Flexsteel Industries, Inc. *and* United Steelworkers of America, AFL-CIO, CLC. Cases 26–CA–15782, 26–CA–15829, 26–CA–15878, 26–CA–15891, 26–CA–15967, and 26–RC–7580

March 15, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

On August 17, 1994, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

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

In part II.A.1.a of his decision the judge referred to a ''presumption of credibility'' for witnesses currently employed by the Respondent, and he stated that he would ''afford this presumption to all witnesses who are current employees.'' We do not rely on any such ''presumption.'' The cases cited by the judge for support do not set forth a presumption of credibility, but do recognize that the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304 fn. 2 (1961). Thus, a witness' status as a current employee may be a significant factor, but it is one among many which a judge utilizes in resolving credibility issues. See, e.g., *Farris Fashions*, 312 NLRB 547, 554 fn. 3 (1993), enfd. 32 F.3d 373 (8th Cir. 1994); *Circuit-Wise, Inc.*, 309 NLRB 905, 909 (1992). As indicated above, we have carefully reviewed *all* of the judge's credibility resolutions in this case pursuant to the *Standard Dry Wall* standard and mindful of the various factors which contribute to such resolutions, and we are satisfied that his determinations are correct without reliance on any ''presumption.''

2. In the introductory paragraph of part II.B.2 of his decision, the judge erroneously stated as controlling law the ''dominant motive'' test rejected by the Board in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The proper test is set forth at page 1089 of *Wright Line*. This inadvertent error had no impact on the judge's analyses of the 8(a)(3) allegations in this case.

With regard to the unlawful discharges of employees Dotson and Scire, the Respondent contends that the judge erroneously found that the Respondent did not acquire a *prospective* furniture manufacturing contract. According to the Respondent, the contract at issue was a *current* one which it had recently *lost*, thus requiring the layoff of these two maintenance employees. The judge's essential finding was that this asserted economic layoff of the two employees was a pretext for their unlawful discharges, and we agree. Even assuming that the contract at issue was a current one, as the Respondent contends, and that the contract was its largest, representing 30 percent of its business, the Respondent has not adequately explained why such a significant blow to its business, especially its production demands, would require the layoff of two *maintenance* employees, in view of the undisputed fact that the Respondent *hired* 26 *production* employees in the 2 months preceding the ''layoffs'' and 18 production employees during the 2 months immediately after.

3. The judge found that the Respondent engaged in a number of violations of Section 8(a)(3) and (1) of the Act in response to the organizing campaign of the Charging Party Union, and we are adopting those findings. Pursuant to his evaluation of the impact of those unfair labor practices in the circumstances of this case, the judge recommended that the Respondent be ordered to bargain with the Union based on its authorization card demonstration of majority support. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). We agree with the judge that a *Gissel* order is an appropriate remedy here.[2]

The Respondent manufactures upholstered furniture; its production facilities in Starkville, Mississippi, include a wood mill and an upholstery plant. The Union

[1] In adopting the judge's conclusion that the Respondent, through Supervisor John Baker, unlawfully solicited employees to air their grievances, we note that an employer's solicitation of grievances during a union organizing campaign carries with it an inference that the employer is implicitly promising to correct the complaints it discovers. This inference is applicable in this case, and the Respondent did not rebut it. See, e.g., *Coronet Foods*, 305 NLRB 79, 85 (1991), enfd. 981 F.2d 1284 (D.C. Cir. 1993); *Uarco, Inc.*, 216 NLRB 1, 1-2 (1974).

[2] We find it unnecessary to consider the judge's opinion that any one of several unfair labor practices committed by the Respondent, standing alone, would support a bargaining order. As discussed below, we agree with the judge that ''the totality'' of the Respondent's unfair labor practices provides a proper basis for the *Gissel* remedy.

engaged in an organizing campaign from the summer of 1993[3] until mid-November. On September 9, the Union requested that the Respondent recognize it as the collective-bargaining representative of its production and maintenance employees, based on authorization cards signed by 91 of the approximately 152 employees in the appropriate unit. The Respondent refused, and the Union filed an election petition on September 10. On November 12, the Union lost the representation election, 77–67. Beginning prior to the filing of the petition and extending through the date of the election, the Respondent engaged in a pattern of unfair labor practices, several of which the Board has characterized as ''hallmark'' violations for purposes of evaluating the appropriateness of a *Gissel* order. Of these hallmark unfair labor practices, we particularly note the discriminatory discharge of three employees and the unlawful grant of benefits in the form of wage incentive plans which eventually affected all the unit employees in both the upholstery plant and the wood mill. Those discharges, summarized below, were ''complete acts [as distinguished from statements] which may reasonably be calculated to have a coercive effect on employees and to remain in their memories for a long period.'' *NLRB v. Jamaica Towing*, 632 F.2d 208, 213 (2d Cir. 1980).

Jesse Dotson had worked at the Respondent's Starkville location for 22 years, first for the Respondent's predecessor, and then for the Respondent. Dotson successfully solicited 25 employees to sign authorization cards during the organizing campaign. He was unlawfully discharged on August 23 because of his union activities. On the same date, the Respondent unlawfully discharged Joseph Scire, whose union activity was minimal and unknown to the Respondent, in order to ''cover'' the unlawful nature of Dotson's discharge. Scire had worked for the Respondent for over 7 years. It is difficult, and ultimately unnecessary, to gauge which discharge had the more severe impact on the unit employees: that of the active union adherent or that of the ''innocent'' who was snared in an unlawful plan. The message the Respondent communicated to the employees by these discharges—a message not easily forgotten—is that *anyone* can lose his or her job when a union tries to organize employees; whether a long-term employee, a union activist, or an employee who unfortunately just gets in the way.

On October 7, James Young, a probationary employee, was unlawfully discharged. Earlier, he had worn a prounion T-shirt for 1 day, and on October 5, 2 days before his discharge, he had questioned the Respondent's plant manager pointedly about terms and conditions of employment at an employee meeting conducted by the Respondent. With respect to its impact on unit employees, this discharge served as a reinforcement of the earlier message: during an organizing campaign, employees who engage in protected activity get fired.

On October 4, the Respondent changed its existing wage incentive plan for upholstery plant employees, resulting in improved incentive pay. Also on October 4, the Respondent began instituting a wage incentive plan in the wood mill. Several wood mill departments were on wage incentive by the time of the election, and the process continued, department by department, long after the election was over. As fully detailed by the judge, the improvement of the wage incentive plan in the upholstery plant and the institution of the plan in the wood mill violated Section 8(a)(1). The Board has noted that wage increase violations during the course of an organizing campaign, such as the ones here, carry a special potential for long-lasting impact, because of their significance to employees, and because the Board's usual remedies do not require the respondent to withdraw the benefits from the employees. See, e.g., *Color Tech Corp.*, 286 NLRB 476, 477 (1987). We think such a potential for protracted impact is particularly true in this case because the Respondent's sequential implementation of its wage incentive plan in the wood mill continued for months after the election.

The Respondent committed various unfair labor practices in addition to the ones discussed above. In late September, Supervisor John Baker unlawfully solicited at least 25 employees in the upholstery plant to discuss their grievances concerning the then-current wage incentive plan. In late October, Supervisor Bill Scarbrough unlawfully restricted the movement of all employees in the Respondent's sanding department. From August until the November 12 election, the Respondent's officials, from first-line supervisors to the plant manager, engaged in a series of unlawful acts directed at individual employees; these ranged from interrogations about union activity to ''hallmark'' threats of plant closure and discharge. Cumulatively considered, these one-on-one unfair labor practices have a significant impact.

As related above, the Union had the support of 91 of 152 unit employees on September 9, based on authorization cards. By November 12 the number of union supporters had dissipated to 67, and the Union lost the election. It is indisputable that the Respondent's pattern of unfair labor practices set forth above—by their nature and by their extent—had at the very least a tendency to undermine the Union's majority support and therefore impede the Board's election process. The series of unfair labor practices which characterized the Respondent's election countercampaign was highlighted by unlawful discharges and unlawful grants of benefits which particularly linger in the memories of a large number of employees. There

[3] All subsequent dates are in 1993.

are no mitigating circumstances here which would tend to lessen the impact of the Respondent's misconduct. See, e.g., *Almet, Inc.*, 305 NLRB 626, 628–629 (1991), enfd. 987 F.2d 445 (7th Cir. 1993).[4] Accordingly, the traditional Board remedies at our disposal are unlikely to rectify sufficiently the damage done by the Respondent to the employees' Section 7 rights and unlikely to insure the fairness of a second election. Therefore, to protect the sentiment of a majority of employees in favor of the Union, as demonstrated by their authorization cards on September 9, a bargaining order is appropriate in this case. *Gissel*, 395 U.S. at 614–615.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Flexsteel Industries, Inc., Starkville, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[4] Chairman Gould and Member Stephens do not consider the postelection rehiring of Dotson and the postelection offer of employment to Scire to be ameliorating factors, because those employees were not otherwise made whole nor did the Respondent properly acknowledge its unlawful conduct with regard to them. In the circumstances, the Respondent's offer to rehire them after using their discharges to undermine the Union's majority is more in the nature of a demonstration of its control over employees' employment ''to the exclusion of any outside agency that might seek an improvement in their conditions of employment.'' *Cell Agricultural Mfg. Co.*, 311 NLRB 1228, 1229 (1993), enf. granted in part and denied in part 41 F.3d 389 (8th Cir. 1994).

William D. Levy and *Rosalyn Eddins, Esqs.*, for the General Counsel.

