Washington Beef Producers, Inc. *and* United Food and Commercial Workers Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO. Cases 19-CA-12276, 19-CA-12296, 19-CA-12454, 19-CA-12760, 19-CA-12916, 19-RC-9686, and 19-RC-9835

September 30, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 12, 1982, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed a "Motion To Strike Respondent's Exceptions and Brief" and a supporting brief, the General Counsel filed an answering brief, Respondent filed a "Motion to Partially Strike General Counsel's Answering Brief," and the General Counsel filed a response to Respondent's motion to strike.

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,[1] findings,[2] and conclusions[3] of the Administrative Law Judge, as modified herein,[4] and to adopt his recommended Order, as modified herein.[5]

AMENDED CONCLUSIONS OF LAW

We substitute the following for Conclusion of Law 13 of the Administrative Law Judge's Decision:

"13. By discriminatorily discharging or constructively discharging employees Peter Nunez, Manuel

[1] As the record, exceptions, and brief adequately present, in our opinion, the issues and positions of the parties, Respondent's request for oral argument is hereby denied.

We have carefully considered Respondent's argument that the Administrative Law Judge's conduct of the hearing, primarily by his granting of numerous amendments to the complaint, several of which Respondent contends were barred by Sec. 10(b) of the Act, violated its right to procedural due process. We find that the amendments allowed were not barred by Sec. 10(b) and that their granting did not, individually or collectively, violate Respondent's due process rights.

We hereby deny the General Counsel's "Motion To Strike Respondent's Exceptions and Brief." As the General Counsel withdrew in its response to Respondent's motion to strike the sentence which served as the basis of Respondent's "Motion to Partially Strike General Counsel's Answering Brief," we find no need to pass on that motion of Respondent.

[2] We note that, in his recitation of the facts, the Administrative Law Judge made certain inadvertent factual errors. It was Robert Beebe, not John Edde, as the Administrative Law Judge stated, who "recalled further" in his testimony that it was Lozano whom he asked when he went to his weekly doctor appointment. Ed Cech did not, as the Administrative Law Judge stated, "later recall" in his testimony that the warnings which had been given to Dan Ramirez were oral.

In part of his fact recitation, the Administrative Law Judge "adopt[ed] many portions" of the General Counsel's post-hearing brief, citing Sec. 102.42 of the Board's Rules and Regulations. We note that Sec. 102.42 does not expressly permit such use of a party's brief and we do not encourage the wholesale substitution of a party's formulation of a major portion of the facts for the Administrative Law Judge's description of the facts in his own words. Nonetheless, we find that where—as here—the Administrative Law Judge has considered the record evidence carefully and has determined that one of the briefs submitted to him fully and accurately recites the relevant facts, he may rely in his Decision on that statement of the facts. See *Shield-Pacific, Ltd. and West Hawaii Concrete, Ltd.*, 245 NLRB 409, 410, fn. 2 (1979).

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We note that while Respondent General Manager Jim King's testimony does not contain what we would characterize, as did the Administrative Law Judge, as a "glaring inconsistency," King did state at one point in his testimony that he did not recall any talk about the Union at the personnel policy planning meeting he had with labor attorney Wesley Wilson in October 1979, and at a later point in his testimony stated that "the term Union . . . might have been" used. We have carefully examined the record and find no basis for reversing the Administrative Law Judge's findings as to King or any other witness.

Nor do we find merit in Respondent's contention that, because the Administrative Law Judge generally discredited Respondent's witnesses and credited the General Counsel's witnesses, his credibility resolutions are erroneous or attended by bias or prejudice. *N.L.R.B.* v. *Pittsburgh S.S. Company*, 337 U.S. 656 (1949).

We have also considered Respondent's contention that the Administrative Law Judge has evidenced bias and prejudice against Respondent, as manifested by his evidentiary rulings, factual inferences, and legal analysis. We have carefully considered the record and the attached Decision and reject these charges.

[3] The Administrative Law Judge inadvertently left out of his discussion of the Yakima plant 8(a)(3) conclusions the validity of the discharge of Jerry McCray. However, he did include three paragraphs on the facts of McCray's employment and constructive discharge, did specifically find that "all allegations of discriminatory discharge" at the Yakima plant "are amply supported with proof," and specifically did include Jerry McCray in the recommended Order as 1 of the 21 employees whom Respondent is to immediately and fully reinstate. Under these circumstances, we conclude that the Administrative Law Judge did find, and properly found, that McCray's constructive discharge was due to his support of the Union, was based on trumped-up claims of slow and poor quality work, and thus violated Sec. 8(a)(3) of the Act.

[4] By its letter of February 27, 1980, the Union requested Respondent to bargain with the Union over the wages, hours, and working conditions of the employees in the Toppenish unit. The Union never made a request to Respondent for bargaining concerning the Yakima unit members. Therefore, while we adopt the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(5) of the Act by refusing to bargain with respect to the Toppenish facility, we reverse his like conclusion as to the Yakima facility and find that Respondent did not violate Sec. 8(a)(5) with respect to the Yakima plant. We nonetheless adopt the Administrative Law Judge's order requiring Respondent to bargain collectively, upon request, with the Union from March 26, 1980, as to the Toppenish facility and from July 10, 1980, as to the Yakima facility, those dates respectively representing the dates that the Union achieved majority status after Respondent had commenced its unlawful course of conduct. *Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93 (1977).

Member Fanning would date the Yakima plant bargaining order prospectively rather than as of July 10, 1980. See his partial concurrence in *Peaker Run Coal Company*, 228 NLRB at 97.

[5] The Administrative Law Judge failed to require Respondent to expunge from its records any reference to the unlawful discharges, unlawful warnings, or other unlawful conduct found herein. We shall modify his recommended Order to include a direction that it expunge any such references from its records, including the personnel files of any of the 21 named discriminatees listed in Conclusion of Law 13.

Orozco, Ruben Perea, Robert Thomas, Donald Haywood, Eddie Thomas, Dan Ramirez, James O'Shaughnessy, Ron Gefroh, Barbara Schwartzman, Jerry McCray, Brandon Foran, Brent Lloyd, John Edde, George Perez, Roger Smith, Bonnie Ramos, Steven Dillard, Dean Leach, Robert Beebe, and Mike Davis during the period January 18 June 12, 1980, thereby discouraging membership in the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act."[6]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Washington Beef Producers, Inc., Toppenish, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(k) and reletter the subsequent paragraph accordingly:

"(k) Refusing to recognize and bargain with United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

> "All full-time and regular part-time production and maintenance employees employed by Respondent at its Toppenish, Washington plant, excluding office clerical employees, guards, and supervisors as defined in the Act."

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Expunge from its records any reference to the unlawful discharges or unlawful warnings or other discipline of the persons listed in paragraph 2(b) above, and notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for any future actions against them."

3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the elections in Cases 19-RC-9686 and 19-RC-9835 be, and the same hereby are, set aside, and that the petitions in Cases 19-RC-9686 and 19-RC-9835 be dismissed.

[6] We leave to the compliance stage of this case resolution of Respondent's argument that employees Peter Nunez and James O'Shaughnessy were each reinstated following their allegedly unlawful layoff or termination, noting that, as Respondent points out, their current employment status was not litigated in this hearing.

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrogate employees about their union activity.

WE WILL NOT authorize or encourage surveillance of union activities of employees.

WE WILL NOT create the impression of surveillance of union activities of employees.

WE WILL NOT discriminatorily enforce rules or discipline against employees because of their activity.

WE WILL NOT tell employees that we would not tolerate a union and would close our plants rather than accept unionization.

WE WILL NOT threaten to freeze benefits or, alternatively, unlawfully grant wage increases or benefits; however, this does not require us to withdraw any wage increases or other benefits already in effect.

WE WILL NOT coercively obtain false statements from employees and use them in abuse of legal process affecting United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO.

WE WILL NOT solicit grievances from employees or form an employee grievance committee in order to subvert a majority status of the Union.

WE WILL NOT tell employees that they do not have to honor subpenas issued by the National Labor Relations Board.

WE WILL NOT discriminatorily discharge or discriminatorily constructively discharge employees to discourage membership in the Union.

WE WILL NOT refuse to recognize and bargain with United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed

by us at our Toppenish, Washington plant, excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any other manner discourage membership in a labor organization, or interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL, upon request, bargain collectively with United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO, as the exclusive bargaining representative from on and after March 26, 1980, with respect to our Toppenish facility and from on and after July 10, 1980, with respect to our Yakima facility, of employees in the units described below with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed contract. The appropriate units are:

All full-time and regular part-time production and maintenance employees employed at our Toppenish, Washington plant and our Yakima, Washington plant, excluding office clerical employees, guards, and supervisors as defined in the Act. Professional employees are also excluded at the Yakima facility only.

WE WILL offer Peter Nunez, Manuel Orozco, Ruben Perea, Robert Thomas, Donald Haywood, Eddie Thomas, Dan Ramirez, James O'Shaughnessy, Ron Gefroh, Barbara Schwartzman, Jerry McCray, Brandon Foran, Brent Lloyd, John Edde, George Perez, Roger Smith, Bonnie Ramos, Steven Dillard, Dean Leach, Robert Beebe, and Mike Davis immediate and full reinstatement to their former positions of employment or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings each may have suffered due to the discrimination against them by paying them back wages plus interest.

WE WILL expunge from our records any reference to the unlawful discharges or unlawful warnings or other discipline of the persons listed in the paragraph immediately preceding this paragraph, and WE WILL notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future action against them.

WASHINGTON BEEF PRODUCERS, INC.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at Toppenish and Yakima, Washington, over a course of 22 days spanning December 2, 1980–February 11, 1981, inclusive. The proceeding was based on a certain second amended consolidated complaint, further amended in the course of hearing, and a certain other consolidated amended complaint which, too, was further amended during hearing. The representation cases were also consolidated with all unfair labor practice cases by a certain third order dated November 12, 1980, in consequence of which certain objections to elections that had been filed by Petitioner therein and certain issues relating to challenged ballots were directed to be heard in this proceeding.

The litigation essentially concerns organizing drives conducted at two employing facilities located respectively in Toppenish and Yakima separated by a distance of about 15 miles. The dates of the secret-ballot elections at Toppenish and Yakima were April 3 and July 17, 1980, respectively. Cases 19-CA-12276, 19-CA-12296, and 19-RC-9686 associate to the Toppenish facility, while Cases 19-CA-12454, 19-CA-12760, 19-CA-12916, and 19-RC-9835 associate to Yakima.

With respect to the Toppenish facility, the General Counsel alleges that Washington Beef Producers, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the Act by interrogating its employees regarding their union activities and sympathies as well as those of their fellow employees, creating the impression of surveillance of employees' union activities and meetings, impliedly threatening an employee with deportation in order to elicit a false unfair labor practice charge, threatening plant closure if employees chose union representation in a National Labor Relations Board election, promising benefits in order to induce employees to withhold their support of a labor organization, soliciting grievances and forming a grievance committee in order to discourage employees from supporting a labor organization, and discharging or constructively discharging employees because of their union activities and sympathies. As a matter of further pleading, the General Counsel alleges that Respondent violated Section 8(a)(5) of the Act and that its conduct has been of such serious and substantial character and effect as to warrant entry of a remedial order requiring it to recognize and bargain with United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO, herein called the Union, as exclusive collective-bargaining representative from February 27, 1980, onward of employees in the appropriately defined production and maintenance unit.

With respect to the Yakima facility, the General Counsel made largely parallel assertions, alleging here that

Respondent violated Section 8(a)(1) and (3) by soliciting grievances, giving employees the impression that their union activities were being kept under surveillance, promising additional benefits, interrogating employees about, and threatening them with, discharge because of their membership in and activities on behalf of the Union, threatening employees with plant closure if the Union was voted in, threatening employees with unspecified reprisals, with physical injury, or with discharge because of their membership in and activity on behalf of the Union, soliciting employees to spy on the union activities of others and with the promise of benefit for doing so and reporting back to Respondent, telling employees that to vote for the Union would result in discharge, giving pay raises, instituting a system of warnings, and setting up a "shop stewards" group to resolve employees' grievances, all in order to discourage employees from joining or supporting the Union, and discharging employees Dan Ramirez and James O'Shaughnessy because they reasonably refused to perform unsafe work, in addition to discharging, constructively or otherwise, 13 other employees during the period of May 8–June 12, 1980, inclusive, because they joined, supported, or assisted the Union, and/or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activity or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The General Counsel again further pleads an 8(a)(5) violation, and that Respondent's conduct overall warrants imposition of a comparable bargaining order effective from July 10, 1980.

Upon the entire record,[1] my observation of the witnesses, and consideration of post-hearing briefs,[2] I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. CASE BACKGROUND

Until late 1979 a beef slaughterhouse was operated at Toppenish by Flavorland Industries, a successor to earlier firms at this location. A beef processing plant, vacant as of late 1979, had once also been operated in Yakima by a company known as H & H, successor to what was earlier a Swift & Co. facility. At this point in time a business entity styled Mountain View Enterprises was owned in substantial part by both Van (Manville) Monson and Dick Van de Graaf. These principals had caused Mountain View to purchase the Yakima facility, and were engaged in remodeling with an eye to reactivating it for the slaughter of cattle and fabrication of their carcasses into meat products.

Flavorland ceased operations in October 1979. At the end its plant manager was Jim (James) King, and its production and maintenance employees were represented by a certain Local *529*, Amalgamated Meat Cutters and Butcher Workmen of North America.[3] Principals of Mountain View revamped their thinking, deciding that purchase of the Toppenish facility too would efficiently permit slaughter of cattle at Toppenish, where a feedlot and cattle pens adjoined, dovetailing with transport of carcasses to Yakima for fabrication and shipment of beef cuts. From this the creation of kill floor equipment at Yakima was suspended, and energies directed instead to preparing for physically separate, but coordinate, operations. Principals of Mountain View hired King to continue further startup planning, and Washington Beef was incorporated. The stock ownership of Washington Beef is split equally between Monson Cattle Company and Van de Graaf Ranches, entities in which the same Monson and Van de Graaf are dominant owners. Monson has a 62-percent interest in Monson Cattle Company, while Van de Graaf and his wife solely own the Ranches. The aforementioned "substantial" interest in Mountain View is a 25-percent share each, the balance also so owned equally but as separate property by one of Monson's sons and by Van de Graaf's wife, respectively. At times material to this case, Monson roamed both plants freely as a self-styled "interested party," while Van de Graaf held corporate office as president of Washington Beef. The picture is clear enough that these two individuals control Washington Beef, and it suffices to note passingly that through landowning and other arrangements either or both Monson and Van de Graaf are now, or were, engaged in cattle raising and feedlot operations as a prelude to fattened animals being killed for beef.

The emergent Washington Beef then employed King as general manager. He in turn chose a small supervisory cadre, empowering them to employ experienced key individuals in further preparation for resumption of beef processing. From these endeavors, the slaughterhouse at Toppenish reopened in prototypic fashion on November

[1] Certain errors in the transcript are hereby noted and corrected.

[2] Following two extensions of time, the final due date for filing of briefs was May 5, 1981. Those of Respondent were transmitted on April 27, 1981, the date on which the General Counsel successfully sought the second extension. Respondent's brief respecting the Toppenish plant shows execution on April 24, 1981, while the brief respecting Yakima is not formally executed. Respondent opposed the second extension of time, one that was ultimately granted to add an additional 5 days to the allowed period for filing. On May 11, 1981, a reply brief relative to Toppenish was received from Respondent, and the General Counsel immediately filed a motion to have it stricken. Respondent then immediately filed its opposition to such motion, arguing essentially that it had dutifully prepared and submitted briefs on time and that the General Counsel's last-minute request, from which a "unilaterally" granted second extension resulted, gave unfair advantage.

