

Flexsteel Industries, Inc. and United Steelworkers of America, AFL-CIO and Leroy Clark. Cases 25-CA-21795, 25-CA-21823, 25-CA-21832, and 25-RC-9113¹

May 28, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On November 9, 1992, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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 briefs and has decided to affirm the judge's rulings, findings,² and conclusions, as amended, and to adopt the recommended Order as modified.

1. The judge found that highlighted portions of the Respondent's February 7, 1992 letter to employees violated Section 8(a)(1) of the Act by threatening loss of benefits. The Respondent argues that the judge misquoted the portions of the letter he found to be unlawful and that the actual statements do not violate Section 8(a)(1). We agree.

The judge relied on the following misstatements of the February 7 letter: The statement the judge quotes as "present benefits *would* be lost" actually reads "present benefits *could* be lost" (emphasis added). Similarly, the parenthetical in the sentence the judge quotes as "[n]egotiations often go on for many months while your wages and benefits would be frozen by law (the Company could not *unilaterally agree to* give a wage increase) while negotiations continue" actually reads, "the Company could not *unilaterally give* a wage increase." (Emphasis added.)

We find that the statements contained in the February 7 letter do not threaten employees with loss of benefits. The judge's finding that portions of the letter are unlawful could be sustained only if the language were as the judge described it. In fact, the letter (as

quoted above) merely contains statements of what could lawfully happen during the give and take of bargaining with the Union. See, e.g., *Montrose-Haeuser Co.*, 306 NLRB (1992) (statement in employer's literature that "while bargaining goes on, wages and benefit programs typically remain frozen until changed, if at all, by contract" held not unlawful); *Oxford Pickles*, 190 NLRB 109 (1971) (accurate statements of law and facts did not amount to implied threats). Accordingly, we reverse the judge and find that the Respondent's February 7 letter did not violate the Act as alleged.³

2. The judge found that the Respondent created the impression of surveillance when its personnel manager, Don McFarland, on two occasions, informed employee Leroy Clark that he had heard rumors about Clark's union activity. Specifically, in early December 1991, McFarland told Clark he had heard a rumor that Clark had instigated the union campaign. Thereafter, in late December 1991 or early January 1992, McFarland told Clark that he heard a rumor Clark was passing out authorization cards. The judge found that McFarland's disclosures would tend to coerce and restrain Clark from continuing this kind of protected activity. We agree.

As our dissenting colleague accurately states, the test for determining whether an employer has created an impression of surveillance is whether the employee would reasonably assume from the statement that their union activities had been placed under surveillance.⁴ Our colleague would require evidence tantamount to actual surveillance to support this violation, however, and would excuse employer statements couched in terms of rumor. We disagree.

The idea behind finding "an impression of surveillance" as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways. We have never required, as our dissenting colleague suggests, evidence that management actually saw or knew of an employee's union activity for a fact, nor do we require evidence that the employee intended his involvement to be covert or that management is actively engaged in spying or surveillance. Rather, an employer creates an impression of surveillance by indicating that it is closely monitoring the degree of an employee's union involvement. See *Emerson Electric Co.*, 287 NLRB 1065 (1988).

In this case on two separate occasions in statements coupled with interrogations and implicit threats, which

¹On February 12, 1993, the Union moved to withdraw its objections in the representation case. On March 8, 1993, the Board granted the motion and ordered that Case 25-RC-9113 be severed from this proceeding.

²The 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³We agree with the judge, however, that statements made by Supervisor Sensibaugh in connection with the February 7 letter constituted threats in violation of Sec. 8(a)(1).

⁴E.g., *Rood Industries*, 278 NLRB 160, 164 (1986).

our dissenting colleague agrees are violations, McFarland related his knowledge of “rumors” to Clark, thereby informing him clearly that management was aware not only that Clark may have been a union supporter, but was also taking note of the reported manifestations of that support, i.e., that Clark may have instigated the union campaign and that Clark had been passing out authorization cards. McFarland’s statements, on their face, reasonably suggested to Clark that the Respondent was closely monitoring the degree and extent of his organizing activities.⁵ The Respondent’s direct personal reference to Clark’s suspected union activity, in the context of unlawful interrogation, would reasonably lead Clark to believe that his protected activity was under surveillance, and this would tend to discourage his protected activity.⁶

AMENDED CONCLUSIONS OF LAW

1. Delete paragraph 3(g) and reletter subsequent paragraphs.

2. Add the following as paragraph 5.

“5. The Respondent has not violated the Act as alleged in complaint paragraph 5(m).”

ORDER

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

1. Delete paragraph 1(g) and reletter the subsequent paragraphs.

2. Substitute the attached notice for that of the administrative law judge.

MEMBER OVIATT, dissenting in part.

The administrative law judge found, and my colleagues affirm, that the Respondent’s personnel manager, Don McFarland, unlawfully interrogated employee Leroy Clark about his union activities, and that McFarland also unlawfully created the impression that

the Respondent was keeping the employees’ union activities under surveillance.

I agree with the judge and my colleagues, for the reasons set forth in the penultimate paragraph of section III,F,1 of the judge’s decision, that McFarland engaged in unlawful interrogation. I disagree, however, with their finding that McFarland created the impression of surveillance. The facts relevant to this latter issue, as set out in section III,F,1 of the judge’s decision, are essentially as follows.

1. Facts

In a conversation between McFarland and Clark in December 1991, Clark told McFarland that if McFarland could not change procedures so that the employees could have good communications and a good place to work, then the Union would get Clark’s vote. McFarland told Clark that the matter was out of his hands and that he had done all that he could. McFarland also told Clark that he had heard a rumor that Clark was the person who had started the union campaign. Clark in effect denied the rumor.

In another conversation around late December, McFarland told Clark that he had heard a rumor that Clark was passing out authorization cards. Clark declined to tell McFarland whether the rumor was true or false.

2. Discussion

In the final paragraph of section III,F,1 of his decision, the judge concludes, sans rationale, that McFarland’s mentioning the rumor about Clark passing out authorization cards relayed an impression of surveillance and conveyed an implied sense of disapproval, if not an actual threat, that would “certainly” tend to coerce and restrain Clark from continuing this line of protected activity, thus constituting the creation of the impression of surveillance in violation of Section 8(a)(1) of the Act. My colleagues agree. I do not.

In determining whether an employer has created an impression that its employees’ union activities are under surveillance by management, the Board applies this test: Would the employees reasonably assume from the statement in question that their union activities have been placed under surveillance?¹

Applying this test to the facts at hand, I find that Clark would not reasonably assume from either or both of McFarland’s statements that Clark’s or his fellow employees’ union activities had been placed under surveillance.

First, Clark himself testified that he had a very close relationship with McFarland, one that was marked by, inter alia, Clark’s candor during the campaign in let-

⁵ Contrary to our dissenting colleague, the “close relationship” between Clark and McFarland, in our view, supports, rather than militates against, the finding of a violation. McFarland’s disclosure, in the context of the men’s friendship, would reasonably convey a warning to Clark: “Be careful. Management’s watching you.”

⁶ *South Shore Hospital*, 229 NLRB 363 (1977), and *G. C. Murphy Co.*, 217 NLRB 34 (1975), cited by our dissenting colleague, are distinguishable. In *South Shore Hospital*, the employer’s statement that “talk of a union was all over the hospital” was not made in the context of direct accusations and threats as were McFarland’s statements to Clark. Similarly, in *G. C. Murphy*, a supervisor responded affirmatively when the employee asked whether he (the supervisor) had heard a rumor about the employee’s union activities. Under those circumstances, acknowledgement of the rumor did not indicate the degree of close workplace monitoring present in this case.

¹ E.g., *South Shore Hospital*, 229 NLRB 363 (1977); *Schrementi Bros., Inc.*, 179 NLRB 853 (1969).

ting McFarland know that Clark was a union supporter.² The existence of this ongoing, open, and candid relationship between Clark and McFarland, particularly in light of the additional considerations discussed below, belies a realistic finding that Clark would reasonably assume from either or both of McFarland's statements that his or his fellow employees' union activities had been placed under surveillance.³

Second, Clark testified that at the time McFarland told him about the rumor that Clark had started the union campaign:

I already knew there was [such] a rumor going around . . . because I heard it from other employees . . . Yes [there was such a rumor going around], I heard it from other employees before Don McFarland told me that.

Thus, McFarland's revelation to Clark, that there was a rumor going around that Clark was the one who started the union campaign, was already old news to Clark by the time McFarland passed it on to him. Accordingly, rather than creating the impression that the Respondent was keeping the employees' union activity under surveillance, McFarland's belated rumor statement to Clark may well have reasonably created the impression for Clark that the Respondent was *not* keeping the employees' union activity under surveillance, but that the Respondent was instead getting the same workplace rumors that the employees themselves were getting—only later!

