Churchill's Supermarkets, Inc. *and* **United Food & Commercial Workers International Union, AFL-CIO-CLC, Locals 954 and 626.** Cases 18-CA-13944-1, 8-CA-13944-2, and 8-CA-14243-1

31 July 1987

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS BABSON AND STEPHENS

On 18 August 1981 Administrative Law Judge Walter H. Maloney Jr. issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Respondent filed an answering brief to the General Counsel's exceptions.

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,[1] and conclusions, to modify his remedy,[2] and to adopt the recommended Order as modified and set out in full below.

The Alleged 8(a)(1) Violations

The judge found that the Respondent had violated Section 8(a)(1) of the Act by coercively interrogating several employees. The Respondent excepted to these findings, arguing that an examination of the surrounding circumstances in each case indicates that the conversations at issue were not coercive and did not violate the Act. We agree with the Respondent only with respect to the alleged interrogations of employee Curtis by Supervisor Katt and employee Winans by Supervisor Petree.

Christine Curtis works as a waitress in the coffeeshop at the Monroe Street store. At the time of the union organizing campaign in 1980,[3] she was supervised by Juanita Brown Katt. Curtis wore a union button at all times and made no secret of her support. Both Curtis and Katt testified that during the course of Curtis' employment they had several conversations in which they discussed the Union, as well as Curtis' personal problems. On occasion, Katt asked Curtis why she was in favor of a union and why she thought a union was necessary. At one point, Katt observed to Curtis that perhaps one of the reasons the Union appealed to Curtis was the fact that it gave her a new group of friends.

The judge found that Katt's inquiries to Curtis concerning the Union were coercive. We disagree. The personal nature of the relationship between Curtis and Katt and the friendly tone of their conversations support the Respondent's assertion that Katt's questions were not coercive, particularly in view of Curtis' position as an open and ardent union supporter. Therefore, we cannot agree with the judge that Katt's questions to Curtis about the Union violated the Act. See *Rossmore House*, 269 NLRB 1176 (1984).

Employee William Winans worked at the Monroe store as a carryout and front-end employee. He was a known union supporter, who wore a union button at the store and had engaged in handbilling on behalf of the Union. In March, Supervisor Joyce Petree asked several of the front-end employees if they had any questions about the Union. When she asked Winans, he replied in the affirmative, and they engaged in a 30-minute discussion about the Union. Winans testified that he began the conversation by telling Petree that he was in favor of the Union and that she would not change his mind by talking to him about it. During the course of the conversation, Winans asked several questions Petree could not answer. She later brought Executive Senior Vice President and Director of Operations Richard Geerkin and Store Manager Thomas Dombowski to the front end of the store and asked Winans in their presence whether he had any questions to address to them. He asked one question, and the conversation ended. The judge found that Petree's actions violated the Act by pointing him out to the Respondent's top management as a union activist and by interrogating him. We disagree. Winans was an open union supporter whose sentiments were not hidden from Respond-

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

We agree with the judge's conclusion that the Respondent violated Sec. 8(a)(3) by denying employee Zielinski a leave of absence for antiunion reasons. In so doing, however, we disagree with the judge's reasoning that the denial of a leave of absence was tantamount to a denial of reemployment. Instead, we find that the Respondent's conduct was violative of Sec. 8(a)(3) because it placed Zielinski in a different employment status for unlawful reasons.

In agreeing with the judge's conclusion that the Respondent violated Sec. 8(a)(3) by giving an unfavorable evaluation rating to employee Feeback in retaliation for her union activities, we note that the Respondent's subsequent improvement of Feeback's rating was insufficient to constitute an effective repudiation of its earlier unlawful conduct or to relieve the Respondent of liability for it. See *Passavant Memorial Area Hospital*, 237 NLRB 138 (1970).

[2] In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after 1 January 1987 will be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to 1 January 1987 shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

[3] All dates refer to 1980 unless otherwise indicated.

ent's management. There is no evidence that Petree specifically identified Winans as an organizer or an activist. Rather, she was attempting to provide a source of answers to Winans' questions. In these circumstances, we cannot agree with the judge that the conversation between Winans and Petree was coercive. *Rossmore House*, supra.

With respect to the interrogations of employees Winans and Joseph Wielgopolski by Flower Shop Manager Richard Glauser and of employee Clyde Nebb by Supervisor Jack Pieh, we agree with the judge that these conversations were coercive. In so finding, we rely on the fact that, although each of the employees questioned was an open union supporter, the conversations between Glauser and Wielgopolski and Glauser and Winans involved threats of layoffs, discharges, and the prediction of a strike because the Respondent would not give the Union a contract. Further, we note that the conversations between Nebb and Pieh involved repeated questioning about the Union, a promise of benefit, and promulgation of an unlawful no-solicitation rule. In each situation these circumstances created a coercive atmosphere aimed at interfering with the employees' exercise of their Section 7 rights. *Rossmore House*, supra. Accordingly, we find, in agreement with the judge, that the Respondent violated Section 8(a)(1) by interrogating employees Wielgopolski, Winans, and Nebb.[4]

The judge also found that the Respondent committed several 8(a)(1) violations during the course of employee Nebb's evaluation by Supervisor Pieh in March 1980. During the course of the evaluation, Pieh asked Nebb if he had any complaints. Nebb replied that he had the same ones he had every year, specifically, lack of a retirement plan, wages that were below union scale, and inadequate benefits, particularly health care. Pieh then asked why Nebb was involved with the Union, and stated that although there was nothing that could be done about the wage differential during the Union's organizing campaign, when the "union business" was over, the Company could do something. Pieh concluded by stating that it would be a shock to General Churchill, the Respondent's president and chief executive officer, to see a list of union leaders with Nebb's name at the top.

The judge found that in this conversation the Respondent violated Section 8(a)(1) by interrogating Nebb, creating the impression of surveillance, unlawfully soliciting a grievance and unlawfully promising a benefit. As noted above, the interrogation of an open union supporter is normally not considered coercive unless it is accompanied by unlawful threats or promise of benefits. *Rossmore House*, supra. Here, we find that Nebb was unlawfully questioned about his union sentiments since he was at the same time unlawfully promised a benefit when Pieh promised to "do something about" the wage differential when the "union business" was over.

We disagree with the judge's conclusions, however, that the Respondent unlawfully solicited a grievance and created the impression of surveillance. The question to Nebb concerning his complaints was one which would be expected in the normal course of an evaluation. It is evident from Nebb's answer that he and Pieh had had similar conversations in past years, prior to the Union's organizing campaign. In these circumstances, we cannot find that Pieh's question to Nebb constituted an unlawful solicitation. We also find that since Nebb was an open and vocal union supporter Pieh did not create an impression of surveillance by stating that Churchill would be shocked to see Nebb's name on a list of union leaders. Since Nebb's sentiments and activities were well known facts, no surveillance was involved.