Respondent's reply brief traverses various factual and legal points made in the General Counsel's Toppenish brief, and concludes with the statement that many other portions of the opponent's brief are also objected to but not as to "warrant an express reply." The reply brief raises many matters that could have been argued in the first instance, and I do not see any prejudice arising from considering the content. While this configuration of post-hearing proceedings is not desirable, nor should my resolution of the point in dispute have any precedential significance, the abiding question is one of fairness and thoroughness in litigation. It is in this sense that I allow the Toppenish reply brief, and herewith deny the General Counsel's motion to strike. See *Allis-Chalmers Corporation*, 234 NLRB 350 (1978).

With respect to Respondent's main brief for the Toppenish plant, I read l. 3 of p. 29 as saying "no effect" rather than "a effect."

[3] In June 1979, the Meat Cutters had merged with the Retail Clerks International Association to form the United Food and Commercial Workers International Union (UFCW). I refer to Local 529 by its historical affiliation to better reflect backdrop of the situation.

26, 1979, while Yakima came on line as a beef fabrication plant on January 14, 1980.[4] During November 1979, a meeting had occurred in Yakima as sought by Ron Kurvink, a former officer of Local 529. Attendees were Kurvink, UFCW International Representative Dick (Richard) Vaughn, King, and Van de Graaf. A bargaining relationship was sought for the work force imminently to be hired, with management inconclusively taking such request under advisement.[5]

II. CASE OUTLINE

By early January 1980, the Toppenish plant was functioning with a complement of about 75 employees. The most prominent supervisor under King was Darrell Turner, in charge of the kill floor where cattle were dressed out after slaughter. As with many other key personnel or rank-and-file employees, Turner had years of past employment with Flavorland (including its predecessors), and had last been in management there. Other supervisors included: Floyd Nelson in charge of rendering, Dennis Herman for the cooler, and Gary Hyatt over maintenance. After initial shakeout and training of inexperienced help, the Toppenish operation showed Lesley Knight at the cattle pens with other departmental labeling as by ascending numerical order in payroll coding of cleanup, offal packing, rendering, kill floor (where the bulk of employees were located), beef cooler (or loading dock), maintenance, and miscellaneous (to which the plant's laundry worker was attached). Turner was generally assisted in the training and assignment process by Oscar Ramon and Jack Brimmer, both initially classified as leadmen.

Overt organizing by the Union began at Toppenish very early in January 1980, when handbilling was done at the plant and several employees, John Lopez prominently among them, began soliciting authorization cards.[6] Vaughn, who was in charge of the campaign throughout, arranged a meeting in Yakima on Saturday, January 12, 1980, which was attended by about a dozen employees.[7] He quickly followed with another in Toppenish on January 15 and had about the same turnout. Card signing efforts continued throughout that winter into early spring, and this was sufficient to support a representation petition filed on February 29 from which the April election ensued. In the course of this, four employees were laid off and a fifth left work from what is contended were circumstances of constructive discharge, these five individuals constituting most alleged discriminatees of the Toppenish case. The Union campaigned up to the election and was obtaining further authorization cards as late as March 26. Respondent countered with literature and had meetings with employees on April 2, timed as not to breach the *Peerless Plywood* rule.[8] The election resulted in 26 votes for the Union, 32 against, and an initial total of 11 determinative challenges.

Circumstances at the Yakima fabricating plant are intrinsically less suited to outlining. Here the General Counsel asserts that practically all managerial policy affecting the work force was contrived and executed to cleverly rid Respondent of employees who were supporting, or might support, the Union. The contention is that such relentlessness permeated most ordinary facets of the work environment, including distorted task assignments, spuriously generated disciplinary actions, and manipulative pay rate changes. Nevertheless some framework existed, and it can fairly be noted that as with Toppenish a dominant figure was present to direct day-to-day operations. This was Ed Cech, an individual hired December 11, 1979, as fabrication production manager. His background includes many years of meat business experience, nationwide and in both processing and retail phases. The Yakima facility also utilized admitted supervisors in both cooler/shipping and receiving operations and for maintenance. Other than these, and exclusive of office, administrative, and sales personnel, Cech's heading of the primary beef fabricating function was aided by Sam Lozano, Duane Van Gorder, and Myron Smith as leadmen. Respondent's experience with high turnover after it commenced operations at Toppenish was repeated in Yakima, and the leadmen were frequently engaged in training new help. There were ordinarily at least 60 rank-and-file employees in the department at any given point in time. A particular group of individuals comprising alleged discriminatees is one resulting from discharges, or assertedly constructive discharges, occurring under various circumstances and over the period May 8–June 12. Departmental labels are less important as an understanding of the Yakima operation, it sufficing instead to note that the fabrication process involved cutting, trimming, boning, quality control inspection, and packaging among its chief work stations.

Vaughn had promptly added Yakima to his organizing efforts, and in this was aided by key employee supporters, including Ron Gefroh, Barbara Schwartzman, Jerry McCray, and two employees surnamed Ricard. The petition for this plant was filed on June 9, with the later ballot tally showing 26 votes for the Union, 39 against, and an initial total of 17 determinative challenges. As the election date of July 17 had neared, King and Assistant

[4] For whatever comparative value it might have, there are some similarities between this background and that found in *Great Plains Beef Company*, 241 NLRB 948 (1979), with respect to investment decisions, marketing projections, and the general business sequencing that was involved.

[5] In the operation of its facilities, Respondent annually sells and ships goods to customers located outside the State of Washington, and to customers within the State of Washington which themselves all meet a nonretail, other-than-indirect jurisdictional standard of the Board. The aggregate amount of such sales, whether to, without, or within Washington, is, as essentially admitted by the pleadings and as evident from the magnitude of operation, in excess of $50,000 annually. I therefore find that Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Further, as is admitted, I find the Union to be a labor organization within the meaning of Sec. 2(5).

[6] These cards plainly identified the UFCW and were headed "AUTHORIZATION FOR REPRESENTATION." The operative sentence above lines to be filled out read:

> I hereby authorize the United Food & Commercial Workers International Union, AFL-CIO-CLC, or its chartered Local Union(s) to represent me for the purpose of collective bargaining.

[7] All dates are in 1980 unless shown otherwise.

[8] *Peerless Plywood Company*, 107 NLRB 427 (1953). As with other happenings during the January–April period (and beyond), the General Counsel contends that Respondent acted unlawfully in practically all regards as respecting the effort to reunionize these employees. Particular conduct will appear in detail as the various formal allegations are treated.

Plant Manager Dick (Richard) Dotzler held a series of meetings with small groups of employees.

III. CREDIBILITY

The substantive issues of this case are basically factual, and how these fall in turn largely determines a disposition of the General Counsel's requests for bargaining orders. I view the characteristic of witness demeanor as significantly more prominent than usual in this case because it was often exhibited for both contemporaneous and reflective evaluation. This arose because of the many occasions on which important witnesses were recalled, once or multiplely, and, to a lesser extent, because the litigation bore definite emotional overtones. The repeated observation of witnesses heightened the confidence by which demeanor was assessed as an indicator of reliability, while certain animation in witnesses, or lack of it, influenced me in largely accepting the testimony of certain witnesses and largely rejecting the testimony of others. Such animation, or lack thereof, was in turn but one of the established aspects of demeanor evaluation, which include, going indivisibly to the judgmental role of piercing false witness, those of bearing, inflection, visible discomfort, hesitation, and general earnestness of expression. This is all noted as occurring under a general sequestration order that applied throughout the hearing.

What eventuated in even greater significance to the ultimate findings of fact were more concrete pointers to actualities of things, and I refer here to telling contradictions of record, and one whopping pratfall that contaminated a major phase of Respondent's evidence and demonstrated reckless disregard for truth on the part of key management personnel. These disclosures, coupled with demeanor evaluation almost totally favorable to witnesses for the General Counsel, caused me to believe that utterances, situations, and observations, whether fleeting or extended, and whether individually experienced or as a composite of group participation, were largely as such witnesses for the General Counsel recalled. On the pure matter of demeanor respecting the Toppenish branch of the case, I was particularly impressed with the seeming candor and accuracy of Robert Thomas and Donald Haywood, while among Yakima plant witnesses for the General Counsel Ron Gefroh, Barbara Schwartzman, and Alberto Tello stood out. Numerous other witnesses for the General Counsel presented in only slightly less impressive manner, and I reach credibility determinations with factors of bias and witness self-interest fully in mind.

As shall be detailed, the issue of Eddie Thomas' discharge, constituting him as the sixth and final alleged discriminatee at Toppenish, turns on whether or not he plainly failed to perform laundry work that would have commenced late in the afternoon of March 27. Respondent's version is that he had so agreed, yet inexplicably left work causing Nelson to perform the function that night and expend petty cash for commercial drying in the process. Nelson's testimony was its own undoing as the petty cash receipt, claimedly given by office bookkeeper Milton Holloway, was credibly repudiated.[9] From this a major unraveling began which threaded all the way to Yakima. Nelson and Turner had reciprocally supported each other in stating that Eddie Thomas had agreed to do laundry on the fateful afternoon. Nelson's blatant lie is a tarring of the deeply implicated Turner, whose demeanor in general easily inspires disbelief, and it is notable that King participated blandly in this revealing episode. Herman, the final key figure in Respondent's supervisory hierarchy at Toppenish, is himself woefully unconvincing, in consequence of which all salient evidence of Respondent is left more than suspect and King cannot be said to have rationally, or at least reasonably, believed the reports of his underlings.[10]

The failings that attached to King's testimony also permeate Respondent's defenses to allegations made respecting the Yakima operation. Here, too, it is better said that King could no more have honestly believed the representations and assurances of his subordinates than he could of accepting the prevarication foisted about by Turner, and to an extent differing only in quantity, not kind, by Nelson and Herman. The scene at Yakima was dominated by a heavy in more than the theatrical sense. This was the muscular, physically imposing Cech, whose brooding, rambling, evasive testimonial style left a record replete with his fanciful remarks, larded at times by improvised and utterly false-sounding elaboration. I view this individual as capable of most shameful and stubborn disassociation from the truth, and reject the entire theme and tenor of his worthless testimony.

In consequence of these assessments of credibility, I proceed to a recitation of operative facts that fully reflects, unless contrarily shown by express modification, that the oral and documentary evidence of the General Counsel has been relied upon. There will, naturally, be instances of connective fact which were better known to Respondent's witnesses, or those which are essentially uncontroversial.

IV. UNFAIR LABOR PRACTICES

A. *Toppenish Plant*

1. Section 8(a)(1)

a. *Interrogation*

Joseph Peterson credibly testified that on January 14 he was questioned by Herman about who was in attendance at the previous Saturday's union meeting in Yakima. Peterson named several individuals, including Robert

[9] The witness demeanor of Holloway was of nonpareil qualities, given unflinchingly under pressured circumstances and with an undaunted pathos that defied disbelief in any regard.

[10] The reader of this record would find King's testimony orderly, precise, and sophisticated. I recognize this, plus that he did not sully himself with individualized dynamics as opposed to group comment or occasional background involvement. These circumstances make demeanor factors relatively insignificant in the case of King, and here I instead believe that overall probabilities of this extraordinary fact situation make his testimony self-servingly unpersuasive, coupled with one glaring inconsistency in which he first denied and then agreed that when operations were imminent in late 1979 he had addressed the matter of whether to anticipatorily deal with unwanted unionization of employees.

Thomas and Donald Haywood, as being there and that authorization cards were signed. This questioning was related to the previous week's inquiry by Herman, a social friend of Peterson's, as to whether the latter would attend the reportedly scheduled meeting. Herman later quizzed both Robert Vasquez and Manuel Torrez about what they knew of how the Union's organizers functioned. Turner had also questioned Haywood about this meeting shortly after it had occurred, and elicited a noncommittal answer from him about whether he favored the Union. Turner extended his questioning to Cruz Garza, who was confronted about card passing before being told it was only allowed on his own time. Shortly thereafter Haywood was approached at work by Monson, who asked whether Haywood knew about any union activities which the Company would like to take care of. Monson also questioned young Tom Breaum about whether authorization cards were being signed, and on two other occasions Monson pressed Breaum for information on the subject. Monson exhibited the same inquisitiveness to Knight, once directly asking her if the Union was being talked around. Rick Van de Graaf, son of Dick and then running the feedlot while later to become plant superintendent, questioned James Shepard during March about contact by the Union, card signing, and how an entire crew was likely to vote. A carryover was shown on election day when Turner inveigled Gaylen Bussard to name Dennis Welch as one who had voted for the Union.

b. *Threats of plant closing*

At a January meeting of employees King pointedly remarked about certain meat processing plants that had closed down in the past after, or in connection with, unions. He repeated these remarks during a dinner meeting held for employees at a Grange hall during March, notwithstanding that labor counsel Wesley Wilson was also present. Finally, Robert Thomas, Peter Nunez, and Albert Molano each credibly testified that at the meeting of April 2 King also warned employees that the plant might shut down because of the Union. I discredit the denials of threatening a plant closure as advanced by various witnesses of Respondent's management hierarchy and as attemptedly corroborated by rank-and-file employee Joe (Daniel) Nyce, whom I find to be a singularly evasive unreliable witness. The threat was also denied by Knight, and while demeanor factors in her case are closer I believe she simply failed to hear the remarks that registered so emphatically with several forthright witnesses of the General Counsel.

c. *Freezing of benefits*

Employees Lopez, Terry Jensen, Torrez, and Robert Thomas all credibly testified that during one of the periodic employee meetings held by King in late winter, or during that at the Grange hall, he told employees that even if Respondent lost the expected secret-ballot election they would tie up its results for one or more years and cause wages and benefits to be frozen for the period.

d. *Promise or grant of benefits*

Respondent introduced an insurance plan for employees promptly after the advent of organizing efforts in early January, and on April 4 announced the grant of Good Friday, April 4, as a paid holiday. This had not appeared in Respondent's original list of intended holidays for its work force, and the explanation that it was done to coincide with downtime of a marketing partner lacks credence.

An extensively testified about meeting was held on or about March 15 after a spokesman for the dozen or more former Flavorland employees let their growing disgruntlement be known. King conducted this meeting and a wide range of topics were covered, primarily those relating to why so much extra work was burdening this group. King made note of the subjects, which included longer coffeebreaks, pay raises for themselves and deserving new employees, plus a crackdown on poor attendance in the kill floor department. A particular request of experienced "header" Angel Landeros was that discharged employee Nunez be returned to employment because he had worked well and fit in. King took all matters under advisement, however, a 25-cent-per-hour pay raise was promptly granted this group and other less significant adjustments were made.

e. *Elicitation of false charge*

On April 2 Vaughn appeared at the home of employee Alejo Gonzalez, and solicited support for the Union over the course of a 1-hour stay in which Gonzalez' wife Lila was also present. Gonzalez was on night-shift cleanup at that time under Rick Van de Graaf. He had previously worked at the feedlot of Van de Graaf ranching interests in Sunnyside, some 20 miles east of Toppenish. His native language is Spanish, and he had little fluency in English. Lila Gonzalez has an opposite pattern of fluency. Later at or about 11:30 p.m., husband and wife went to a phone booth and telephoned Dick Van de Graaf at his home. Lila Gonzalez, conversing as requested, by her husband, asked Dick Van de Graaf if it were true that the plant would close upon organizational success by the Union, and if so whether her husband could expect transfer back to Sunnyside in that event. Lila Gonzalez credibly testified that Dick Van de Graaf said the plant would close rather than accept unionization, and should it come out that Alejo Gonzalez had voted for this he would also be barred from again working at Sunnyside. The following Monday Dick Van de Graaf came to the Gonzalez home when only Lila was there, and displayed a paper for her husband to sign. It was a short statement to the effect that Vaughn had threatened to kill him should he not vote for the Union when the election came. Later in the day Dick Van de Graaf transported Alejo Gonzalez to his home and importuned further with the couple. They both resisted the idea of signing the paper, and Dick Van de Graaf finally changed the wording to be a claim of threatened "physical[ly] harm." They still refused Dick Van de Graaf's urgings as he became angrily upset over the course of this 45-minute stay. Dick Van de Graaf returned the next day, and spoke briefly again about the matter with Lila Gonzalez.