Third, McFarland did not tell Clark that he or the Respondent knew anything about Clark's union activities. McFarland simply told Clark that he had heard *rumors* about them—rumors which Clark, himself, had already heard from his fellow employees. This is not the stuff out of which an impression of surveillance is created. An employer does not create an impression of surveillance by merely stating that it is aware of a rumor pertaining to the union activities of its employees, so long as there is no evidence—and here there is none—indicating that the Employer could only have learned of the rumor through surveillance.⁴ Since rumor is, by definition, talk or opinion widely disseminated with no discernible source, employees cannot reasonably assume from an employer's knowledge of such a rumor, without more, that their union activities

have been placed under surveillance.⁵ Indeed, by attributing his information to rumors, McFarland dispelled any implication that management was actively engaged in spying or surveillance.⁶

Moreover, inasmuch as McFarland did not tell Clark that he *knew* anything about Clark's union activities, he perforce did not convey to Clark any knowledge on the part of McFarland, or the Respondent in general, about any details of the extent of such activities.⁷ Rather, as seen, it was reasonable for Clark to conclude no more nor less than what McFarland told him—that whatever information McFarland had about Clark's union activity, he got it through gossip, "rumors."⁸

Accordingly, I find that McFarland's statements to Clark about rumors of the latter's union activities do not constitute creation of the impression of surveillance, and I would dismiss this allegation.

My colleagues profess to believe that for me to find that an employer has created an *impression* of surveillance, I would require a showing of that the employer has engaged in *actual* surveillance. That is not my position.

I understand the difference, and I trust my colleagues do also, between actual surveillance and the creation of an impression of surveillance. They can and do exist independently of each other, and the existence of one is neither necessary nor sufficient for the existence of the other. Thus, an employer can actually keep its employees' union activities under surveillance—but without letting its employees know it is doing so. That is actual surveillance, but not creation of an impression of surveillance.

Conversely, an employer can create an impression of surveillance by flatly telling its employees that it is keeping their union activities under surveillance—even though it is not actually doing so. That is a creation of an impression of surveillance, but not actual surveillance.

Or, less blatantly, an employer—like the one in *Emerson Electric Co.*, 287 NLRB 1065 (1988), cited by my colleagues—can create an impression of surveillance by telling an employee that it *knew* the extent of the employee's involvement with the union—even

²Clark also testified, however, that he did not want to volunteer information about his role in the campaign, because he feared retaliation from General Foreman Ken Hampton.

³I note here that there is no evidence, in any event, that any other employees learned of McFarland's "rumor" statements to Clark. No one else was present when McFarland made these statements to Clark, and there is no evidence that McFarland or Clark told anyone else about them.

⁴*South Shore Hospital*, supra, 229 NLRB at 363; see also *G. C. Murphy Co.*, 217 NLRB 34, 36 (1975).

⁵*South Shore Hospital*, supra, 229 NLRB at 363–364.

⁶*National Gypsum Co.*, 293 NLRB 1138, 1141 (1989) (by Brian Baker).

⁷Cf. *United Charter Service*, 306 NLRB 150 (1992) (Member Oviatt dissenting in pertinent part) (impression of surveillance created where operations manager not only told employees that he knew of their organizing efforts, but also went into detail about extent of activities and specific topics discussed at meetings).

⁸Cf. *Jennie-O Foods*, 301 NLRB 305, 338–339 (1991) (Member Oviatt dissenting in pertinent part) (impression of surveillance created where plant manager did not testify how he found out that employee in question was "getting into politics," and especially did not testify that he found out through "some idle gossip in the plant or from the newspaper or from any other source").

though the employer in that case was not shown to have engaged in actual surveillance.⁹

I agree with the reasoning in *Emerson*. Indeed, I join my colleagues in affirming the judge's finding, in section III,D of his decision, that the Respondent *did* unlawfully create an impression of surveillance when, according to the credited testimony of employee Stoney Gawthrop, Supervisor Jack Moon told Gawthrop that he *knew* that Gawthrop was getting people to sign authorization cards. When Gawthrop replied that he did not know what Moon was talking about, Moon told Gawthrop that he knew that Gawthrop knew what Moon was talking about, because people had told Moon that Gawthrop was getting them to sign cards.¹⁰

So, contrary to my colleagues expressed belief, I would not require evidence tantamount to actual surveillance in order to find that an impression of surveillance has been created. Employer statements to employees that that the employer *knows* about its' employees' particular union activities, as in *Emerson* and as in the instant case in regard to Moon's remarks to Gawthrop, are sufficient for me to find the creation of an impression of surveillance.

But I do, however, consistent with the Board precedent that I have cited,¹¹ require more than mere employer statements to employees about *rumors* the employer has heard, to support a finding that the employees would reasonably assume that the employer has placed their union activities under surveillance. Thus, contrary to my colleagues, I do not find that McFarland's remarks to Clark, about rumors he had heard about Clark engaging in union activities, reasonably suggested to Clark that the Respondent was closely monitoring the degree and extent of his organizing activities. Thus, I would dismiss this allegation.

⁹ Indeed, in finding a creation of an impression of surveillance in *Emerson*, the judge, affirmed by the Board, found it to be immaterial whether the employer "actually had been engaged in actual surveillance." The gravamen of the violation was found to be that the employer told the employee that it "*knew* what he was doing" (emphasis added).

¹⁰ In affirming the judge's finding of a violation on these facts, I do not, however, rely on the judge's alternative finding that even Moon's discredited version of this conversation (set forth by the judge) supports a finding of a creation of an impression of surveillance.

¹¹ I am not persuaded by my colleagues attempts to distinguish the cited cases.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT promise you unspecified improved terms and conditions of employment if you will abandon support for the Union.

WE WILL NOT interrogate you regarding your union membership, activities, and sympathies.

WE WILL NOT discriminatorily enforce our no-solicitation, no-distribution rule against union-related solicitations and distributions in plant work areas, while permitting nonunion related solicitations and distributions in the same work areas.

WE WILL NOT threaten you through our supervisors with the elimination of your benefits and with requiring the Union to bargain from scratch if you select the Union as your collective-bargaining representative.

WE WILL NOT give you the impression that your union activities are under surveillance by us.

WE WILL NOT withhold a portion of your pay as simulated union dues, fines, and assessments without your authorization, requiring you to sign a receipt acknowledging your agreement with our position that you would be required to pay at least the amount withheld for union dues, fines, and assessments, and delaying by a day paying the amount withheld to any of you who refused to sign the receipt.

WE WILL NOT threaten you through our supervisors with more onerous work rates and thus loss of pay if you select the Union as your collective-bargaining representative.

WE WILL NOT threaten you through our supervisors with loss of your jobs or discharge if you select the Union as your collective-bargaining representative.

WE WILL NOT threaten you through our supervisors with plant closure if you select the Union as your collective-bargaining representative.

WE WILL NOT issue written material to you wherein we threaten you with loss of work and jobs if you se-

lect the Union as your collective-bargaining representative.

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

FLEXSTEEL INDUSTRIES, INC.

Walter Steele and Merrie Thompson, Esq., for the General Counsel.

Arthur D. Rutkowski, Esq., of Evansville, Indiana, for the Respondent.

Eric Jacobsen, of Jasper, Indiana, for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Based on charges filed by the United Steelworkers of America, AFL-CIO (Union) on February 26, 1992, in Case 25-CA-21795 and on March 5, 1992¹ in Case 25-CA-21823, and on a charge filed by Leroy Clark, an individual, on March 9, in Case 25-CA-21832, the Regional Director for Region 25 issued an order consolidating cases, consolidated complaint, and notice of hearing (complaint) on April 30. The complaint alleges that Flexsteel Industries, Inc. (Flexsteel or Respondent) engaged in certain activity in violation of Section 8(a)(1) of the National Labor Relations Act (Act). At the hearing held in this case, the General Counsel was allowed to amend the complaint to allege two additional allegations of conduct by Respondent in violation of Section 8(a)(1) of the Act. Also consolidated for hearing in this proceeding are several objections to conduct affecting the results of election. Respondent has filed timely answer to the complaint and the objections and denies the commission of any unfair labor practice or objectionable conduct.

Hearing was held in these matters in Elkhart, Indiana, on July 14 and 15, 1992. Briefs were received from the parties on or about August 18, 1992, based on the entire record, including my observation of the demeanor of the witnesses and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, at all times material to this proceeding, has maintained its principal office in Dubuque, Iowa, and places of business at various other locations, including one at New Paris, Indiana, where it engages in the manufacture, sale, and distribution of recreational vehicle equipment and related products. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Overview of the Dispute and the Issues for Determination

As noted above, Respondent has a facility located at New Paris, Indiana, where it manufactures products for recreational vehicles. It employs about 200 people at this location. Beginning sometime in October 1991, the Union began an organizing campaign to seek representation of Respondent's employees in an appropriate unit consisting of all production and maintenance employees employed by Respondent at its New Paris, Indiana facility; but excluding all office clerical employees, professional employees, and all guards and supervisors as defined in the Act. Several employees, including Rebecca Chaney, Naomi Churchill (nee Whitaker), Leroy Clark, James J. Hall, Dawn Hepler, Stoney Gawthrop, and Tom Dye, were actively involved in the organizing campaign for the Union. A petition was filed on January 15, 1992, which resulted in an election on February 28, 1992, that was won by Respondent.

