballard talked to her on the day after the October 18, 1995 election. Ballard told Bauman that he was afraid that if the Union came back in he was afraid for his job. As shown above Ballard told Bauman that Respondent had made plans to close the plant if the Union came back in. I find that evidence shows that Respondent engaged in activity in violation of Section 8(a)(1) of the Act.

The credited testimony of Graple Sue Henson proved that around October 1, 1995, a management supervisor threatened her that if the Union came back in that either he or Henson might not have a job. That supervisor was identified in the record as Freddy Hibdon. Hibdon was admitted to be the rug department manager. That constitutes a violation of Section 8(a)(1) of the Act.

I find that there was no evidence showing that Respondent engaged in alleged unfair labor practices regarding comments by Freddie Ellis.

I find on the basis of the credited record that Supervisor Joyce Hicks talked to employee Ellen Konday on October 17, 1995. Hicks told Kondan that Kondan should vote against the Union because Hicks was too old to be looking for another job. That constitutes a threat of loss of jobs in violation of Section 8(a)(1) of the Act.

c. Threats to cut wages

As shown above, I credit the testimony of Sandra Bauman which proved that Supervisor Jody Snell told her around April 10, 1996, that if the Union came back in pay adjustments would be taken away. That constitutes additional activity in violation of Section 8(a)(1) of the Act.

5. The 8(a)(3) allegations

The October 5, 1995 discharge of Larry Long

Larry Long worked for Respondent from 1988 until 1995. He was an A cap operator. His supervisor was Bill Johnson.

While working for Respondent, Long served as union president and shop steward. His discharge occurred approximately 2 weeks before the NLRB conducted an election at Respondent's facility on October 18, 1995.

Long missed work the Sunday night before his termination because of illness. He could not phone in to a supervisor because there is no supervisor on duty during that time. He phoned his Supervisor Bill Johnson, the following morning around 7 a.m. He explained to Johnson that he was sick at the public clinic and would be out of work for a couple of days. Johnson told Long to be sure and bring in a doctor's statement.

Larry Long returned to work the following Wednesday night October 4, 1995, on his regular shift. At the plant gate he was stopped by the guard. The guard told Long that he could not allow him to come in that night and that Long should return the next day and see Bill Johnson and Plant Manager Danny Sharp.

Long returned the next morning and met with Sharp and Johnson in Sharp's office. They told Long that his doctor's excuse was untimely because it was dated from October 2 until October 4, and that Long had not called in 2 days in a row. Long replied that he had phoned in Monday morning regarding Sunday night and Monday. Sharp and Johnson told Long they would get back with him later that evening. That afternoon Johnson phoned Long and told Long that he was terminated.

The General Counsel moved into evidence Long's doctor's statement and his medical bills. Long testified that he gave the originals of those documents to Respondent. Long received a termination notice in the mail. That notice shows that Long was terminated because "absent two consecutive work days with no report."

Long testified that the procedure for reporting absences before his termination required employees to phone in and report absences to their supervisor. If the employee was to be out more than 1 day he or she must report at least 1 day out of 2 days absence. If an employee missed 2 days without phoning in at all, the employee could be terminated. Long testified there was a progressive disciplinary system that included verbal warnings, written warnings, suspension without pay, and termination. The collective-bargaining agreement includes a grievance procedure in articles VI and VII. On cross-examination Long admitted that the collective-bargaining agreement at article X F reads, is "absent two consecutive working days without notifying the Company, or, receiving prior permission from his supervisor unless prevented from giving notice due to the employee's medical condition."

Long testified on direct examination that he had no absentee problems before his termination. He had missed some days and he did receive a written warning for being absent 1 day in February 1995. Under cross-examination Long was shown several personnel action reports including one dated February 9, 1989, for not calling in until 1:30 a.m. on February 8. He testified that he did not recall receiving that warning. Long was also shown warnings concerning absenteeism and tardiness issued to him on February 15, March 29, June 29, and October 12, 1989, September 29, 1990, January 2, March 14, May 28, July 31, 1991, and April 26, 1994.