On the return to the plant after Dick Van de Graaf's second home visit on April 7, he had asked Alejo Gonzalez about the length of his stay to date in the United States (10 years), and whether he had immigration papers. In the days following, Rick Van de Graaf spoke several times with Alejo Gonzalez about signing the modified paper. These conversations occurred in the office to which Alejo Gonzalez was repeatedly called, and often with Dick Van de Graaf present. In the course of this a list of names was shown to Alejo Gonzalez, which he credibly testified was a basis of questioning about which employees on it may have voted for, or been in, the Union. Alejo Gonzalez parried all such questioning, particularly as it was focused on the various Hispanic members of the night shift. Finally, on April 11, Rick Van De Graaf called him in and with implications of whether his job was at stake prevailed on Alejo Gonzalez to sign what he did not consider to be true.[11] Rick Van de Graaf used this document to attempt the establishment of a basis for an 8(b)(1)(A) charge, filed against the Union on April 14 as Case 19-CB-3748, which was ultimately found unmeritorious.

f. *Dealings with subpoenaed employees*

This matter arose as an "eve-of-trial" amendment, and relates to discussions between Respondent's labor cocounsel, Gary Lofland, and certain employees under subpoena by the General Counsel. In late October the issuance of subpoenas was known openly, and during November Turner had obtained a show of hands among assembled employees as to who was subpoenaed, offering them consultation with a company attorney. However, it was not until November 24 that Peterson and Frank Vasquez were ushered into a plant office in use by Lofland, and in separate episodes discussion of the effect of their subpoenas ensued. The employees pressed for information as to their obligation, with Peterson testifying that he was told the paper was not actually mandatory, and Frank Vasquez recalling Lofland stating it not to be of standard character. Lofland testified about these interviews, saying that he explained the distinction between regular state subpoenas and those without self-enforcing characteristics as of NLRB. This led to a discussion of how judicial enforcement of the subpoena could compel attendance via a Federal marshal. Lofland expanded on his testimony by saying that he sought to enlighten the pawn-like posture of people so enmeshed, and that he voiced to them how the decision of whether or not to go was theirs.

g. *Conclusions*

The evidence shows unlawful interrogation of employees spanning the entire period of the Union's campaign.[12] Further, unlawful threats of plant closing and an earnings freeze were also made, while the timing of employee insurance benefits and the group pay raises to old Flavorland employees were acts having the tendency to interfere with employee rights of free choice. The experiences of Alejo Gonzalez constitute coercive threats of job loss and coercive obtaining of a false statement to be used as a tactical tool in labor-management skirmishing.[13] Lofland's conduct is such that the holding in *Bobs Motors, Incorporated*, 241 NLRB 1236 (1979), requires a finding that a violation of the Act occurred. There the statement, indistinguishable from admitted verbiage here, was that an inquiring employee was "free to suit himself" in deciding whether or not to honor the subpoena. Contrasting nonviolative conduct found in *Peat Manufacturing Company*, 251 NLRB 1117 (1980), was grounded in rationale that company counsel there had refrained from suggesting nonappearance at the hearing, and that the intent not to deter such was "obvious" from all the circumstances.

2. Section 8(a)(3)

a. *The January layoffs*

Nunez had commenced work at Toppenish in November 1979 as a head washer. He attended the Union's meeting on January 12, as well as that of the following week. He had previously signed an authorization card on December 8, 1979, and mailed it to the Union. Manuel Orozco had started the same time in the classification of second hindlegger. He also attended the first meeting, signed an authorization card for Vaughn while there, and passed out a dozen or so blank ones to fellow employees at the plant during the following week. Ruben Perea had been another head flusher from November 1979 onward, and was similarly in attendance on January 12 when he signed an authorization card. Robert Thomas was hired for the rendering department during December 1979. He had 17 years rendering experience in the facility with Flavorland and a predecessor. From this he was familiar with King, Nelson, Turner, and Herman. He attended the Union's January 12 meeting in Yakima, recalling that 15-20 people were present.[14] Robert Thomas also went to the Union's Toppenish meeting of January 15, but did not sign an authorization card until January 23.

[11] Russell Taylor, an offal department employee and former recreational chum of Rick Van de Graaf's, testified that he witnessed Alejo Gonzalez sign the paper. I reject Taylor's testimony on demeanor grounds, noting that he incorrectly recalled chronology at the time in terms of the Mt. St. Helens' volcanic eruption of May 18. Further, Taylor's disclaimer of King having threatened plant closure at employee meetings is so discounted that the weak, hesitant manner of testimony tends to suggest the very opposite as credibly described by several of the General Counsel's witnesses.

[12] Numerous questions, comments, or innuendos of Respondent's agents are pointed to by the General Counsel as independent or composite matters that amount to the creation of the impression of surveillance of union activities. The doctrine is often an elusive one, but here many verbalisms suffused into this type of unlawfulness. I therefore find merit to such an allegation.

[13] I am not satisfied that the cryptic reference to Gonzalez' alien (or at least immigration) status is actionable, nor that it would be particularly appropriate to blend it in with other violations found. For this reason that component of Toppenish complaint par. 20 is not further treated.

[14] Robert Thomas named Kurvink as conducting this meeting, with Vaughn present as his assistant. I have referred above to the overall campaign as one guided chiefly by Vaughn, and make this point only to note that persons other than Vaughn were instrumental at times, plus that perceptions of those touched by the experience could differ. It suffices to know that Vaughn was most deeply and consistently involved, aided as organizing tactics of the Union might dictate at later times by Representatives Michael McDavid, Sam Tillett, and James Millsap.

In mid-January Respondent determined to reduce its work force. The reasons given by King were that feedlots were low in cattle and employees were experiencing short workweeks as a result. He added that supervision was told to effectuate layoffs on January 18 in keeping with retrenchment concentrated among kill floor employees. In consequence of this Nunez, Orozco, Perea, and Robert Thomas were all informed of indefinite layoff, the first named being eventually hired back in March. A tabulation of daily kill totals showed a dropoff from 579 on January 18 to only 391 the next workday of January 21, and substantially lower figures than had been the case from then into February when 500 was first exceeded on February 5 and reached on nine more working days of that month.

b. *The constructive discharge*

Donald Haywood had run the feedlot for Flavorland over the last several years of its operations. Following their shutdown he was soon employed by Respondent to resume cattle feeding as needed to mesh with resumed slaughtering. After briefly doing this, he became cattle knocker for the plant in December 1979, and held this classification for an approximate 1-1/2 month period until January 21. He attended the two closely spaced meetings of the Union in January, and signed an authorization card at the first one where he outspokenly urged collective action by employees. On the morning of January 21 he was directed off his regular job and sent to the feedlot where Rick Van de Graaf soon appeared. Haywood was driven to a silage pit about one-half mile distant, where Rick Van de Graaf instructed him to move a 5–10 ton amount of rotten silage from where it was piled to a point several feet away. Haywood mulled over the situation after Rick Van de Graaf's departure, then promptly sought him out back at the plant to say that absent any better chores he would simply leave as he did.

The silage pit is a remote, rectangular area where cannery leavings are trucked to become cattle food. A concrete ramp, peaking about 20 feet, is where silage is dumped in a perpetual process of retention. Haywood credibly testified that about 75 percent of the pit area was full to a near 30-foot height. A remaining corner area was empty of silage, and used as an outloading area by trucks. This quarterly portion was also bounded by dirt dikes, and the accumulation of spoiled silage was found against a dike. Haywood added that ordinarily machine loading and disposal occurred to periodically rid the silage pit of such material. The version of Rick Van de Graaf, supported by Dick Van de Graaf, both of whom I discredit in this regard,[15] places the silage to be moved as high on the sloped concrete face of the unloading ramp, inaccessible to machinery and therefore appropriate to the manual labor requested of Haywood.

[15] Incredulousness respecting the Van de Graafs is heightened by noting their starkly contradictory estimates of earthen bank height as plainly depicted to them on G.C. Exh. 70.

c. *The Eddie Thomas discharge*

Eddie Thomas was employed as the laundryman when Toppenish operations commenced, and worked through Thursday, March 27. He had previously worked a short time at Flavorland under Nelson's supervision there. His duties for Respondent included washing of gloves, coats, and shrouds for both plants, plus certain cleaning of racks and trolleys near his own work station. Near the end of his employment, Albert Molano was designated to finish up leftover, undone laundry during the night shift. Eddie Thomas had signed an authorization card for Vaughn on January 8, and attended the organizational meeting held by the Union in Toppenish on January 15. He credibly testified that on March 27 Turner asked him late in the day to stay over for late arriving laundry from Yakima. Eddie Thomas responded that he was well along in winding up, and asked if he could cover extra laundry duties the next day. His recollection, corroborated on the point by Molano, was that Turner routinely agreed to this, upon which he soon punched out at 4:10 p.m. to go home. When coming in the next morning he learned from both Turner and King that he had been terminated for failure to stay over the night before. Eddie Thomas protested unavailingly that he must have misunderstood any instructions, for had it been an order to do so he would have stayed.

Respondent's version of the evening in question was that Eddie Thomas left without having done the final Yakima laundry as expected of him, necessitating Nelson to stay and do it with assistance from employee David Gamez. As emphasized above this version culminated in the advancing of a spurious petty cash receipt, and is otherwise contradicted by testimony of Molano and Gamez, the former of whom primarily engaged in performing the necessary laundry work throughout the evening of March 27. Gamez' less coherent testimony at least established that on an occasion several weeks later he once accompanied Nelson to a commercial laundry facility for special clothes drying, an event that Respondent has vacuously attempted to associate with this issue.

d. *Conclusions*

The identities of certain alleged discriminatees (other than Eddie Thomas) having been in attendance during the Union's organizing meeting of January 12 was effectively transmitted to Herman by Peterson. He named Robert Thomas and Haywood for certain, and may have added others. Further, employer knowledge of their leanings and a general propensity to snuff out union adherents is shown from the credible testimony of Eddie Thomas who was told by Nelson in November 1979 that only a certain percentage of former Flavorland employees would be hired because of their having been union members, from King's cryptic remark to Lopez about the imminent first meeting in January, from Nelson's admission that he knew of Haywood's attendance threat and his wish for a union, and from pressing interrogations from Turner and Monson. The frequency of penetration into employee facilities and work stations by agents such as Nelson and Monson makes more than likely that extensive solicitation of authorization cards by

Orozco become known or suspected. Joe (Daniel) Nyce, Respondent's own witness and an experienced kill floor butcher, readily told of how union supporters among the rank-and-file employees were identifiable by January. Moreover, the group discharge was made under circumstances which compels an inference of discriminatory motive. The four chosen for layoff were all attendees at one or more of the Union's kickoff meetings held only within the prior 7-day period, and such attrition as affected two other individuals at the time, Manuel Garcia and Taylor Chapman, was voluntary on their part. The entire matter of cattle flow into the slaughterhouse was uniquely within the control of Respondent's principals, with the actions of Monson already disclosing, and those of Dick Van de Graaf later to do the same, that they were assiduously opposed to union activities and would engage in unlawful conduct in the process. Thus, the whole explanation of a needful layoff of January 18 is undercut by an imperfect, self-serving attempt at justification, one that fails to explain why even at the time Robert Thomas, newly hired and well experienced, had been scheduled for overtime work, and why during the period of Nunez' layoff other new hires were made even as he was inquiring about prospects for recall. The Board historically looks to timing of allegedly retaliatory employer action, and here that factor, coupled with other circumstances, is fully indicative of discrimination against the adorning interest in establishing a collective-bargaining representative for employees. See *Heartland Food Warehouse, Division of Purity Supreme Supermarkets*, 256 NLRB 1108 (1981).

King stated that Haywood's assignment to the feedlot on January 21 was part of the same retrenchment. The credited evidence on the issue, however, shows a certain picturesque nonsense attaching to the spectre of this proud, capable individual being led, astonished, to the pungent scene. The work assignment was petty, unproductive, and insulting, all obviously calculated to bring a particular result. Haywood's leaving employment under the circumstances is identical to having been fired without mere color of good cause, and constitutes a constructive discharge of one who is known as an adherent of the abhorred strivings. Cf. *Crystal Princeton Refining Company*, 222 NLRB 1068 (1976). Respondent contends in the alternative that Section 10(b) of the Act applies to this phase of the case because no charge materialized about Haywood until he was named in an amendment to Case 19-CA-12276 filed on November 20. It is argued that the pertinent statute of limitations concept requiring a charge to be filed and served before the passage of 6 months from the actionable occurrence bars an unfair labor practice finding here. I agree with the General Counsel's countering argument that the Board's traditional rule embracing matters that are *related* to a timely filed charge for purposes of avoiding operation of Section 10(b) obtains here. Haywood's disturbance from his settled job function was in direct relation to four other cases of unlawfully discriminatory conduct, a configuration that could hardly better fit both the letter and spirit of this doctrine. *Sunrise Manor Nursing Home*, 199 NLRB 1120 (1972); *Stainless Steel Products, Incorporated*, 157 NL8B 232 (1966). See also *Hiatt General, Inc. d/b/a Hiatt Electric-Hiatt Plumbing, and Hiatt Electric, Inc.*, 257 NLRB 960 (1981). Cf. *Red Food Store*, 252 NLRB 116 (1980), and cases cited therein. *South East Coal Company*, 242 NLRB 547 (1979), and *N.L.R.B.* v. *California School of Professional Psychology*, 583 F.2d 1099 (9th Cir. 1978), cited by Respondent in support of its contention, are each factually distinguishable.

The events that surround Eddie Thomas' discharge are pivotal to this entire case. This is so because the action plainly exhibits Respondent's attempted cunning, and implicates King as a background participant in clumsily contrived efforts to rid his plant of union adherents. Eddie Thomas had initially been cautioned against supporting a union when being interviewed for the job by Nelson in November 1979. Further, Ralph Patterson testified uncontradictedly that on the very day of discharge Supervisor Gary Hyatt asked if Eddie Thomas was talking up the Union. This untoward antipathy, spanning all of Eddie Thomas' employment, a time in which he had been thrice increased in pay, coupled with a plainly unwarranted discharge just before the scheduled election, patently establishes a violation here as alleged.