The complaint alleges that during the course of the campaign, Respondent committed a number of unfair labor practices, acting through certain of its admitted statutory supervisors including Ken Hampton, general foreman, Don McFarland, personnel manager, Larry Sensibaugh, supervisor, Jack Moon, foreman, and Ronnie Nash, plant manager. Specifically, the complaint alleges the following actions as violations of Section 8(a)(1) of the Act:²

1. On or about two unknown dates in early or mid-February 1992, the Respondent, acting through Ken Hampton, promised its employees unspecified improved terms and conditions of employment if they would abandon their support for the Union.

2. On or about an unknown date in early or mid-February 1992, Respondent, acting through Ken Hampton, interrogated its employees regarding their union membership, activities, and sympathies.

3. Since on or about August 26, 1991, the Respondent has discriminatorily maintained and enforced a rule prohibiting its employees from engaging in union-related solicitations and distributions in work areas, while permitting nonunion-related solicitations and distributions in work areas.

4. On unknown dates in January and February 1992, the Respondent, acting through Don McFarland, announced to its employees the rules described above.

5. On an unknown date in early 1992, occurring before the election, Respondent, acting through Don McFarland, warned its employees that it would discipline them if they engaged in union-related solicitations and distributions in work areas in violation of the rules described above.

6. On an unknown date in February 1992, the Respondent, acting through Larry Sensibaugh, threatened its employees with the elimination of their benefits and requiring the Union to bargain from "scratch" if its employees selected the Union as their collective-bargaining representative.

7. On or about January 15, 1992, the Respondent, acting through Jack Moon, threatened its employees with discharge

² The complaint allegations set out below are as they appear in the complaint and the amendment thereto. They have been renumbered for the purposes of this decision and will be referred to hereinafter by the new number.

¹ All dates are in 1992 unless otherwise noted.

if they selected the Union as their collective-bargaining representative.

8. On or about January 15, 1992, the Respondent, acting through Jack Moon, created an impression among its employees that their union activities were under surveillance by the Respondent.

9. On or about December 7, 1991, the Respondent, acting through Don McFarland, interrogated its employees regarding their union membership, activities, and sympathies.

10. On or about December 7, 1991, the Respondent, acting through Don McFarland, created an impression among its employees that their union activities were under surveillance by the Respondent.

11. On or about February 21, 1992, the Respondent required its employees, as a condition of receiving \$50 of wages earned by each of them, to sign a document acknowledging their agreement with the Respondent's position that they would be required to pay union dues, union fines, and union assessments in the amount of \$50 from their paychecks if they selected the Union as their collective-bargaining representative.

12. On or about February 21, 1992, the Respondent delayed paying an employee \$50 in wages earned by him because he refused to agree with the Respondent's position that the Union would compel Respondent's employees to pay \$50 in dues, fines, and assessments from their weekly pay.

13. On or about February 7, 1992, the Respondent, by distribution of handout material to employees, threatened its employees with the following described actions if they selected the Union as their collective-bargaining representative:

a. The Respondent would delay the collective-bargaining process leading to the bargaining of a contract for many months.

b. The Respondent would delay wage raises and benefit increases regularly given its employees because they selected the Union as their bargaining representative.

c. The Respondent would eliminate all wages, beyond the minimum required of the Respondent, and other employee benefits at the start of any bargaining with the Union.

14. On or about January 25, 1992, the Respondent, by distribution of handout material to employees, threatened its employees with loss of work and jobs if they selected the Union as their collective-bargaining representative.

15. On or about January 29, 1992, the Respondent, acting through Larry Sensibaugh, threatened its employees with plant closure if its employees selected the Union as their collective-bargaining representative.

16. On or about February 21, 1992, the Respondent, acting through Larry Sensibaugh, threatened its employees with loss of work if the employees selected the Union as their collective-bargaining representative.

In addition to the foregoing, there are presented for consideration portions of the Union's Objections 1 and 2 and its Objections 4 and 6.³ The remainder of the objections filed by the Union were overruled by the Regional Director for Region 25. Objections 1 and 2 correspond to certain of the unfair labor practice allegations. Objection 4 alleges that Respondent made an objectionable promise to employees during

a speech given during the course of the organizing campaign. Objection 6 alleges that the Respondent maintained a presence outside the voting area immediately after the polls opened and immediately after the polls closed. Each of the complaint allegations and objections will be discussed below in appropriate groupings.

B. The Alleged Violations Regarding Respondent's No-Solicitation—No-Distribution Rule (Complaint Allegations 3, 4, and 5, above)

Since at least 1987, the Respondent has had in place in its employee handbook a rule regarding solicitation and distribution which reads:

Solicitation of an associate by another associate is prohibited while either person is on working time. Working time is all time when an associate's duties require that he or she be engaged in work tasks, but does not include any associate's own time, such as meal period, scheduled breaks, time before or after a shift and personal cleanup time.

Associates may not distribute literature, written or printed material of any description, in working areas at any time or in non-working areas during an associate's working time.

During the course of the union organizing campaign, this rule was enforced for the first time in any witness' memory. Two employees were stopped from distributing union literature in the plant in work areas during their breaktime. Rebecca Chaney, an employee of Respondent for over 8 years, was part of the Union's organizing committee, which was composed of about 20 employees. Her union sympathies were known to Respondent as she was active in the campaign, wearing a union button, and acting as the Union's observer in the election. She works on the day shift at the facility, either 6 a.m. to 2:30 p.m. or 7 a.m. to 3:30 p.m., depending on the season. Part of her responsibilities in the campaign involved passing out union handbills. She did this twice, the first time in late January and the second time about a week later. On the first instance, she passed out the literature outside the plant's door as employees left work. On the second occasion, though she was aware of the Respondent's no-distribution—no-solicitation rule, she passed out the handbills during lunchtime throughout the work area of the metal shop within the facility.⁴ She also passed out handbills in the lunchroom where some employees ate their lunch.

Shortly after this activity, she was approached by Plant Personnel Manager Don McFarland, who asked her if she had passed out union literature. After telling him she had, McFarland advised her that she was not supposed to pass out literature in work areas or during worktime. Literature could only be passed out in the plant in break areas during breaks according to McFarland.

Employee and campaign committee member Naomi Churchill also passed out handbills during her lunchtime in the sewing department where she worked. She started in the breakroom giving employees handbills and then went to the

³A portion of Objection 1 alleges that Respondent's supervisor Lance Slavicek engaged in objectionable conduct. No evidence was offered with respect to this allegation and it is overruled.

⁴The evidence shows that a number of employees took their breaks and ate lunch at their workstations rather than using one of Respondent's two lunchrooms or other formal break areas.

sewing work area where some employees were having lunch at their machines. About 15 minutes after she did this, she was approached by McFarland who told her what she had done was illegal, that the Company was trying to run a fair and honest campaign, and that she had cheated by passing out handbills in the work area. He told her she could distribute them in the breakroom or the parking lot, but not in work areas. Evidently Churchill questioned this interpretation of the no-solicitation—no-distribution rule because McFarland became angry and shook his finger and yelled at Churchill. Other employees who observed this confrontation said they had never seen McFarland angry before. After this incident, Churchill ceased distributing handbills in her work area, but other employees continued other types of solicitations without comment from management.

McFarland admitted that he did speak with Chaney and Churchill about their distribution of handbills after being informed by supervisors that they were distributing them in work areas. He admitted that he told them that they could not distribute in work areas, but could do so in break areas or outside the plant. He further admitted that he became angry with Churchill when she argued with him, saying that she could do what she wanted on her break. He testified that the rule against solicitations and distributions in work areas had been enforced equally against all distributions, including Girl Scout cookies and Avon products. However, he denied any knowledge that employees had sold or distributed items in work areas thus offering an explanation why no employee before Chaney and Churchill had been either disciplined or warned against such solicitations and distributions.⁵

Virtually every witness who testified conceded that solicitations of employees and distributions of a variety of items for a variety of reasons and causes (all nonunion in nature) had routinely taken place inside the plant for years. In totally unconvincing testimony, management witnesses testified that to their knowledge such activity had always been confined to break areas and on breaktimes. A number of employees credibly testified that solicitations and distributions had taken place on worktime and in work areas, with the knowledge of and at least tacit approval of management.

Rebecca Chaney testified that Respondent allowed the selling of Girl Scout cookies, Boy Scout popcorn, band raffle tickets, Tupperware, Mary Kay cosmetic products, and similar items in the facility. She testified that she sold a variety of items, primarily for charitable organizations, before working hours or during breaks in break areas, work areas, and the office. She had observed other employees selling items during worktime with the knowledge of supervisors. About 2 weeks prior to the hearing, she sold Respondent's supervisor, Al Douglas, a raffle ticket for a high school band in her work area before work began. She has sold McFarland items in his office. She has observed a supervisor delivering Avon products and collecting money for them and during the fall of 1991, she sold a fellow employee some sausage at Supervisor Douglas' desk while he was present. She purchased

Avon products before Christmas 1991 at her workstation on worktime.