The judge further found that the Respondent violated Section 8(a)(1) by enforcing a discriminatory no-solicitation rule. We agree with the judge that a no-solicitation rule was discriminatorily enforced with respect to Nebb's use of the company telephone on his breaks, and with respect to Supervisor Katt's warning to employee Curtis to refrain from union activity on company time for her own good, for the reasons set forth in the judge's decision. In adopting the judge's finding that the Respondent violated Section 8(a)(1) when Supervisor Katt issued the warning to Curtis "for your own good" to refrain from union activity on company time, we note that the warning was in response to employee Curtis' simple "Hello" to union officials who were lawfully seated as patrons in the Respondent's restaurant. At least absent evidence that the Respondent had previously warned waitresses against greeting customers, this warning represented antiunion discrimination that would tend to restrain the exercise of Section 7 rights.[5]

[4] We note that in finding the interrogation of Nebb to be unlawful the judge relied on *PPG Industries*, 251 NLRB 1146 (1980), which was overruled by *Rossmore House*. However, because of the coercive circumstances surrounding Pieh's questioning of Nebb, we reach the same result as the judge

[5] While Chairman Dotson agrees with the judge that a no-solicitation rule was discriminatorily enforced with respect to Nebb's use of the company telephone on his breaks, he disagrees with the judge's conclusion that Supervisor Katt's warning to employee Curtis was discriminatory. An employer may lawfully prohibit solicitation during worktime, and there is no indication here that such a prohibition was discriminatorily applied Further, in view of the personal nature of the relationship existing between Katt and Curtis, the Chairman does not view Katt's comment to Curtis to refrain from union activity on company time "for her own good" as threatening or coercive

We disagree with the judge's conclusion that the Employer's grant of a new health care program to employees was unlawful. As the judge found, beginning in the late summer or fall of 1979, the Respondent began to consider the possibility of discontinuing the use of an outside carrier and, instead, to provide health insurance coverage for its employees through a self-insurance fund. It asked the broker who had provided the Respondent with casualty insurance coverage to investigate this possibility and to provide the Respondent with quotations detailing the cost of the plan and whether it would be possible to increase benefits through self-insurance without an increase in cost to the Respondent. The broker delayed several months, and it was not until late February or early March that it gave the Respondent a quotation for self-insurance. The broker suggested at the time that the Respondent wait a few more weeks before deciding on a plan because he felt that he could obtain better catastrophe coverage from another insurance company. Early in April, the broker presented the Respondent with another quotation, and within a matter of days the Respondent executed the necessary documents to adopt the plan.

Ronald Murray, an insurance agent for Picton-Cavanaugh, testified that the length of time between the initial indication of interest by the Respondent in August 1979 and the actual implementation of the program in May 1980 was due to a delay on the part of the insurance company, and not on the part of the Respondent. A decision was made by the Respondent to purchase the plan shortly after it was presented in April 1980. The effective date of coverage was 1 May 1980, which coincided with the anniversary of the Respondent's previous health care policy. Murray indicated in his testimony that it is normal practice to change to a new policy on the renewal date of the old one.

Unlike the judge, we do not find that this explanation "strains credulity." The Respondent has established that the timing of the new insurance program resulted from a combination of factors, the insurance company's delay chief among them. Indeed, the judge's statement of the facts indicates that he credited the testimony establishing the Respondent's version of events at least up until the new program was announced. But the judge simply concluded—notwithstanding the logical explanation for the delay—that the "improvements could have been made months or years before the Union's organizing campaign." Where a plausible explanation for the sequence of events is given, the fact that it was theoretically possible for the benefits to be given earlier does not establish discrimination in the timing. Nor do we think that the Respondent was compelled to wait until after the union election to announce and implement the program. It announced the new coverage shortly after the agent had presented the package, and it timed the implementation so that the new coverage would take effect when the old health insurance policy expired. In short, the Respondent demonstrated that the improvement in benefits represented the logical working out of a plan initiated before the advent of a union campaign, i.e., its proof indicates that the timing of the implementation of new benefits would have been the same whether or not there was a campaign afoot. In these circumstances, the fact that the Respondent committed other unfair labor practices does not render this grant of benefits unlawful. Accordingly, we do not adopt the judge's finding of a violation on this allegation.

The judge also found that the Respondent had violated Section 8(a)(1) through Supervisor Pieh's statements to employee Shelia Lemble that if the Union came in, the employees would be subject to more onerous working conditions. We agree with this finding, but note that the judge neglected to mention that during the same conversation Pieh told Lemble that if the Union did not come in, she would have a "good, healthy raise" within a year. We find that this statement constitutes an unlawful promise of benefit and is also violative of Section 8(a)(1).

The Alleged 8(a)(3) Violations

The judge found that the Respondent had violated Section 8(a)(3) by reducing the number of overtime hours worked by employee Nebb by approximately 1.4 hours per week. The Respondent asserts that the fluctuation in hours was due to the fact that an employee from the meat department at the Monroe store where Nebb worked was transferred to a new store, which created additional overtime. When individuals were later temporarily assigned to the Monroe store to assist, the result was that the opportunity for overtime was reduced. We find merit in the Respondent's position.

As noted above, Nebb was an open union supporter. Nebb testified without contradiction that all the employees in the meat department were also in favor of the Union. The reduction in hours coincided with the transfer of Meat Department Supervisor Pieh to a new store. A supervisor from another store, Vern Viers, replaced him, and from time to time would bring his former employees to the Monroe store to work. The judge concluded that the record is devoid of any explanation for this practice other than discrimination against the union supporters in the meat department at the Monroe store. We disagree. Nebb's testimony indicates that

in January one of the regular meatcutters was transferred to a different store, which resulted in 2 to 6 hours of overtime for the remaining employees. In June when Viers became manager, employees from other stores would come into the Monroe store and work for a few hours a week. Although there is no clear explanation as to why outside help was sought rather than continuing to give overtime to Monroe store employees, there also has been no evidence presented, other than reference to the Respondent's unlawful conduct generally, that would indicate that the change was discriminatorily motivated. Contrary to the judge, we cannot conclude that discrimination is the only explanation. It is not unusual for new managers to change personnel practices to meet their own preferences. Further, Nebb's overtime hours were only cut by 1.4 hours a week, and there were some pay periods after Viers arrived in which he worked as much as 50 hours. These facts tend to offset an inference of discrimination. Without more, we decline to find that the reduction of Nebb's overtime hours violated the Act.