Bill Johnson testified that he is a production supervisor. According to Johnson, Larry Long was discharged because he failed to report in for 2 consecutive days of absence. Long failed to show up for work on Sunday, October 1, 1995. Johnson was phoned by someone at approximately 8:30 p.m. on Monday, October 2, 1996. The person identified himself and told Johnson that Long was in the walk-in clinic, that Long had an elevated temperature and he was going to keep Long at the clinic until he brought the temperature down. Johnson replied on the phone that it was company policy to have "documentation that they were indeed there and in order to excuse his absence for that Sunday night, he needed to make sure he got documentation to bring back to me." The caller replied that he would inform Long.

On cross-examination Long recalled that the walk-in clinic caller told him that Long was sick and that was the reason Long had not worked the night before. He testified that he notified Danny Sharp of his call from the clinic.

Johnson heard nothing further on Monday, on Tuesday, or during the day on Wednesday. On Wednesday, October 4, Johnson filled out papers for Long's discharge. He notified security to stop Long if he came in that evening and not to allow Long on the premises. Johnson learned the following day that Long tried to report for work on Wednesday night but that he was stopped by security.

Johnson testified that Long came in on Thursday, October 5. He and Plant Manager Danny Sharp met with Long. Johnson testified about that meeting:

> Mr. Sharp basically led the conversation. He, he started out by trying to determine, talking with Larry trying to determine, you know, the reason for the absence, why he had not called in and Mr. Long was asked the question number one, why he did not call in, and basically we were told that he just could not function. He had been sick and could not function, could not call. At that point, we asked him if there was not someone else that could have called in for him, if his wife could not have called in and he said that he and his wife were having some problems and I remember Mr. Sharp mentioning to him that, you know, if you don't want to tell us what the problems were, that's fine but we do, we do need to know why you were absent or if you could have called and as the—as we continued talking with him, I, I finally asked Larry, I said "Larry, basically what you've told us is to this point, you know, you've had three days, you could have called in Monday, you could have called in Tuesday, you could have called in Wednesday and you have not called. Do you not feel like that one of you could have called us or someone could have called us, notified us, let us know what was going on." He said "yes, we could have called."

Johnson testified that they discussed the company policy regarding call in for absences. Long gave them two documents from the walk-in clinic. Johnson testified that Respondent received no notice that Long would be absent on the nights of October 2 and 3. He testified that he discharged one other employee for not reporting in. That involved Lorene Jenkins in June 1995. Jenkins failed to report in even though she missed 2 consecutive days of work. Johnson testified that he did not recall whether Jenkins brought in a doctor's excuse.

Shower Curtain Plant Manager Danny Sharp confirmed that Larry Long was terminated for failing to call in and being absent for 2 consecutive days. Sharp corroborated Johnson's testimony regarding their meeting with Larry Long.

Sharp testified that after he and Johnson talked with Larry Long, he forwarded the documentation to human resources. Director of Human Resources Jay Ward phoned Sharp and pointed out that even though Johnson had received a phone call from the clinic before 9 a.m. on Monday, the clinic documents showed that Larry Long did not have an appointment at the clinic until 12:49 p.m. (see GC Exh. 4).

Manager of Human Resources Jay Ward testified that he was notified on October 4 (Wednesday) that Larry Long had missed 2 consecutive days without notice to Respondent. He had been notified about the call on Monday regarding Long at the walk-in clinic.

On October 5, Ward was contacted and told that Sharp and Johnson had met with Larry Long and that Long had said to them that he was unable to phone in due to sickness. Long had presented some documentation from the Centra Care Clinic. Ward testified that he evaluated the information he had received from Sharp and Johnson and information from Centra Clinic. He determined that the Monday phone call regarding Long at the walk-in clinic did not equate with the actual visit to the clinic at 12:49 p.m. and that he did not see any reason why Long should have been unable to give notice of his absences. On that basis Ward decided to discharge Long for violation of the policy of 2 days absent with no report.

Jay Ward identified for evidence a list of 33 employees that have been discharged for failure to report in for 2 days absence since March 3, 1994. Seventeen of those were discharged in 1994. Eleven were discharged in 1995 and five were discharged in 1996 through March 5. Ward testified that the Company may make exceptions to their 2-day without report rule but that he is unaware of their granting any exceptions since he has been with the Company.