Employee Naomi Churchill testified that other than union material, the Respondent did not enforce its solicitation and distribution rules. She passed out a solicitation sheet for a charity in September 1991 that went from employee to employee who noted the amount they would give and signed their names. This took place in the plant's work area. She also solicited a supervisor as well as other employees during worktime for money to help an employee whose house had burned. She has observed a supervisor solicit for a charity during worktime in work areas. She has observed the selling of Girl Scout cookies in work areas on worktime for years.

Employee Leroy Clark testified that he had purchased items at the plant from other employees for 10 years. He noted an example that took place just before the election when another employee came into his work area and sold him candy bars.

Employee Dawn Hepler testified that employees regularly bought and sold items such as cookies, candy, and popcorn in working areas. Employee James Hall testified that he had had a similar experience.

Employee Thomas Dye testified that he did not think there was a no-solicitation policy because employees regularly sold items such as Avon and candy throughout the plant at any time, including worktime.

Employee Stoney Gawthrop testified that people regularly sold items in breakrooms at the facility and to employees who were taking breaks at their workstations. He has bought candy from another employee at his workstation on worktime. His supervisor, Jack Moon, attempted to sell him items for his daughter. Moon also solicited other employees at their work areas on worktime. Moon denied attempting to sell candy or other items for his daughter in work areas, on worktime, to Gawthrop. Moon first admitted that if buying and selling items in the workplace by employees violated the no-solicitation—no-distribution rule, then it had been violated in the past. He then changed his testimony to confine such activities to break areas on nonworktime. He appeared unfamiliar with the rule per se, but was familiar with what could be enforced with respect to union solicitation and distribution in the plant. Because of the inconsistency in his testimony on this point and for other reasons which will be discussed later, I credit Gawthrop's testimony in this regard.

The credible evidence reflects that Respondent's involved rule has only been enforced with respect to distribution of union material during the campaign and not otherwise, though the rule has been routinely violated both before and after the campaign with the knowledge of and in at least some cases, the participation by supervisors. Such disparate enforcement of a no-solicitation rule has long been held to be a violation of Section 8(a)(1) of the Act. Although the Board has made exceptions to finding a violation when there have been only isolated instances of charitable solicitations allowed by employers in contravention of their no-solicitation—no-distribution rules, that does not appear to be the case here. Solicitations and distributions of both a charitable and commercial nature were routinely allowed in contravention of the involved rules. Therefore I find that by disparately enforcing its no-solicitation rule against solicitations and distributions on behalf of the Union, Respondent has violated Section 8(a)(1) of the Act as alleged in the com-

⁵ Although not alleged specifically in the complaint, another example of Respondent's enforcement of its no-solicitation rule against union handouts is found in the testimony of employee and union committee member James J. Hall. He testified credibly that he passed out union bumper stickers during the campaign. His supervisor, Al Douglas, told him that Respondent prohibited him from passing out these stickers in work areas.

plaint. See *Hammary Mfg. Corp.*, 265 NLRB 57 fn. 4 (1982); *St. Vincent's Hospital*, 265 NLRB 38 (1982); *New York Telephone Co.*, 304 NLRB 259 (1991).

C. Allegations of Threats of Plant Closure and Loss of Jobs (Objection 1)

1. The January 22 and 28 postings by Respondent (complaint allegation 14, above)

The petition for election was filed on January 15, 1992. On January 22, the Respondent posted a news release from corporate headquarters in Iowa which announced the closing of Respondent's Evansville, Indiana plant and the transfer of its functions to another Flexsteel facility in Dublin, Georgia. Such postings of news releases are unusual in the involved facility. On January 24, the Respondent posted a newspaper article about the Evansville closing which makes the point that the unionized Evansville employees declined to agree to wage and benefit concessions, and the Dublin plant is non-union as is the New Paris plant.⁶

The posting of the news release and article was followed closely on January 28, 1992, by Respondent posting in its facility a memorandum to all employees. The memorandum reads as follows:

As a courtesy to the National Labor Relations Board, your Company, on this date, willingly agreed to allow a secret-ballot election to be held on Company property and on Company time.

[Time and place information omitted.]

This election is about 'LOST JOBS'!!!

You can now vote by secret ballot for the best job security we can have at New Paris without COMPULSORY UNIONISM—OR—for UNION DOMINATION and this Union's history of FAILURES at Evansville and Waxahachie. They failed at Evansville to get a workable contract and the jobs are going to be moved to Dublin, Georgia. The Steelworkers failed at Waxahachie. Now they want to play with your jobs when now is the time for us to stay unique (non-union) with the greatest job security we can have (quality manufacturing with no interruption for strikes, grievances, red tape, compulsory unionism) here at New Paris. Yes, the Dubuque Union Bosses want to take away your non-union status. WHY? So that they can have more money in Dubuque. They really don't care about you, but only want to take your money in the form of \$19.50 a month.

Because we feel it is so vital to all our jobs here at New Paris in these recessionary and concessionary times, we are asking each and every one of you to VOTE NO in this election. We will also be stating Flexsteel's position in communications to you during the next few weeks.

We will inform you why we feel we do not need a Union here, and in fact, why we feel a Union could be harmful to all of us.

⁶Plant Manager Ronnie Nash testified that he did not believe this newspaper article was posted; however, I find that it was posted based on a notation on the article which indicates it was posted on 1-24-92 and on the testimony of employee Leroy Clark who recalled seeing the article posted.

FLEXSTEEL

By: Ronnie Nash
Plant Manager

According to Nash this memorandum remained posted for longer than a week. Although an employer has the right to present its views during an organizational campaign, it does not have the right to threaten loss of job security or jobs solely because of the possibility of union representation. In my opinion, that is what the January 28 posting does, especially following closely the January 22 and 24 postings. The posting clearly equates the Union's presence at the Evansville facility for the loss of that facilities' jobs to Respondent's nonunion Dublin, Georgia plant. It also clearly equates job security with nonunion status. No other circumstance other than union representation is given for the loss of jobs at Evansville and that is the only circumstance given which would threaten jobs at New Paris. I believe this posting constitutes a threat and crosses the line of permissible campaign statements of position and opinion. See *White Plains Lincoln Mercury*, 288 NLRB 1133 (1988).

2. Alleged threats by Supervisor Sensibaugh to employee James J. Hall of plant closure and job loss (complaint allegations 15 and 16 above)

James J. Hall is an employee of Respondent working as a forklift driver and die setter. About 2 weeks before the election, Hall had a conversation with Supervisor Larry Sensibaugh at his workstation. It was preceded by a remark made by Hall to fellow employee Janet Newell. He told her that she would probably be for the Union if she were not running around with Sensibaugh. Sensibaugh, who was apparently present, said that if the Union gets in, Respondent was going to make the plant a warehouse so he (Hall) might as well fill out a resume. Sensibaugh also told Hall that if the Union got in, Respondent would not be generous about giving more time for jobs (on piece-rate jobs). This would have the potential effect of lowering wages. Sensibaugh admitted having a conversation with James J. Hall in which he said the Respondent might not be able to be as lenient as it had in the past (if the Union was voted in).

Sensibaugh denied having the portion of this conversation involving resumes and plant closure with James J. Hall, but testified about a similar conversation with another employee, James M. Hall, at a time at the end of January when Sensibaugh was at his desk updating his resume. He testified that James M. Hall approached him and asked if he had heard rumors that the plant was going to close down and become a warehouse if the Union was voted in. Sensibaugh said he had heard no such rumors. Hall then asked him what he was doing and he said he was updating his resume, making the comment that if the place would close down for any reason, he wanted to be prepared. Sensibaugh admitted he knew of no reason the plant would shut down.

I credit the testimony of James J. Hall over that of Supervisor Sensibaugh. Uncontroverted evidence reflects that there was a rumor circulating in the plant during January that the plant would be closed and turned into a warehouse if the Union were voted in. Sensibaugh admitted discussing with another employee the preparation of his resume in the context of it being needed if the plant closed for any reason. His general denial of the conversation with James J. Hall does

not seem credible when compared with the relatively detailed and straightforward testimony of Hall. Sensibaugh also admitted having a conversation with James J. Hall in which he threatened that Respondent would not be as lenient if the Union became the employees' representative. I also credit James J. Hall's version of this conversation. Accordingly I find that Supervisor Sensibaugh's comments to James J. Hall, in the presence of another employee, Janet Newell, constitute a threat of plant closure if the Union were voted in. Such a threat, involving the potential of job loss, is clearly coercive and in violation of Section 8(a)(1) of the Act.⁷ Similarly, Sensibaugh's threat that time allotted for piece-rate jobs would not be as generous if the Union were voted in is highly coercive as it directly affects an employee's pay. I find this threat also violates Section 8(a)(1) of the Act.