The judge also found that the Respondent committed an 8(a)(3) violation by refusing to allow nonemployee union representatives to attend its annual company picnic. The Respondent excepts, maintaining that it was justified in refusing to grant tickets to union representatives, given the nature of the picnic and the fact that the decision was not based on its employees' union sentiments. We find merit in the Respondent's exception. The annual picnic was essentially a family-style affair. The Respondent provided all refreshments, and charged only a nominal $1 fee to cover the cost of the fried chicken. The purchase of a ticket in advance was required for the 1980 picnic, as was the submission of an employee guest list. Employees Penny Shultz and Shelia Lemble turned in the names of certain union representatives as their guests, but were eventually told that the union representatives were not welcome. One supervisor told Lemble that the reason union representatives were not welcome was because of their involvement with another Churchill's store which was being organized. The employees were never denied an opportunity to buy tickets for themselves. The judge determined that while the right to invite guests to attend an annual social function was a nominal fringe benefit it was still a term and condition of employment, and that benefit had been unlawfully withdrawn. We disagree that the evidence established that the Respondent's conduct was discriminatory.

In the past, the company picnic had been held for the benefit of employees, their families, and close friends. Penelope Shultz testified that employees brought their families to the picnic and that they were entitled to bring a date. She also testified that she had never attended any of the company picnics in the past. She had no intention of going to the picnic for which she requested tickets for the union guests, but requested them "just to see if I could get them."

The Respondent did not prohibit its employees from attending the picnic, nor did it deny them the right to bring guests in general. Rather, the Respondent objected to the inclusion of certain guests who in all likelihood would have used this friendly social gathering for a purpose for which it was not intended, namely, to conduct business in the form of promoting their own interests. Based on the record evidence, it would be erroneous to conclude that the Employer acted discriminately in refusing to permit guests to attend who did not fit into the category of "family or friends" and who were coming for a purpose other than the one intended. The Respondent is under no obligation to include nonemployee union representatives at its annual picnic, so long as it does not discriminate against employees on the basis of their union sentiments in the process. Here, no such discrimination took place, and we find that the judge erred in concluding that the Respondent violated Section 8(a)(3) and (1).

During the union organizing campaign, employee Marilyn Feeback was employed in the Respondent's flower shop at the Monroe store. The judge found that the Respondent violated Section 8(a)(3) and (1) by reducing Feeback's hours by 1 full day. The Respondent excepts, and contends that its actions are not violative since all the flower center employees' hours were reduced because of economic considerations. We find merit in the Respondent's exception.

Feeback worked for the Respondent from November 1978 to October 1980. It appears from the record that prior to February 1980 she worked Mondays, Thursdays, and Fridays from 10 a.m. until 5 p.m. and every other Sunday from 12 p.m. until 4 p.m. In February 1980, the Employer added an extra workday on Wednesday to her schedule because "a couple of girls" quit. After Feeback returned from her father's funeral on 15 September, the Employer reduced her hours by 1 hour on Monday, Thursday, and Friday, and no longer scheduled her to work on Wednesdays.

The record is unclear as to how the reduction in Feeback's hours compared with the reductions in the hours of other flower department employees. However, the judge credited Glauser's assertion that all flower center employees received reduced hours. While the full-time employees' hours were

not reduced as much as the part-time employees, their hours were also cut. Given the evidence before us, we are unable to determine whether the reduction in Feeback's hours was discriminatory, and therefore conclude that the General Counsel failed to establish that the reduction of Feeback's hours violated Section 8(a)(3).

The Alleged 8(a)(5) Violation

We agree with the judge that a bargaining order is warranted in the Respondent's warehouse unit, where all five employees had signed authorization cards as of 10 March 1980.[6] The Respondent's unlawful conduct was extensive and pervasive at both the Monroe store and the warehouse, but the effects of the unfair labor practices in the warehouse unit are particularly noteworthy, given the extremely small size of the unit. In determining whether a bargaining order is appropriate, the Board examines the seriousness of the violations committed and the present effects of the coercive practices. In the warehouse unit, the Respondent immediately embarked on a campaign involving "hallmark" violations of the Act designed to discourage union support among its employees.

Upon learning of the involvement of warehouse employees Richard Doll and Keith Mallory in the handbilling of Churchill's Central Avenue store on 19 February, the Respondent called an employee meeting. At the meeting on 20 February, Warehouse Supervisor Ron Shook and Warehouse Manager Judy Faust asked Mallory and Doll what their problem was. They replied that they wanted representation. Shook stated that they should have sought to have their problems resolved without intervention from a third party. In the discussion that followed, Faust and Shook told the employees that they were very disappointed in their actions. Shook also told the employees that if the Union came in he would close the warehouse, and that the employees would be out of jobs and ineligible for unemployment compensation. During the meeting, employee Charles Tucker complained that his status should be converted from part time to full time, so that he could receive health insurance and other benefits. Faust replied that the Company already had too many full-time people and that it would be too expensive to give him hospitalization coverage.

A second meeting was held a few days later with Richard Geerkin in attendance.[7] Tucker reiterated his complaint concerning his part-time status, and Geerkin said he would check into it. Another employee complained about the lack of a regularly scheduled lunch hour. Shortly thereafter, a new work schedule was posted with a regularly scheduled lunch hour, and Tucker was classified as a full-time employee. On 10 March the Union requested recognition based on its card majority. The Respondent declined to extend recognition, and insisted on an election. On 26 March Richard Doll was discriminatorily discharged.

It is significant to our decision to note the seriousness of these violations. In the course of 5 weeks, the warehouse employees were threatened with plant closure, had their grievances solicited and remedied by top management, and saw one of their coworkers discharged for his union activity. These actions involve the type of pervasive coercion that has lingering effects not readily dispelled. Because of the swiftness and severity of the Respondent's reaction against the Union's organizing drive, it is highly unlikely that a fair election could be conducted with the use of only traditional remedies. We note that the Sixth Circuit has recognized that a cease-and-desist order is not always sufficient to remedy an employer's unfair labor practices. *Exchange Bank v. NLRB*, 732 F.2d 60 (6th Cir. 1984). Therein, the court quoted *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), as follows:

> If an employer has succeeded in undermining a union's strength and destroying the laboratory conditions necessary for a fair election, he may see no need to violate a cease-and-desist order by further unlawful activity. The damage will have been done, and perhaps the only fair way to effectuate employee rights is to re-establish the conditions as they existed before the employer's unlawful campaign.

We believe that, under the circumstances of the instant case, simply requiring the Respondent to refrain from unlawful conduct will not eradicate the lingering effects of the hallmark violations, and will not deter their recurrence.