William E. Hester III, Esq., of New Orleans, Louisiana, and *Jonathan S. Harbuck, Esq.*, of Birmingham, Alabama, for the Respondent.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This case under the National Labor Relations Act (the Act) was tried before me in Starkville, Mississippi, on five dates from January 25 through March 9, 1994. On September 9, 1993,[1] by letter of that date, United Steelworkers of America, AFL–CIO, CLC (the Union) requested recognition from Flexsteel Industries, Inc. (the Respondent) as the collective-bargaining representative of Respondent's employees who worked in its production and maintenance operations (the collective-bargaining unit or unit). Respondent refused the request. On September 10, the Union filed the petition for election in Case 26–RC–7580 seeking Board certification as the collective-bargaining representative of the unit employees.

On September 21 the Union filed the unfair labor practice charge in Case 26–CA–15782 against Respondent. On October 14 the Union filed the charge in Case 26–CA–15829 against Respondent. On November 5, on the basis of the charges filed by that date, the General Counsel issued an ''Order Consolidating Cases, Consolidated Complaint and Notice of Hearing.'' On November 15 the Union filed against Respondent the charge in Case 26–CA–15878. On November 18 the Union filed the charge in Case 26–CA–15891 against Respondent. On December 22, on the basis of all of the charges that had been filed by that date, the General Counsel issued a ''Second Order Consolidating Cases, Consolidated Complaint and Notice of Hearing.'' On January 19, 1994, the Union filed the charge in Case 26–CA–15967. On February 24, 1994, while the trial before me was in recess, the General Counsel issued a complaint on the basis of the charge in Case 26–CA–15967. When the trial resumed on March 8, on motion of the General Counsel, the February 24 complaint was consolidated with the others. I shall refer collectively to all of the complaints as ''the complaint.''

The complaint alleges that: (1) the Union has, since September 9, by virtue of authorization cards that it then (and thereafter) possessed, represented a majority of the unit employees; (2) in violation of Section 8(a)(1), Respondent's agents engaged in acts constituting interference, restraint, or coercion of employees in the exercise of their Section 7 rights; (3) in violation of Section 8(a)(3), Respondent's agents committed several acts constituting discrimination against employees that is prohibited by the Act; and (4) Respondent has refused to bargain with the Union in violation of Section 8(a)(5). As well as other remedies, the complaint alleges the appropriateness of a bargaining order effective from the September 9 request for, and refusal of, recognition and bargaining.

The Respondent duly filed an answer to the complaint admitting jurisdiction of this matter before the Board, admitting the status of certain supervisors within the meaning of Section 2(11) of the Act, and admitting certain other matters, but denying the commission of any unfair labor practices and denying the appropriateness of a bargaining order for any unfair labor practices that might be found. Specifically, Respondent asserts that a bargaining order is inappropriate, inter alia, because the Union did not receive a majority of the valid votes cast in an election conducted on November 12 pursuant to the petition filed in Case 26–RC–7850.

As recited in the Regional Director's Supplemental Decision and Order dated December 17, the tally of ballots of the November 12 election was:

Approximate number of eligible voters	150
Number of void ballots	0
Number of votes cast for [the Union]	67
Number of votes cast against [the Union]	77
Number of valid votes counted	144
Number of challenged ballots	10
Number of valid counted plus challenged ballots	154

Challenges are not sufficient in number to affect the results of the election.

As the supplemental decision further recites, the Union filed timely objections to conduct affecting the results of the elec-

[1] All dates subsequently mentioned are in 1993 unless otherwise indicated.

tion. The Regional Director found that certain of the objections required a hearing, and he ordered consolidation of the objections with the then-outstanding complaints.

On the entire record[2] and my observation of the demeanor of the witnesses, and after considering the briefs that have been filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged at Starkville, Mississippi, in the business of manufacturing upholstered furniture. During the year preceding issuance of the complaint, Respondent, in conducting those business operations at Starkville, shipped goods valued in excess of $50,000 directly to customers located at points outside the State of Mississippi, and it purchased and received at its Starkville facility, directly from suppliers located at points outside of the State of Mississippi goods valued in excess of $50,000. Therefore, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. As the Respondent further admits, the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent's production facilities include a wood mill and an upholstery plant. The wood mill is divided into the rough mill, the finishing mill, and the assembly department. The complaint alleges a variety of 8(a)(1) violations by Respondent's supervisors at these facilities. The following individuals are admitted by Respondent to be supervisors within the meaning of Section 2(11) of the Act:

Pat Salmon	General Manager
Roy Pollard	Personnel Director
Jerry Ray	Wood Mill Manager
Kenny Malone	Upholstery Plant Manager
Bill Scarbrough	Sanding Supervisor
Wayne Boykin	Finishing Room Supervisor
Richard Howell	Maintenance Coordinator
Winston Patrick	Finish Mill Lead Person
Johnny Baker	Upholstery Plant Supervisor
Fred Melloy	National Sales Manager

Each of these supervisors is alleged to have participated in conduct that is prohibited by the Act.

1. Alleged violations of Section 8(a)(1)

a. *Conduct of Bill Scarbrough*

The complaint alleges two acts of interrogation and one threat by Sanding Supervisor Scarbrough.

Current employee[3] Jeffrey Malone testified that during the campaign which preceded the November 12 election Respondent posted a ''card,'' or poster, in the break area stating: ''Signing a union card is like signing a blank check.'' According to Malone, about a week before the election at a time when he was in his work area, he was approached by Scarbrough. According to Malone:

> He [Scarbrough] walked up to me and he told me did I understand about that card on the wall. I asked him, ''What card?'' He said, ''The card in the break room.'' I . . . said, ''No,'' and he walked off.

This conduct is not denied. In fact, Respondent contends that this was the only question that it permitted its supervisors to ask employees.

Current employee Darren Robinson testified that in August, as he was working:

> He [Scarbrough] just walked over and asked me did I fill out a union card. . . . I said no.
>
> He just said it was best not to get mixed up in this stuff.

Scarbrough denied this testimony by Robinson; however, current employees such as Robinson are afforded a presumption of credibility,[4] and I did find Robinson credible as he gave the above-quoted testimony.

Malone further testified that a few days after the election he was approached again by Scarbrough. According to Malone:

> Well, I was at the table filling out a time sheet for the loads. Every load have a time sheet for it and you had to fill it out. And he [Scarbrough] came over to the table and asked me something about my car. He asked me have I fixed my car yet—asked me have I got through paying for my car yet and I told him yes. Then he asked me again, he said, ''I didn't know you was through paying for your car already.'' I kind of caught on to what he was talking about because I thought he was talking about the dent on it. I had been in an accident and I thought he asked me have I got my car fixed yet. So, I told him, ''No, I ain't through paying for it yet.'' And he said, ''If you know what will happen if the union was to get in here, how are you going to get through paying for your car then?''

Malone was then asked, and he testified:

> Q. And did you make any answer to him?
> A. I just laughed.

Scarbrough denied the testimony by Malone. I credit Malone. As a current employee, Malone is afforded the presumption of credibility. Moreover, Malone seemed candid as he answered, ''I just laughed.'' To most any layman this would seemingly dilute any alleged coercive impact; in giving it, Malone showed himself there to tell the truth, not to ''make a case'' against Scarbrough or Respondent.

The complaint further alleges that Scarbrough, since about September, has more strictly enforced Respondent's ''rules requiring employees to remain at their work stations and pre-

[2] Passages of the transcript have been electronically reproduced. Proper punctuation of transcript quotations is supplied only where necessary to avoid confusion.

[3] I use the term ''current employee'' for those witnesses who were employed by Respondent at time of trial.

[4] *Georgia Rug Mill*, 131 NLRB 1304 (1961); *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978). Unless otherwise indicated, I afford this presumption to all witnesses who are current employees.

venting employees from talking among themselves during worktime in order to discourage employees from supporting the Union.[5]

Current employee Blivens Washington testified that about 2 weeks before the election Scarbrough called the sanding department employees together and:

> We was told to stay in our department and we shouldn't be going to other departments talking with other men that work in other departments. If we're on break, we shouldn't be going over there talking.

Washington testified that, before this announcement, when employees were on breaks, they were allowed to go to other departments that were not on break, ask the supervisor of that other department if they could speak to other employees who were then working, and, if the supervisor of that other department granted permission, the employee who was on break would go and talk to the employee who was not on break.

Scarbrough did not deny this testimony; in fact, he partially corroborated it. Scarbrough did testify that he always told employees that, while they were working, they should not stray into other departments. Scarbrough did not, however, deny Washington's testimony that he told sanding department employees that, thenceforth, while they were on breaks, they should not go to other departments and seek permission from other supervisors to speak to working employees. Indeed, Scarbrough partially corroborated Washington by testifying that, in the past, he has granted permission to employees from other departments to speak to working employees in the sanding department; he did not qualify this admission by testifying that he first asked the requesting employee if the proposed subject of conversation was work related.

b. *Conduct of Richard Howell*

The complaint alleges preelection threats and interrogations by Maintenance Coordinator Howell. Current employee Charles Reed testified that in October, while he was on afternoon break in the lunchroom, Howell spoke to him:

> Richard asked me had anybody approached me with a union card. I said yeah. He asked me had I signed a union card and I said yeah. . . . He told me there had been a couple of plants shut down because the union came in, like Maben Frame Mill.

Howell denied this testimony by Reed; however, I found Reed credible.

c. *Conduct of Winston Patrick*

The complaint alleges a preelection threat of plant closure by finish mill Lead Person Patrick.[6]

Current employee Marvin L. Williams testified that in August, while he was working, he was approached by Patrick and:

> [Patrick] approached me and told me that there would be no union in this plant and that he had talked to everybody else about the union and if I had a problem with it that I needed to talk to Jerry Ray, Roy [Pollard] or Pat [Salmon] or himself, sit down and talk to them about it, that if a union came in that they would shut the doors down or whatever. And I told him that I knew they couldn't close the plant down because no union came in and that they had machinery back there, referring to the C & C routers that had to be paid for, that my salary wasn't a half a million dollars a year. And that's when he grinned and walked away.