6. Findings

a. Credibility

As shown above, there were conflicts between Larry Long's testimony and the record showing that he received several warnings for tardiness and absenteeism. Long admitted that he recalled some of those incidents including a 3-day suspension.

Long testified that he phoned his supervisor on the Monday morning after his first night's absence at about 7 a.m. He testified that he told Supervisor Bill Johnson that he was sick and at the clinic. Long recalled that he finally saw the doctor around 11 a.m., maybe 12 noon. Long testified that although he was at the clinic when he phoned, he did not have an appointment. Long's medical bill shows for October 2, 1995, "appointment time: 12:49 p, take-back time: 1:30p, check-out time: 2:35p." (see GC Exhs. 3 and 4). I find that the documents that Long received from the clinic (and which he gave to Respondent) conflict with Long's testimony as to the time he arrived at the clinic. He testified that he phoned Bill Johnson from the clinic around 7 a.m. However, the bill from the Centra Clinic shows that he had an appointment at 12:49 p.m. Long did not explain if he waited at the clinic from 7 a.m. to 12:49 p.m. Moreover, after Long's testimony Supervisor Bill Johnson testified that he received a call from someone purportedly from the clinic that morning, saying that Long was at the clinic and would remain there until his fever subsided. No evidence was offered in rebuttal to explain whether a call was actually made on Long's behalf or to explain why someone at the clinic could report on Long's medical condition before his 12:49 p.m. appointment.

Larry Long testified that he had not been disciplined pursuant to a progressive disciplinary procedure before his discharge. He testified that he had no previous problems with failing to report absences or calling in. During cross-examination he testified that he had no prior written or verbal warnings as far as absenteeism except for a written warning in February 1995, when he was absent for 1 day to get married. Subsequently, while on cross-examination, Long was shown several warnings that were contained in his personnel file. He testified that he did not recall several of those warnings. However, notations dated February 15, 1989, and October 12, 1995, that the supervisor had told Long to improve his attendance or tardiness were signed by Larry Long. Under cross-examination Long recalled receiving warnings for attendance or tardiness dated March 29, 1989, July 23, 1990, February 14, 1991, and a 3-day suspension dated March 14, 1991. I find that Long's testimony as shown above, includes several serious inconsistencies and conflicts.

In view of the above evidence I am unable to credit Long's testimony to the extent it conflicts with credited evidence.

Bill Johnson also had some difficulty with his testimony. For example he testified that he did not recommend Long's discharge. However, he admitted that he completed a personnel form and that he checked discharge. On the basis of their demeanor, and the full record I find that I am unable to fully credit the testimony of either Larry Long or Bill Johnson.

b. Conclusion

As to the alleged violation of Section 8(a)(1) and (3) by discharging Larry Long because of his union activities, I shall first examine whether the General Counsel proved that Respondent acted out of union animus in suspending and discharging Long. *Manno Electric, Inc*., 321 NLRB 278 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

> . . . in order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish (1) that the alleged discriminatees engaged in union activities; (2) that the employer had knowledge of such; (3) that the employer's actions were motivated by union animus; and (4) that the discharges had the effect of encouraging or discouraging membership in a labor organization. *Electromedics, Inc.,* 299 NLRB 928, 937, affirmed 947 F.2d 953 (10th Cir. 1991).

The record evidence did show that Larry Long had engaged in union activity and that Respondent was aware of that activity. It is not in dispute that he was discharged approximately 2 weeks before the NLRB election. The record showed Respondent's antiunion animus by illustrating that Respondent engaged in several actions in violation of Section 8(a)(1) of the Act.

However, there is a dispute as to whether Respondent's discharge of Long was motivated by its antiunion animus.

Moreover, there is a question as to whether the record proved that Respondent would have discharged Long in the absence of his union activities.

In view of my credibility findings, I am convinced that the record shows that Larry Long missed work on Sunday, October 1, 1995, and on the following two scheduled work shifts. Testimony by Bill Johnson, which I credit as an admission, shows that someone phoned Johnson at work on the morning of Monday, October 2, 1994, and reported that Larry Long was at a walk-in clinic with a fever and that he would remain until the fever was controlled. Nothing was said to the effect that Long would miss work on Monday or Tuesday nights.