We are mindful that 7 years have passed since the occurrence of the unlawful conduct in the warehouse unit. The serious nature of the Respondent's conduct in threatening plant closure, soliciting

[6] Although we agree with the judge's grant of a bargaining order, we expressly disavow his statement that since the Union had demonstrated its majority status in open court the Respondent's insistence on an election was an "unnecessary imposition." It is well settled that, where an employer has not committed any unfair labor practices, an employer does not violate Sec. 8(a)(5) of the Act by refusing to voluntarily recognize a union on the basis of a card majority, absent an expressed agreement to do so. *Linden Lumber Division v. NLRB*, 419 U.S. 301 (1974). In the present case, the Employer contends not only that a bargaining order is inappropriate, but that it has not violated the Act by its actions. Were this found to be true, an election would be appropriate at the Employer's request, despite the Union's card majority.

[7] Geerkin is the Respondent's executive senior vice president and director of operations.

grievances, and discharging a union supporter, however, convinces us that the lasting effects of such conduct cannot be remedied either by the passage of time or the Board's traditional remedies. The passage of time, though regrettable, is not a sufficient basis for denying the bargaining order.[8] Accordingly, we adopt the judge's recommended Order, as modified below, and require the Respondent to bargain with the Union as the duly designated representative of the employees in the warehouse unit, effective 10 March 1980, the date the Union had acquired authorization cards from a majority of employees in the unit.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Churchill's Supermarkets, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities and the union activities of other employees.

(b) Threatening to close the warehouse, discharge employees, reduce portions of the Respondent's operations, impose more onerous working conditions, or discontinue employee benefits if the employees select the Union as their bargaining agent.

(c) Telling employees that the Respondent would refuse to enter into a contract with the Union if it was selected as their bargaining agent.

(d) Soliciting grievances from employees for the purpose of remedying them.

(e) Creating in the minds of employees the impression that their union activities are the subject of company surveillance.

(f) Promising employees benefits if they reject the Union as their bargaining agent.

(g) Imposing and enforcing an overly broad no-solicitation rule.

(h) Discouraging membership in and activities on behalf of United Food & Commercial Workers International Union, AFL-CIO-CLC, Locals 954 and 626, or any other labor organization, by discharging employees, giving them unfavorable personnel evaluations, refusing to grant leaves of absence, or otherwise discriminating against them in their hire or tenure.

(i) Refusing to recognize and bargain collectively with United Food & Commercial Workers International Union, AFL-CIO-CLC, Locals 954 and 626, as the exclusive collective-bargaining representative of all the regular full-time and part-time employees employed at the Respondent's Toledo, Ohio warehouse, exclusive of office clerical employees, professional employees, guards, and supervisors as defined in the Act.

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

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

(a) Recognize and, on request, bargain collectively with United Food & Commercial Workers International Union, AFL-CIO-CLC, Locals 954 and 626, as the exclusive collective-bargaining representative of all the regular full-time and part-time employees employed at the Respondent's Toledo, Ohio warehouse, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(b) Offer Richard Doll and William Winans immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Remove from its files any reference to the unlawful discharges of Richard Doll and William Winans and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Make Marci Zielinski whole for any loss of pay or benefits, which she has suffered by reason of the discrimination found herein.

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

(f) Post at the Respondent's warehouse and stores in and about Toledo, Ohio, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon re-

[8] *Quality Aluminum Products*, 278 NLRB 338 (1986), enfd 813 F 2d 795 (6th Cir 1987)

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

ceipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that, insofar as the amended complaint alleges matters that have not been found to be violations of the Act, the allegations are dismissed.

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 coercively interrogate employees concerning their union activities or the union activities of other employees.

WE WILL NOT threaten to close the warehouse, discharge employees, reduce portions of our operations, impose more onerous working conditions, or discontinue employee benefits if employees select the Union as their bargaining agent.

WE WILL NOT tell employees that we will refuse to enter into a contract with the Union if it is selected as the bargaining agent of our employees.

WE WILL NOT solicit grievances from employees for the purpose of remedying them.

WE WILL NOT create in the minds of our employees the impression that their union activities are the subject of company surveillance.

WE WILL NOT promise you benefits if you reject the Union as your bargaining agent.

WE WILL NOT impose or enforce an overly broad no-solicitation rule.

WE WILL NOT discharge employees, or otherwise discriminate against them for the purpose of discouraging their membership in or activities on behalf of United Food & Commercial Workers International Union, AFL–CIO–CLC, Locals 954 and 626, or any other labor organization.

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

WE WILL recognize and, on request, bargain collectively in good faith with United Food & Commercial Workers International Union, AFL–CIO–CLC, Locals 954 and 626, as the exclusive collective-bargaining representative of our regular full-time and part-time warehouse employees, exclusive of office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL offer Richard Doll and William Winans immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify Richard Doll and William Winans that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way.

WE WILL make Marci Zielinski whole for any loss of pay or benefits that she has suffered by reason of the discrimination found herein.

CHURCHILL'S SUPERMARKETS, INC.

Mark F. Neubecker, Esq., for the General Counsel.
Justice G. Johnson, Jr., John G. Mattimoe, and Terrance L. Ryan, Esqs., of Toledo, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY JR., Administrative Law Judge. This case came on for hearing before me at Toledo, Ohio, on a consolidated unfair labor practice complaint,[1] issued by the Regional Director for Region 8, which alleges that Respondent Churchill's Supermarkets, Inc.,[2]

[1] The principal docket entries in this case are as follows:
Charge filed by Locals 945 and 626, United Food & Commercial Workers International Union, AFL–CIO–CLC (the Union) against Respondent in Case 8–CA–13944–1 on June 23, 1980, charge filed by the Union against Respondent in Case 8–CA–13944–2 on June 27, 1980; charge filed by the Union against Respondent in Case 8–CA–14243 on September 24, 1980; original consolidated complaint issued on August 29, 1980, Respondent's answer filed on September 11, 1980, amended consolidated complaint issued on November 28, 1980, Respondent's answer filed on December 11, 1980; hearing held in Toledo, Ohio, on April 27–30, 1981, briefs filed with me by the General Counsel and the Respondent on or before July 30, 1981.

[2] Respondent admits, and I find, that it is an Ohio corporation, which maintains its principal office in Sylvania, Ohio, and operates a chain of

Continued

violated Section 8(a)(1), (3), and (5) of the Act. More particularly, the amended consolidated complaint alleges that the Respondent both promised and granted benefits to employees in order to persuade them not to support the Union, coercively interrogated employees concerning their union sympathies, threatened employees with loss of benefits, loss of overtime, and more onerous working conditions in reprisal for supporting the Union, created the impression among employees that their union activities were subject to company surveillance, solicited and remedied grievances in order to persuade employees not to join the Union and imposed on employees an unlawful no-solicitation rule. The amended complaint also alleges that the Respondent discriminatorily discharged Rebecca Donnelly, Richard Doll, and William Winans, reduced the normal overtime of other employees, and refused to grant a leave of absence to another employee in reprisal for their union activities. The complaint also alleges an unlawful refusal to bargain in one of the bargaining units that the Union tried to organize[3] and seeks a *Gissel* remedy with respect to that unit.[4] The Respondent denies the comission of independent violation of the Act and contends that the discharged individuals who were named in the amended complaint were terminated for cause. It also asserts that a representation election is the proper means of determining who is the proper bargaining agent at its warehouse. On these contentions, the issues herein were joined.[5]

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES ALLEGED

Respondent operates four supermarkets and a produce warehouse in and about Toledo, Ohio. The stores bear the name of the company president and chief executive officer, General Walter A. Churchill, Sr. Respondent's executive senior vice president and director of operations is Richard Geerken. Respondent employs about 600 full-time and part-time employees, including about 50 supervisory or managerial employees. Its employees have never been represented by any labor organization.