3. Section 8(a)(5)

Based on the Stipulation for Certification Upon Consent Election in Case 19-RC-9686, a production and maintenance unit with customary exclusions was established. The General Counsel contends that the Union achieved majority support in this unit during the week ending March 29, and in this manner validated its earlier demand for recognition as made by letter dated February 27.[16] The payroll for that week ("run date[d]" April 1) totals 79 employees. The 3 employed in departments 69 and 71 are outside the bargaining unit, thus reducing this number to 76. Additionally, all individuals exclusive of David Gamez associated to department 67 are ineligible casual part-time employees and not within the bargaining unit. There are 9 in this group, yielding a working remainder of 67. Such was the actual number of bargaining unit employees for that workweek, but only through March 26 after which Rod Vetsch terminated his employment and, for that matter, Eddie Thomas was fired. It is appropriate to focus on the early portion of this workweek, at which time (March 24-26, inclusive) there were 35 valid cards signed among the 67 total employees. Thus, the Union enjoyed a majority at that point in time, based on evidence linking the following 35 individuals to a desire for representation by this labor organization:

Molano, Albert	Garcia, Richard C.
Shepard, James K.	Adams, Charles L.
Ceballos, Gorge R.	Esqueda, Juan
Gadley, Bruce R.[17]	Garza, Cruz, Jr.
Gonzalez, Juan P.	Garza, Jesse

[16] This document is in evidence as G.C. Exh. 4. Respondent declined the demand by return letter of that same date signed by labor counsel Wilson.

[17] I expressly discredit Gadley's recollection that Vaughn told him the sole purpose of signing a card would be to secure an election. Vaughn's highly impressive and persuasive testimony to the contrary is more than enough to overcome this isolated claim.

Hart, Harce L.	Jensen, Terry
Jones, Jesse P.	Landeros, Angel G.
Lopez, Juan (John)	Navejas, Alfredo, Jr.
Nunez, Pete G.	Pleasant, David Edward
Ramirez, Daniel	Suarez, David, Jr.
Tovar, Efrain	Vasquez, Frank L.
Vetsch, Rod	Bird, Richard M.
Brasker, William Lee	Chapman, Taylor C.
DeLeon, Felix	Garcia, Manuel, Jr.
Hadley, Kevin D.	Ortiz, Raymond E.
Ojeda, Raul	Peterson, H. Joseph
Vasquez, Robert S.	Stamper, Ralph C.
Thomas, Eddie	

Respondent called several witnesses for the purpose of establishing invalidating grounds as to cards that had been signed. Of the five persons so called, only Robert Vasquez, Manuel Garcia, and Jesse Jones are among the foregoing count. Robert Vasquez testified that Vaughn had solicited the authorization card at his home, telling him it would enable the Union itself to "go in Washington Beef" and have a free and valid election. Robert Vasquez expanded his testimony further by saying that he was told the only reason to sign was "to go in and have a free election." Robert Vasquez added that he read the card during his 15-minute long discussion with Vaughn, and was told in the process that they were "for representation." Manuel Garcia testified that he got his card at a group meeting where Vaughn said a certain percentage were needed to hold an election for the Union to come into the plant. Manuel Garcia had read the card before signing it. Jesse Jones testified that he signed his card in the plant locker room, not reading it too well in the process. Jones displayed only faint recollection of the circumstances, finally recalling that the person giving him the card had said "things would be better if the Union got in."

As chief solicitor of authorization cards, Vaughn testified that he plainly told all persons contacted that the card was intended for collective bargaining. I fully credit Vaughn's testimony, believing that he made no departures from the dogged process of accumulating cards based on persuasion about the Union's objectives. A comparable assessment also applies to organizer McDavid, who testified in forthright fashion. Contrarily, I discredit both Robert Vasquez and Manuel Garcia to the extent that their testimony remotely tends to establish that a "sole purpose" representation was made to them in the sense of undercutting pure phraseology of the cards. Cf. *Montgomery Ward & Co., Incorporated*, 253 NLRB 196 (1980).

In *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court approved Board law on determining the validity or invalidity of authorization cards, as set forth in *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (6th Cir. 1965), and reaffirmed in *Levi Strauss & Co.*, 172 NLRB 732 (1968). The Court described Board law in the following terms (395 U.S. at 584):

> Under the *Cumberland Shoe* doctrine, if the card itself is unambiguous (i.e., states on its face that the signer authorizes the Union to represent the employee for collective bargaining purposes and not to seek an election), it will be counted unless it is proved that the employee was told that the card was to be used *solely* for the purpose of obtaining an election.

With respect to employees who sign cards upon alleged misrepresentations as to their purpose, the Court said, "[E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature." (395 U.S. at 606.) The Court cautioned the Board not to apply the *Cumberland Shoe* rule mechanically, and quoted with approval the Board's language in *Levi Strauss, supra*, that "it is not the use or nonuse of certain key or 'magic' words that is controlling, but whether or not the totality of circumstances surrounding the card solicitation is such, as to add up to an assurance to the card signer that his card will be used for no purpose other than to help get an election." (395 U.S. at fn. 27.)

By this test the Union had a 55-percent showing of support within the appropriate unit as of March 26. This finding is supportive of allegations appearing in paragraph 33 of the second amended consolidated complaint respecting Toppenish, except for the point in time at which the majority was contended to have arisen.

B. *Yakima Plant*[18]

1. Supervisory status

a. *Facts*

Posted personnel policies at Respondent's Yakima plant provide, in part, that grievance and safety matters are to be taken up with "your forelady or foreman," persons who are also to be the source of approval for leaving the job during worktime. This document also refers employees to a "foreman" when seeking job safety information or reporting injury.

Employees Bonnie Ramos and Brent Lloyd each credibly testified that Lozano instructed them in job tasks. Lloyd and John Edde recalled that Van Gorder gave out orders, while Robert Beebe testified that from among the bosses he was to recognize Van Gorder most commonly

[18] Pursuant to Sec. 102.42 of the Board's Rules and Regulations, I adopt many portions of the General Counsel's post-hearing brief for Cases 19-CA-12454, 19-CA-12760, and 19-CA-12916 in setting forth facts as based on probative evidence and conclusions to be drawn therefrom. This particular brief is a lucid, well-organized expression of "proposed findings and conclusions," which I deem as equivalent to findingss of fact and conclusions of law. See *Shield-Pacific, Ltd. and West Hawaii Concrete, Ltd.*, 245 NLRB 409 (1979); *Plastic Film Products Corp.*, 232 NLRB 722 (1977).

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changed him from job to job and Lozano did this too on occasion. Edde recalled further that it was Lozano excusing him for needed medical treatment, and he was aware of Lozano excusing others. Dean Leach named Lozano as clearing pay problems for employees and noting lateness. George Perez, Brandon Foran, and Patricia Quiroz each also experienced being moved about the processing table by Lozano, and Barbara Schwartzman credibly testified that Lozano had told her to see him on production problems.

Lozano himself conceded making assignments of personnel, voicing work evaluations to Cech for pay increase consideration, and being instructed by both King and Cech on his role in the Union's organizing campaign.[19] Douglas Turner, nephew of Darrell Turner and a witness called by Respondent, textified that even as an experienced meatcutter he was subject to changing job assignments that emanated from Lozano and Van Gorder as well as Myron Smith. Jim Irons, another of Respondent's witnesses, corroborated that Lozano fulfilled this type of role in the plant. Respondent made the point that Yakima card signer James Crouse had entered "breaking foreman" for his occupation, a title that did not perturb solicitor Vaughn in his accumulation of validating support. I note here that Vaughn credibly testified how this individual's rank-and-file status was commonly known, and that Crouse did not wear the distinctive yellow hat of regular leadmen. (Crouse was later elevated to a supervisory role.)

b. *Conclusions*

Section 2(11) of the Act provides, in part, that where individuals assign and responsibly direct others, or effectively recommend such action with use of independent judgment, they shall be statutorily defined supervisors. Here the aura is that Lozano, Van Gorder, and Smith all, at material times, were recognized to be supervisory and so held themselves out. See *Han-Dee Pak, Inc.*, 249 NLRB 725 (1980), and, as to Lozano's bilingual faculty, *International Baking Company, Inc.*, 240 NLRB 230 (1979).[20] Cf. *Redi-Serve Foods, Inc.*, 226 NLRB 636 (1976), where, as here, employees were under written caution not to disobey a "sub-foreman's direct order." It is also sufficiently established that approval of time away from work and responsiveness to employee complaints were among the duties of those at issue. Finally, the supervisor-employee ratio that would obtain in the beef fabricating department would be inordinantly high if Cech was determined to be the only supervisor so functioning, particularly where there is significant testimony from former leadman Dean Wilson that as time passed Cech spent progressively more time in his office and less around the actual work area. See *National Press, Inc.*, 241 NLRB 884 (1979), and *Formco, Inc.*, 245 NLRB 127 (1979). On this basis, I find that the individuals at issue are each supervisors within the meaning of Section 2(11).

2. Section 8(a)(1)

a. *Facts*

Leon Johnson testified that Cech called him aside on or about May 27, and asked what he thought about the Union. Johnson was noncommittal, to which Cech replied that it represented troublemakers to be gotten rid of.

Perez testified that in mid-May he had a conversation with Cech at the plant, wherein Perez was told that Respondent just could not afford the Union. Cech added that card signers would not be there very long. Cech stated further that they could fire all those people and hire new ones, indicating that they had a stack of applications of people who were waiting to go to work.

Roger Smith testified that, when he was applying for work with Respondent, Cech told him during an interview that he did not want the Union in, adding that anybody getting aligned with it would no longer have a job.[21]

Employee Robert Torbitt testified that he conversed with Cech around May 14, and was asked if he was in the Union. After Torbitt replied negatively, Cech stated it was good for Torbitt to not even think or talk about joining. Cech added that if the Union came in it would mean unaffordable wages which would cause Respondent to close up. Cech foresaw that the Union could be kept out for up to 2 years.

Steven Dillard testified that in early 1980 Van Gorder, his uncle, told him that Cech wanted him to attend a union meeting, to take some notes, and to report back. Van Gorder later pressed for an answer, at which time Dillard said he would upon prompting that Cech had termed it a beneficial thing for Dillard to do. This assurance, not actually to be fulfilled, seemingly caused Cech to release a requested pay advance of $190 that day.

Beebe testified that Van Gorder asked what he thought about the Union shortly after he signed an authorization card on May 6. Schwartzman also named Van Gorder as saying that her $1 raise of April 1980 to $5.75 an hour was such that certainly ought to keep the Union out.

Jerry McCray testified to a conversation with Myron Smith around mid to late March 1980, in which he was told that not signing an authorization card would better preserve his job. McCray also recalled a similar conversation with Myron Smith on or about May 1, at which time he was asked whether he was leaning toward the Union because everyone else was signing cards.

Roger Smith further testified that he had a conversation in mid to late June 1980, at the Phoenix Cocktail Lounge in Yakima, wherein he told Lozano that the Union was going to get in at the plant. To this Lozano answered that the Union would not get in because he

[19] Lozano is a protege-like extension of Cech, having previously worked with him in Massachusetts and Texas plus otherwise displaying close alignment of thought and action. His testimony as to manner of participating in prospective pay increases for employees shows quite evidently that his recommendations were highly "effective" within the intendment of Sec. 2(11) of the Act.

[20] Lozano is fluent in Spanish. He estimated that at material times about 18 plant employees could only speak this language. Cech himself once referred to there being six bilingual employees among the rank-and-file employees.

[21] I pass over certain cantankerous remarks made to Smith by Cech at a community river float in July, not being satisfied that they represented sober utterances or were truly material to this proceeding.

had cautioned all the Mexican employees that they would all be fired for signing an authorization card or voting for the Union.

Schwartzman testified to a conversation with Lozano on or about May 12 at the plant wherein he inquired of persons who she thought might have signed an authorization card.

Alberto Tello testified to activities that consisted of Lozano, right before the election, constantly telling employees at work and elsewhere that if they supported the Union it would lead to loss of work for them. Miguel Quiroz testified that he had several conversations in which Lozano had repeatedly sought him out about the Union. One of these took place at the Evergreen Motel where Lozano told him that success by the Union would mean plant closure putting Quiroz out of a job. Angel Fernandez testified that he had a conversation with Lozano prior to the election with several other Mexican employees present at the plant. According to Fernandez, Lozano told him in this conversation that if he gave his vote for the Union they would close down the plant and that even Sam was going to lose his job along with the rest of them. Fernandez further related episodes close to the election in which Lozano, interpreting for another person, said that if employees signed authorization cards they would all lose their jobs.

Patricia Quiroz credibly testified that she had several conversations with Lozano about the Union. She recalled the first one as involving questioning whether she and other persons planned to support the Union. Another of Quiroz' conversations with Loranzo took place at the Evergreen Motel a few days before the election, with Miguel Quiroz, her husband, and Miguel Dominguez present. She testified that Lozano stated if the Union won the plant was going to close down and everyone would be unemployed. She recalled a separate conversation with Lozano on the morning of the election at Washington Beef in which several other Mexican employees were present. She testified that Lozano told such employees at this time not to vote for the Union because the plant would close down.

Tello also testified that Plant Manager Dick Dotzler conducted a meeting of Mexican employees on the morning of the election, utilizing Lozano as interpreter. During this meeting, Dotzler brought up repeated examples of other meat companies that had closed down after being unionized.[22]

Schwartzman testified to a meeting held in March that was conducted jointly by Cech and King. At this meeting Cech brought up having shop stewards available for the employees, stating that he wanted some people chosen to be shop stewards as weekly go-betweens for employees and management. Schwartzman was herself asked to sign up, and did so. In this capacity she did listen to employee problems on a few occasions, and took them to Cech. Dean Leach also testified about this meeting, recalling that Cech stated Respondent did not want the Union and as an alternative was setting up the system of shop stewards. Schwartzman further testified to another comparable meeting in April, where King asked whether employees had problems for which his office was always open. She recalled that at a meeting on May 8, as in others, Cech stated that the Union would put Respondent under, making it go out of business.

Dillard and Mike Davis also testified about the meeting on May 8, recalling King's reference to having won the election at Toppenish and that officials invited complaints or problems there at the Yakima plant. At this time King told the assembled employees that if they really wanted something like a union they could choose shop stewards.

Schwartzman testified that Cech conducted an employee meeting in February, at which time he promised all employees a $1-an-hour raise. She recalled his statement that he knew the Union was around and would be for months to come. Following this, 36 of the 94 total employees at the time had their pay increased. Schwartzman testified to another employee meeting in April conducted by King and Cech. At this meeting Respondent announced a revised system of pay, which resulted in increases for nearly half the work force as effectuated for the pay period ending April 19.

b. *Conclusions*

The various utterances of Respondent's agents devolve as classically unlawful interrogation and threats. Oddness of expression and veiled innuendo are also present, as reflected in particularized allegations of the Yakima case complaint throughout its paragraphs 6 and 7, and as further successfully amended at the hearing. The denials of actionable utterances are rejected on credibility grounds, leaving categorical allegations of interrogation and plant closing threats supported by ample probative evidence. Such verbalisms also amounted to unlawful solicitation of grievances, creation of the impression that union activities were being kept under Respondent's surveillance, solicitation of spying on union activities, granting of pay raises at such time and in such inordinate quantity as to interfere with employee rights of free choice, and establishment of a puppet grievance procedure.