Respondent argues that it should not be held liable for Sensibaugh's threats or the alleged threats of other supervisors because the supervisors had been specifically instructed by Respondent's counsel not to engage in such activity. They were told in meetings with the Respondent's labor counsel that they could not do what the counsel called SPIT (Spy, Promise, Interrogate or Threaten). In this regard Respondent cites *National Apartment Leasing*, 272 NLRB 1097 (1984). In that case, the Board held that it would look to see if a supervisor alleged to have made threatening statements had authority to make such statements on behalf of management, or whether such supervisor was reasonably viewed by employees as speaking on behalf of management. Accepting Respondent's argument that its supervisors were not specifically instructed to threaten employees and to the contrary, received specific instructions from its counsel not to threaten, interrogate, spy on, or promise employees, I still find that Respondent's supervisors were its agents in this regard and that Respondent is legally responsible for their actions. In addition to what Respondent told its supervisors what they could not do, it is important to look at what it told them to do during the campaign.

The supervisors were instructed by Plant Manager Nash to meet one on one with employees, to ask them if it was all right to speak with them about the Union, and if they said yes, to ask them what they felt the Union could do for them and other similar questions. The supervisors were then told to tell the employees what management was currently providing for them, stressing that their wages, benefits, and working conditions were good in relationship to other companies in the area.

Additionally, the supervisors were asked to give their opinions to management about how they believed employees under their supervision would vote in the election. This was referred to in notes of a supervisors' meeting under directions to supervisors to "talk to associates one on one," and "take informal poll (union—questionable—no union)." Plant Manager Nash testified that this "poll" was to come from the supervisors' knowledge and judgment and they were not to interrogate employees.

The written material promulgated by Respondent and posted or mailed to employees certainly gave tacit approval to

its supervisors to convey the thoughts therein contained to employees and removes any doubt that employees could reasonably believe that these supervisors were speaking on behalf of management when they spoke of loss of jobs, plant closure, loss of benefits, and other matters mentioned in the written material. It is also clear that Respondent's supervisors were considered management by the employees under their supervision. No specific instructions had been given to the supervisors about the exact parameters of their conversations with employees, except they were to convey management's belief that the employees did not need a Union. That what they said followed the line put forth by management in its posting of an article attributing the closing of a sister unionized plant and the shifting of that plant's work to a nonunion plant, and a letter which indicated that employees could lose their existing benefits through collective bargaining would make their statements even more believable to employees. Therefore, even under the test set out by the Board in *National Apartment Leasing*, supra, Respondent is liable for the actions of its supervisors during the campaign.

*D. Alleged Impression of Surveillance Given by and
Alleged Threats Made by Respondent's Supervisor Jack
Moon (Complaint Allegations 7 and 8, above, and
Objection 2)*

Stoney Gawthrop is employed as an assembler by Respondent. He supported the union campaign, attended some meetings, and talked with his friends about the Union. He was on the union employee organizing committee. He signed an authorization card and wore a union button at work for about 2 days. He also had about seven or eight other employees sign authorization cards. In this regard, he testified about a conversation with his supervisor, Jack Moon, which took place a week or two before the election. Moon approached him at his workstation and told him that he knew that he was getting people to sign authorization cards and not to do it. Gawthrop replied that he did not know what Moon was talking about. Moon said that he knew what he was talking about because people had told him that Gawthrop was getting them to sign cards. Moon then commented that Gawthrop was low in seniority and would be one of the first ones to go.

Moon testified that an employee named Francesca came to him and told him that Gawthrop had come to her house to convince her to vote for the Union, stayed a long time, and she had difficulty getting rid of him. Moon testified that later that day he saw Gawthrop moving from one workstation to another and told him that it was fine for him to talk about the Union in the break area and lunchroom, but he could not do so in the work area. He did not hear what Gawthrop was saying to other employees nor did he ask them. He evidently assumed it was union business. He testified that he also asked Gawthrop if he knew what unions were about and Gawthrop said he did because his Dad was in one. Moon said that its got a lot to do with seniority, and Gawthrop replied that he did not have a lot of it (seniority). According to Moon, the conversation ended there. Moon denied threatening Gawthrop and denied telling Gawthrop that he knew he was signing up people and not to do it.

I credit Gawthrop's version of his encounter with Moon over that given by Moon. Gawthrop's testimony was more consistent and believable. Moon made a great deal about the

⁷ Sensibaugh's admitted conversation with employee James M. Hall is also coercive and violates the Act in the context of the conversation. It clearly conveys the threat that the plant might close if the Union were voted in.

complaint he received from the employee Francesca, yet the activity complained about by her did not take place at work and was not covered by any employee rule. It appeared to me that he was searching for an excuse for his surveillance of Gawthrop and his threat to Gawthrop. Even Moon's version of the events reflect giving the impression of surveillance and the implied threat of Gawthrop's loss of his job if the Union were voted in. I find that Moon's statements to Gawthrop are coercive, give the impression of unlawful surveillance of Gawthrop's protected activity, and threaten job loss because of that activity. Accordingly, I find that Respondent has violated Section 8(a)(1) by the actions of its supervisor, Moon.

E. Threats Made in a February 7 Letter Concerning Loss of Wages and Benefits and Delays in the Collective-Bargaining Process and Related Threats Made by Supervisor Sensibaugh

1. The February 7 letter (complaint issue 13, above)

During the Respondent's campaign against the Union, it distributed to employees a number of memorandums or letters. One such letter, dated February 7, reads:

BARGAINING: WHAT IS THE LAW?

Some associates have said, "What have I got to lose? By bringing in a union, don't I start with my present wages and benefits and then get an automatic increase?"

However, this is so **WRONG!** The NLRB has upheld statements describing the Bargaining Process to be lawful which said:

"the parties come together with two **BLANK** pieces of paper"

and that

"the bargaining will **START** from **SCRATCH**"

and

"**THAT PRESENT BENEFITS** could be **LOST**"
(Copy of NLRB Decision 259 NLRB No. 70 attached)

Also, the Union could **TRADE** some of your present **PAY, HOLIDAYS HEALTH INSURANCE** in order to get a **UNION SHOP** (where everyone must join the Union in 30 days) and an **AUTOMATIC DUES CHECKOFF**. (See attached **SELL-OUT AGREEMENT** where the Union traded such benefits for a union shop and **AUTOMATIC DUES CHECKOFF** made by Furniture Workers Union).

Negotiations often go on for **MANY MONTHS** while your **WAGES** and **BENEFITS** **WOULD BE FROZEN** by law (the Company could not unilaterally give a wage increase) while negotiating continue.

FEDERAL LAW says that **NEITHER SIDE** has to **AGREE** to any **DEMAND** or make **CONCESSIONS**.

So you see, you won't necessarily **KEEP ALL PRESENT BENEFITS** and just get more in **NEGOTIATIONS!** **THIS IS ABSOLUTELY WRONG, BECAUSE THE UNION CAN'T EVEN GUARAN-**

TEE that you will keep your **PRESENT WAGES OR PRESENT BENEFITS. THEY CAN'T GUARANTEE ONE SINGLE ITEM.**

Although we would bargain in good faith, if the Union would make unreasonable demands, the only weapon to back up such demands would be to **TAKE YOU OUT ON STRIKE**. And, to those of you who say that you will not support a strike, I point out to you that every Union **CONTROLS** the "**STRIKE VOTE**" and always will.

We are **NOT** going to **AGREE** to unreasonable demands. You should not be **MISLEAD** by **DUBUQUE** and **Evansville UNION BOSSES** who have no interest in you at New Paris except to get **YOUR JOBS** back in their cities. We need to support each other here in **NEW PARIS** without **STRIKES**, with a **UNION SHOP**, without **PICKET LINES**, and without a **UNION**. For the **SUCCESS** of **NEW PARIS** and your jobs.

Signed by Ronnie Nagh

At the hearing, though nothing in the February 7 letter would go indicate, it was asserted that this letter was distributed in response to a union distribution which states:

HERE'S WHY YOU DON'T NEED TO BE CONCERNED:

1. Nobody can order us to go on strike. Only we, the employees of Flexsteel, New Paris will decide if we are to strike ever.
2. The only way we would ever go on strike is if we, the employees of Flexsteel, New Paris, voted in a secret ballot election. We don't know anybody in our plant who wants to strike.
3. Federal Law requires the company to bargain, with the Union, in good faith, for the purpose of achieving a signed contract. That means under penalty of law, the company and the Union have a legal obligation to get the job done right and not play games.
4. Under Federal Law, once we vote for the Steelworkers, the company cannot change our wages or benefits unless we agree to such changes.
5. If we should ever see the need to exercise the right to strike, the Steelworkers Strike and Defense Fund has in excess of \$150 million dollars. Strike benefits for newly organized units start from day one; \$85/weekly for the first 2 weeks, \$115 for the 3rd week, \$115 for the 4th, 5th, and 6th weeks, and \$125 from the 7th week on.