In the fall of 1979, when the Respondent opened its Alexis Road store, the Union engaged in sporadic informational picketing. However, the actual organizing of this store and other parts of the Respondent's business did not begin until about January 1980. The five employees who constituted the warehouse unit signed designation cards on or before February 4, 1980. Several union meetings were held about this time for the purpose of signing up Respondent's management, either directly from unionized employees or "via the grapevine" that this effort was in progress.

A. *Events at the Respondent's Warehouse*

One of the first overt acts of employee union activity was the handbilling of the Central Avenue store on February 19 by warehouse employees Richard Doll and Keith Mallory. Word of this activity was telephoned to Ron Shook, the produce buyer and supervisor in charge of the warehouse, by the manager of the Central Avenue store. Shook was upset and brought the matter immediately to the attention of Judy Faust, the warehouse manager and his assistant. They held a meeting of employees the following day at the warehouse to discuss this turn of events. Shook told employees on this occasion that he had been under the impression that the warehouse employees were a big happy family and asked Mallory and Doll what was their problem. Both replied that they wanted some representation. Shook said they should have settled their problems without third-party intervention. An open discussion ensued. One employee stated that they all wanted additional benefits and job security. Employee Charles Tucker complained that he had worked sufficient hours to qualify as a full-time employee and was entitled to health insurance and other benefits which went with full-time employment.[6] However, he was not receiving them. Faust replied that the Company had too many full-time people so he could not get hospitalization. Both Shook and Faust told employees that they were very disappointed in their actions. Shook also said on this occasion that, if the Union came in, he would close the warehouse,[7] employees would be out of jobs, and they would be ineligible for unemployment compensation.

A few days later, Geerken visited the warehouse and another discussion session with employees was held in the presence of Geerken, Shook, and Faust. One complaint that arose at this time was that the warehouse employees had no fixed hours for breaks or lunch. Most of them arrived for work between 3:30 and 5 a.m. and often worked straight through without any break until the work was completed and they were ready to go home. A few days later, Geerken instructed Faust to post stated break and lunch periods for all warehouse employees.

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supermarkets in and about Toledo, Ohio. In the course and conduct of this business, the Respondent annually derives gross revenues in excess of $500,000 and receives at its Toledo, Ohio locations directly from points and places located outside the State of Ohio goods and merchandise valued in excess of $50,000 Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act The Union is a labor organization within the meaning of Sec 2(5) of the Act.

[3] In the spring of 1980, the Respondent filed representation petitions seeking seperate elections at the Respondent's downtown Toledo warehouse and in three of its four retail stores, known as the Monroe Street, Central Avenue, and Alexis Road stores (Cases 8–RC–12108, 8–RC–12109, 8–RC–12110, and 8–RC–12118) No petition was ever filed for its Byrne Road Store. A decision and direction of separate elections in each of these units was issued by the Regional Director for Region 8, on April 11, 1980, but the elections have been blocked because of the pendency of the charges in this consolidated case

[4] *NLRB v. Gissel Packing Co*, 395 U S 575 (1969).

[5] Errors in the transcript have been noted and corrected Respondent filed an unopposed posttrial motion to admit its employee handbook into evidence as R. Exh 21. The motion is granted and the exhibit is received

[6] According to the Respondent's employee handbook, an employee who averages 32 hours or more per week for 13 consecutive weeks is considered to be a full-time employee and, as such, is entitled to health insurance coverage and presumably other benefits

[7] The warehouse is located in a deteriorated section of downtown Toledo Shook testified that he told employees that a real estate agent had been sent around to appraise the building for the purpose of putting it on the market because the Respondent did not really need the produce warehouse in order to service its stores. As of the date of the hearing, some 14 months after these remarks were made, the warehouse continues to operate because the Respondent could not find a buyer for the building

After this was done, all employees took breaks or lunch at the times set forth after their respective names. On this occasion Tucker reiterated his complaint about being eligible for health insurance benefits as a full-time employee and stated that he had previously voiced this complaint to no avail. Geerken said he would check into the problem. During the course of the discussion, Geerken was heard to say that the Respondent could not afford a retirement program, with or without a union. Shortly thereafter, Tucker was classified as a full-time employee and was accorded health insurance benefits.

Tucker, who had signed a union card in late January and who had also engaged in handbilling of the Central Avenue and Monroe Street stores on behalf of the Union, testified that his hours were cut in mid-April. He worked a fluctuating schedule of hours each week. His timecards for an 8-month period from late 1979 to mid-1980 reflect the following hours worked:

Period Ending	*Hours Worked (fractions omitted)*
12/28/79	30
1/4/80	32
1/11/80	40
1/18/80	41
1/25/80	37
2/3/80	44
2/10/80	45
2/17/80	45
2/24/80	39
3/2/80	40
3/9/80	43
3/16/80	36
3/23/80	37
3/30/80	37
4/6/80	41
4/13/80	38
4/20/80	35
4/27/80	40
5/4/80	32
5/11/80	36
5/18/80	37
5/25/80	37
6/1/80	vacation
6/8/80	40

Sometime in March, Tucker asked Faust why his hours were being reduced. She gave him no answer. Later, he asked to have his timecards and was told that they were not available.

On March 10, Eugene H. Kolkman, the Union's chief executive officer, wrote a letter to Shook advising Shook that the Union represented a majority of the warehouse employees. He made a demand for recognition and offered to display the authorization cards in his possession to a neutral party for verification. On March 12, Respondent's counsel replied to Kolkman's letter and insisted on a Board election to determine the Union's majority status. On the same day, Churchill sent a letter to all employees, both at the warehouse and at the retail stores, informing them that the Union had filed representation petitions for the warehouse and the Monroe Street and Alexis Road stores. The letter went on to say that the Respondent did not believe it to be in the best interest of the employees to select the Union as their bargaining agent and expressed the opinion that whatever problems might arise could be worked out "among ourselves on a fair and honest basis" without interference from an outside Union.