Patrick denied this testimony; however I found Williams credible.

d. *Conduct of Pat Salmon and Roy Pollard*

The complaint alleges preelection threats to employees by Plant Manager Salmon and Personnel Director Pollard that they would be discharged if they wore prounion buttons.

Former employee Kit Akins testified that about a month before the November 12 election, at a time when some employees were wearing prounion buttons:

> I was going to the back to get some springs for my department. Pat [Salmon] and Roy Pollard was standing back there at that shipping table and they asked me—I walked by and they said, ''Kit, thank you for not wearing the 'Fire Me' button.'' I said, ''Huh?'' You know, acting like I was lost. He [Salmon] was smiling and he said, ''Go ahead on.''
>
> And I went and got the springs and come back and Roy, he was gone, and . . . I said, ''What did you say, Pat? I didn't really understand you. I've got a headache.'' He said, ''Thank you for not wearing that 'Fire Me' button.'' I said, ''Oh, okay.'' . . . And I just went on back to work.

Pollard and Salmon denied the testimony; however, Akins is a former employee who has no reason to lie, and I found him credible.

The complaint further alleges that Salmon threatened employees with loss of their funds in Respondent's Section 401(k) plan if the Union were selected by them. Current employee Jeffrey Malone testified that Salmon made just such a threat during a preelection speech. Current employee C. W. Montgomery testified that Salmon told the employees that the Union would take the employees' funds in the plan and pay the Union's debts with it, but he did not testify to the flat statement attributed to Salmon by Malone. On direct examination, current employee Betty Poe also failed to corroborate Malone; she did testify that Salmon told the employees that he would get his money out of the 401(k) plan if the Union were elected and that the employees should do the same. Salmon denied this testimony; he testified that he told the employees that, as management, his 401(k) plan would not be a part of any collective-bargaining process, but the employees' plan would be the subject of negotiations if the Union were elected. On cross-examination Poe agreed

[5] The complaint further alleges such conduct by Supervisor Winston Patrick, but there was no evidence presented on that portion of the allegation; it is not mentioned by the General Counsel on brief; and I shall recommend dismissal of that portion of the allegation.

[6] The complaint (par. 9(a)) also alleges a preelection interrogation by Patrick; however, there is no evidence to support the allegation, and I shall recommend dismissal of the allegation.

that Salmon did tell the employees that their plan would be the subject of collective bargaining. I credit Salmon (and Poe on cross-examination) over Malone and Mongomery.

e. *Institution of improved and new incentive plans, and conduct of Johnny Baker*

Before the events of this case, the upholstery plant employees received incentive pay; the wood mill employees did not. The complaint alleges that in early October Upholstery Plant Supervisor Baker:

> solicited its employees' grievances concerning Respondent's incentive plan [in the upholstery plant] and impliedly promised to rectify such grievances.

And the complaint further alleges:

> In or about the first week of October 1993 . . . Respondent implemented an incentive plan for its wood mill employees and implemented an improved incentive plan for employees employed in its upholstery plant.

Prior to October 4, computations for incentives in the upholstery plant included the production of the wood mill as well as the upholstery plant. Employee Lloyd Bell, a packer in the upholstery plant, testified that ''About a month and a half'' before the November 12 election, or in late September or early October, John Baker, Bell's immediate supervisor, approached him and employee Andrew Hines asked them what they thought about the existing incentive plan. As Bell testified on cross-examination: ''Well, [Baker] didn't really ask whether there needed to be any changes. He asked us what we thought about it. I just told him how I felt about it.'' Bell testified that he answered Baker's inquiry by stating that ''the plan[7] was taking [money] from me.'' Bell further testified that he told Baker that the plan was ''unfair.'' Bell testified that Hines (who did not testify) told Baker the same things. Bell testified that Baker did not respond to his comments or those of Hines.

Baker admitted this questioning of Bell and Hines; as discussed below, he testified that he did so on the specific instructions of Pollard.

On October 4, Respondent implemented a change in its incentive plan for employees employed in the upholstery plant. The incentives were changed so that incentives were figured on the basis of the upholstery plant, alone, and not in combination with the production of the wood mill. Bell testified that, after the change was made, his incentive pay improved.

Also on October 4, Respondent, for the first time, established incentive rates for employees in the rough mill section of the wood mill. The marking and bandsaw operations were placed on incentive on October 4; the trim-and-bore operations were placed on incentive on October 18, the upright bore operations were placed on incentive on November 1; and the CNC router operations were placed on incentive on November 8. Many more operations in the rough mil were placed on incentive after the November 12 election. Plant Engineering Assistant Thomas Benton testified that he was transferred to the plant engineering office about September 1 and told to study the possibilities of incentives for the wood mill employees. He further testified that there were no determinations to institute such incentives for the wood mill until October 1 when they were announced to the employees.

Personnel Director Pollard was called by the General Counsel to identify and explain certain memoranda from Respondent's corporate file that had been produced in response to a subpoena. The memoranda appear to be those that would have led up to the changes in the incentive plans, but Pollard refused to admit knowledge of them. Specifically, Pollard denied seeing the memoranda before, denied knowing if the memoranda had been posted in the plants, denied knowing if the memoranda could have been the first announcement of the changes to the employees, denied knowing if the incentives actually instituted were the incentives described in the memoranda, denied being involved in any announcement of the changes to the employees, denied knowing whether supervisors had explained the changes to the employees, denied knowing how the incentives for the upholstery plant were computed before the changes; denied knowing how the incentives were computed after the changes; denied knowing who made the decision to change the incentive rates, and denied knowing when the decisions to change the rates were made.

All of these professions of ignorance about the wage structure are particularly suspect when one considers the testimony of Supervisor Baker who testified that:

> I was asked by the Personnel Manager[8] to go out into all of my area and ask everyone their opinions and ideas about the current incentive program, and if they didn't like it, if they had anything else to say about it.

Baker testified that Pollard told him to gather the information because engineers from the Respondent's parent corporation in Dubuque, Iowa, were coming to the plant, and ''they would be passing this information back to them.'' Baker testified that he did, in fact, give the information that he gathered to Pollard. Baker would not have given this testimony if it were not true. Quite obviously, Pollard was not in the position of complete, innocent, ignorance about the incentive programs (old and new) that he claimed.

Even without Baker's testimony, I would find Pollard to have been an incredible witness. A change in a wage structure is the sort of thing that a personnel director would principally be responsible for. At minimum, a personnel director would have knowledge of such changes as they are going on around him. (And if there is anything less than this minimum, it is knowledge by a personnel director of what company documents have been, or have not been, posted on the company bulletin boards.)

I found Personnel Director Pollard's professions of ignorance about wage administration so surprising that, at one point, I was constrained to ask:

> JUDGE EVANS: Excuse me. You're the Personnel Director. Do you have any reason to believe that this [the memorandum describing the new plan] hasn't been carried out?
>
> THE WITNESS: I have no reason to believe it hasn't been.

[7] Certain errors in the transcript have been noted and corrected.

[8] According to this record, there is no ''personnel manager'' other than ''Personnel Director Pollard.''

That is, when his most palpably false profession of ignorance was challenged, Pollard employed the tactic of evasiveness. Another such telling exercise in evasiveness occurred when General Counsel asked Pollard about who might have been involved in the decision to change the incentives, if he was not:

> Q. Do you know whether Mr. Salmon [the plant manager] was a part of that decision?
> A. You'll have to ask him.
> JUDGE EVANS: Is that a ''No''?
> THE WITNESS: That's an ''I don't know.''
> JUDGE EVANS: Thank you.

All of this is to say that Pollard was a mendacious, if not perjurious, witness.

This point about Pollard's mendacity does not relate to any finding on the issues raised by the allegations of violative implementations of improved and new incentive rates. This is so because there are no factual issues on the issues of the implementation of, and improvements in, the incentives. Respondent does not deny the changes, and Respondent does not contend that any relevant decisions were made before the filing of the petition.[9] I make the point about Pollard's mendacity for future reference on a completely different issue, his denial of knowledge of the union activities of alleged discriminatee Jesse Dotson.

f. *Conduct of Wayne Boykin*

The complaint alleges that Finishing Room Supervisor Boykin interrogated and threatened ''approximately 9'' employees on September 2. There were about nine finishing room employees in September, but only one, Willie Gillespie, testified on the allegation.

Gillespie has been employed by Respondent as a paint-sprayer under Boykin for about 8 years. Gillespie testified that on September 2:

> [Boykin] just took me on the outside from my work station and went out in front of the guard shack and sat down on a 5-gallon bucket and asked me how I felt about a union. I said, ''If it's going to help, I'm for it. If not, I'm not.''
>
> [A]nd he said it can help you in the long run and it can harm you in the long run. He had known some plants that have went out of business, closed down. Workers that had been there a long time got laid off, lost their medical benefits.

Gillespie further testified that on the same day he saw Boykin take other finishing room employees, including Johnny Staple, Wallace Knox, Roosevelt Patterson, outside, one-by-one, but he did not hear what Boykin may have said to those employees.

Boykin admitted taking Gillespie and other employees outside for discussions on September 2, but he insisted that he only asked the employees, including Gillespie, if they understood a poster concerning union authorization cards that Respondent had recently placed in the lunchroom. Gillespie flatly denied that a poster was discussed.

Respondent asks that I draw an adverse inference against the General Counsel, and discredit Gillespie, because none of the other finishing room employees were called to testify. Respondent cites *International Automated Machines*, 285 NLRB 1122 (1987), as authority for the proposition. The cited case involved the failure of a respondent-employer to call a supervisor who would have had knowledge directly bearing on an alleged violative discharge. The Board held that an adverse inference was appropriately drawn because the supervisor would have possessed relevant knowledge and because the respondent in that case would have had ''confidence in [the] available witness'' objectivity.[10] Here, the General Counsel had no apparent reason to have confidence in the other employees' objectivity, assuming that they were available. Also, it may well be that the other employees were not spoken to in the same manner as was Gillespie; perhaps the General Counsel indulged in a false assumption when he included the ''approximately 9'' allegation in the complaint. This would not detract from what did, or did not, happen to Gillespie when he and Boykin were alone.