Long admitted that the rule in the collective-bargaining agreement providing for loss of seniority for absence for 2 consecutive working days without notifying Respondent, was the rule that was applicable in his situation.

The record proved that Respondent has a policy of discharging employees that missed 2 consecutive workdays without notice. Since March 1994, Respondent has applied that policy in discharging 33 employees. The evidence failed to prove that Respondent has ever made an exception to that policy. Neither the General Counsel nor the Union offered any evidence to show that Respondent has not consistently enforced its two consecutive absences policy.

The General Counsel argued that Long was not in violation of the provisions of Respondent's attendance control procedure which call for immediate discharge. That procedure was effective October 1, 1994. However, I note in agreement with Respondent, that the attendance control procedure does not set out a procedure for dealing with failure of notification of absences. At section II,G of the attendance control procedure, there is a statement that failure to notify of absence is an infraction. However, the procedure does not include a statement as to what will occur when there is a failure to give notice of absences.

On the other hand the collective-bargaining agreement between Respondent and the Union does specify at article X, section 4(f) that seniority shall be lost when an employee is "absent two consecutive working days without notifying the Company or receiving prior permission from his supervisor, unless prevented from giving notice due to the employee's medical condition." There was no evidence showing that Respondent ceased to apply the terms of the collective-bargaining agreement upon the agreements October 1, 1995 expiration.

In fact Respondent showed that it continued to apply the above provisions of the collective-bargaining agreement to employee absences of 2 consecutive days without notice through at least, early 1996. There was no showing that Respondent deviated from that policy at any material time.

Larry Long admitted on cross-examination that he was not physically unable to give notice to Respondent during the October 1 through 4, 1995 period.

In view of the above credited evidence I find that the General Counsel failed to prove that Respondent was motivated by antiunion animus in discharging Larry Long. *Manno Electric, Inc*., supra; *Electromedics, Inc.*, 299 NLRB 928, 937 (1990), affirmed 947 F.2d 953 (10th Cir. 1991). Moreover, I find that Respondent proved that it would have discharged Long in the absence of his union activity. *Wright Line*, supra.

c. The November 30, 1995 refusal to hire Olivia Clemons

Olivia Clemons testified that she applied for work with Respondent in late November 1995. She completed and turned in a written application at Respondent's office. Clemons had previous work experience similar to that of Respondent. She worked at Farris Fashions in Arkansas for 4 years. Clemons was interviewed by Ted Green. Green asked Clemons about her experience and she told him that her work experience included just about every job at Respondent's plant.

Two days after her application Clemons was phoned by Ted Green. He sat up another interview. During the interview Green told Clemons there were three jobs available. She and Green went into the facility and met with the supervisor in the back shipping department. The supervisor asked Clemons which job she would like. Afterward Ted Green told Clemons that he would check her references then call her and have her come in and take a drug test.

The following week Ted Green phoned Clemons. He told her that he had called one of the listed employers on her application, Farris Fashions, and talked with a lady. Clemons asked if it was Marilyn and Green said yes. Green said that Marilyn wouldn't give him any information. Green said that Marilyn was a bitch and that he could see why a union would come in there. Green said that they needed something.

Clemons phoned Marilyn Burroughs at Farris but she refused to release any employment information on Clemons. Clemons then phoned Jack McKay, the union representative in Arkansas. McKay said that he had a file that would verify and give Respondent the prior employment information they needed and that he would fax that to Ted Green.

Clemons phoned Ted Green. She recalled that everything occurred within a 2-week time span. She asked Green if he had talked with Jack McKay. Green asked who McKay was and Clemons told him that McKay was her union representative. Green said, "I don't want anything to do with the Union. We don't support the Union." Clemons replied that "she was not in

the union but she noticed that Green's attitude had changed. Green sounded offensive. Green told her that if he could get the employment verification that was what he was looking for."

Clemons has not received an employment offer from Respondent.

Olivia Clemons was on the bargaining committee in Arkansas. She knew Jack McKay when he was the union representative of the Company she worked for in Arkansas.