If the Respondent's letter was issued to correct some misstatement of law contained in the union distribution, I cannot find that it does so. I can find no misstatement of the law in the union distribution except for the generalization in paragraph 4, above, which does not address the possibility of impasse being reached after good-faith bargaining. Certainly the highlighted statements in the February 7 letter which say: "the parties would come together with two blank pieces of paper," the bargaining will start from scratch, and "that present benefits would be lost," do not address any misstatement of law. These statements, taken without any rational context or explanation of the bargaining process appear to me to be nothing more than the type of threat found

to be unlawful in *Lear-Siegler Management Service*, 306 NLRB 393 (1992). Therein, the Board found the statement “Under the union, all benefits would have to be negotiated, starting from zeros to be unlawful as it was not made in a context which made clear that any reduction in wages or benefits will occur only as a result of the give and take of negotiating.” In the involved letter, there is no indication of normal give and take in negotiations, only the clear indication that benefits will be lost as a result of union representation. Indeed, the letter goes on to say that “Federal saw says that neither side has to agree to any demand or make concessions,” and follows this statement with “you won’t necessarily keep all present benefits and just get more in negotiations!” and “[T]his is absolutely wrong, because the union can’t even guarantee that you will keep your present wages or present benefits.”

I also believe the letter is violative of the Act when it states that “Negotiations often go on for many months while your wages and benefits would be frozen, by law (the Company could not unilaterally agree to give a wage increase) while negotiations continue.” Absent any hint in the letter that there was a possibility that the Company and Union might reach an agreement on anything, I believe that this statement constitutes a threat that the Company would delay negotiating and use the bargaining process as a means to avoid giving any increases in wages or benefits. This is even more true given the threats noted above that benefits would be lost because of the bargaining process. See *Frank’s Nursery & Crafts*, 297 NLRB 781 (1990), and *Columbus Mills*, 303 NLRB 223 (1991).

For the reasons set forth, I find that Respondent’s letter of February 7 violates Section 8(a)(1) as alleged in the complaint.

2. Alleged threats made by Supervisor Sensibaugh in connection with the February 7 letter (complaint allegation 6)

Employee Thomas Dye had a conversation with his supervisor, Larry Sensibaugh, about this letter. Dye and two other employees were standing near Sensibaugh’s desk when he approached. The employees were talking about the letter and Sensibaugh joined in the conversation. Dye said that he believed that what the letter said was not true. Sensibaugh said the letter was true and that if the Union were voted in, the employees would have nothing, and would lose everything they had. Sensibaugh took a blank piece of paper and laid it on his desk, saying that is what the employees would have. Dye got mad, said that was a lie, and walked away.

Employee James M. Hall testified that he was present at this conversation and remembers Sensibaugh pulling out a blank rate card and saying that is where the employees will start if the Union is voted in.

Employee James L. Hare testified that he heard this conversation and that Sensibaugh said that if the Union gets in, employee pay and benefits would go down to zero and bargaining would begin at that point. He remembers Sensibaugh taking a blank piece of paper and saying this is what you will start with. Hare said that he did not believe that the employees could lose their benefits, prompting Sensibaugh to again refer to the blank sheet and say this is where you will start. After this conversation, Hare was approached by employee Richard Smith who seemed upset. Smith asked him

whether the Respondent could take away his health insurance if the Union was voted in. Hare said he did not think so, but that Smith should call the Labor Board to make sure.

Sensibaugh recalls only a conversation with Dye in this regard. He remembers Dye approaching him, showing him the letter, and telling him it was not true. According to Sensibaugh, Dye said bargaining would not start from scratch. Sensibaugh testified that he told Dye he would find out more information and get back with him. He then went into a meeting with his supervisor and asked for more information. Later, he sought out Dye and told him that everything would remain frozen with respect to employee benefits and wages, and the Company and Union would get together with two blank pieces of paper and draw up a contract. He denied telling employees that they would lose all their benefits if the Union came in, and pointing to a blank piece of paper. He denies any conversation with James M. Hall on this subject, and similarly denies any such conversation with Jim Hare.

I credit Dye’s and the other employees’ version of the involved conversation over that of Sensibaugh. I have already found Sensibaugh to be less than candid, and I do so again in regard to this conversation. In his affidavit given to the Board during the investigation of this case, Sensibaugh could not recall any conversation with any employee where “bargaining from scratch” or a “blank piece of paper” came up. I can find no reason to credit his selective memory improvement over the apparently credible testimony of employee witnesses Dye, Hare, and Hall. The statements attributed to Sensibaugh by these employees are clearly coercive and I find them to be in violation of Section 8(a)(1) of the Act.

F. Allegations of Interrogations, Surveillance, and Promises By Don McFarland and Ken Hampton

1. The alleged interrogation and impression of surveillance by Don McFarland (complaint allegations 9 and 10, above)

Leroy Clark is employed by Respondent as a tool-and-die maker and is the only employee in that category at New Paris. Clark was the first employee to contact the Union about possible representation at New Paris. This contact took place in early October 1991. He thereafter engaged in getting authorization cards signed and solicited support from fellow employees. In the first part of December 1991, before he began wearing any insignia of union support or otherwise identifying himself as a union supporter, he had a conversation at the plant with Don McFarland. McFarland asked him if he had attended a union meeting and Clark said he had. According to Clark, this ended the conversation. About a week later, he had another conversation with McFarland in which he asked the same question. Clark had not attended a meeting that week so he responded negatively. McFarland then asked if Clark had heard how many employees had attended the meeting. Clark responded that there were not enough to worry about.

In yet another conversation in the same timeframe, McFarland and Clark were discussing a problem with getting cooperation from Respondent’s general foreman, Ken Hampton. Clark commented that if McFarland could not change the process around so that the employees could have good communications and a good workplace, that the Union would get

his vote. McFarland said it was out of his hands, that he had done all that he could. McFarland also told Clark that he had heard a rumor that Clark was the person who had started the union campaign. Clark indirectly denied the rumor. In another conversation, McFarland related to Clark that he had heard a rumor that Clark was passing out authorization cards. Clark declined to tell him whether he was so engaged or was not.

Clark testified that he and McFarland were good friends with a very close relationship. During the campaign they talked openly about the Union. However, he did not want to volunteer information about his role in the campaign as he feared retaliation from General Foreman Ken Hampton.

McFarland testified that he and Clark had a good relationship and talked almost daily. McFarland admitted telling Clark that he had heard a rumor that it was Clark who started the union campaign. With respect to the matter of questions about union meetings, McFarland could not remember if he asked Clark about them or whether Clark just volunteered the information. At a later point in his testimony, he testified that Clark volunteered the information that not enough people attended the union meeting to be worried about. He denied ever asking Clark if he was getting employees to sign authorization cards. In this regard, Clark testified that McFarland told him that he (McFarland) had heard that he was passing out such cards. I credit Clark on this point. McFarland generally corroborated Clark's testimony to the extent that he could remember the conversations and his memory of them was not as clear as Clark's. Moreover, Clark noted this statement in an affidavit given to the Board in April, a time much closer to the conversations in question than the hearing held herein. Such a statement would also be consistent with McFarland's admitted mentioning of the rumor about Clark starting the union campaign.

McFarland testified that the way he discussed the Union with Clark indicated that he considered the Union a problem. McFarland also testified that he believed that the rumor about Clark starting the union campaign could be detrimental to Clark.

Given the admittedly close relationship between Clark and McFarland, I would not ordinarily find a violation based on their conversations about the Union. I believe that McFarland knew that Clark was a union supporter based on his support of the Union in an earlier organizing campaign at the plant, and Clark's statements to McFarland that the Union would get his vote if things were not changed around at the plant. However, I believe the matter of their friendship is overshadowed by the veiled threat implicit in the questioning of Clark by McFarland about the rumor that Clark was behind the current campaign and the rumor that Clark was passing out authorization cards. Clark testified that he was fearful of divulging his role, fearing retaliation from Hampton. Even McFarland indicated he viewed the Union as a "problem" and believed the rumor about Clark's instigating the union campaign could be detrimental to Clark. I find that the threat implied in the questions about Clark's role in starting the campaign tends to make the whole line of questioning Clark about his and other employees' attendance at union meetings coercive.

I also find that mentioning the rumor about Clark passing out authorization cards to relay an impression of surveillance and convey an implied sense of disapproval, if not an actual

threat. It would certainly tend to coerce and restrain Clark from continuing this line of protected activity. I therefore find that the conversations between McFarland and Clark as described above constitute unlawful interrogations and creating the impression of surveillance in violation of Section 8(a)(1) of the Act.

2. Alleged interrogation by General Foreman Hampton and promises of improved terms of employment (complaint allegations 1 and 2, above)

Dawn Hepler is employed as a press operator and painter for Respondent. She supported the Union by attending meetings, passing out buttons, and making house calls. She also passed out handbills in the lunchroom. She confined her handbilling to the lunchroom as she had seen McFarland telling Chaney that they could not be passed out in work areas. She testified that she attended a meeting for employees held by Respondent during the campaign and after the meeting stayed to talk with Plant Manager Nagh and General Foreman Hampton. She tried to explain to them how the union campaign came about, that employees wanted a fairer work rate on their piece work. She asked Nagh and Hampton about a rumor she had heard that they were going to turn the plant into a warehouse if the Union was voted in. Nagh said that the rumor was not true; however, no general announcement was made to employees to this effect.