3. Section 8(a)(3)

a. *Facts*

Dan Ramirez testified that he began working for Respondent on or about January 21. Prior to this he had 2 years' experience in the meatcutting industry. Ramirez was a beef boner, specifically boning out New York strip steaks. He was under Lozano's supervision. On April 18, Ramirez was working the line together with James O'Shaughnessy on one side and Jessie Hernandez on the other. As the line moved O'Shaughnessy and Ramirez noticed that some of the meat they were working on was partially frozen. These employees worked the frozen

[22] This was one of the series of small meetings conducted by Respondent. On the limited point of whether or not it occurred on July 17, I am satisified that Tello is mistaken, and, as an exception to generally discrediting Respondent's witnesses, find that it occurred on or just before July 16 as claimed by King, Dotzler, and Lozano. However, the testimony of Lozano himself about what was said, or at least his translation of English rhetoric into Spanish, shows an overt unlawful threat of plant closure as alleged in an amendment to the complaint made during the course of the hearing.

meat for awhile, but when they saw that it was still coming down the line Ramirez and O'Shaughnessy attempted to get others to stop working on it. O'Shaughnessy testified in this regard that he felt working with the frozen beef was unsafe, and he pointed that out to Lozano. With this Lozano started putting the frozen beef in a tub, then taking the tubbed frozen beef back to the head of the line to be sent back down again. Ramirez testified that in his experience as a meatcutter working with frozen or semifrozen beef was extremely dangerous because of wayward knife action, and he thought O'Shaughnessy felt the same. As the frozen beef continued to appear, Ramirez and O'Shaughnessy began refusing to work on it and attempted to get other employees to follow suit. However, the frozen meat that they had been working on was finally finished, and it was followed by regular meat. After work that day Ramirez went to Lozano to get his paycheck. Lozano said he could not find it, and diverted Ramirez to Cech's office. Cech paid him off, saying that Ramirez was not needed any more. The elaboration was a claim that Ramirez was not doing his job, and that he was talking too much to Schwartzman on the line. Ramirez denied this, stating that the only time he talked to Schwartzman was when she needed correct trimming done to a piece of meat. A second effort at discussing his situation was inconclusive.

Approximately a week later Ramirez went back to the plant to get his final paycheck. He spoke again with Cech, attempting to get his job back by promising to do a better job in the future. Cech testified on this issue by saying that Ramirez had received several written warnings. Cech later recalled these were oral warnings of Ramirez, which did not for that reason appear in the personnel file.

O'Shaughnessy testified that he had several periods of employment with Respondent, including one around the time the Union's campaign was underway. He testified to reading and signing an authorization card on or about May 6. O'Shaughnessy remembered working with Ramirez on April 18, and that he also felt it was unsafe to work on semifrozen meat as was coming down the line that date. O'Shaughnessy termed the action of he and Ramirez as an attempted walkout, but when the frozen meat stopped coming a walkout was not needed.

After Ramirez was fired, O'Shaughnessy was off for several days. Prior to coming back to work he called Monson, asking to speak with him about things that were going on at the plant. From this O'Shaughnessy met with Monson, King, and Crouse. O'Shaughnessy was asked about the circumstances surrounding Ramirez being fired. He stated that the happening was upsetting, as was the lack of protective equipment and his insufficient earnings. The day after having signed an authorization card O'Shaughnessy told another employee while working on the line that Vaughn and Tillett had finally run him down to sign the card. While saying this Lozano was directly across the table from him. The following day O'Shaughnessy was at work with a posted work ending hour of 1 p.m. He actually worked past this, and checked for the end of meat processing needs before cleaning up to quit. The next morning O'Shaughnessy was called into Cech's office and fired. Stated reasons were that he had a bad attitude with too many incidents adding up. The previously attempted walkout was alluded to, plus statements about O'Shaughnessy's wanting more money. O'Shaughnessy denied having been confronted with anything reasonably construed as a warning.

Ron Gefroh testified that he began around February 4, and was assigned as operator of a Cryovac machine sealer. He recalled employees becoming interested in the Union to a large extent around mid-April, stating that he himself became involved to the extent of soliciting authorization cards, attending union meetings, and discussing benefits from the Union. He stated he talked up the Union at work to his coemployees at breaks and at lunch hour. He stated that he signed an authorization card on the date indicated on the card. He read and signed the card given him by Vaughn, who said at the time that the purpose of the card was to give employees a chance to freely decide on union representation and to bargain for better wages and working conditions.

Gefroh recalled a series of meetings that Respondent had with employees in early 1980, and specifically one held on May 8 by King. After the meeting Gefroh was given an unusual cleaning assignment around the fabrication line. This was his first time being ordered to clean up the floor, which he did there and in the lunchroom until quitting time. The next day Gefroh went to work as usual. He was stopped at the guard post where Cech came out and told him that he was being fired for leaving the job early and receiving two verbal warnings.

Schwartzman credibly testified that she began work as a meat inspector in quality control supervised by Wilson. After orientation she learned to distinguish defective meat and eventually tubs were given her after Van Gorder or Lozano tired of carrying pieces of defective meat back to the line for reprocessing. On occasion the tubs provided her would be so full of meat that pieces would fall off on the floor. At such times she would attempt to get a leadman to put spilled meat back on the table and to tell boners how to cut it correctly. It seemed this was not usually successful, for the meat would come back to her down the line, not trimmed correctly, causing her to again throw the same meat back into the tub. She testified to having authority for line shutdown, and did so on one occasion to Lozano's consternation. She testified to becoming interested in the Union and contacting Vaughn to obtain authorization cards, passing them out at work. She solicited some signatures and returned the cards to Vaughn as well as signing one herself. As this was occurring she was never told that her work was anything other than satisfactory. She denied seeing any of the warning notices Respondent produced from her file, and testified that she was never warned by Wilson or Myron Smith. She was discharged on May 12, and upon meeting Monson on the way out was told by him that he thought she had been doing a good job.

Respondent presented Myron Smith, who testified that Schwartzman let too much meat go by with bones in it. Tina Wolfe, another employee, also testified for Respondent that it was Schwartzman's job to check meat

for bones, and she was late quite a bit. Cech testified that there was a file kept of complaints by customers about defective meat, which he associated to her shortcomings.

Wilson testified that he had a conversation with Schwartzman about the Union, which led him to believe that she was prounion. He had several conversations with Cech about the Union, and mentioned Schwartzman in these. He also testified that Cech told him of a list of people that were suspected of being for the Union. He recalled being told by Cech that if he wanted to get rid of someone he knew how to do it.

McCray testified that he began working on or about January 21. He was first on the table cutting meat, but not being able to handle this was moved to quality control. His job there was to separate the meat and fat that came down the line into various mixtures. His supervisor was Wilson, and later he was under Myron Smith. McCray stated that with other employees he became interested in having a union. He obtained an authorization card from Vaughn, read it, and signed it on the indicated date of April 24 with Vaughn telling him that the purpose of the card was to get the Union to represent them.

McCray testified that on or about May 9 he went to get his paycheck from Myron Smith, but eventually ended up seeing Cech who was holding his pay. McCray was told that customers were finding too many bones in the product, and this constituted his first warning. McCray testified that the belt was going too fast to effectively pick out all bones and bone chips.

McCray reported for work on May 12 at an early time to be particularly sure that the place was clean enough to run. Cech soon appeared and berated him for excessive concern with the sterilizers, saying he was not getting his job done. When work actually began that day Cech told McCray they would be mixing 80–20 with the shank meat and that some 50–50 should be run. McCray commenced to do as he was told. After a while Hick Siekawicz, loading dock supervisor, came up to McCray and asked what he was doing. McCray told him that he was just doing what Cech had already told him to do, that is to mix the 80–20 and the shank meat together and later the 50–50. At this time McCray called Cech back to the trim table, asking what was going on because he thought he was to run the 80–20 and the shank meat together. At this time Cech denied ever having told him to do that, but did not deny having told McCray to run the 80–20 and the shank meat together with the 50–50. After this conversation with Cech, McCray went back to work. He noticed Cech standing at the front of the table looking at him. McCray stated that Cech went up to the front of the table, folded his arms, and stared for approximately 5 minutes. McCray worked for a while with Cech staring at him, and then finally just turned around, stopped working momentarily, and stared back at Cech. With that Cech came back, and approached McCray in a bullish way saying he had a choice to either quit or be fired. At that time McCray told him that he did not feel he should be fired for any reason at all, so he said he quit. With this McCray left the premises and went home. He then got to thinking about the fact that the Company might hold $10 out of his check for not returning his identification card, so he went back to the office with the card and gave it to a secretary. At that time Cech appeared and asked McCray about the Union.

Foran testified that he began working on or about January 4 as a fabricator. He later solicited employees to sign authorization cards, and signed one himself after receiving it from Vaughn and reading it. Foran denied he ever was warned about the quality of his work, or that he ever received claimed warnings on April 10 or 29. He was discharged on May 12 for no apparent reason except his union activity. Al Jones testified that he was present with Cech in the office when Foran was discharged as a witness to what was being done. Jones contradicted Cech on the point of whether a confirming memo was written then or 3 days after the discharge.

Lloyd testified that he began employment on or about January 9, also as a fabricator. He testified that the main boss was Cech but that Lozano and Van Gorder also told him what to do. He became interested in the Union as did other employees, and signed an authorization card as indicated on May 5. He had conversed with Van Gorder after he signed the authorization card, telling him a union representative had come to his house some time before that and left him thinking of signing a card. Lloyd testified that he received a raise approximately a week before his last day on May 18, on which he actually worked overtime. However, upon seeking to pick up his pay, he was led to reach Cech's office and told that Respondent was trying to get rid of people who were breaking company rules. Cech accused Lloyd of padding his timeclock and sitting around on break.

General Counsel Exhibits 79(c) and (d) were introduced into evidence as a payroll change notice relating to Lloyd's termination because of padding his timecard, with the related employer response to his unemployment application. These two documents are contradictory as to whether Lloyd was punching out 10 to 15 minutes after completing his workday.

Edde testified that he also began work on or about January 21, as a fabricator, working for Van Gorder on line two. He stated that after the plant was open for awhile some of the employees became interested in a union. He received an authorization card from Vaughn, read it, and signed it. Around mid-May he told Van Gorder that employees needed a union in the plant.

Edde was spoken to by Cech on or about April 18 about miscutting too many loins for Safeway. At no time was mention made about making a memo to Edde's personnel file or that this was a warning. He was discharged on or about May 16 by Cech for not keeping up. Edde testified that there was an unpublished production standard of sorts on his job of boning arms, but it was constantly changing. Cech testified that there were some written standards posted, which were a composite of his experiences with the industry.

Perez testified that he began employment with Respondent in April, being immediately supervised by Van Gorder and later Lozano. He soon obtained, read, and signed an authorization card, and returned it to Gefroh. Perez testified that after he began working on Lozano's line he was constantly harassed by unfounded criticisms, assignment to already overloaded work stations, mali-

cious dispersal of his tools, ignominious timing of his work pace, and being hit in the body by meat thrown at him. During a final unwarranted scolding from Lozano on May 23, Perez stated he would not take any more. He unavailingly sought reassignment from both Cech and King before actually giving up his employment.

Roger Smith testified that he began employment with Respondent on or about April 25 and worked until on or about May 29. He was first a laborer, but then moved on to the breaking line and ended up being fabricator. Along with other employees he became interested in having a union at the plant, went to campaign meetings, and signed an authorization card. He was laid off by Cech who said at the time that there were too many people for the work being done. Cech foresaw a recall in about 2 weeks; however, this did not materialize. After the layoff Smith continued to solicit cards, handbilled at the plant, and later picketed.

Ramos began her employment with Respondent on or about April 29, supervised directly by Lozano. She worked as a meatcutter until laid off on or about June 3. For this Cech called her into his office, saying there were going to be some cutbacks and perhaps she would be called back the first week of July. After she was laid off Ramos called Schwartzman, and also talked with Vaughn. She obtained an authorization card which she read, filled out, and signed. Following her layoff Ramos went three or four times to the plant and passed out leaflets to employees arriving for work. She received no further communication from Respondent, which left her layoff of permanent nature. Cech testified that at some time after Ramos was laid off that he added the words "cut back on inexperienced help" on the pertinent payroll change notice. Lozano testified that her job performance had been adequate.

Steven Dillard testified that he began employment on or about February 4. He was first a trimmer, but ultimately placed in the position of boning. When the Union became active in its organizing campaign, he signed an authorization card. Dillard received a warning notice on or about June 3, for which he signed an acknowledgement. At the time of issuing this notice to Dillard, Cech did not say anything about any consequences that might befall or that if he received a certain number of them it would result in discharge.

Dillard's last day of employment was June 9 on which he began work at 6:30 a.m. As meat started down the lines Cech came over to where he was working, and stood waiting for him to put a bone up on the belt at which time he checked the bone and put it back. Cech then waited until Dillard cleaned another bone, inspected it, and found there was a little bit of meat left on it. He gave the bone back to Dillard and left the area. A few minutes later Lozano told Dillard that he was wanted in Cech's office. At this time Dillard received a warning notice from Cech for leaving an excess of meat on bones, and still another for not keeping up. Dillard was required to also sign them both, and was fired when the day was over.

Leach testified that he began employment on or about January 2, working for about 2 weeks getting the plant ready for production and then assigned as a trimmer on the production line under Lozano. Leach was interested in getting a union in at the plant, and talked with employees trying to get them to sign authorization cards. He also attended campaign meetings, and signed an authorization card himself. Cech testified that Leach was discharged because he was unable to meet company standards. However, he had received a pay raise from $4 to $4.50 per hour on February 8, from $4.50 to $5 per hour on March 6, from $5 to $5.50 per hour on April 18, and from 5.50 to $5.75 per hour on April 28. However, Leach also received warnings, the first of these dated May 6 but apparently actually issued on June 6. At the time of receiving that warning notice he was doing three cuts of meat, either top butts, knuckles, and briskets, or top butts, strips, and briskets. He believed that no one had ever done those three cuts before and that this was a job for more than one person. In rapid succession from May 27 to June 5 he was given three more written warnings by Cech for work performance, lateness, and padding timecards. Leach testified that on his last day, June 11, he was assigned to four different cuts of meat, which really required two people. Leach admittedly fell behind, and when Cech came up to him and asked him what the problem was he did not answer because it seemed obvious. Leach then received a final warning notice for claimed failure to improve output, but refused to sign this one. Leach recalled that on the day he was fired there were other boners on the line who were behind much more than he.

Robert Beebe testified he began employment on or about January 9, mainly under the supervision of Van Gorder. Upon becoming interested in the Union, he tried to get employees to sign authorization cards and signed one himself. Beebe solicited the authorization card of Celso Casas, testifying that he told this employee the purpose of the card was to help get an election and let the Union bargain for them. Beebe received a raise from $4 to $5 an hour on February 8, with the notation that he was becoming a qualified plate boner. Ten days later he received another raise from $5 to $5.50 per hour with further favorable notation. On April 14, Beebe received another raise from $5.50 to $6 an hour, and again on May 9 from $6 to $6.25 an hour. He testified to receiving his first warning notice on May 28 for working too slow on boning arms. He conceded that he was really just learning how to do them and was indeed behind at the time. Beebe testified he was off work the day following Dillard's discharge, and upon returning on Wednesday, June 11, was the only one assigned to do rounds. He recalled reporting for work at approximately 6:30 a.m., and began working on rounds. About 45 minutes later Van Gorder told him to go talk with Cech while Van Gorder did the rounds. Cech told Beebe that he was too slow on the rounds and could not keep up. Beebe replied that he was doing the best he could, which Cech said was not good enough. Beebe refused to sign a warning notice and went back to his work station where Van Gorder had not kept up with all of the rounds in the interim.

After that day's morning break, Lozano told Beebe to see Cech. Beebe did so, and with Crouse present in the room received the warning notice of that date. At the

end of the day Cech approached Beebe, telling him to wash his equipment and go into the office. Beebe went to the office, where Van Gorder, Lozano, Myron Smith, Crouse, and Cech were all present. Cech told Beebe that he was "fucking up" and "fucking around" too much, and discharged him for not keeping up.