Again, Gillespie is a current employee, and he is the immediate subordinate of the supervisor about whose conduct he testified. He has everything to fear from false testimony, and he certainly has no incentive to lie. I credit Gillespie.

g. *Conduct of Fred Melloy*

The complaint alleges that National Sales Manager Melloy interrogated an employee on November 12, the day of the Board election. In support of this allegation, the General Counsel called office clerical employee Brenda A. Akins.

Until January 1994, Akins was one of six inside sales assistants under the direct supervision of Melloy. The sales assistants work mostly in the office area of the plant, but they also spend about 15 percent of their time in the production areas of the plant.

The election of November 12 was held in the afternoon. Akins testified that when she arrived at work in the morning, she noticed that some of the other inside sales assistants were wearing ''Vote No'' stickers that were designed to be placed on clothing. (Each sticker was in the form of a campaign button, and Akins usually referred to the stickers as ''buttons'' in her testimony.) Additionally, such stickers were lying on some desks, including hers. Akins threw the sticker in the trash.

Later in the morning, according to Akins, she was approached by Melloy who ''tossed'' one of the stickers on Akins' desk and told her to put it on. Akins refused. Melloy asked Akins why she would not wear a ''Vote No'' sticker; Akins gave several reasons, but Melloy persisted, asking at least twice more why Akins would not wear the sticker. To one of her reasons, Melloy replied, ''So what, Brenda?''

Melloy testified that when he arrived at work on November 12 he found two ''Vote No'' stickers on his desk. Melloy further testified that he noticed that all of his subordinates except Akins were wearing such buttons. Melloy testified that he approached Akins and:

> I got a sticker and I put it on her desk, and I said to her, ''Here's a sticker in case you lost or misplaced your other one.''

[9] The documents that Pollard refused to acknowledge postdated the filing of the petition for election herein.

[10] *International Automated Machines*, supra at 1123.

> She said she already had one and she wasn't going to wear it.
>
> I asked her why she wouldn't wear it.
>
> [S]he said, ''Fred, you know how I feel about the union. These are my friends out here. They're my friends out there. They know where I live and I'm not going to wear it.''

Melloy testified that nothing else was said between him and Akins on the matter.

Akins was a former employee who had no seeming reason to lie under oath; moreover, she had a completely credible demeanor, as opposed to Melloy. To the extent that Akins and Melloy differ in their testimonies, I credit Akins.

2. Alleged violations of Section 8(a)(3) and (1)

a. *Discharges of Dotson and Scire*

Respondent purchased the Starkville facilities from Howard Furniture Company in 1985. Jesse Dotson was hired by Howard Furniture in 1971 and was continuously employed in various maintenance and production jobs for Howard until it was purchased by Respondent. At the time of the purchase Dotson was a leadman for Howard in the wood mill. Respondent continued Dotson's employment, hiring him as the maintenance man in the wood mill, a position in which he continued until about 1989 or 1990 when he was transferred to be the maintenance man in the upholstery plant. Dotson was the maintenance man in the upholstery plant until he was terminated on August 23. Also terminated on August 23 was Joseph Michael Scire who had been a maintenance man at the wood mill since February 1986. As the maintenance men Dotson and Scire mostly repaired equipment and building facilities; they were the only employees regularly assigned to do such repairs at the time of their terminations.

The General Counsel contends that Dotson was discharged because of his known or suspected union activities. The union activities of Dotson were prodigious, but Respondent denies any knowledge of them. Respondent further contends that Dotson and Scire were laid off (not discharged) solely because of a lack of need for their services as a maintenance men. The General Counsel contends evidence of Respondent's knowledge of Dotson's union activities is contained in a remark by Pollard to Dotson, a remark that Pollard denies. The General Counsel acknowledges that Scire's union activities were minimal, and the General Counsel does not contend that those minimal union activities became known to Respondent before Scire's termination. The General Counsel contends that Scire was terminated, as stated on brief, ''in order to give the appearance, albeit false, that it had a legitimate reason for terminating the employment of Dotson.'' The General Counsel contends that, by such conduct, Respondent violated Section 8(a)(3) in the termination of Scire, as well as Dotson.

Dotson signed a union authorization card on August 9. Between that date and August 23 he secured the signatures of 25 other employees. Dotson freely admitted, however, that he attempted to keep his card soliciting activities a secret from management.

For some period of time before his termination, Dotson had been trying to convince Pollard that he was promotable to a supervisory position. Such a position in frame assembly did come open sometime in the summer. According to Dotson, during the week before his termination he met Pollard in a work area. On direct examination Dotson was asked and he testified:

> Q. Would you tell us what was said, please?
>
> A. He told me, he said, ''I thought you was a company man. We had a position for you.'' It was right at lunch time. The buzzer had rung, so I went to lunch.

On cross-examination, Dotson further testified that he responded to Pollard: ''Roy, I've been looking for a position for about five years.''

On cross-examination Dotson denied that the specific position in frame assembly was mentioned in his exchange with Pollard. Dotson acknowledged on cross-examination that he had several times before referred to himself as a ''company man'' when speaking to Pollard, but he denied making such a comment in this exchange.

Pollard denied this testimony. I have indicated before that Pollard was not there to tell the truth. His tactics of incredible denials and evasiveness when testifying about the implementation and improvement of incentives complete cloud any attempt to credit his testimony on this other important issue. I credit Dotson, who also had a more favorable demeanor.

Dotson was given no forewarning of his termination; he described his August 23 termination by Upholstery Plant Manager Malone:

> I worked all day that day. Right before quitting time Kenny Malone come and got me and took me in his office and told me he had some bad news. I told him, ''Let's hear it.'' He told me, ''Your job run out.'' And then I told him, I said, ''No.'' He said, ''Yeah.'' He said, ''We're going to start contracting.'' I told him, I said, ''The job didn't run out. I didn't come here on no watermelon truck.'' Those are the exact words that I told him. And he said, ''Yeah, it ran out.'' . . . [A]nd that was it.

Scire gave a consistent account of his termination by Wood Mill Manager Ray. Both Scire and Dotson were offered reinstatement, or recall, in December; Scire declined and Dotson accepted.

Pollard and Salmon testified that Dotson and Scire were laid off because Respondent had lost a large contract and needed less ''indirect labor.'' Pollard testified that while Dotson and Scire were laid off, their former duties were distributed to other employees and management, and to an individual and a company which Respondent had, prior to the layoffs, contracted-out some maintenance work.

No other employees were laid off around August 23. Respondent did not hire any new maintenance employees between August 23 and December, however; it did hire 18 new production employees by October 25. Also, Respondent had hired 26 production employees in the 2 months immediately preceding the terminations of Dotson and Scire.

b. *Warning to, and discharge of, John Channell*

Channell began working for Respondent as a sander in January, and he was discharged on September 3. The General Counsel contends that by that discharge, and by the issuance

of a written warning to Channell about[11] 3 weeks before that discharge, Respondent violated Section 8(a)(3).

Channell testified that he attended weekly union meetings during the campaign. Channell spoke in favor of the Union with other employees at breaks and signed a union authorization card on July 12, but he did not ask any other employee to sign a union authorization card. There is no evidence of Respondent's knowledge of these activities. Channell did not wear prounion buttons or any other insignia of his sympathies. Channell did engage in one discussion with another employee in the parking lot after work about 3 weeks before his discharge. Channell spoke in favor of the Union, and the other employee spoke against it. At one point the discussion became heated, but after it returned to ''normal'' (Channell's word) volume, Supervisor Winston Patrick approached Channell and the other employee and told them to leave the parking lot. Neither Channell nor the other employee testified that Patrick could have heard their discussion before he ordered them to leave the parking lot.

Also about 3 weeks before his discharge (Channell was not asked if before or after the parking lot incident) Scarbrough gave Channell a written warning notice for dipping snuff inside the plant. Channell admitted to dipping snuff but denied that there was previously any rule against it. The General Counsel's witness Vance Ray testified that there was, in fact, such a rule.

On September 2 Channell asked his supervisor, Scarbrough, for permission to leave work at the regular quitting time rather than work assigned overtime. Scarbrough said ''Okay'' according to Channell's undisputed testimony.[12] On September 3, when he returned to work, further according to the undisputed testimony of Channell, Scarbrough handed Channell his final check and told Channell that Pollard had told Scarbrough that Channell was discharged; according to Channell's undenied testimony, Scarbrough gave him no reason for the discharge.

When called by the General Counsel under Rule 611(c), Pollard testified that Channell was fired because of a his ''[r]efusal to give a reason for leaving work during scheduled overtime.'' No evidence was offered by Respondent in support of this conclusion.

c. *Unfavorable evaluation and discharge of James Young*

James Young was hired as a sander on July 19. Like all other employees, he was subject to a 90-day probationary period during which he received 60- and 80-day evaluations He was placed under the direct supervision of Scarbrough who conducted the evaluations. Young was terminated on October 7. The complaint alleges that Young received a negative 80-day probationary employee's evaluation, and he was discharged, in violation of Section 8(a)(3). The General Counsel contends that Young received a negative 80-day evaluation because shortly before that evaluation was issued he wore to work a T-shirt advocating unionism; the General Counsel contends that Young's termination was caused by Young's speaking out at a campaign meeting conducted by Plant Manager Salmon on October 5. Respondent contends that the evaluation, and the discharge, were caused only by Young's performance as a probationary employee.