About 2 days later, she had a discussion with Hampton wherein he thanked her for talking with Nagh and himself. Hampton, who initiated the discussion, allowed as how the Company was really scared that the Union would get in. Hepler then said that Respondent had to listen to the employees and if they had listened there would be no campaign. Hampton replied that the employees did not need a third party, that the Company and employees could work out their problems. He said there would be some changes if the Union lost so that Respondent would not have to go through a campaign again. He said that if the Union did get in there would be a lot of changes that the employees would not want.

Later that day she had another conversation with Hampton. She was wearing a union hat and Hampton asked her what she thought about that, pointing to the hat. She said it was a good thing. He then repeated what he had said earlier.

Hampton testified that he spoke with Hepler after the meeting with himself and Nash. He asked Hepler if he could talk with her about the Union and she agreed he could. He asked her what was the biggest problem, and she said that work rates were not taken care of in the proper way and employee questions were not being answered in a timely fashion. Hampton commented that the E-Rep meetings had stopped quite a while back and that management had lost its means of communicating with the employees.⁸ He denied making any promises or saying things would change or that employees would not want the changes. He believed Hepler to be a union supporter at that time because of her actions in asking questions at the employee meeting, much like a spokesperson.

⁸E-Rep meetings were meetings between employee representatives and management for the purpose of solving work-related problems. The program was evidently not successful and had been canceled for some time prior to the instant organizing campaign.

I credit Hepler's version of the involved conversations. She appeared to be an entirely credible witness and had a much better memory of the conversations than did Hampton. Moreover, Hampton admitted the fact of the conversations, that he asked her about the cause of the organizing effort and commented that management had lost its means of communication with the end of the E-Rep program. I believe that by telling Hepler, after she had stated that employee work rates and communication were the problems behind the campaign, that positive changes would take place if the Union did not get in and negative changes would take place if it did constitute both a promise and a threat. In the context given, Hepler could only draw the implication from such statements that work rates would be more favorable and communications would be improved if the Union were not voted in. Mentioning the E-Rep program would only enforce this implication. Although Respondent questions whether Hepler could reasonably believe that Hampton spoke for management in making this promise and threat, I find that that question must be answered that she could and did. This conversation was a follow up to her talk with Plant Manager Nash and Hampton after the Respondent's employee campaign meeting. If they were speaking for management at that meeting, one would have to draw the presumption that Hampton was speaking for management when he approached Hepler and began the conversation by reminding her of that earlier meeting.

I find that the promises and threats made to Hepler by Hampton are coercive and in violation of the Act, and the interrogation itself to be unlawful as it was accompanied by this promise and threat.

G. The Alleged Unlawful Wage Deduction (complaint allegations 11 and 12, above)

On February 21, with the employees paychecks, they also received a letter which reads:

Today your regular paycheck is \$50.00 short!! What makes up this \$50.00 amount is shown on the enclosed sample union bill for DUES (\$240.00 a year), representing \$20.00 a month for DUES, \$10.00 for a FINE for NOT ATTENDING UNION MEETINGS, and \$20.00 for a STRIKE ASSESSMENT to pay for STRIKES at other Steelworkers Union plants. This \$50.00 will be given to you in cash and should be picked up from me, Tom Morris, Ken Hampton, or Don McFarland immediately.

Together, your check and the money you will receive today from us will make up your total paycheck.

I am not saying this is the exact amount the Union is going to charge you. IT COULD BE MORE!! The Union could even FINE you for crossing a PICKET LINE and coming into work during a STRIKE.

In fact, the Union could DOUBLE YOUR DUES (\$40.00 a Month) to pay for a strike at some other Steelworkers Union plants.

Also, this money does not include any FINES for DISCIPLINARY ACTIONS for failure to follow the Union's ORDERS. Remember that part of the hard-earned money you have in your hand for DUES is what you would pay MONTHLY. Money that you could

apply on your gas and electric bill, mortgage, rent or car payment.

If the Union should be successful in winning the February 28th election, CHARGES like these would probably be DEDUCTED AUTOMATICALLY from your paychecks EACH MONTH.

DO YOU NEED THE UNION OR DOES THE UNION NEED YOUR MONEY TO PAY THEIR HUGE SALARIES WHICH I SHOWED YOU? ISN'T THE BEST ANSWER TO VOTE "NO" ON FEBRUARY 28TH.

Signed: Ronnie Nash

When the employees went to one of the members of management named to pick up the withheld \$50, they were required to sign a receipt in the form of a union bill which set out the amounts withheld as described above. The "receipt" reads:

I have received this 21st day of February, 1992, Fifty Dollars (\$50.00) in cash from FLEXSTEEL INDUSTRIES, INC. which represents one MONTH'S DUES, a fine for not attending union meetings and a STRIKE ASSESSMENT of \$20.00 for me to pay for Steelworkers' Union strikes at other plants, that could be deducted from my paycheck if we agree to an AUTOMATIC DUES CHECKOFF and a Union comes in at FLEXSTEEL INDUSTRIES, INC., (New Paris).

Associate's Signature

WITNESS:

Employee Leroy Clark went to McFarland and refused to sign the receipt as he believed it was not true. McFarland said he had to sign something because he needed a receipt. Clark told McFarland to give him a check or something to sign that was true, or he would go to the Labor Board. According to Clark, McFarland told him to go to the Labor Board. Clark was given a check for \$50 the next day.

Clark doubted the truthfulness of the letter and receipt as he had been given information by the Union that indicated that the figures used by the Respondent were incorrect.

McFarland testified that Clark came to him and demanded his \$50. According to McFarland, Clark refused to sign the receipt and he said he would not give him the \$50 without a receipt as he was accountable for the cash. Clark then left. McFarland denies anything being said about the Labor Board at this time and testified that Clark did not tell him why he was not signing the receipt. He testified that Clark was upset and cannot recall whether or not Clark said the Company had no right to deduct the \$50 from his paycheck. Two days later, McFarland had a conversation with Clark in which Clark informed him that he had called the Labor Board on the day the incident occurred and was told to go in the next day and pick up his check. According to McFarland, Clark said he had no hard feelings and offered to buy McFarland a hot chocolate. I credit Clark's version of these conversations.

I find this so-called simulated dues checkoff to be coercive and violative of the Act for the following reasons. One, it purports to establish as a minimum a \$50 deduction from each employee's paycheck without any factual support for

the numbers being given. The letter which announces the deduction indicates that the \$50 deduction is a minimum figure and might be more. Second, to receive the money represented by the deduction, employees were required to sign the receipt set out above which requires the employees' acknowledgment that such deductions, again without any factual support, could be deducted from their paychecks if the Union were voted in. Third, Respondent did not have in place any means to immediately pay the employees the \$50 it withheld from their checks if they refused to sign the receipt. Clark refused and had to wait until the next day to receive a check for the amount withheld. Tampering with employee paychecks without permission of the employees is certainly a serious matter and one guaranteed to get their attention. Because of the seriousness with which employees treat their pay, I do not believe the Respondent has the right to play fast and loose with the facts in the process of withholding pay without any employee authorization, and then force employees to sign a purportedly factual antiunion receipt to get this pay without delay. For the foregoing reasons, I find that Respondent's actions in withholding \$50 and requiring a day's delay in paying the sum to Clark when he did not sign the receipt for the \$50 in cash to go beyond simply stating Respondent's opinion about the possible results of unionization and is an unlawful and coercive intrusion upon their protected rights. Consequently, I find that Respondent violated Section 8(a)(1) of the Act in this regard.

H. Objection Based on Alleged Election Line Misconduct

The Union's Objection 6 alleges that the Respondent interfered with the voting procedure by maintaining a presence outside the voting area immediately after the polls opened and immediately after the polls closed. Specifically, the Union contends that for a period of time, General Foreman Ken Hampton engaged employee Lewis Wallace in conversation in the vicinity of the voting area while Wallace was waiting to vote, such conversation taking place within the view of a number of other voters.

Wallace testified that he was a member of the organizing committee and attended a couple of union meetings. He was on layoff status at the plant immediately prior to the vote because of his son's serious illness. He came to the plant on election day wearing his union button and asked Supervisor Larry Sensibaugh where to go. Sensibaugh directed him to the voting area and he joined a line of voters. According to Wallace, Ken Hampton approached him and started talking, so he stepped out of line to let people continue to move forward while they talked. About 10 or 15 people were in line when this conversation began. Wallace testified that he and Hampton moved about 5 feet away from the line and had a conversation that lasted about 15 to 20 minutes. During this time another five to eight people joined the line. After the conversation ended, Wallace rejoined the line and voted. He testified that people in line would glance at he and Hampton while they talked. The conversation was friendly and concerned the condition of Wallace's son and the timing of Wallace's return to work.