Joyce Hicks is supervisor over distribution and shipping. Hicks agreed that her job duties include showing prospective applicants various jobs in the distribution center and explaining those jobs. Hicks explained that Ted Green did bring prospective applicants to her and she explained the jobs to those applicants. She did not recall Olivia Clemons. Hicks testified that she does not recall specific names of applicants because she takes a great many around.

Employment Specialists Ted Green testified. Green recalled interviewing Olivia Clemons. Green admitted that Respondent was hiring at the time Clemons was interviewed. Green testified that 155 to 160 people were interviewed around that time and 65 were actually hired. Green interviewed Olivia Clemons on November 20, 1995. He asked Joyce Hicks to show Clemons the various jobs upon completion of the interview. Afterward, Green explained to Clemons they would check her references and there would be a drug screen.

One reference, Cutting Edge, responded affirmatively to Green's inquiries that Clemons had worked there and had left because of an auto accident. Cutting Edge did not involve work similar to that of Respondent.

Green then called Farris Fashions. The woman he spoke with at Farris told him that "at this point and time, her legal counsel had advised her not to give out any information about any employees, past, present or anything like that."

Ted Green then phoned Olivia Clemons and told her that Farris Fashions refused to give out any information. Green asked Clemons if she would talk to someone at Farris Fashions that could give them a reference. Clemons said she had trouble with Mrs. Farris before but that she would do that. Clemons questioned Green on why he needed any reference other than Cutting Edge. Green testified that Clemons hung up on him before the end of their conversation.

Green testified that a gentleman called him and said that he was the international representative for Farris Fashions and he was calling to verify the employment of Olivia Clemons. Green replied that was fine but he needed some one from management at Farris Fashions to call and verify Clemons' employment. Green phoned Clemons and confirmed that the union representative had called but he told her that he needed someone from Farris' management to verify her employment. Clemons questioned Green as to whether he really knew what he was doing and she again hung up on him.

Green recommended that Clemons not be hired because of her attitude. He based that on her rudeness to him during the two phone conversations. Green denied that the Union or union activities had anything to do with his recommendation against the hiring of Clemons.

7. Findings

a. Credibility

To a substantial degree there are few conflicts in the testimony of Olivia Clemons and Ted Green. Both agree that Farris Fashions refused to release any information regarding Clemons' former employment. They also agree that the union representative phoned Green and verified Clemons' employment with Farris. However, Green insisted that he needed confirmation from a Farris management official.

As to their conflicts, I was more impressed with the demeanor of Ted Green. He appeared to testify candidly. I credit his testimony and do not credit conflicting testimony of Olivia Clemons.

Moreover, it is undisputed that Green insisted that Respondent expressed that it needed verification from Farris that Clemons had worked there. Farris was the only employer listed by Clemons where she performed work similar to that she would have performed for Respondent. Clemons admitted that information was not released by Farris. It is also undisputed that Green refused to accept the union representative's verification of Clemons employment at Farris.

I credit the disputed testimony of Ted Green showing that Clemons was rude in their two phone conversations regarding the refusal of Farris to supply employment information. I credit Green in his denial that he told Clemons that he didn't want anything to do with the Union and that he said that Respondent did not support the Union.

b. Conclusions

As to the alleged violation of Section 8(a)(1) and (3) by refusing to hire Olivia Clemons because of her union activities, I shall first examine whether the General Counsel proved that Respondent acted out of union animus in refusing to hire Clemons. *Manno Electric, Inc*., 321 NLRB 278 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

There is no dispute but Respondent learned through an international representative that Clemons had contacts with the Union.

There is a dispute as to whether Respondent was motivated by its antiunion animus in its refusal to hire Clemons and there is a dispute as to whether Respondent would have refused to hire Clemons in the absence of any union connection.

The credited record showed that Ted Green interviewed Olivia Clemons. He told Clemons that Respondent would check her references. There is no dispute but that the only reference given by Clemons that included work similar to what was planned by Respondent, was Farris Fashions. There is no dispute but that Farris Fashions told Ted Green they would not release any records.

Thereafter, Green phoned Clemons and told her of the problem with confirming her work with Farris Fashions. Despite two phone calls to Clemons, Green was unsuccessful in getting confirmation of Clemons' employment from Farris Fashions.