Richard Doll began working at the warehouse in June 1978. He performed a variety of jobs. He inspected incoming deliveries of produce, drove a forklift and handjack, inventoried produce, and made pickups and deliveries from the warehouse to the Respondent's stores. As long as Doll worked for the Respondent it was well known that he had a habit of drinking considerable quantities of beer. Occasionally, he would come to work smelling of beer and this condition did not escape the notice of his supervisors. On one occasion, Shook asked employee Mallory if Doll carried a bottle on his person. Mallory replied that he did not do so. Occasionally farmers visiting the warehouse to sell produce reported that Doll was smelling of alcohol.

Over the course of 2 years, Doll had a number of small accidents with equipment. On one occasion, he backed a truck into a dumpster. On another occasion, when operating a forklift, he dumped over a load of tomatoes. On a third occasion, he ran an electric pallet jack on his foot. In the fall of 1979, while backing a truck at the Byrne Road store, he rammed the loading dock. The store manager reported this incident to Shook with the further information that he had smelled alcohol on Doll's breath.

From time to time, warehouse employees and supervisors ate lunch together at a nearby bar called the Roadhouse. I credit testimony that Doll and others would have beer with their lunch on these occasions, and I also credit record testimony that, on some of these occasions, Doll and others returned to the warehouse after lunch to continue to work. In the winter of 1979–1980, Shook spoke to Doll about his drinking and told him he would have to learn to control it. This occurred after Doll's wife called Shook's home to inquire about Doll's whereabouts when he failed to come home after work.[8]

In late March 1980, after the Respondent had instituted the policy of granting fixed lunch periods to warehouse employees, Geerken visited the warehouse and began to discuss Doll's habits with Shook and Faust. Geerken told them that, before any disciplinary action could be taken against Doll, clear proof had to be obtained that he was drinking. Faust volunteered to visit the nearby Roadhouse bar, where Doll had gone on his lunch hour,[9] to find out if he was drinking. She did so and saw Doll having a beer. When she reported the information to Shook, the latter called the bar, spoke to a waitress, and learned that Doll had two or three beers but had not ordered anything to eat. When Doll returned

[8] The record contains undisputed evidence that, during a trip to Toledo from Detroit where Doll had gone to pick up a load of pineapples, he had a breakdown and had to call Shook and Faust to pick him up During the return trip in Faust's vehicle, she offered Doll a beer and he drank one

[9] Because Doll reported to work at 3 30 a m., he normally took his lunch hour beginning at 9 30 a.m

to the warehouse, he was assigned to some inventory work

Shook wrote up a disciplinary slip on Doll, dated March 26 It stated that he had given Doll a 3-day suspension for drinking while on dinner hour and returning back to work He told Doll that he was suspended and phoned Geerken to say that the disciplinary slip was in the mail to Respondent's corporate headquarters A day or so later, Geerken phoned Shook and instructed him to discharge Doll for violating a provision of the Respondent's personnel handbook that makes working after using drugs or alcoholic beverages a serious offense.

B *Events at the Monroe Street Store*

The Monroe Street store is the largest of the Respondent's retail outlets. It contains a variety of departments, including a flower shop, a hardware store, and a coffeeshop, as well as grocery and meat departments Some of its sections are open on a 24-hour basis. The Respondent also maintains its corporate office at this location

There is record testimony from various employees that after the Union began its drive in January 1980 various supervisors responded to counteract the effect of the organizing campaign. Short-term employee Joseph Wielgopolski testified without contradiction that sometime in March Richard Glauser, the flower shop manager,[10] took him aside for a private conversation in the bathroom at the store Glauser reportedly asked Wielgopolski what he thought of the Union, to which the latter replied that he did not think much of it. Then Glauser went on to ask other questions about the Union and threatened that there would be layoffs in the event of unionization. He told Wielgopolski that there would be a strike because the Respondent would not give the Union a contract He predicted violence and said that a lot of people would be fired.

Wielgopolski was a carryout employee, which meant that he had a variety of menial jobs including the loading of customer cars He testified that he had signed a card and had attempted to sign up other employees in the store in the presence of, or in the immediate vicinity of, several supervisors. He complained that for a 2-week period of time he was assigned exclusively to loading groceries in customer cars in the pickup area and was thereby isolated from other employees He later returned to other duties and is no longer employed by the Respondent

Gus Wingler is a produce clerk. He attended a union meeting on January 28, 1980, at the Sheraton-Westgate Motel. On the following day, he was engaged in a conversation at the store with a fellow employee who inquired into the particulars of the meeting. At this point the bakery supervisor and Wingler's own supervisor, Brent Langenfelder, joined the conversation Langenfelder asked Wingler if he attended, how large the meeting was, and what he thought of it. Wingler replied that about 50 employees attended and he thought the meeting went all right He added that if Rick (Carr), General (Churchill), or Tom Dembowski (the Monroe Street store manager) did not get off his back, he would go all out for the Union Langenfelder replied that he was sorry to hear this because there were two sides to every story. Wingler said that as of that time he had heard only one side.

As discussed more fully hereinafter, Monroe Street employee Rebecca (Becky) Donnelly was terminated on February 18. Shortly thereafter, Wingler and fellow employee Kay Miller were discussing the discharge at the store in the presence of Langenfelder. Miller stated that the union representatives took Donnelly to Food Town (a unionized store) and got her a job there. I credit Wingler's statement that Langenfelder then said, "Good. In a couple of weeks, I hope they can find a lot of jobs" Wingler became upset and, shortly thereafter, spoke with Dembowski, who is Langenfelder's superior. He told Dembowski in an excited manner that he needed more money and had attended a union meeting, adding "You guys don't even have to wait two weeks You can fire me now." Dembowski tried to calm Wingler, invited him to have a cup of coffee with him, and spoke to him in order to allay his fears During the course of this coffeebreak, Dembowski assured him that the Company had no intention of discharging him.

Meat department employee Clyde Nebb has been employed at the Monroe Street store about 8 years. On January 29, 1980, he signed a union card and thereafter made no secret of his union sympathies in the course of various discussions with his supervisor, Meat Manager Jack Pieh. On one occasion in late January, Pieh asked Nebb how many people had showed up at a union meeting Nebb's reply was, "A lot more than expected"

Respondent maintains outgoing phone lines at various locations in its stores and has been quite liberal in permitting employees to use the phones for personal matters. The overriding consideration has always been that an employee should not tie up the phone lines for conversations of a personal nature On one occasion, Nebb phoned the Byrne Road store and spoke with a meatcutter at that location to tell him about a forthcoming union meeting and to ask him if any meatcutters at that location were interested in joining. Pieh got word of this phone call from Gary Jones, the meat manager at the Byrne Road store, and spoke to Nebb about it Pieh told Nebb that such use of the phone was considered to be soliciting on company time and using company property in violation of company policy and instructed him not to use the phone for union business, even on his own time, since it was company property. Pieh also said he was going to go "by the book" with regard to improper solicitations, meaning a verbal warning for the first offense, a written warning for the second offense, time off for the third offense, and discharge thereafter. Nebb assured Pieh that he would not do so in the future, and asked Pieh when it was permissible to solicit for the Union. Pieh said he would find out and tell him.