Respondent has forms for supervisors to complete on employees' 60th and 80th days of employment. The forms, entitled ''Probationary Employees Progress Report'' instruct the supervisors to grade employees in four categories: (1) workmanship (''volume, quality, and safety of work''); (2) ability to grasp instructions; (3) conduct (''cooperation, courtesy, attitude, and work habits''); and (4) punctuality and attendance. In each category, the supervisors are to grade probationary employees from ''A'' to ''E'' for outstanding, above average, average, below average, and poor, respectively. Just before the supervisor's signature, the forms have, ''I (do, do not) recommend retention.''

On his 60-day report for Young, Scarbrough graded Young B, B, A, and A, respectively, for the four categories; Scarbrough struck through ''do not'' on the recommendation line.

Until the Salmon meeting of October 5, Young was not active on behalf of the Union. However, 2 weeks before his discharge Young wore to work a T-shirt of another union. The legend on the shirt was: ''A great union—IUE—for a better tomorrow.''

Young testified that on the day that he wore the IUE T-shirt to work, Wood Mill Manager Ray stopped and commented on it:

> Well, I was standing up and he walked by and stopped and talking to me and [Ray] kept looking at my shirt, and he read something about the *union* and I asked him, ''Why do you keep looking at my shirt? Is something wrong with it?'' And he said, ''No.'' And he kept reading the *union* and then I looked down at the shirt and I seen ''Union'' across it and I told him I didn't know it was on there. It was just a work shirt, an old work shirt I was keeping from getting my good shirt messed up. And he left out of the room and came back and read it again. And then he talked to me a little while again and then he left back out.[13]

When asked precisely what Ray said about the T-shirt, Young testified:

> He read it out loud. . . . I can't remember the first thing[14] [that Ray said] but I know he got to ''IUE for a better tomorrow.'' ''The greatest union for a better tomorrow, IUE.'' . . . Well, the only thing he just asked me where was the company wherever the union that gave my momma the shirt—he asked me where was it from and I told him I didn't know because my momma gave me the shirt to work in.

Young's testimony was fully corroborated by current employee Marvin Williams who testified that he witnessed the confrontation of Young by Ray, including Ray's reading the T-shirt, leaving, and then returning to re-read the T-shirt audibly.

[11] Issuance of the warning is admitted, but a copy was not placed in evidence, and the date is unclear.

[12] Scarbrough testified, but not on the allegations relating to Channell.

[13] I supply the emphasis to the transcript quotation. Young emphasized the word ''union as if he were reading out loud, as the testimony quoted immediately below indicates.

[14] See fn. 7, supra.

On October 5, Scarbrough completed an 80-day probationary report on Young. Scarbrough again graded Young ''A'' in conduct and attendance, but he graded Young ''D'' in workmanship and ''C'' in ability to grasp instructions.

Later on October 5, Plant Manager Salmon conducted a campaign meeting of employees in the wood mill. According to Young, as Salmon read a speech:

> Well, he was talking about the union and I asked him—different things about the union and I asked him, ''Are you scared of the union?'' Pat said, ''No, I'm not scared of nothing.'' And I said, ''If you're not scared of the union, you say you can turn it down. Why don't you let it in and turn it down?'' He still didn't say nothing and then he read a little further. When he got a little further on in it, he asked everybody, he said, ''If you got any questions, just jump right in.'' So, he got a little further and I asked another question. Then I told him, I said, ''If employees go out there and lose an arm, it's just an arm lost, right?'' Then he told me that was a good question. I said, ''The only thing you're looking for is to get your work out. You don't even think about your employees.'' I said, ''You got to think about your employees before you can do anything else. If you scratch our backs, we'll scratch yours.'' And later on after that he got to the part where he said he was paying the lawyers $300,000.00 and I told him, ''If you're paying the lawyers that much, I'll just go home and put on one of my suits and you can give me $300,000.00 if you want.''
>
> I asked him, I said, ''When are we going to get a raise?'' He said, ''About in January.'' And I said, ''How much are we going to get, about seven or eight dollars an hour?'' Then he said, ''Just wait and see.''. . . I said, I think, ''You want us to work for nothing.''

On October 7, according to Young:

> I got to work and about 9:00 Bill [Scarbrough] . . . took me in Jerry's [Jerry Ray's]office and he stood there, and I said, ''What's wrong?'' He said, ''I'm sorry.'' I said, ''Sorry about what?'' He said, ''I'm going to have to let you go,'' he said, ''because Roy [Pollard] wasn't satisfied with your work.'' I said, ''Roy wasn't satisfied with my work? If he wasn't satisfied with it, he could have got rid of me a long time ago.'' And then I asked him, I said, ''Tell me the honest truth.'' And he didn't say nothing. He just left out and he said, ''Go clock out.''

As Young was hired on July 19, his 90-day probationary period was to expire on October 17.

Scarbrough testified, but not on the subject of Young's discharge or the remarks that Young attributed to him.

Respondent called Wood Mill Manager Ray who testified that he made the decision to discharge Young. When asked on direct examination for the reason, Ray responded:

> Mr. Young was terminated for unsatisfactory work, and when I say unsatisfactory work, his efficiency was fine, but he had a large amount of rework. Just about everything he did had to be reworked and he was a probationary employee of less than 90 days and we made the decision to terminate him for that reason.
>
> His job performance was unsatisfactory because he had a large number of rework. We had to rework just about everything he did.

Ray testified that he made the decision to discharge Young on the day that the discharge was consummated. Repeatedly on cross-examination Ray testified that ''just about everything that Young did between the 80-day evaluation and the discharge had to be redone by Young or others. Ray did not testify on what basis he reached the conclusion that ''just about everything'' that Young did required reworking, and no documentary or other evidence (such as the testimony of Young's immediate supervisor Scarbrough) was offered by Respondent.

d. *Warning notices to Reed*

Reed is a janitor. I have previously credited his testimony about an interrogation and treat of plant closure by Supervisor Howell. He told Howell that he had signed a union authorization card. The complaint further alleges that Reed was discriminatorily given warning notices on September 6 and October 8 and 14.

The warning notices are memoranda to Reed's personnel file; no copies were given to Reed at the time that the notices were so entered. All of the are based on employee complaints about how the bathrooms and drinking fountains were cleaned (or, rather, not cleaned). There is no suggestion that these complaints were fomented by Respondent's agents. Also, Reed acknowledged that twice in the 6-month period before the Union began the organizational attempt, he received two other such warnings.

B. *Analysis and Conclusions*

The unfair labor practice allegations of complaint and the Charging Party's objections to the conduct affecting the results of the November 12 election are essentially identical, and the analysis and conclusions for both shall be entered here.

1. Alleged 8(a)(1) violations

a. *Institution of improved and new incentive plans*

The complaint alleges, and Respondent admits, that a new incentive pay plan for the wood mill employees, and improvements to the existing incentive pay plan for the upholstery plant employees, were instituted on October 4, a date within the ''critical period'' between the September 10 filing of the petition for election and the November 12 election.

In *Exchange Parts Co.*, 375 U.S. 405 (1964), the Supreme Court, with dramatic imagery, described the potential evil of the use of grants of wage increases during an organizational campaign:

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if is not obliged. [Footnote omitted.]

In *ARA Food Services*, 285 NLRB 221, 222 (1987), the Board stated the ''well established principle'':

> [W]hen a benefit is granted during the critical period before an election, the burden of showing that the timing was governed by factors other than the pendency of the election is on the party who granted the benefit. The logic behind this legal principle is clear: only the party granting the benefit can explain why it chose to do so. An employer meets that burden if it presents evidence which establishes justification for its action.

In this case, Respondent makes no attempt to explain the timing of its institution of an incentive plan for the wood mill employees and no attempt to explain its timing of the improvements to the incentive plan for the upholstery plant employees. This factor compels the conclusions that the increases were designed to interfere with the employees' free choice in the November 12 election,[15] and that the grants violated Section 8(a)(1).[16]

b. *Solicitation of grievances about the incentive plans*

As Supervisor Baker testified, Personnel Director Pollard sent him into the upholstery plant to ask employees what they thought about the then-existing incentive plan. Baker did so, and he got replies that were entirely predictable: the employees wanted more money. Then they got more money, in the form of the October 4 grants. The employees may not have realized what was happening at the time that Baker questioned them, but the immediate grant of the increases would have inspired the rhetorical question: ''We complained when Baker came around and asked us about it; then we got increases; so why do we need the Union?'' That is, the employees would know, retrospectively, that Baker's questioning had been a solicitation of grievances in order to defeat the Union, even if Baker made no promises at the time, and even though Baker did not mention the Union at the time. I conclude that (the predictable) grievances were being solicited so that they could immediately be remedied. (And they could be remedied immediately because, as Pollard assuredly knew at the time he sent Baker out to solicit the grievances, Respondent was already planning to institute, unlawfully, the incentive plan improvements discussed above.)

By Baker's solicitations of grievances about the upholstery plant incentive plan, Respondent violated Section 8(a)(1), as I find and conclude.

c. *Restriction of employee movement*

After the union activities began, and for no other apparent reason, Scarbrough told employees that they must thereafter not go into other departments, even when on their breaks. This was so in spite of the fact that employees had previously been allowed to go into other departments and, after receiving permission of supervisors in other departments, speak to working employees. This was institution of a new rule; the sanding department employees were told, in effect, not even to ask other supervisors for permission to talk to other employees. Respondent offers not the slightest reason for the new rule; Scarbrough hinted that sometimes employees talk too much, but he made no suggestion that the employees in the sanding department had been abusing privileges granted by *other* supervisors. There being no explanation for the change other than the union activities, I find and conclude that the change was made only to interfere with those union activities and that by that conduct, Respondent violated Section 8(a)(1). *SMI Steel*, 286 NLRB 274 (1987).

d. *Interrogations and Threats*

Five separate acts of violative interrogations and five separate acts of violative threats are alleged by the complaint. I include both the alleged threats and the alleged interrogations in this section because, sometimes, both categories of violations are alleged on the basis of one conversation.