I have credited the testimony of Ted Green showing that Clemons was rude in those two phone conversations. Green was requesting that Clemons have a former employer release information on Clemons' former employment. As shown above, that was the only work experience shown by Clemons which was similar to the work she would have performed for Respondent.

Clemons was unsuccessful in her efforts to have someone at Farris release her employment information.

The record showed and I find that Respondent refused to hire Olivia Clemons because of her attitude as demonstrated in phone conversations with Ted Green. Clemons was uncooperative in assisting Green to receive information regarding her former employment. I find that was the grounds on which Respondent relied in refusing to hire Clemons.

Even if I had not credited the testimony of Ted Green, the record shows without dispute that Respondent never did receive confirmation of Clemons prior employment from Farris Fashions. There was no showing that Respondent has ever extended an employment offer under similar circumstances.

I find that the record failed to prove that Respondent was motivated by antiunion animus in refusing to hire Clemons and that Respondent proved that it would have refused to hire Clemons in the absence of her union connections. *Manno Electric, Inc*., supra; *Wright Line*, supra; (1982); *Electromedics, Inc.*, 299 NLRB 928, 937 (1990), affirmed 947 F.2d 953 (10th Cir. 1991).

8. The 8(a)(5) allegations

a. Denial of requested information

The complaint alleged that at material times the following described bargaining unit constituted an appropriate unit within the meaning of Section 9(b) of the Act:

> Included: All production and maintenance employees, shipping, receiving and distribution department employees, plant clerical employees employed at Respondent's Bath Fashions Division facility located at Cockrill Bend Industrial Road, Nashville, Tennessee;
>
> Excluded: All temporary employees, office clerical employees, professional and technical employees, guards and supervisors as defined in the Act.

Respondent admitted that the Union was certified as the exclusive collective-bargaining representative of the employees in the unit on August 24, 1994. The parties stipulated that at all times material between September 24, 1993, and October 2, 1995, the Union was the exclusive collective-bargaining representative of the unit employees and that the Union was representative of the employees with respect to grievances which were filed during the life of the contract but were not resolved until after withdrawal of recognition. The collective-bargaining contract was in effective from May 30, 1994, until October 1, 1995. Respondent stipulated that it had an obligation to bargain over those grievances.

After employees filed a petition in Case 26–RD–954 before the termination of the collective-bargaining contract, Respondent withdrew recognition by an August 3, 1995 letter. It notified the Union that the withdrawal was effective on October 2, 1995 (i.e., the day after the collective-bargaining contract expired).

On August 29, 1995, a grievance was filed and is identified herein as grievance 145. The grievance relates to alleged health problems among some named stapler employees.

On August 30, 1995, a grievance was filed on behalf of the Union and Joann Austin. This is identified as grievance 148. The grievance reads:

> Joann Austin was suppose to have been caught sleeping on the job, she was taking medication prescribed by doctor, the grievance is having some one work all day long pending deciding what discipline to administer.

Grievance 199 was filed by Sue Henson complaining of alleged health problems created by pulling heavy rugs through machines. Grievance 199 was received by Respondent on September 8, 1995.

The parties met to discuss resolution of grievances before the contract expired. The grievances were eventually resolved in May 1996. The General Counsel alleged that during that period before the grievances were resolved Respondent refused to supply the Union with names of witnesses necessary for the Union to process grievances on behalf of employees and that Respondent delayed in furnishing information requested on the OSHA log.

Walter Szymanski is a Union International representative. He was assigned to work in support of Respondent's unit employees. Szymanski wrote the Respondent on February 17, 1996, and requested documents relevant to some 25 grievances including grievances 145 and 148.