Several days later, Pieh told Nebb, after repeated requests for clarification, that he could solicit for the Union if he had punched out on a break or at lunchtime, so long as the employees being solicited were also

[10] Glauser testified that he had no recollection of the conversation recounted by Wielgopolski and had no recollection even of Wielgopolski as an employee

punched out. He also said he would have to confine his soliciting to nonproductive work areas. Nebb testified that this was the first time he had ever heard of this policy [11]

On another occasion, Langenfelder was discussing the organizing drive with Pieh in the presence of Nebb and asked Pieh how many employees had attended a recent union meeting Pieh pointed to Nebb and told Langenfelder to ask Nebb because Nebb was one of the leaders.[12] A few days later, Pieh asked Nebb directly how many of his people were getting involved in the union effort and how many had attended a union meeting Nebb made no reply. In the course of another of their conversations concerning the union drive, Nebb asked Pieh who was the source of his information concerning the union effort. Pieh's reply was that the Company had a pipeline the same as the Union did

On one occasion, Langenfelder asked Nebb if any of "his people" (in the produce department) were showing up at union meetings Nebb refused to reply. I credit Nebb's testimony that in mid-February as Nebb was getting ready to go on vacation, Pieh asked him in the presence of other employees whether the Union was picking up the tab for his vacation trip. Nebb asked Pieh what prompted that thought, and Pieh replied that he had heard that unions sometimes offer vacations, cars, and money to people to help them organize. He voiced the opinion that because the Union had been trying for so long to get in at Churchill's, it would be worth their while if they could find someone to "bust Churchill's open."

Late in February 1980, a day or so after a union meeting, Pieh told Nebb that he knew who had attended the meeting and from which stores they had come. Pieh also said to employee Dewayne Bell that he heard that Bell had attended. Bell became upset at this remark and insisted that Pieh produce the person who had made the statement so he could confront him. Bell insisted to Pieh that he had not attended the meetings Pieh finally relented, admitting that he had not actually received any such information but had just made up the statement in order to get Bell to admit if he had been doing anything.

In March 1980, Pieh gave Nebb his annual employee evaluation. During the course of this discussion, which was held in the conference room at the Monroe Street store, Pieh asked Nebb if he had any gripes Nebb replied that he had the same ones he had mentioned in previous years—lack of a retirement plan, wages that were below union scale, and inadequate benefits, particularly health insurance He complained to Pieh that employees were required to pay for dependent health insurance coverage out of their own pockets. Nebb also complained that as assistant manager he was making only 10 cents per hour more than journeyman meatcutters, whereas in union stores assistant managers made 30 cents or 40 cents more per hour than journeymen. Pieh asked Nebb why he was getting involved with the Union and why he would become one of the leaders in its organizing effort. Nebb replied that he saw no other way of getting a proper pay scale or of obtaining a retirement system. Pieh said that because an organizing drive was in progress there was nothing he could do about a wage differential for assistant managers, but it was definitely something that should be looked into and, after the "union business" was over the Company could do something. I credit testimony to the effect that Pieh also said that it was going to be a shocker when "the old man" (General Churchill) saw the list of union leaders with Nebb's name at the top. Nebb asked what list he was referring to and Pieh replied it was not hard to sit down and put one together because people were actively passing out buttons and literature.

Nebb testified that in previous years he had received an average of about 2 hours a week of overtime. Overtime was not customarily spread throughout the calendar year but occurred in large amounts at specific intervals, namely, during holidays and when the meat manager was on vacation and Nebb temporarily substituted for him. In June 1980, Pieh was shifted to the Alexis Road store and the meat manager at that store, Vern Viers, came to Monroe Street. Timecards placed in evidence show the following numbers of hours worked each week in 1980 and into 1981 by Nebb·

Week Ending	*Hours Worked*
1/12/80	41
1/19/80	41
1/26/80	41
2/2/80	40
2/9/80	40
2/16/80	43
2/23/80	43
3/1/80	39
3/8/80	50
3/15/80	41
3/22/80	41
3/29/80	40
4/5/80	40
4/12/80	?
4/19/80	40
4/26/80	40
5/3/80	41
5/10/80	42
5/17/80	41
5/24/80	45
5/30/80	32
6/7/80	holiday
6/14/80	40
6/21/80	vacation
6/28/80	37
7/5/80	32
7/12/80	40
7/19/80	50

[11] In the Respondent's employee handbook, there is a provision which states "Solicitations on behalf of any club, society, labor union, religious organization, political party, or similar association is not permitted during hours that employees are working This prohibition covers solicitations in any form either for membership, subscription, or payment of money Outsiders and other employees are prohibited from soliciting employees during hours that employees are working and while they are on Company premises"

[12] In his testimony, Pieh said that Nebb had never admitted having been a member of the organizing committee However, Pieh assumed that Nebb was one of the main organizers because of the feedback he had been receiving

8/2/80	40
8/9/80	40
8/16/80	40
8/23/80	40
8/30/80	42
9/6/80	40
9/13/80	40
9/20/80	40
9/27/80	42
10/4/80	41
10/11/80	40
10/18/80	40
10/25/80	38
11/1/80	39
11/8/80	39
11/15/80	40
11/22/80	40
11/29/80	37
12/6/80	40
12/13/80	40
12/20/80	40
12/27/80	35
1/3/81	32
1/10/80	41
1/16/81	40
1/23/81	leave
1/31/81	40
2/7/81	40
2/14/81	leave
2/21/81	?
2/28/81	?

The above-recited figures indicate that, during the first 20 weeks of 1980 for which legible timecards for a full week can be found in the record, Nebb averaged 40.9 hours per week. During the next 34 weeks for which legible timecards for a full week can be found in the record, he averaged 39.5 hours, a difference of 1.4 hours per week. During the latter part of 1980, Gary Jones, the manager of the Byrne Road store, came to work 1 day a week in the Monroe Street meat department. Occasionally another employee from the same store filled in at Monroe Street. The net result of their presence at Monroe Street meant fewer hours for the Monroe Street meat department employees.

Penelope Shultz, a deli clerk at the Monroe Street store, was an active union supporter. One of her efforts was the composition and mailing of a two-page letter to all employees urging them to support the Union. About 400 copies of this letter were mailed with the assistance of the Union. After the letter became circulated, Jack Pieh asked her where she got the figures in the letter, which stated that the Company had made $6.4 million in profit.[12] She replied that she had obtained the information from her stockbroker. I credit Shultz' testimony to the effect that, on one occasion, she witnessed a conversation between Deli Manager Shirley Yeupell and deceased employee Yvonne Day in which Yeupell handed Day a "Vote No" button that was lying on a table in the deli section and asked Day if she cared to wear one. The latter replied that she would do so.