Before the November 12 election, Scarbrough asked employee Malone if he had seen Respondent's posting about union authorization cards and if Malone had any questions about the posting. The General Counsel does not make any argument that such a question, alone, has any coercive impact. The General Counsel does cite *Monfort of Colorado*, 298 NLRB 73, 85 (1990), as authority for the legal, if not logical, proposition that a violation occurred. In *Monfort* a supervisor did ask an employee if she had seen a company election campaign leaflet, but that was not the violation found. The violation found in *Monfort* was asking employee other questions (how she liked her job and what she thought of other employees' possibly returning to work), and the Board mentioned the supervisor's question about the leaflet only to demonstrate that there could have been no mistaking that the other questions were really questions about a pending Board election. I shall recommend dismissal of this allegation of the complaint.

In August, Scarbrough asked employee Robinson if he had signed a union authorization card. Robinson replied that he had not, and Scarbrough warned him that it was ''best not to get mixed up in this stuff.'' This interrogation, coupled with an instruction not to engage in union activities necessarily contained a coercive element, and by it Respondent violated Section 8(a)(1), as I find and conclude.[17]

In October, Howell questioned employee Reed about whether Reed had been approached about signing a union authorization card and if Reed had signed one. When Reed responded affirmatively to both questions, Howell told Reed what the impact of his answers might be by stating that ''a couple of plants shut down because the Union came in.'' By Howell's adding this threat, the coercive nature of the preceding questions was then made most clear. And by both the interrogation and the threat, Respondent violated Section 8(a)(1), as I find and conclude.

In August, Supervisor Patrick told employee Williams that ''there would be no union in this plant,'' that if Williams ''had a problem with it'' (viz, if Williams disagreed), he should talk to Patrick, Pollard, Salmon, or Jerry Ray, and that Respondent wold ''shut the doors down'' if the Union

[15] Additionally, one of the corporate documents that Pollard refused to recognize states that the grants were prompted by ''numerous complaints from the employees.''

[16] The complaint also alleges that the grants violated Sec. 8(a)(3); however, the General Counsel does not mention this portion of the allegation on brief, there is no evidence on which to make any such conclusion, and I recommend its dismissal.

[17] *Rossmore House*, 269 NLRB 1176 (1984).

were selected as the employees' collective-bargaining representative. At minimum, when Patrick threatened Williams with these things, Respondent was violating Section 8(a)(1), as I find and conclude.

On September 2, Supervisor Boykin took employee Gillespie away from his work station and asked him how he felt about the Union. Boykin gave an evasive response, and Boykin countered with statements that selection of the Union could ''harm you in the long run,'' and that Boykin had known of plants that had shut down when a union was chosen as the employees' collective-bargaining representative. By Boykin's questioning of Gillespie, coupled with Boykin's threats to Gillespie, Respondent violated Section 8(a)(1), as I find and conclude.

On November 12, election day, Melloy foisted on office employee Brenda Akins a ''Vote No'' sticker button and demanded to know why she would not wear one. Soliciting an employee to wear a ''VOTE NO'' insignia and asking the employee why the employee would not do so constitutes an interrogation in violation of Section 8(a)(1). *Nissen Foods (USA) Co.*, 272 NLRB 371 (1984). I find and conclude that Respondent, by Melloy's conduct toward Akins, did so here.

Finally, Plant Manager Salmon told production employee Kit Akins, twice, ''Thank you for not wearing that 'Fire Me' button.'' These remarks were, purely and simply, threats that wearing union insignia was like asking to be discharged. By such conduct of Salmon, Respondent violated Section 8(a)(1), as I find and conclude.[18]

2. Alleged 8(a)(3) violations

The law dispositive of the 8(a)(3) allegations is stated in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The General Counsel has initial burden of establishing a prima facie case sufficient to support an inference that union activity, or other concerted activity that is protected by the Act, was a motivating factor in an employer's action that is alleged to constitute discrimination in violation of Section 8(a)(1) or (3). Once this is established, the burden shifts to Respondent to come forward with evidence that the alleged discriminatory conduct would have taken place even in the absence of the protected activity. If Respondent goes forward with such evidence, the General Counsel ''is further required to rebut the employer's asserted defense by demonstrating that the [alleged discrimination] would not have taken place in the absence of the employee's protected activities.''[19]

Therefore, the first inquiry is whether the record contains a prima facie case of discrimination proscribed by the Act, or credible evidence that: (1) the alleged discriminatory acts occurred; (2) the Respondent knew or suspected that the alleged discriminatees had engaged in union or other protected concerted activities at the time that it decided to discharge or otherwise discipline them; and (3) that Respondent's decision to discharge or otherwise discipline the alleged discriminatees was motivated, at least in part, by animus toward those activities. *Chelsea Homes*, 298 NLRB 813 (1990). If such a prima facie case is held to have been established, an inquiry will be made whether the defense presented, if any, has been rebutted, either by showing that the defense is without factual basis or by a showing that it is pretextual.

a. *Robert Channell and Charles Reed*

Other than the nonevidence of Pollard's conclusion that Channell was discharged for failing to work scheduled overtime, Respondent presented nothing in defense to the allegation that Channell was discharged because of his union activities. But it was not required to in Channels' case. The General Counsel did not present a prima facie case for Channell's warning notice or discharge. Channell's union activities were minimal. He signed a union authorization card, he attended weekly meetings, and he spoke to an unspecified number of other employees, but he did not so much as ask another employee to sign a union authorization card. There is no evidence of employer knowledge of these minimal activities. He engaged in a parking lot argument with another employee about the Union, but, again there is no evidence that any supervisor heard Channell state the Union's position in the argument. Accordingly, I shall recommend dismissal of the allegations that Channell was warned and discharged in violation of Section 8(a)(3).

The General Counsel did present a prima facie case for Reed. Reed's union activities were minimal, but they or the suspicion of them was enough to cause Howell unlawfully to interrogate Reed. Respondent however presented a defense to the 8(a)(3) allegations that Reed was issued warning notices because of his union activities. The warning notices in question, and two before them, were prompted by *employee* complaints, and there is no reason on this record to believe that the warnings were not valid. Accordingly, I shall recommend dismissal of the allegations that Reed's warning notices were issued in violation of Section 8(a)(3).

b. *Jesse Dotson*

Respondent contends that the General Counsel has not stated a prima facie case in regard to the discharge, or layoff, of Dotson. Respondent argues that there is no credible evidence that its supervisors had knowledge of Dotson's union activities before the August 23 layoff. I disagree.

Dotson testified that before the events of this case he had requested a promotion and that he had, many times, referred to himself as a ''company man'' when talking to Pollard. But such discussions were not taking place, according to the testimony of Dotson that I credit, when Pollard approached Dotson about a week before Dotson's August 23 discharge and told Dotson that ''I thought you was a company man. We had a position for you.'' Those remarks, I conclude, constitute evidence that Respondent had discovered Dotson's

[18] The complaint further alleged that, in violation of Sec. 8(a)(1), Respondent's supervisor's cleaned lunchroom tables of discarded prounion literature but left discarded antiunion literature. Over the General Counsel's objection, I dismissed that allegation at trial. After the hearing closed, the General Counsel moved to reopen the hearing so that further evidence on the issue can be taken. I deny the motion. Assuming that my bench dismissal was in error, a finding on the issue would not substantially add to the Order I issue here. Furthermore, reopening this hearing would have substantially delayed issuance of this decision.

[19] 251 NLRB at 1087.

union activities, Dotson's attempts to solicit 25 union authorization cards covertly notwithstanding.[20]

For employers who bear unlawful animus toward employees' union activities, the alternative to being a ''company man'' is being a ''union man.'' The previously found unfair labor practices (especially Salmon's threat to employee Kit Akins that wearing a prounion button was a request to be discharged) prove that Respondent is such an employer. Therefore, when Pollard initiated an exchange with alleged discriminatee Dotson by telling him that he thought Dotson had before proclaimed himself to be a ''company man,'' Pollard was mocking Dotson's prior protestations that he was, indeed a ''company man.'' Pollard was necessarily telling Dotson that he knew that Dotson had been engaging in union activities, even though Dotson had attempted to conduct his union activities covertly. Pollard followed his observation by stating that Respondent at one time had ''a position'' for Dotson, leaving an tacit, but clear, message that Respondent no longer had such ''a position'' for him. These remarks were expressions of knowledge of, and categorically directed animus toward, the union activities of Dotson. I find that the General Counsel has proved a prima facie case in the discharge of Dotson, and the defense must be addressed.

Respondent contends that it did not get a contract that it had hoped to get; therefore, Dotson and Scire had to be laid off. If loss of a contract meant less production to be done, seemingly some production employees would have been laid off also. But no one else was laid off. The Board has noted the improbability of a valid one-employee layoff.[21] Here, two employees were laid off, but they were the maintenance employees. Usually, when layoffs in production and maintenance units occur, maintenance employees are the last to go; this is because the remaining employees cannot use machinery unless the machinery is working. That is, even if there were to be some layoffs of production employees (which there was not), it is most unlikely that maintenance employees such as Dotson and Scire would have been laid off first.

Respondent contends that it was justified in laying off Dotson and Scire because their duties could have been, and were, shifted to supervisors, independent contractors, and other employees. The Board has noted that, in any large organization, jobs of relatively unskilled employees can be shuffled among other employees at any time.[22] If the corporation was to be saved financially by the layoffs of these two relatively unskilled workers, or even if it were only some slight economic advantage to laying off these two relatively unskilled workers, Respondent could have done it at any time before the union activities started. It did not. It waited until Dotson had shown himself not really to be a ''company man,'' but a man who would get signatures on union authorization cards of 25 of the approximately 150 unit employees. I find that Respondent has not shown that Dotson would have been laid off absent his union activities, and I conclude that Respondent did lay off, or discharge, Dotson because of his union activities in violation of Section 8(a)(3).