Davis stated that he went to work shortly after the Yakima plant opened, having 15 to 18 years' experience as a meatcutter at the time. He confirmed from his experience that working with frozen beef was dangerous, and he had observed several people injured while working with frozen beef in the past. He testified to signing an authorization card received from Tillett at his house. In this contact Tillett said that the purpose of the card was to seek a majority, which would allow the Union to represent employees or draw up a contract. Davis testified that in early June Vaughn and Tillett were present at the plant entrance in the morning, handing out leaflets or flyers about the Union. He stated they were stopping the traffic as it came into the parking lot to make these handouts. Davis testified that he himself stopped and talked with Vaughn and Tillett for several minutes, until there were several cars backed up behind him at which time he went on into work. Some of the employees were throwing away the leaflets that they received from the Union, using a trash can placed just inside the gate for this purpose. Cech was present at this time, leaning on the hood of an old green pickup truck right inside the gate. Davis observed Cech watching everybody as they came through. Davis kept the leaflet that he received from the Union, and did not throw it away. Later on that day he happened to have a conversation with Cech, teasing him about the Union trying to get in.

Davis testified that he knew employee Mark Stouffer and conversed with him on the morning of June 11. Stouffer told Davis that Respondent would fire Beebe that day. Davis asked Stouffer why Beebe was going to be fired and how he (Stouffer) knew about it, to which Stouffer replied that Cech had told him. After this conversation with Stouffer, Davis made it a point to observe Beebe's work. He saw a diligent effort by Beebe almost the entire day. The next day Davis heard that Beebe had been fired, and made up his mind to go in and talk with Cech about it. In such a conversation the following morning Cech stated that Beebe just was not doing his job. Davis objected saying that he knew better, having watched Beebe give his best effort. When he went back to work Davis was taken off the saw, and assigned to boning rounds or doing Beebe's former work. He was then put on chucks, but soon criticized for not keeping up. Davis started objecting to the unfounded criticism, at which time Cech told him to go into the office and they would talk about it. There Davis attempted to explain that Lozano had taken one man away from doing the chucks anyway. At this time Davis asked Cech what he was trying to do, and if he wanted to fire him or something just say so. He further stated that he told Cech he would quit if that was wanted, and Cech coaxed him to do so. Davis testified that he quit because he believed the Company was upset over his questioning about what happened to Beebe.

The General Counsel presented three witnesses who testified credibly and significantly to the effect that a deliberate plan was formulated by Cech to identify supporters of the Union, develop sham criticism of their work, and rid them from the workplace. One of these witnesses, Van Gorder, is a person at issue with respect to statutory supervisory status of leadmen. Van Gorder testified that he began employment as a trainer on January 6 and around mid-February was changed to foreman wearing the yellow hat. He testified that Lozano said the reason they wore white hats for the first couple of weeks was that they could mix with the employees and find out who were for the Union and what was going on. Van Gorder testified that Cech stated that his duties were to watch the tables, train people to different cuts, move employees around to wherever he saw fit, watch the bone lines to make sure that no bones went into the lean meat, and watch the fat lines. He was in charge of one 50-foot long worktable, and Lozano the other. Both he and Lozano moved employees around to make sure that the most skilled or experienced employees on each cuts would be assigned to those cuts. Van Gorder also testified that Cech stayed in his office quite a bit and the only time he came out on the line would be to change something. Van Gorder has given employees time off on at least two occasions. Prior to letting these two people go, he cleared it with Cech. Van Gorder also testified that he had recommended certain employees be given raises, and these went through.

Van Gorder credibly testified that in April and May he had conversations with Lozano on the cutting room floor between the two tables. At this time Lozano pointed out people that he had heard signed union authorization cards, indicating Foran, Perez, Dillard, Lloyd, McCray, Schwartzman, Tim Flowers, Beebe, and Leach. In May he had a conversation with Cech at the plant, wherein Cech told him everybody was signing cards and that he was thinking about resigning because the Union almost had a quota needing only one or two more cards. In this conversation Cech alluded to firing them all and starting over again. Later in that month Van Gorder had another conversation with Lozano. He had noticed people were starting to disappear, and he approached Lozano to ask what was going on. Lozano stated that they were finding out who had signed union cards, based on a source telling them names of people so signing. Lozano then started pointing to employees that they were going to get rid of for tardiness, stating that he and Van Gorder were to start writing them up for tardiness, coming in late, or unauthorized absence. Lozano added that they could stack them up with meat, to where they would not be able to keep up and then give them warnings followed by termination. Van Gorder recalled several times when Cech asked him and Lozano to keep their ears open for anybody talking about the Union and to let him know. He did report back to Cech the names of certain people who he had found out had signed authorization cards, Foran and Leach being among these.

Van Gorder testified that Edde worked on his line boning arms and chucks, but that Lozano came up and caused the assignment of even more tasks. Van Gorder

testified that Edde just kept falling behind, was given some warnings, and then discharged. Van Gorder testified that Leach was working on Lozano's table, and that Cech had told both he and Lozano to assign Leach to trimming top butts from New York strips. Van Gorder then assigned Leach to the further task of doing knuckles in order to get him behind. Leach did indeed get very far behind, with the table stacked up and gondolas behind him stuffed full. He was then called in for warnings and terminated. Van Gorder testified that he, Cech, and Lozano had tried to break Leach to the point where he would quit.

Van Gorder further testified about the discharge of Beebe, who was working for him at the time boning rounds. For awhile he had both Beebe and Dillard boning rounds, but Dillard was taken away to make Beebe do all rounds himself. Van Gorder stated that Beebe was doing a pretty good job, but Cech required him to chase down bones that Beebe had worked on and bring them back for examination. Van Gorder did not consider the bones to be as dirty as those bones of another employee working at the same speed. When Beebe would attempt to reclean the bones or take the meat off the bones he would get further behind on his regular work and would receive warnings. This same pattern was followed by Cech with Dillard.

Van Gorder further testified that on the day of the Yakima election he was present at the Thunderbird Motel having drinks with Cech and Lozano. At that time Cech stated that they were going to have to fire the employees that had voted yes in the election, to which Lozano replied that it would have to be done in a legal manner, slowly but surely. Van Gorder further testified to overhearing a telephone conversation between King and Cech, in which Flowers was named as one of the employees voting yes and he would be gone shortly.

Mark Stouffer was the second witness of similar significance. He testified to being employed by Respondent from January until around the first week in July at which time he quit. For a period in early May he lived with Lozano for about 3 or 4 weeks and knew Cech on a social basis from visiting at his house and doing some boxing together. Stouffer testified that in many conversations Cech asked him who was in the Union. Stouffer told Cech several such names, including Foran, Gefroh, and Schwartzman. Stouffer testified that he and Cech talked about employees being schemingly discharged. As to McCray, Stouffer testified that he knew that Cech was going to fire McCray because Stouffer had previously identified him as signing a union card. He stated that Cech told him that he was going to speed up the line, thus overloading McCray with so much work that he could not keep up. From this Cech would give him a succession of warnings and eventually discharge him. He stated that Cech did the same thing with employees Foran and Leach. Again Cech would simply speed up the lines to that they could not keep up. Cech had stated that he knew these employees were for the Union, and he was going to have to get rid of them. Stouffer also testified that he knew several employees were going to be discharged before it actually happened. He knew that Lloyd was going to be fired, and also Beebe. Stouffer also testified that he knew that Gefroh was going to be fired because he told Cech that Gefroh was for the Union. In addition to these other employees, Stouffer testified that he also related union activity of Edde to Cech, who asked him to continue reporting the names of people who were for the Union which he did so to the best of his ability.

Stouffer also testified that after he received his subpoena from the General Counsel to appear and give testimony in this proceeding he had a conversation with Lofland about it. He testified that he asked Lofland if he had to show up for the subpoena and whether he would get in trouble if he did not show up. Stouffer recalled that Lofland told him he would not be in contempt of court or that two big guys would not come out and force him to go. Lofland told him that he did not have to go if he did not want to, and that he would not get into any trouble. Stouffer further testified that he asked Lofland if he wanted him to testify, at which time Lofland replied, "Well, you don't have to testify but I would like you to because it would help us out." Stouffer further testified that, in this conversation with Lofland, at which time Wilson was present together with Cech, Lofland showed Stouffer a list of employees who had been discharged during the April–June period and asked Stouffer if he knew anything about them. After Stouffer falsely told Lofland that he did not know anything about the discharges, Lofland repeated that Stouffer did not have to testify but it would be to Lofland's benefit if he did.

Dean Wilson, the third of this witness group, testified that he went to work for Respondent in January and that he worked until mid-March. He started in the quality control department, with McCray working for him as well as Schwartzman and others. He had a table assigned to him in Cech's office. Wilson stated that he recalled the beginning of the union activity at the plant, wherein he saw prounion people picket the front gates. After union activity began, Wilson had a conversation with Cech in the office at which time Cech accused Wilson of going to a union meeting. Wilson denied being at a union meeting, at which time Cech replied that he had someone who said that he was there and he saw him. Wilson testified to a later conversation with Cech, wherein he was asked to attend union meetings and report on what was going on. Cech also asked him to find out about other people being for or against the Union. He recalled a conversation at the Town Pump Bar with Cech, who stated that present employees might just be fired so Respondent could hire experienced people because they could not afford to pay union scale to inexperienced people.

Wilson stated that he had a conversation with Schwartzman on the line leading him to believe that she might be for the Union. He told Cech that he thought Schwartzman was one of the people for the Union, and later reiterated this upon Cech's inquiry. Wilson credibly recalled a conversation with Cech before the "major layoff," in which Cech told of suspecting some people and that he had a list of names. Wilson also testified that

he had a conversation with Cech about how to get rid of employees, Cech saying that he knew how to do it.

Wilson had rated McCray's work as number one of all the people under him. He and other quality control personnel such as Schwartzman had the authority to shut down the line. He stated that she did on occasion shut down the line because of the fact that the cuts would either be coming down the line too quickly and piling up at the end, or else there were too many defects in the meat coming down the line and it needed to be slowed down. Wilson further testified that the warning notice of March 19 to Schwartzman was not his doing. Further, he had never talked with Schwartzman about missing four strips with yield on them, nor had he ever talked with Cech about this. He denied having anything to do with Schwartzman's warning notice dated March 18, or that he ever conversed with Cech pertaining to the subject matter of that warning notice. Wilson added that he had observed Cech "bird dogging" people, or inordinately watching them from clear across the plant waiting for a mistake to be made. When this happened, according to Wilson, Cech would be right on the spot, and make a spectacle out of them or call them into the office.

b. *Conclusions*

Each of the alleged discriminatees engaged in union and/or protected concerted activity and knowledge of this came to the attention of Respondent through its agents Cech, Lozano, Wilson, or Van Gorder. More significantly, Cech was devoted, as a mass of credible testimony shows, to deliberately ferreting out such knowledge as a prelude to obsessively comprehensive plans toward ridding Respondent of those showing any appreciable interest in self-organization. This motivation was so pervasive, encompassing as it did a spurious accumulation of personnel records, distorted work assignments, and general creation of an aura of fear or despair regarding job retention, that I believe all allegations of discriminatory discharge, by direct or constructive means, are amply supported with proof. The fact that one or more persons, such as Flowers, who might have expectedly also been deviously eliminated but were not should not in any way exonerate Respondent or diminish the belief that a veritably wicked force was loose in this setting which was the root cause of the numerous wholly pretextual terminations at issue. The testimony of Van Gorder and Dillard is especially significant in showing how Cech asked to have the cousin attend an early union meeting and report back, while that of the highly credible Stouffer about his own espionage and funneling of information to Cech tells even more. Lozano had also asked who was signing cards or who might be inclined to do so. From this it must be concluded that Respondent was totally committed to closely monitor all union activities at the Yakima plant, and act unlawfully on the information. *Heartland Food Warehouse, supra.* Discussion of each discharge, *seriatim*, is done in this context, one in which the frequency of pay increases to discriminatees *prior* to their commencement of union activities is a further indication that violations of the Act have, as alleged, occurred in this regard.

As to Ramirez it is clear that he considered the frozen or semifrozen beef to be an unsafe working condition. Respondent knew he was involved, in that Ramirez and O'Shaughnessy had attempted to cause a walk out, or at least a short work stoppage, due to the appearance of frozen meat for processing. It is amply clear that such a condition was far riskier in terms of potential personal injury than the meat that they were ordinarily expected to work on. Thus, the reason for Ramirez' discharge was in fact because he had engaged in concerted activity. As to O'Shaughnessy the testimony revealed that he, too, was discharged because he had attempted to cause a protected work stoppage over the same unsafe condition.

As to Gefroh, it is clear that he was dealt with in a summary fashion upon Respondent's learning that he was one of the Union's advocates, had signed an authorization card, and was attempting to get other employees to sign them.

As to Schwartzman, it is also clear from the testimony of Wilson that Respondent knew of her union activities, and contrived her discharge on a fake claim of improper job performance.

As to Foran, credible testimony established not only that he signed an authorization card himself, but that he also solicited other employees to do the same. From Stouffer and Van Gorder, it is clear that Respondent knew of this, and the sham circumstances surrounding a memo written by Al Jones undercut any contention that Foran was discharged legimately. In addition, the three warning notices given Foran are fabricated and contradictory, inasmuch as they expose a shifting standard of performance expected from him as a boner of chuck cuts.

As to Lloyd, he signed a union card and was known to Respondent to have done so. The circumstances surrounding this discharge clearly indicate that the true reason was his protected activity. Respondent's defense to the discharge of Lloyd was that padding the timeclock is grounds for immediate dismissal, and there were no warnings issued for such an offense. However, the documentary evidence also disclosed that at least one other employee had been warned for padding his timeclock and, General Counsel's Exhibit 79(c), the payroll change notice wherein it stated that he was terminated because of padding his timeclock is suspect. It stated that he *was punching out* 10 to 15 minutes after completion of the job, yet Respondent's comment to an unemployment application by Lloyd stated that Lloyd did not punch out after completion of the workday.

As to Edde, it is plain that this early union adherent was deliberately set up for termination, assigned many more tasks than he reasonably could perform, was given warnings to that effect, and finally summarily discharged.

As to Perez, the evidence established that Lozano was given the special task of harassing him until he finally could take no more, gave up, and quit. Cech actually conceded that Perez approached him many times complaining that Lozano was harassing him in a number of ways, and a past practice existed in the plant of assigning an employee to another job should he be unable to do

the one currently assigned him. In the course of the terminal episode, Cech admitted that Lozano was doing his bidding, and these intolerable impositions converted Perez' act of quitting to an unlawful constructive discharge. See *Crystal Princeton Refining, supra.*

As to Roger Smith he was supposedly laid off because of lack of work, even though at some time prior to the hearing Smith's payroll change notice pertaining to his layoff was altered or modified to indicate that the reason was due to inexperience. This shifting position, coupled with Respondent's deep-seated animosity to unionization, requires the inference that Smith was peremptorily disposed of before, as he later came to do, he could lend support to the Union's organizing efforts. The same reasoning is applicable to Ramos, whose payroll change notice was also altered in an attempt to fabricate a reason for not bringing her back from layoff. As with Smith, she later began notoriously open activities on behalf of the Union by handbilling and picketing, and the inference here, too, is that she was caught in Respondent's capricious weeding out process.

As to Dillard, his situation reflects that he was doing fine as an employee until Respondent became aware that he had signed a union authorization card and was also soliciting them. Cech's unprecedented scanning of bones worked on by Dillard, and the flurry of spurious warning notices that issued, shows that action taken against this individual was utterly pretextual.