Respondent manager of human resources replied to Szymanski on March 6, 1996: He wrote:

> Your request for a copy of the OSHA 200 for 1995 has no relationship to the sought remedy in grievance 025-0895-145. The grievants and the Union's remedy is for the Company to create a new job, [sic["to get a permanent crate pusher." This bares no relationship to the OSHA 200. Also, in this same grievance, you request access to our facility. As we have previously advised, the Union no longer represents our associates and we see no reason to grant any Union representative access to our property.
>
> You also requested information concerning grievance 330-0895-148. Karlos Bruton was issued a final written warning for being asleep. This warning was issued April 11, 1995. Again, the *Union has no right to a copy of management's notes.*

On March 19, 1996, Szymanski wrote Respondent again and asked for the following:

> In preparation for our April 3 Third-Step grievance meeting, please provide the Union with the following information:
>
> Grievance No. 162 & 163/95—Local 2608
>
> 1. Copy of all Company Plant Safety Rules and Regulations which in any way apply to the operators and/or operations of two motors and/or lift trucks.
>
> Grievance No. 199/95—Rug Sewers
>
> 1. Copy of the OSHA 200 log for calendar year 1995.

Szymanski testified there were several grievances to be discussed on April 3, 1996, that dealt with health and safety issues. He testified that Respondent refused to respond to his January 17 requests for names of witnesses on the various grievances and for access. Respondent supplied the requested OSHA 200 log approximately 3 months after March 19, 1996. Szymanski admitted on cross-examination that the Austin grievance has been settled.

Respondent's human resources manager wrote Szymanski on March 20, 1996. (See GC Exh. 11.) Respondent refused to supply a substantial portion of the documentation requested by the Union. Respondent denied the Union access to the property on the grounds that the Union no longer represented Respon-

dent's associates and that access was not needed for the Union to determine whether to pursue the grievances.

Manager of Human Resources Jay Ward testified that grievance 145 has been completed through the grievance procedure and that the Union has not filed for arbitration. The time for filing for arbitration has expired.

As to grievance 148, Ward testified that grievance has been resolved. Grievance 199 is complete and the time for filing for arbitration has expired.

Ward testified that he provided the Union with the requested OSHA log at a step-3 meeting in early May 1996. He testified that he denied the Union's request for access to the plant regarding grievances 145 and 199 because at the time of the request the Union no longer represented Respondent's employees. Also from March through September 1995, the Union had representatives in the shop constantly and they should have had time to investigate the grievances during those visits.

b. Conclusions

The record evidence shows that Respondent has never provided the Union access to its facilities pursuant to the Union's request. Respondent has never provided the Union with requested names of witnesses. Respondent eventually provided the Union with its requested OSHA 200 log but the log was provided 3 months after the Union's request.

Respondent had an obligation to provide the Union with information relevant to grievances being processed by the Union. *Howard University*, 290 NLRB 1006, 1007 (1988). Respondent does not dispute that it had a duty to negotiate regarding grievances that were filed before the contract expired. *Nolde Bros. v. Bakery Workers Local 358*, 430 U.S. 243 (1977); *Litton Business Systems v. NLRB*, 501 U.S. 190 (1991); *Union Switch & Signal, Inc*., 316 NLRB 1025 (1995).

Even though the collective-bargaining agreement expired before the relevant grievances were processed to conclusion, all were filed before the contract expired on October 1, 1995. That contract included grievance-arbitration provisions at article VI. I am persuaded that access to Respondent's facilities for the purpose of investigating circumstances involved in the grievances; documentation of witnesses to the grievances; and OSHA 200 log, were all relevant to grievances 145, 148, or 199. Respondent's refusal to provide those matters in a timely manner constitutes a violation of Section 8(a)(1) and (5) of the Act. *Audio Engineering, Inc*., 302 NLRB 942 (1991); *Fairmont Hotel*, 304 NLRB 746 (1991); *Transport of New Jersey*, 233 NLRB 694 (1977).

9. Objections

Case 26–RD–954 petition's was withdrawn. The Union filed the petition in Case 26–RC–7752 on August 24, 1995. During an October 18, 1995 NLRB conducted election the Union received 219 votes, 305 votes were against the Union and there were eight challenged ballots. The Union filed objections. The Acting Regional Director issued a supplemental decision in which he found that the Union's Objections 9 and 11 raise material and substantial issues which may best be resolved on the basis of record testimony. Case 26–RC–7752 was consolidated with the instant unfair labor practice cases.

In its objection nine the Union alleged that Respondent unlawfully terminated Larry Long on October 5, 1995. As shown above, I found that Respondent did not unlawfully terminate Long. I find that Respondent did not thereby engage in objectionable conduct.