Where union advocates are terminated in violation of Section 8(a)(3) the concurrent terminations of other individuals ''to cloak those terminations with an aura of legitimacy by including nonunion supporters along with them'' is equally violative of the Act. *Howard Johnson Co.*, 209 NLRB 1122, 1123 (1974). I find that the layoff of Scire was prompted by such an attempt to make Dotson's discharge appear legitimate, and I conclude that by Scire's layoff Respondent violated Section 8(a)(3) as well.

c. *James Young*

The direct supervisor of probationary employee Young was Scarbrough. At one point, Scarbrough gave Young a satisfactory 60-day probationary employee review, and Scarbrough stated that Young should be retained. But then Young wore a T-shirt that was prounion, albeit pro-another-union. This T-shirt drew the attention of Wood Mill Manager Ray who stopped and read it out loud, left, and returned to read it out loud again. This happened in mid-September, when the union activities were in full swing and several of the threats and interrogations found here had already occurred. There is no claim that Ray at any other time gave employees' T-shirts such attention. Ray's stopping and reading Young's T-shirt, twice, was an obvious attempt to convey the impression that Young's sentiments were suspect, and they could get him in trouble. I find that by the evidence of Ray's conduct, the General Counsel has shown that Respondent at least suspected Young of prounion sentiments, and Respondent harbored specific animus toward those suspected sympathies at the time that Scarbrough gave Young an unfavorable 80-day evaluation on October 5.[23] That is, the General Counsel has proved a prima facie case that Scarbrough's 80-day evaluation of Young constituted discrimination that was prohibited by the Act.

Respondent did not produce Scarbrough to testify about why he issued the negative 80-day evaluation to Young. It is possible that Scarbrough could have given nonconclusionary testimony about the quality of Young's sanding, but Respondent's counsel did not ask Scarbrough about Young, even though Scarbrough was called to testify about other topics. In *International Automated Machines*, supra at 1123, the Board noted the ''familiar'' rule that:

> [W]hen a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. (2 Wigmore, *Evidence*, § 286 (2d ed. 1940); McCormick, *Evidence*, § 272 (3d ed. 1984). See *Greg Construction Co.*, 277 NLRB 1411 (1985); *Hadbar*, 211 NLRB 333, 337 (1974).)

If Young's work had been anything less than satisfactory, Respondent assuredly would have asked Scarbrough about it because Scarbrough was Young's direct supervisor and the creator of the 80-day evaluation that is in issue here. I draw

[20] This evidence distinguishes *Pizza Crust Co.*, 286 NLRB 490 (1987), on which Respondent relies. In that case the General Counsel sought an inference of knowledge based on timing alone.

[21] *Electro-Wire Truck Products*, 305 NLRB 1015, 1024 (1991).

[22] *Comcast Cablevision*, 313 NLRB 220 (1993).

[23] Respondent argues that employee Jeff Ray has worn an IBEW jacket to work since 1986 without discipline. The jacket is heavy compared to a T-shirt, and it was probably not worn during the Mississippi-summertime campaign involved here; moreover, the General Counsel was not required to prove the negative, why Ray was not discriminated against.

the strongest possible adverse inference against Respondent for failing to ask Scarbrough to give the testimony that he could have given.

Instead of calling the one witness who created the evaluation, and who presumably knew if it had any valid basis, Respondent called Wood Mill Manager Ray to defend the evaluation and the discharge of Young. Ray offered only conclusions. First Ray testified:

> Mr. Young was terminated for unsatisfactory work, and when I say unsatisfactory work, his efficiency was fine, but he had a large amount of rework.

Ray's oxymoron belies him; Young could not have had ''fine efficiency'' if his work was ''unsatisfactory.'' Then Ray testified that ''about everything'' that Young did after his favorable 60-day evaluation had to be redone. If anything like that were true, probationary employee Young would have been discharged without waiting 22, or even 20, days to do something about it. And, again, if Young's performance had so seriously declined after his 60-day evaluation, the person who gave that evaluation, Scarbrough, would have been called to so testify.

In *Advance Transportation Co*., 299 NLRB 900 (1989), the Board held that such conclusionary testimony as that offered by Ray herein did not constitute a *Wright Line* defense, especially in view of prior comments that an employee had performed satisfactorily. Here, the prior favorable comments are contained in the 60-day evaluation that indicated, inter alia, that Young should be retained.

In summary, after his favorable 60-day evaluation Young wore a prounion T-shirt to work. He did this for the first, and only, time during the Union's organizational drive which Respondent was meeting with the discharge of Dotson and Scire and the other unfair labor practices found above. Young's T-shirt caught the attention of Ray in circumstances which can only be considered threatening. Shortly thereafter, Young received the negative 80-day evaluation. I conclude that the General Counsel has adduced evidence of suspicion of Young's prounion sympathies, as well as animus toward those sympathies. I further conclude that Respondent has not shown that it would have given to Young the negative 80-day evaluation absent the suspicion of his prounion sympathies that was engendered by Young's wearing of the IUE T-shirt. I therefore conclude that Respondent issued the negative 80-day probationary employee evaluation to Young in violation of Section 8(a)(3) as alleged.

The same day that Young got the evaluation, he attended an antiunion meeting conducted by Salmon. Young had not been active on behalf of the Union before, but, after receiving the spurious 80-day evaluation, he took up the cause. When Salmon encouraged comments, and even before, Young spoke up. Young asked Salmon if he were not afraid of the Union, he challenged Young to ''let it in''; and he told Salmon that the employees were underpaid. All of these comments were union, or protected concerted, activities. And within 2 days of those activities, and 10 days short of the end of his probationary period, Young was discharged.

When Scarbrough discharged Young, he did not tell Young that his performance in the last 2 days had deteriorated further.[24] Scarbrough told Young only that Personnel Director Pollard had ordered the discharge. When he testified, Pollard did not deny that he ordered the discharge of Young. If Pollard had directed the discharge for any valid reason, he supposedly would have so testified.

As in the case of the preceding evaluation, Respondent relies only on the conclusionary testimony of Ray. In so doing, Respondent again has failed to meet its *Wright Line* burden,[25] and I conclude that Respondent violated Section 8(a)(3) by the discharge of Young.

III. THE REMEDY

A. *Bargaining Order*

In *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), the Supreme Court approved bargaining order remedies for ''outrageous'' and ''pervasive'' unfair labor practices, even without a showing that the involved union ever possessed evidence that it was the majority representative of the unit of employees who have been affected by such unfair labor practices. At 614–615, the Court also approved the use of the bargaining order remedies in a second category of situations that it described as:

> less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process. The Board's authority to issue such an order on a lesser showing of employer misconduct is appropriate, we should reemphasize, where there is also a showing that at one point the union had a majority; in such a case, of course, effectuating ascertainable employee free choice becomes as important a goal as deterring employer misbehavior. In fashioning a remedy in the exercise of its discretion, then, the Board can properly take into consideration the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. 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 [authorization] cards would, on balance, be better protected by a bargaining order, then such an order should issue.

The General Counsel contends that this case falls in this second category of cases that is described by the Court. In considering this contention, the first issue is whether the Union established, at any point, a majority status. If so, the second issue is whether a bargaining order is appropriate under the standards announced by the Court.

1. The Union's majority status

Respondent admits that, as of the date of the September 9 request for bargaining, a majority of its production and maintenance employees had signed union authorization cards

[24] Again, if that had been the case, Respondent would have asked Scarbrough about it when he appeared to testify; and, again, I draw an adverse inference against Respondent for its failure to do so.

[25] *Advance Transportation Co.*, supra.

stating: ''I hereby authorize the United Steelworkers of America, AFL–CIO–CLC to represent me in collective bargaining. As Respondent states on brief, page 35:

> There appears to be no doubt that the General Counsel offered into evidence enough to prove that the Union obtained cards from at least a majority of members of the unit found appropriate [in the representation case]. But the testimony of the above witnesses raises serious questions about whether the cards justify an inference of majority support.

In fact, the General Counsel proved that, by the September 9 request for bargaining, 91 of the 152 unit employees had signed the above-quoted cards. The ''above witnesses'' referred to by Respondent were a maximum of 13 card signers who testified that they signed their cards when told that a purpose of the card was to get *an* election, or they testified that they signed the card to get rid of the solicitor, or both. In *Gissell* however, the Supreme Court held that such cards should be counted as valid designations of labor organizations unless:

> the totality of circumstances surrounding the card solicitation is such to add up to an assurance to the card signer that his card will be used f*or no purpose other than* to help get an election. [395 U.S. 609 fn. 27; emphasis added.]

Not 1 of the 13 witnesses referred to by Respondent testified that there were circumstances which would cause a reasonable employee to believe that the only purpose in signing his card was *only* to get an election. I find and conclude that the General Counsel proved that the Union had secured 91 valid employee designations of majority status at the time it made its September 9 demand for recognition.

2. Appropriateness of a bargaining order

The next issue is whether the extent of the proven unfair labor practices requires a bargaining order remedy. I find that it does.

Respondent's first hallmark unfair labor practice was the discharge of the employee who secured authorization cards from about 16 percent of the unit, Dotson. The brutality of the discharge was magnified by Respondent's sacrificing another employee, Scire, in order to rid itself of Dotson. In circumstances not nearly as extreme as those found here, the Board in *Panchito's*, 228 NLRB 136 (1977), relied on the manner of discharge of the employer's employee Hull, almost exclusively,[26] as evidence of the need for a bargaining order:

> The precipitous nature of Hull's discharge must have brought this termination to the attention of the other employees, even if he himself did not do so. In these circumstances, Hull's discharge had a far-reaching effect, the meaning of which could not have been lost on them: support the Union and lose your job.[27]

[26] In addition to the one discharge, the only other unfair labor practice was one act of surveillance.