Ken Hampton admitted that he had such a conversation with Wallace on the day of the election, but contends that the conversation did not take place near the voting area or within the view of any voters. He testified that the plant is

divided by a partition which separates the metal shop from the upholstery department. The election was held in the upholstery breakroom. Hampton testified that on the day of the election, he saw Wallace coming toward his office which is on the metal shop side of the partition. He greeted him and asked how he and his son were doing. He asked when Wallace thought he could return to work. After this conversation, which he estimated lasted 2 or 3 minutes, Hampton testified he directed Wallace to the election area, which was on the other side of the partition dividing the plant. Hampton denies that he took Wallace out of the voting line or that Wallace had even been in the voting line when they spoke. He testified that the conversation took place adjacent to his office and adjacent to the door leading over to the voting place. According to Hampton, from this location, one could not see the polling area nor could one see the line of employees waiting to vote.

Hampton's version of where the conversation took place is not only challenged by Wallace, but by two other employees who testified that they observed the conversation. Employee Thomas Dye testified that, on election day, the employees voted by department and would stand in line to enter the voting area. He testified the voters lined up near a large opening in the partition which divided the plant. Through this opening he could see at least 10 or 12 people who were standing in line to vote. He noticed that Hampton pulled Wallace out of line and engaged him in a conversation. This struck Dye as strange as the employees had been told that there were to be no supervisors in the voting area. Dye said everyone in line at the time could observe Hampton and Wallace having a conversation.

Employee James M. Hall testified that he too observed Hampton speaking to Wallace during the voting procedure near the line of employees waiting to vote.

I credit the testimony of Wallace and the other two employees over that of Hampton. Hampton does not deny that the conversation took place, only its location. On this point the testimony of the three employees appeared truthful. It seems incredible to me that Wallace, Dye, and Hall would make up their testimony about the location of the conversation. Moreover, Wallace testified that Supervisor Sensibaugh, not Hampton, directed him to the voting area. Sensibaugh testified after Wallace and did not deny this testimony. I find that Hampton did engage Wallace in a conversation in the vicinity of the voting area, within the view of other voters and thus sustain the Union's objection in this regard. Such conduct is normally found to be prejudicial and I so find. *Milchem Inc.*, 170 NLRB 362 (1968).

I. Union's Objection Based on Allegations of Objectionable Promises

Under a portion of the Union's Objection 4, it alleges that Respondent, in a campaign speech given to employees on February 27, promised the formation of a Management/Associate Committee in response to a request from certain employees and this amounted to an objectionable promise of benefit should the employees reject representation.

Employee Rebecca Chaney testified that on February 27, 1992, she attended a company-sponsored dinner where, inter alia, Plant Manager Ronnie Nash told the assembled employees that he wanted to establish a committee comprised of employees and management to work on the problems that

were causing employees to want the Union. According to Chaney, this was a new suggestion; however, she did not consider it to be a promise. It was said during a part of a speech given by Nash. The text of that speech in pertinent part reads:

I have been approached by two loyal associates who asked me to form an Associate-Management Committee that would work together as a team to establish in priority a list of problems with goals and timetables to resolve these problems, and to establish common ground to work together as a team with a common goal.

While I can't promise you anything at this time or that we will have this type of committee, I can inform you that with our Quality Work Groups that a good part of you have already received training, part of our overall program does include plans for some form of joint Management-Associate Participation Committee to deal with all our problems including Quality. This Committee will take the shape of our E-Rep Meetings that we had a while back. This is part of our Quality Work Group Plans that have already been decided.

Chaney testified that the E-Rep groups were composed of an employee representative and a management team. Her understanding was that through the representative, employees could request new equipment or bring up work-related problems. She was of the opinion that nothing much came of these meetings. Employee Leroy Clark testified that company dinners were unusual and that the last one occurred in 1986, also during the course of a union organizing campaign.

I do not believe that the record is clear enough on this point to sustain the objection. There is nothing to indicate that Nash deviated from the prepared speech, and in the speech he does not promise anything new. Evidently there were already in place some form of quality groups, and the only thing that Nash added was that these groups would have some procedure for providing a forum for discussion of all problems, not just those involving quality. The speech indicates that this was part of an existing plan and I can find no proof that it was not. There is also no threat that this program's continuance was dependent on the employees rejecting the Union. Accordingly, I overrule this portion of the Union's Objection 4.

IV. CONCLUSIONS WITH RESPECT TO THE ALLEGED UNFAIR LABOR PRACTICES AND OBJECTIONS

For the reasons set forth above, I have found that Respondent has violated Section 8(a)(1) of the Act in every respect alleged in the complaint. I have further sustained the Union's objections as they correspond to the unfair labor practice allegations and additionally, Objection 6. Pursuant to the Board's usual policy, a new election is to be directed "whenever an unfair labor practice occurs during the critical period since [c]onduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammelled choice in the election." *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962), quoted with approval in *Clark Equipment*, 278 NLRB 498 (1986). Accordingly, I recommend that the election conducted on February 28, 1992, be set aside on the basis of the Union's objections referred to above and a rerun election be conducted.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

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

2. United Steelworkers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by:

a. Promising its employees unspecified improved terms and conditions of employment if they would abandon support for the Union.

b. Interrogating its employees regarding their union membership, activities, and sympathies.

c. Discriminatorily enforcing a no-solicitation, no-distribution rule against union-related solicitations and distributions in plant work areas, while permitting nonunion-related solicitations and distributions in the same work areas.

d. Threatening its employees through its supervisors with the elimination of their benefits and requiring the Union to bargain from scratch if its employees selected the Union as their collective-bargaining representative.

e. Giving its employees the impression that their union activities were under surveillance by Respondent.

f. Withholding a portion of its employees' pay as simulated union dues, fines, and assessments without their authorization, requiring its employees to sign a receipt acknowledging their agreement with Respondent's position that they would be required to pay at least the amount withheld for union dues, fines, and assessments, and delaying by a day paying the amount withheld to any employee who refused to sign the receipt.

g. Issuing to its employees written material wherein it threatened its employees that it would delay the collective-bargaining process leading to a contract for many months, that it would delay wages and benefit increases regularly given its employees because they selected the Union as their collective-bargaining representative, and that it would eliminate all wages beyond the minimum required of Respondent, and other employee benefits at the start of any bargaining with the Union.

h. Threatening its employees through its supervisors with more onerous work rates and thus loss of pay if they selected the Union as their collective-bargaining representative.

i. Threatening its employees through its supervisors with loss of their jobs or discharge if they selected the Union as their collective-bargaining representative.

j. Threatening employees through its supervisors with plant closure if they selected the Union as their collective-bargaining representative.

k. Issuing to its employees written material wherein it threatens its employees with loss of work and jobs if they selected the Union as their collective-bargaining representative.

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

On the foregoing findings of fact, conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Flexsteel Industries, Inc., New Paris, Indiana, it officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising its employees unspecified improved terms and conditions of employment if they would abandon support for the Union.

(b) Interrogating its employees regarding their union membership, activities, and sympathies.

(c) Discriminatorily enforcing a no-solicitation, no-distribution rule against union-related solicitations and distributions in plant work areas, while permitting nonunion-related solicitations and distributions in the same work areas.

(d) Threatening its employees through its supervisors with the elimination of their benefits and requiring the Union to bargain from scratch if its employees selected the Union as their collective-bargaining representative.

(e) Giving its employees the impression that their union activities were under surveillance by Respondent.

(f) Withholding a portion of its employees pay as simulated union dues, fines, and assessments without their authorization, requiring its employees to sign a receipt acknowledging their agreement with Respondent's position that they would be required to pay at least the amount withheld for union dues, fines, and assessments, and delaying by a day paying the amount withheld to any employee who refused to sign the receipt.

(g) Issuing to its employees written material wherein it threatened its employees that it would delay the collective-bargaining process leading to a contract for many months, that it would delay wages and benefit increases regularly given its employees because they selected the Union as their collective-bargaining representative, and that it would eliminate all wages beyond the minimum required of Respondent,

and other employee benefits at the start of any bargaining with the Union.

(h) Threatening its employees through its supervisors with more onerous work rates and thus loss of pay if they selected the Union as their collective-bargaining representative.

(i) Threatening its employees through its supervisors with loss of their jobs or discharge if they selected the Union as their collective-bargaining representative.

(j) Threatening employees through its supervisors with plant closure if they selected the Union as their collective-bargaining representative.

(k) Issuing to its employees written material wherein it threatens its employees with loss of work and jobs if they selected the Union as their collective-bargaining representative.

(l) In any like or related 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) Post at its New Paris, Indiana facility copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on form provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by it for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 25 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that Case 25-RC-9113 be severed from Cases 25-CA-21795, 25-CA-21823 and 25-CA-21832, and be remanded to the Regional Director for Region 25 who shall conduct a rerun election at such time as he deems the circumstances permit a free choice on the issue of representation.

⁹If 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 by Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰If 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."