In Objection 11, the Union alleged that on or about October 10, 1995, Respondent threatened to close and move its Nashville facility.

As shown above regarding the unfair labor practice allegations, I find that Respondent engaged in activity in violation of sections of the Act. Some of those findings include determinations that the unfair labor practices occurred during the critical period. That period started when the Union filed the petition in Case 26–RC–17360 on August 24, 1995, and ended when the election was held on October 18, 1995.

The credited testimony of Sandra Bauman proved that Gerrie Shavers, a supervisor, threatened employee Bauman around September 2, 1995, that she was afraid the plant would close down if the Union came back in. That constitutes objectionable conduct as well as a violation of Section 8(a)(1) of the Act. The credited testimony of Graple Sue Henson proved that around October 1, 1995, Rug Department Manager Freddy Hibdon threatened her that if the Union came back in that either he or Henson might not have a job. That constitutes objectionable conduct and a violation of Section 8(a)(1) of the Act. Supervisor Joyce Hicks talked to employee Ellen Konday on October 17, 1995. Hicks told Kondan that Kondan should vote against the Union because Hicks was too old to be looking for another job. That constitutes a threat of loss of jobs in violation of Section 8(a)(1) of the Act and is objectionable conduct.

An employer's preelection communication to its employees must not contain a threat of reprisal or force or promise of benefit. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969); *Long-Airdox Co*., 277 NLRB 1157 (1985); *Dominion Engineered Textiles*, 314 NLRB 571 (1994). My findings demonstrate that the election should be set aside because of Respondent's ojbectionable conduct.

I recommend that Case 26–RC–7752 be remanded to the Regional Director for appropriate action.

CONCLUSIONS OF LAW

1. Springs Industries Inc., Bath Fashions Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Union of Needletrades, Industrial, and Textile Employees, Local 2608, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by threatening its employees with plant closure, loss of pay increases, and loss of jobs has engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent by failing and refusing to supply the Union with requested access to the plant and documentation has engaged in conduct violative of Section 8(a)(1) and (5) of the Act,

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

THE REMEDY

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

On these finding of fact and conclusions of law and on the entire record, I issue the following recommended. [1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is ordered that Respondent, Springs Industries Inc., Bath Fashions Division, Nashville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees that it may close its facility if the employees select the Union as their collective-bargaining representative.

(b) Threatening its employees that they may lose their jobs if the Union is selected as their bargaining representative.

(c) Threatening its employees that they may have wage adjustments taken away if the Union is selected as their bargaining representative.

(d) By failing and refusing to bargain collectively with Union of Needletrades, Industrial and Textile Employees, Local 2608, AFL–CIO, CLC as the exclusive collective–bargaining representative of all employees of Respondent represented by the Union, by failing and refusing to supply the Union with documents; with access to the plant for investigation of grievances and OSHA 200 log, in a timely manner when requested by the Union and which were relevant to grievances being processed by the Union.

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

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

(a) Within 14 days after service by the Region, post at its facility in Nashville, Tennessee, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 8, 1995.

(b) Within 21 days after service by the Region, file with the Regional Director, Region 26, a sworn certification of a responsible official on a from provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C. April 8, 1997.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a Judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to bargain collectively with Union of Needletrades, Industrial, and Textile Employees, Local 2608, AFL–CIO, CLC as the exclusive collective-bargaining representative of Respondent's employees in the following described bargaining unit by failing and refusing to supply relevant documentation requested by the Union and by refusing to permit the Union access to the plant to investigate properly filed grievances:

> Included: All production and maintenance employees, shipping, receiving and distribution department employees, plant clerical employees employed at Respondent's Bath Fashions Division facility located at Cockrill Bend Industrial Road, Nashville, Tennessee;
>
> Excluded: All temporary employees, office clerical employees, professional and technical employees, guards and supervisors as defined in the Act.

WE WILL NOT threaten our employees with plant closure if they select the Union as their bargaining representative.

WE WILL NOT threaten our employees that their wages will be cut if they select the Union as their bargaining representative.

WE WILL NOT threaten our employees with loss of jobs if they select the Union as their bargaining representative.

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

SPRINGS INDUSTRIES INC., BATH FASHIONS DIVISION