The discharge of Leach reflects a singularly obvious case of discrimination. This competent individual had received several raises; however, when Cech became aware that Leach had signed a union authorization card he began loading Leach up, requiring him to do two men's work, and giving him warning notices when he was unable to keep up. Respondent's pretextual action is highly apparent here.

As to Beebe, his case also graphically represents the intense desire of Cech to be rid of union adherents. Stouffer's telling to Davis on the morning that Beebe was discharged of this imminent event shows the relentlessness of Cech's purposes. The fact that Stouffer knew beforehand that Beebe was going to be discharged unmistakably discloses that in Beebe's case, and in all other cases, Cech deliberately set out to contrive situations which resulted in sham warning notices and then discharge.

Davis was a skilled meatcutter who was sought out for employment by Cech. He had signed an authorization card and after the Union began handbilling and picketing at the plant he verbalized this fact with Cech. When Stouffer told Davis about Beebe's impending summary discharge, and Davis saw that indeed it happened, this demonstrated Respondent's intent and the inevitability that he, too, would be a target. The first contrived warning notice set this in motion, and Davis' countering action of leaving was fully as much an unlawful constructive discharge as those discussed above. See *Crystal Princeton Refining, supra.*

4. Section 8(a)(5)

a. *Circumstances of signing authorization cards*

The following individuals testified in authentication of their own, or others, authorization cards: Van Gorder, O'Shaughnessy, Lloyd, Edde, Dillard, and Beebe, through Beebe about the authorization card of Celso Casas, Davis, and Leach, McCray, and through McCray about the authorization card of Bill Chott. In addition, Chott himself testified on direct examination that McCray asked him if he would be in favor of the Union at the Company at which time he signed the authorization card after reading it. McCray also witnessed the signing of an authorization card by Roel Gutierrez. There was similar direct testimony by Gefroh, Perez, Foran, Smith, Ramos, and Schwartzman about their authorization cards. Earl Schmig testified that he received an authorization card from Vaughn, and signed it after reading it, and that Vaughn told him the purpose of the card was to try to help get a union in at the plant. In addition, Schmig testified that he witnessed the authorization card signings of Carlos Garcia and Maria De La Garza, and that he told them the purpose of the card was to get the Union in at the plant.

Vaughn testified to the circumstances surrounding Allen Zielke's card, recalling that he went to Zielke's home with McCray and told him that he was from the Union seeking cards for union representation. Vaughn testified that Zielke signed the card on the date indicated, and that he read it before he signed it. Vaughn further testified that he went to the home of Thurman Lucas, and solicited Lucas to sign an authorization card, and that Lucas signed the card in his presence after Vaughn told him that it was for union representation. Vaughn testified that he went to the home of Alberto Tello with Ruben Perea, who assisted Vaughn in translating for the Spanish-speaking employees of Respondent at Yakima. Vaughn testified that they discussed the fact that Tello had been in the Union before after having worked at Iowa Beef Products in Wallula. He observed discussion between Perea and Mrs. Tello, indicating that they both knew what the Union had done for them at Iowa Beef Products, and that Tello was interested in signing an authorization card to help get the Union to represent employees at the Yakima plant. He did so in Vaughn's presence on the date indicated on the card. This procedure was also generally followed with the cards of Alfredo Castoreno and Raoul Rosas (Raul Rozas).

Vaughn testified that he went to the home of Sara Valencia one afternoon with the assistance of a Spanish-speaking woman to interpret for him. He stated that Sara Valencia was hesitant about signing the authorization card and called a friend of hers who had signed an authorization card earlier. She then agreed to sign a card. Vaughn told her that the purpose of the card was for union representation, and she signed the card in his presence on the date indicated on the card after having had the card read to her by the translator. Vaughn further testified as to the authorization card of Crespin Valencia. He stated that he spoke through the interpreter to Cre-

spin Valencia, saying the same things that he had said to Sara Valencia and that Crespin signed the authorization card in his presence on the date indicated.

Vaughn testified that he solicited the card of Doug Turner at his house, where he told Turner that the purpose of the card was for union representation after which Turner read the card and signed it in his presence. Vaughn testified that he went to Allen Werre's house, and that Werre filled out his authorization card after Vaughn told him that they needed authorization cards to represent Respondent's employees. In this regard Werre himself testified on direct examination, after having been called by Respondent as a witness, that the purpose of the card as explained to him by Vaughn was to have a bargaining contract with the Company. Werre testified that he knew what the card was about, which was for the Union to represent employees as bargaining agent. Vaughn next testified about the authorization card of Roberto Sanchez. Sanchez stated that he had been a member of the Laborers Union and knew that they needed a union at the plant to represent them. Vaughn explained that the Union needed the authorization card signed before it could represent employees of the Yakima plant, and with this Sanchez signed it. Vaughn also testified about the authorization card of Joe Sanchez, Jr., to whose house he had gone with McDavid. They explained to Joe Sanchez, Jr., that they needed authorization cards to represent Yakima employees, and he filled out his card at that time and signed it. This was also the case with Theresa Chavez.

Vaughn further testified that he visited Dean Moran's house with McCray one day, and explained to Moran what the Union could or could not do for him and that the purpose of the card was to authorize the Union to represent employees. Afterward, Moran's father encouraged his son to sign the card, which he did. This pair also comparably obtained a card from Steve Harwell. Vaughn went to Tim McKelheer's house approximately three times. On the first two times he explained that the purpose of the card was for the Union to represent him and, finally, on the third trip out to the house McKelheer agreed to sign the card and did so.

Vaughn obtained the authorization card of Crouse, after a house visit with Tillet. Vaughn told Crouse that the purpose of the card was to represent people at the plant, and Crouse filled out the card at that time. Vaughn testified that he had known Orval Gillaspie for over 20 years, and went to his home on an evening that happened to be Gillaspie's birthday. Vaughn testified that he told Gillaspie the purpose of the card was to represent employees, and, as Gillaspie himself testified, that it was then filled out and signed. Vaughn testified that Tim Flowers had come to a committee meeting in a motel room, and signed the authorization card at that time. Vaughn testified that he made numerous trips to nearby Wapato to locate Robert Sager, and finally did so one day as he was moving from one home to another. Vaughn testified that he had previously talked to Sager on the telephone and explained to him what the card was for and what the Union could or could not do for him. Sager himself testified that he signed Vaughn's card, and that he read it before signing.

Vaughn testified that he spoke to both Julie and Vickie Rickard at the same time, telling them the purpose of the cards they signed was to represent employees in the plant. Vaughn testified that he went to the house of Mark Reyes, introduced himself, and solicited a card. Reyes was cordial because he had been a metal worker in Seattle and knew what a union would do for him. Vaughn explained that the card was for representation, and on this basis Reyes signed it. Vaughn went to Jessie Hernandez' house in Toppenish several times. Hernandez had worked construction at the plant prior to its opening, and seemed apprehensive about signing an authorization card. Vaughn later went to Hernandez' house at which time he agreed to sign it, knowing the previously stated purpose of the card as being to represent the people in the plant. Timothy Henn signed an authorization card at the Union's office one afternoon in connection with Vaughn's statement that the purpose of the card was for use in representing employees at the plant.

Tillett testified that he saw Gary Price read and sign an authorization card on the date indicated, after Tillett told him that by signing the card he was authorizing the Union to be his agent for collective bargaining. Perea testified that he and Union Representative Jim Millsap went to Roberto Soto's house, and he acted as interpreter for Millsap in talking with Soto. Perea's credible testimony is that Soto felt they definitely needed the Union and he immediately signed the authorization card. Gefroh testified that he saw William Camden sign the authorization card on the date indicated, and that he told Camden the purpose of the card was having Vaughn represent them to negotiate better working conditions, wages, and job security. Debbie Turner testified that she read and signed a card on the date indicated, having gotten it from Vickie Ricard who told her its purpose was to try to get the Union in. This was also the experience of Robert Perry. Gerald Wildman testified that he signed two authorization cards on the dates indicated, getting one from McCray and the second card from Vickie Ricard. Both the individuals had told Wildman that the purpose of the card was for union representation.

Steve Roberts testified that he got his authorization card from Vaughn, and signed it at his house on the date indicated on the card with Vaughn telling him the purpose of the card was better insurance and job security. Vaughn testified that he solicited an authorization card from Torbitt which was actually signed on June 3. Torbitt himself testified that Vaughn gave him the card, which he read and signed upon Vaughn's telling him its purpose was for representation.

Millsap testified that Miguel Quiroz signed the authorization card in front of him, and that he told Quiroz if a majority of employees signed and the Union did come in it would represent them. Quiroz himself testified that he got the authorization card from Perea, and he signed it to be represented by a union.

Patricia Quiroz testified that she got an authorization card from her husband Miguel several days before the election and signed it in a room at the Evergreen Motel. Her husband had told her that if she wanted to be part

of the Union she would have to sign, and she did so to be represented by the Union. Miguel Quiroz also testified that he gave her the card, saw her sign it, and told her the Union was going to be beneficial for them. Patricia Quiroz testified on cross-examination that her husband told her that if she wanted to be represented by the Union for her to sign the card, and that it was her decision. Miguel Quiroz testified that he saw Daniel Campos sign an authorization card, which Perea had given him saying that its purpose was for union representation. Angel Fernandez testified that he got an authorization card at the Evergreen Motel, where there was both an American and a Mexican individual present. The Mexican told him that the purpose of the card was to have backing from the Union, and he then signed it approximately 7 days before the election. On cross-examination Fernandez reiterated that union representatives had told him that the purpose of the card was to be represented.

As to General Counsel's Exhibits 160, 161, and 162, Miguel Quiroz testified that he saw Macario Paz, Esequiel Garcia, and Marcos Comotto sign authorization cards that they had gotten from Perea. In each case these individuals were told that the purpose of the card was to be represented by the Union. Miguel Quiroz further testified that Perea had read the authorization cards to the three.

b. *Validity of authorization cards*

The General Counsel proffered 57 authorization cards in support of its contention that a majority of employees sought representation by the Union at a pertinent point in time. All cards were dated when signed, but for the single card of Torbitt which was identified as having been signed prior to July 10. Further, they were signed by the individuals whose name they bore. The cards are single-purpose cards, clearly and unambiguously authorizing United Food and Commercial Workers to represent employees for collective bargaining. If there is no question as to the authenticity of an authorization card, the burden of proof and the burden of going forward shifts to Respondent to produce evidence impugning their validity. See *Universal Metal Finishing, a Division of C. A. Roberts Co.*, 156 NLRB 138 (1965). The question of whether a signature on a card was induced by the solicitor's representation that it would be used for no purpose other than an election is a matter akin to an affirmative defense. *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 604, 605. An otherwise valid card is not to be lightly set aside. In that respect one court has stated, "Where an employee has signed a card which plainly designates a union as bargaining agent, the employer can prevail only with clear evidence of misrepresentation. A morass of hazy individual recollections of attendant circumstances will not suffice." *Amalgamated Clothing Workers of America, AFL-CIO [Hamburg Shirt Corporation]* v. *N.L.R.B.*, 371 F.2d 740, 745 (D.C. Cir. 1966).

The United States Supreme Court set forth the following standard in *Gissel, supra* at 606–607 (expanding on the quotation above):

> [E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election. . . . We cannot agree . . . that employees as a rule are too unsophisticated to be bound by what they sign unless expressly told that their act of signing represents something else.

A prior holding in *Levi Strauss & Co.*, 172 NLRB 732, 733, was not inconsistent with *Gissel*. The Board here found certain cards to be valid, stating:

> Thus the fact that employees are told in the course of solicitation that an election is contemplated, or that a purpose of the card is to make an election possible, provides in our view *insufficient* basis in itself for vitiating unambiguously worded authorization cards on the theory of misrepresentation.

Cumberland Shoe Corporation, 144 NLRB 1268, a case expressly approved in *Gissel*, concerned the verbal representation that a purpose of sought authorization cards was to secure a Board election. In deeming the cards valid the Board declared:

> [I]t does not appear that they [the signers] were told that this [securing an election] was the only purpose of the cards. In this case the cards, on their face, explicitly authorized the Union only to act as bargaining agent of the employees, and . . . the failure of the Union's solicitors to affirmatively restate this authorization does not indicate it was abandoned or ignored.

Recent case law confirms the fact that an unambiguous card is valid unless the signer is specifically informed that the card will be used *solely* to secure an election. See *W & W Tool & Die Manufacturing Co.*, 225 NLRB 1000 (1976). Further, the Board has held that, even if an employee comprehends before signing an authorization card that its purpose is to obtain an election, the card will not be invalidated so long as there is proof that the employee read the unambiguous card before signing it and the person soliciting his signature did not expressly contradict an alternative statement of purpose on the card itself. *Hedstrom Company, a subsidiary of Brown Group, Inc.*, 223 NLRB 1409 (1976). Subjective views concerning authorization cards are improper and inadmissible, the Board having, in one case, counted unambiguous cards signed by employees believing them only for the purpose of obtaining a union meeting. *Colonial Lincoln Mercury Sales, Inc.*, 197 NLRB 54 (1972), enfd. 485 F.2d 455 (5th Cir. 1973). See also *Ed Chandler Ford, Inc.*, 254 NLRB 851 (1981).

On this basis, I confirm the authorization cards received in evidence from Yakima employees as reliable indicators of choice within the meaning of *Gissel* and *Cum-*

berland Shoe.[23] As at Toppenish, Respondent presented several witnesses in an attempt to demonstrate invalidity of the cards. These included Orval Gillaspie, Crouse, Raoul Rosas, Roel Guteirrez, Doug Turner, Timothy Henn, Allen Werre, Robert Sager, Tim McKelheer, John Beebe, and Crespin Valencia. I discredit the testimony of each of them to the extent that it might tend to show an invalidating single election purpose to the cards, noting that in several regards, particularly as with Rosas, their recollection of certain things said to them establishes just the opposite. I also separately discredit Bill Chott, whose card was obtained by McCray. While McCray was one of the General Counsel's weaker witnesses from the standpoint of impressiveness, I do credit him generally and in particular on this point over Chott.[24]

c. *Numerical ratio of authorization cards to unit employees*

General Counsel's Exhibit 171 was stipulated into evidence. It comprises a list of employees in the unit on July 10, totaling 80 names, *including* Lozano, Van Gorder, and Myron Smith. Of this number there were 41 authorization cards introduced into evidence. The total number of employees on General Counsel's Exhibit 171, *including* Lozano, Van Gorder, and Smith, as well as 15 discriminatees and 2 challenges, Roberts and Torbitt, equals 97. Of this number there are 57 authorization cards. The total number of employees on General Counsel's Exhibit 171, *excluding* Lozano, Van Gorder, and Smith, but including the 15 discriminatees and 2 challenges, equals 94. Of this number there are 56 authorization cards. (Van Gorder's card no longer being counted.) The total number of employees on General Counsel's Exhibit 171, *excluding* Lozano, Van Gorder, and Smith and *excluding* Roberts and Torbitt, but including the 15 discriminatees, equals 90. Of this number there are 53 authorization cards. Of these four configurations the very lowest yields a majority of 51 percent based on the 41:80 ratio. However, Lozano, Van Gorder, and Myron Smith are each found to be supervisors and this actually raises the majority established on July 10 to 52 percent based on the ratio 40:77. Each of the other possibilities results in a still higher percentage, and need not be detailed further.[25]

As a composite of matters established through substantial, probative evidence, and concerning both the employing locations, I make the following:

[23] I do not adopt the reference to *Walgreen Company*, 221 NLRB 1096 (1975), for that case is misconstrued in the General Counsel's brief.