[27] The Board's Order was enforced by the Ninth Circuit at 581 F.2d 204 (1978).

The other employees could not have missed the meaning of the precipitous discharge (or layoff) of Dotson; they could not have missed the message that Respondent would discharge such union adherents as Dotson, even if other ''innocent'' employees such as Scire had to be discharged as well. No employee who knew of these discharges at the time, or who found about them later, could miss, or forget, the message: support the Union and lose your job. I would conclude that, alone, the discharges of Dotson and Scire would require a bargaining order in this case. (And, in addition to the discharges of Dotson and Scire, there was the further, point-making, violative discharge of Young who spoke up in favor of the Union at Salmon's October 5 speech to the gathered employees.)

I would also conclude that, standing alone, Respondent's granting of the October 4 wage incentives would require a remedial bargaining order. The impact of such extraordinary conduct has been recognized by the Board as one that endures and one that requires a bargaining order to assure uncoerced majority choice. As stated in *Color Tech Corp.*, 286 NLRB 476, 477 (1987):

> Wage increases in particular have been recognized as having a potential long-lasting effect, not only because of their significance to the employees, but also because the Board's traditional remedies do not require the Respondent to withdraw the benefits from the employees. *Red Barn System*, 224 NLRB 1586 (1976), enfd. mem. 574 F.2d 315 (6th Cir. 1976).

Not that more than the discharges and the wage-incentive grants would be required to warrant issuance of a bargaining order, but there is more.

An employer is free to communicate with its employees in general terms about unions as long as the communications do not threaten or promise benefits. Among the panoply of threats that antiunion employers can make, possibly the most destructive of employee rights are threats of discharge and plant closure. This is why the Board stated in *Somerset Welding & Steel*, 304 NLRB 32, 33 (1991):

> We have emphasized, with court approval, that threats of plant closure and discharge not only are ''hallmark'' violations but are ''among the most flagrant of unfair labor practices.'' *Action Auto Stores*, 298 NLRB 875 (1990) (citing *Indiana Cal-Pro, Inc. v. NLRB*, 863 F.2d 1292, 1301–1302 (6th Cir. 1988), enfg. 287 NLRB 796 (1987).)

In *Somerset* a remedial order was issued because of the threats of plant closure (and a single instance of a wage increase denial); there were no discharges and general wage increases, as found here.

In this case, the most blatant threat of discharge came from the highest-ranking official at Respondent's plant, Salmon. Salmon told employee Kit Akins, twice, ''Thank you for not wearing that 'Fire Me' button.'' As the Board stated in *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993):

> The participation of a high-level manager in unlawful conduct exacerbates the natural fear of employees that they would lose employment if they persisted in their union activities.

The threats to close the plant were made by lower-level supervisors, Boykin, Patrick, and Howell, but they were the ''hallmark'' threats, nevertheless, and they also would necessarily have an enduring impact.

In addition to these unlawful wage increases, discharges, threats of discharges, and threats of plant closure were the interrogations, the solicitation of grievances, and the restriction of employee movement about the plant, as found above. The totality of these unfair labor practices necessarily cause me to conclude that, because of the unfair labor practices found here: (1) the results of the November 12 election should be set aside; (2) the authorization cards executed by a majority of the employees in the unit are a more accurate measure of the free and uncoerced employee desires for representation than a second election would be; (3) the Respondent's bargaining obligation arose as of September 9, 1993, the date the Union had established its majority status and demanded recognition as the collective-bargaining representative of the unit employees; and (4) Respondent must be ordered to bargain with the Union as such representative as of that date. *Trading Port, Inc.*, 219 NLRB 298 (1975).

B. *Other Necessary Remedies*

The Respondent, having discriminatorily discharged employees Jesse Dotson, Joseph Michael Scire, and James Young, but having previously offered reinstatement to Dotson and Scire, must offer James Young reinstatement and it must make Young, Dotson, and Scire whole for any consequential loss of earnings and other benefits, computed on a quarterly basis from the date of their discharges to date of proper offers of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest to be computed as specified in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent shall also be ordered to expunge from its files all records of the violative discriminatory treatment of employees found here, including expunging of the violative 80-day evaluation of Young. *Sterling Sugars*, 261 NLRB 472 (1982).

In view of the number and pervasive nature of the unfair labor practices found here, I shall include a broad cease-and-desist order requiring Respondent to refrain from, in any other manner, violating the rights of its employees under the Act. See *Hickmott Foods*, 242 NLRB 1357 (1979). Finally, Respondent shall be required to post a notice that assures the employees that it will respect their rights under the Act.

CONCLUSIONS OF LAW

1. By the following acts and conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

(a) Threatening employees with plant closure, discharge, and other discipline, because they have become or remained members of, or because they are in sympathy with, or because they have given assistance or support to the Union.

(b) Interrogating employees about their union membership, activities, or desires.

(c) Granting employees wage incentives in order to discourage union membership, activities, or desires.

(d) Soliciting employee grievances in order to discourage union membership, activities, or desires.

(e) Restricting employee movement about the plant in order to discourage union membership, activities, or desires.

2. By the following acts and conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

(a) Discharging or laying off employees Jesse Dotson, Joseph Michael Scire, and James Young because they had become or remained members of the Union or given assistance or support to it.

(b) Issuing to employee James Young an unfavorable probationary employee evaluation because he had become or remained a member of the Union or given assistance or support to it.

3. By failing and refusing, since September 9, 1993, to recognize and bargain with the Union as the collective-bargaining representative of the employees in the following unit of employees, which unit is appropriate for bargaining under Section 9(a) of the Act, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

> All production and maintenance employees employed by Respondent at its Starkville, Mississippi, facility; but excluding all truckdrivers, truck mechanics, office clerical employees, professional employees, and guards, and excluding supervisors as defined in the Act.

4. The remaining allegations of the complaint have not been proved.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[28]

ORDER

The Respondent, Flexsteel Industries, Inc., of Starkville, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure, discharge, or other discipline, because they have become or remained members of, or because they are in sympathy with, or because they have given assistance or support to the Union.

(b) Interrogating employees about their union membership, activities, or desires.

(c) Granting employees wage incentives in order to discourage union membership, activities, or desires.

(d) Soliciting employee grievances in order to discourage union membership, activities, or desires.

(e) Restricting employee movement about the plant in order to discourage union membership, activities, or desires.

(f) Discharging, laying off, or otherwise discriminating against, employees because they have become or remained members of the Union or given assistance or support to it.

(g) Issuing to employees unfavorable probationary employee evaluations because they have become or remained a member of the Union or given assistance or support to it.

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

(h) Failing and refusing to recognize and bargain with the Union as the collective-bargaining representative of the employees in the above-described bargaining unit.

(i) In other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Offer to James Young immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges that he previously enjoyed, and make Jesse Dotson, Joseph Michael Scire, and James Young whole for any loss of earnings or other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Remove from its files any reference to the unlawful discharges or layoffs of Jesse Dotson, Joseph Michael Scire, and James Young, and remove from its files all records of the unlawful 80-day probationary employee evaluation issued to James Young, and notify those employees in writing that this has been done and that those discharges or layoffs, or that evaluation, will not be used against them in any way.

(d) Preserve and, on 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.

(e) On request, bargain collectively and in good faith concerning rates of pay, hours of employment, and other terms and conditions of employment with the Union as the exclusive collective-bargaining representative of its employees in the above-described unit, and embody in a signed agreement any understanding reached.

(f) Post at its Starkville, Mississippi facility copies of the attached notice marked ''Appendix.''[29] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the election in Case 26–RC–7580 is set aside and that Case 26–RC–7850 be dismissed.

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

APPENDIX

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

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

Section 7 of the Act gives you these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives that you choose
> To act together for other mutual aid or protection
> To choose not to engage in such protected concerted activities.

WE WILL NOT threaten you with plant closure, discharge, or other discipline because you have become or remained members of, or because you are in sympathy with, or because you have given assistance or support to United Steelworkers of America, AFL–CIO, CLC.

WE WILL NOT interrogate you about your union membership, activities, or desires.

WE WILL NOT grant you wage incentives in order to discourage union membership, activities, or desires.

WE WILL NOT solicit your grievances in order to discourage union membership, activities, or desires.

WE WILL NOT restrict your movement about the plant in order to discourage union membership, activities, or desires.

WE WILL NOT discharge you, lay you off, or otherwise discriminate against you, because you have become or remained members of the Union or given assistance or support to it.

WE WILL NOT issue to you unfavorable probationary employee evaluations because you have become or remained a member of the Union or given assistance or support to it.

WE WILL NOT fail or refuse to recognize and bargain with the Union as the collective-bargaining representative of the employees in the following bargaining unit:

> All production and maintenance employees employed by us, at our Starkville, Mississippi facility, but excluding all truckdrivers, truck mechanics, office clerical employees, professional employees, and guards, and supervisors as defined in the Act.

WE WILL NOT in other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL offer to James Young immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed. WE HAVE previously extended such offers to Jesse Dotson and Joseph Michael Scire.

WE WILL make James Young, Jesse Dotson, and Joseph Michael Scire whole, with interest, for any loss of earnings or other benefits suffered as a result of the discrimination against them.

WE WILL remove from our files any reference to the unlawful discharges or layoffs of Jesse Dotson, Joseph Michael Scire, and James Young, and remove from our files records of the unlawful 80-day probationary employee evaluation issued to James Young, and WE WILL notify those employees in writing that this has been done and that those discharges or layoffs, or that evaluation, will not be used against them in any way.

WE WILL, on request, bargain collectively and in good faith concerning rates of pay, hours of employment, and other terms and conditions of employment with the Union as the exclusive collective-bargaining representative of our employees in the above-described unit, and embody in a signed agreement any understanding reached.

FLEXSTEEL INDUSTRIES, INC.