[24] A much better indication of the general interchanging remarks on the subject of cards, particularly as correctly voiced by Vaughn during his many contacts, is found in the extremely credible testimony of Torbitt, who at one point in reconstructing the dialogue quoted Vaughn (who had first said the card was for *representation*) as saying that "it looks like there might be an election."

[25] The last handwritten name added as of July 10 on G.C. Exh. 171 is misspelled. It is clear from the record that the correct spelling is *Garza*. The report on challenged ballots, G.C. Exh. 1(w)(w), found that Jesus *Garza* was off on an industrial injury prior to the eligibility list being prepared, but that he had a reasonable expectancy of return to work and did so as of July 22. This reasonable expectancy of return to work included the day of July 10. In addition, Resp. Exh. 34 shows there was no Jesus *Garcia* employed at Yakima from January 1980 into January 1981, but that a Jesus E. *Garza* was.

CONCLUSIONS OF LAW

1. Respondent Washington Beef Producers, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed by Respondent at its Toppenish, Washington, plant and Yakima, Washington, plant, excluding office clerical employees, guards, and supervisors as defined in the Act, constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. Professional employees are an additional excluded group at the Yakima facility only.

4. By interrogating employees about their union activity, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By engaging in, authorizing, and encouraging surveillance of union activities of employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. By creating the impression that Respondent was engaged in surveillance of union activities of employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. By discriminatorily enforcing plant rules or discipline against employees because of their union activity, Respondent his engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. By telling employees that Respondent would not tolerate a union among its employees, and would close its plant rather than accept unionization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. By threatening to freeze benefits and, alternatively, granting employees wage increases and benefits as promised at employee meetings, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

10. By coercively obtaining a false statement from an employee and using it in abuse of process affecting the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

11. By soliciting grievances from employees and forming an employee grievance committee in order to subvert a majority status of the Union, Respondent has engaged in unfair labor practices with the meaning of Section 8(a)(1) of the Act.

12. By telling employees that they do not have to honor subpoenas issued by the National Labor Relations Board, and tacitly condoning such comment by its legal counsel, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

13. By discriminatorily discharging and constructively discharging employees during the period January 18 through June 12, 1980, thereby discouraging membership in the Union, Respondent has engaged in unfair labor

practices within the meaning of Section 8(a)(3) of the Act.

14. By refusing to recognize and bargain collectively with the Union from on and after March 26, 1980, with respect to its Toppenish facility and from on and after July 10, 1980, with respect to its Yakima facility, and as to employees in the above-described appropriate units, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

15. The above-described unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

In *Gissel, supra*, the United States Supreme Court made its landmark delineations about employer unfair labor practices relating to the obligation to bargain and the connection of that obligation to employee free choice as expressible through the act of signing a union authorization card or voting in orderly, secret manner. It noted the existing concept of possibly imposing a bargaining order "without need of inquiring into majority status on the basis of cards, or otherwise," in exceptional cases marked by "outrageous and pervasive" unfair labor practices. Its next distinction formed a core holding of the decision, and in this the Court approved the Board's imposition of a bargaining order "in less extraordinary cases marked by less pervasive practices which nonetheless have the tendency to undermine the majority strength and impede the election process." This quoted passage has appeared in a multitude of Board decisions subsequent to *Gissel* and its implementation, plus the matter of explicating precisely why such a bracing remedy should obtain, has become a major component of recent labor-management relations law.[26] A third category of "minor or less extensive unfair labor practices" was also alluded to by the Court, and termed situations which would not sustain a bargaining order, "because of their minimal impact on the election machinery." The Court understood Board policy to eschew a *per se* rule in this entire area, citing *Aaron Brothers Company of California*, 158 NLRB 1077 (1966).

The manner of approaching such implementation is to take into consideration the extensiveness of the past effect the unfair labor practices would have had on election conditions and the likelihood of their future recurrence. The Court cast its crucial guidance thusly:

> If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue. [*Gissel, supra* at 614–615.]

In *Colonial Lincoln Mercury Sales, supra* at 66, this principle was carefully applied while imposing a bargaining order. A "potent . . . impression [of] reprisals . . . for the union activities taking place" was present creating a "threat then hang[ing] over the remaining employees that if they continued to support the Union, they too will be subject to peremptory removal from their jobs" as a "forceful inhibition" on Section 7 rights and generated "fears [that] are pervasive, extensive, difficult to extinguish, and quick to reappear under only slight stimulous." In *IDAK Convalescent Center of Fall River, Inc., d/b/a Crawford House*, 238 NLRB 410 (1978), the bargaining order was justified by exposing a nursing home administrator's convoluted equating of an organizing drive "tension" with the discharging of union protagonists. In *Keystone Pretzel Bakery*, 242 NLRB 492 (1979), the "serious and extensive unfair labor practices" tended to undermine majority strength and impede the election process. As the involved union's support had been quickly "obliterated," and the possibility of "erasing the effects" was slight, the authorization card majority, on balance, was perceived to be a better source of revealed, abiding sentiment. Similar recapitulation applied in *Permanent Label Corporation*, 248 NLRB 118 (1980), stemming from a "mass of violations" tending to impress on employees the "futility" of seeking a collective-bargaining representative and the "harsher dealing and reprisal" to follow any such attempt. In *Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation*, 258 NLRB 1081 (1981), the Board's opinion traversed the suddenness and subsequent pace of employer unfair labor practices, writing of a "blitz-like attack" on Section 7 rights and "adverse consequences," all as "calculated" to undermine a union's majority strength and make a free choice by election unlikely.

A surfeit of reasons is present to impose bargaining orders in this case. Respondent's conduct embraces practically all denominable characteristics of villainy; cutting across time, acculturation, predatory psychological gambiting, unrelentingness, and near-total intrusiveness. Setting apart matters of tone and indoctrination, as with Nelson's late 1979 implication to Eddie Thomas, and the admittedly chilling advice to initial job applicants, the unfair labor practices to follow were more than qualifyingly extensive and pervasive, if not in truth within *Gissel's* first category. King's threats of plant closing would radiate as suavely bewildering, just as the avuncular Monson snooped randomly among a variety of employees. Herman persistently interrogated numerous employees, while Turner busied his brusque self in coarsely discharging a select group of employees only scant days after the first significant step toward an effective organizing campaign. The bizarre conditions abruptly imposed on Haywood, known to be loquacious and most likely to tell of the idiotic charade thrust on him, bared the shameless lengths to which Respondent would stoop, reach, or bend. This characteristic is further found in the botched attempt to legitimatize Eddie Thomas' discharge, and the indefatigable cowing of Alejo Gonzalez.

The two employing locations are interdependent by function and linked as a generally integrated commuting

[26] See *N.L.R.B.* v. *L. B. Foster Company*, 418 F.2d 1 (9th Cir. 1969); *N.L.R.B.* v. *Cofer, et al.*, 637 F.2d 1309 (9th Cir. 1981). Cf. *L'eggs Products, Incorporated* v. *N.L.R.B.*, 619 F.2d 1337 (9th Cir. 1980). This point was further treated in the litigation originating with *Hedstrom Company, supra*, a case that resulted in a Supplemental Decision issuing April 30, 1978, and so enforced at 629 F.2d 305 (3d Cir. 1980).

area. It is most natural to expect that happenings at one end of the connecting highway would permeate the other, and vice versa. This is particularly true where key Spanish-speaking individuals, Ramos and Lozano (the latter in particular), were imposingly present at the workplace in day-to-day terms and tending to infiltrate Respondent's ominous objectives into the very lives of many Hispanic employees. In this context Respondent's invective migrated from its originating Toppenish base, and was soon at full tilt under Cech's formidable stewardship at Yakima. A brace or more of highly credible witnesses exposed his establishment of a wholly artificial work setting; one in which ordinary duties of a working day were superimposed with malice, contempt, and intimidation, all in terms of aborting the Union's objectives and all manifesting in a range from exasperation to terror. Relentlessness was a particular characteristic of Cech's undertakings, just as sternly verbalized and as crudely, voluminously recorded in sham documentations addressing work performance, attitude, or attendance. This entire course of conduct was directly and notoriously responsible for 15 terminations from employment, and I am unimpressed with Respondent's contentions that natural turnover was frequent when this considerable number of achieving individuals was precipitatively sacked or heavy-handedly forced to quit.

I find from the fair implication of actual testimony, and from behaviorisms of those functioning on the witness chair, that Respondent successfully inculcated such fears in its work force that the elections of 1980 were so fully impacted as to make a dissipation of effects highly unlikely. Such fears would predictably have a palpable, lingering effect, and this was nowhere better seen than in the cringing, pathetic projection of employee Miguel Dominguez, whose summoning as Respondent's rebuttal witness only served to make vivid that employees could remain without a free will many months after the peak of Respondent's various undertakings. It is regrettable that several dozen pages of decisional composition must be consumed for what, upon reflective consideration of this entire record and assessment of the diverse witnesses giving testimony, is summarizable in one terse term: outlaw employer.

I shall therefore include in my recommended order to follow that Respondent be required to recognize and bargain with the Union for each of its production and maintenance units, and that such obligation date from March 26 for Toppenish and from July 10 for Yakima, when the Union secured respective showings of majority. *Keystone Pretzel Bakery, supra; Coating Products, Inc.*, 251 NLRB 1271 (1980); *Gordonsville Industries, Inc.*, 252 NLRB 563 (1980); *Montgomery Ward & Co., Incorporated*, 253 NLRB 196; *Southern Moldings, Inc.*, 255 NLRB 839 (1981).

THE REPRESENTATION CASES

The Regional Director's Report on Objections (and related matters) set forth summarized or condensed versions of the Union's objections to the two elections. These expressly and respectively dealt with the Toppenish discharges at issue plus preelection promise or grant of benefits, and with initiation of pay raises at Yakima, with the threat of plant closure, and with a number of the terminations at issue there.[27] Based on findings above, such objections, raising conduct within the critical period which is at least derivatively violative of Section 8(a)(1), does, *a fortiori*, interfere with the election as to ordinarily require that it be set aside. See *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962). However, this step is superseded by the bargaining orders that obtain. Further, and noting that the Union briefed challenge issues in Toppenish Case 19-RC-9686, there were stipulations of record that reduced challenges to a nondeterminative level and rendered a treatment of such issues academic.

As to the Yakima case, the challenge configuration has been affected by the 8(a)(3) findings here and that of Lozano being a supervisor within the meaning of the Act. Originally there were 17 determinative challenges, a number reduced to 15 by the Regional Director's Report on Challenged Ballots (and related matters), including that he overruled the challenge to Jesus Garza. The challenge to Lozano is sustainable leaving 14 ballots remaining, of which 12 (11 discriminatees and Garza) may be opened and counted, and 2, Torbitt and Roberts, are yet unresolved. Torbitt was hired on May 15 but was soon injured. A medical statement dated May 29 confirms this and refers to further planned treatment on June 6. However, when appearing for a paycheck on May 28, Cech informed Torbitt of layoff based on production cutback. It is insufficient to construe from this that Torbitt was without a reasonable expectancy of recall, and for this reason the challenge to his ballot should also be overruled. Roberts testified that he received King's permission for schooling (which King denied), but was later laid off by Siekawicz with an implication of further contact. Siekawicz' version is that Roberts offered to work around any class schedule that he might arrange, and to this he was told that only full-time jobs were available. From this Roberts was simply perceived to have stopped working on the apparent basis that he preferred to enhance his education. I find Siekawicz to be the only significant exception to Respondent's parade of discreditable witnesses, and am satisfied that Roberts did nothing more unusual than quit employment when he could not obtain a particular concession from the ordinary. On this basis I recommend that the challenge to Roberts be sustained on grounds that he was not employed when the election took place on July 17. Cf. *Montgomery Ward & Co., Incorporated* v. *N.L.R.B.*, 668 F.2d 29 (7th Cir. 1981). The final number of challenges which I recommend be overruled is 13, and this number is not sufficient to affect the results of the election. An overruling of the challenge to Roberts would only have had significance in possibly providing the Union with special benefits of a certification. See *Mid-East Consolidation Warehouse, a Division of Ethan Allen, Inc.*, 247 NLRB 552 (1980).

Upon the foregoing findings of fact, conclusions of law, proposed remedy, resolution of representation case issues, and the entire record, and pursuant to Section

[27] A fourth objection dealing with completeness of the *Excelsior* list for Yakima has technical merit, but for practical reasons warrants no further treatment.

10(c) of the Act, I hereby issue the following recommended:

ORDER[28]

The Respondent, Washington Beef Producers, Inc., Toppenish and Yakima, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union activity.

(b) Engaging in, authorizing, and encouraging surveillance of union activities of employees.

(c) Creating the impression that Respondent was engaged in surveillance of union activities of employees.

(d) Discriminatorily enforcing plant rules or discipline against employees because of their union activity.

(e) Telling employees that Respondent would not tolerate a union among its employees and would close its plant rather than accept unionization.

(f) Threatening to freeze benefits and, alternately, granting employees wage increases and benefits as promised at employee meetings. Nothing herein shall be construed as requiring Respondent to revoke any wage increases or other benefits previously granted.

(g) Coercively obtaining a false statement from an employee and using it in abuse of process affecting the Union.

(h) Soliciting grievances from employees and forming an employee grievance committee in order to subvert a majority status of the Union.

(i) Telling employees that they do not have to honor subpoenas issued by the National Labor Relations Board.

(j) Discriminatorily discharging and constructively discharging employees to discourage membership in the Union.

(k) In any other manner discouraging membership in a labor organization, or interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with United Food and Commercial Workers Union Local 529A, affiliated with United Food and Commercial Workers International Union, AFL-CIO, as the exclusive bargaining representative from on and after March 26, 1980, with respect to its Toppenish facility and from on and after July 10, 1980, with respect to its Yakima facility, of employees in the units described below with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed contract. The appropriate units are:

> All full-time and regular part-time production and maintenance employees employed by Washington Beef Producers, Inc., at its Toppenish, Washington plant and its Yakima, Washington plant, excluding office clerical employees, guards, and supervisors as defined in the Act. Professional employees are an additional excluded group at the Yakima facility only.

(b) Offer Peter Nunez, Manuel Orozco, Ruben Perea, Robert Thomas, Donald Haywood, Eddie Thomas, Dan Ramirez, James O'Shaughnessy, Ron Gefroh, Barbara Schwartzman, Jerry McCray, Brandon Foran, Brent Lloyd, John Edde, George Perez, Roger Smith, Bonnie Ramos, Steven Dillard, Dean Leach, Robert Beebe, and Mike Davis immediate and full reinstatement to their former positions of employment or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings each may have suffered due to the discrimination against them by paying what they would have earned, less net interim earnings, plus interest, in the manner provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[29]

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Toppenish and Yakima, Washington, places of business copies of the attached notice marked "Appendix."[30] Copies of said notice, written in English and Spanish,[31] on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaints, and amendments thereto, be dismissed in all regards other than as to violations specifically found herein.

IT IS ALSO FURTHER ORDERED that the elections be set aside and the petitions in Cases 19-RC-9686 and 19-RC-9835 be dismissed, and all prior proceedings thereunder vacated.

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[28] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[29] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

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

[31] See *Viracon, Inc.*, 256 NLRB 245 (1981); *Art Steel of California, Inc.*, 256 NLRB 816 (1981).