It was customary for the Respondent to hold an annual picnic on the late summer or early fall for the benefit of employees, their families, and friends. The normal charge was $1, payable at the door, to cover the cost of fried chicken and other food that was provided. In 1980, the picnic was held, but advance purchase of tickets was required. In addition to making a request for tickets, an employee had to list the names of the guests he or she wished to invite. Both Shultz and employee Sheila Lemble turned in the names of various union representatives as their guests at the picnic. When the tickets were not forthcoming in the usual course of distribution, Lemble went to see Dombowski to ask what had become of her tickets. Dombowski told Lemble that the names of her prospective guests had been brought to his attention and that it included union representatives. He also told her that they were not welcome "because of their involvement with Central Avenue." She then asked about former employee Joe Wielgopolski. He replied that he was also unwelcome but offered to let her buy a ticket for herself. She told him to forget it.

Christine Curtis is a waitress at the coffee shop in the Monroe Street store. As part of their organizing technique, union representatives frequently came to the coffeeshop, ordered coffee, sat in a booth, and talked with store employees when they came to the coffeeshop to take breaks. On one occasion, Union Representatives Robert Carrasquello and Richard Eddington came to the coffeeshop and sat down at a table. Curtis passed by their table and said hello as she passed. Her supervisor, Juanita (Brown) Katt, saw her speaking to the union representatives and immediately told her to refrain from union activity on company time "for her own good." On several occasions, Katt spoke to Curtis about the Union, and on some of those occasions asked her why she wanted a union, why things could not be worked out without a union, and why a union was necessary. To this last question, Curtis replied that she thought a union was necessary because whenever a problem arose, it was shifted from one person to another and nothing was ever solved.

I credit the testimony of employee Shiela Lemble that, sometime in February, she had a private conversation with Pieh near the smokehouse at the Monroe Street store. During the course of this conversation, Pieh told Lemble that should a union come in at Churchill's they would discontinue giving employees free coffee. He also said that food service employees would have to wear hairnets, the Company would lower the store temperature by 10 degrees, and employees would have more difficulty getting days off. He told her that employees would not be allowed to switch days off with other employees and would be reprimanded if they came to work late. He observed that things were very lax at the store,

[12] In the text of the letter, Miss Shultz stated:

I wrote this letter alone. It contains my own ideas and opinions and conclusions This letter will be signed with my name. I stand behind what I have written and I do not mind being questioned or confronted about it.

but with a union, it would be "bang, bang, bang!" He also said that, with a Union, the store would have set hours for employees and could not schedule part-time students Pieh went on to say that the Company could not pay union scale and, if it could not pay union scale, it could not open any new stores and would become stagnant and die. He then said that if a union did not come in she would have a good healthy raise within a year.

Lemble was a personal friend of Pieh's daughter and frequently visited the Pieh home. On one occasion in April Pieh spoke to Lemble at the store and said, "You weren't at the card game Tuesday night. I know where you were and you know where you were" In fact, Lemble had been attending a union meeting.

Lemble frequently wore a union button to work. Rather than use a conventional button, many union sympathizers wore a "smiley" button, which bore no inscription but merely contained a sketch of a face with a smile. It is undisputed that Respondent's management was aware of the significance of the "smiley" button. She and other meat department employees were accustomed to using the timeclock at the front of the Monroe Street store to punch in and out, rather than using the clock that was located in the meat department. Sometime in April 1980, she and other employees went to the front of the store and punched out for a coffeebreak. On the way to the clock, she greeted other employees at the cash registers using an informal code greeting that some of the women union sympathizers had devised among themselves.[13] On her return from break, she was told by Pieh that Front-End Supervisor Joyce Petree wanted her to keep her timecard in the rack near the meat department because she did not want Lemble to have any connection or conversation with the employees in the front of the store. Lemble and all the other meat department employees were required to use the clock in the department exclusively until Nebb made a protest to Pieh and the former practice was resumed.

Robert C. Kennedy Jr. is presently the grocery manager at Monroe Street He was formerly a stock supervisor. During the spring of 1980, he frequently spoke to employees about the organizing drive. I credit the testimony of employee Marci Zielinski that, during one of these conversations, Kennedy told them that the Company did not have to agree to anything a union proposed and could string out negotiations over a long period of time. I do not credit her disputed testimony that Kennedy also said that if a union came in it would insist on the hiring of full-time employees so part-time employees like Zielinski would be laid off.

It is established in the record that in years prior to 1980 the Respondent followed a policy of granting leave of absence to summer employees, many of whom were college students, that assured them of employment during the Christmas vacation period when they returned home to the Toledo area. It is also well established that, at least as it applied to Zielinski, this policy was not followed during 1980. She worked throughout the summer and, near the end of that period, made repeated requests of Kennedy and others for a leave of absence that would assure her of a position at Christmastime. She was told to submit her request on a company form but the form was never provided.

Just before she was about to leave to go to college, Zielinski was told by Kennedy that the Company was not granting any more leaves of absence to part-time employees, but she could come back to the store at Christmastime, apply for a job, and take her chances with any other applicants who might want jobs at that time. I credit her testimony that Kennedy said that this change of policy came about because of the union activity that was taking place in the store. He suggested that she could take her case to Geerken if she chose. Geerken was in the area so she made a request for a leave of absence to him Geerken told her that leaves of absences were not being granted any longer to summer employees because the job market was such that the Company had all the applicants it needed. He assured her that the decision had nothing to do with union activity.

Zielinski later came to the store with her mother, who roundly berated Kennedy for refusing to give her daughter a leave of absence. While Zielinski visited the store in the fall of 1980 from time to time as a visitor, she did not renew her request for Christmas employment and did not receive any. Any summer employee who requested Christmas employment was told the same story that was given to Zielinski. However, six summer employees were rehired at Christmas.

Gordon Zielinski, the brother of Marci Zielinski, worked as a salesclerk at the home center in the Monroe Street store. He signed a union card in January, attended union meetings, and wore a union button at the store. According to Zielinski, late in March his supervisor, Carr, called him into the office and requested that he sign a disciplinary slip for tardiness. While the two of them were together in the office, Carr asked Zielinski why he wanted a union Zielinski replied that it was because he wanted better wages and benefits for part-time employees and also because he wanted some representation. Carr told him that the Company would not agree to increased wages that were comparable to a unionized store, such as the Ontario store, and that General Churchill would start from scratch if he had to engage in collective bargaining. Zielinski replied that he did not think the general could have his own way completely and insisted that he would have to sit down and negotiate with the Union. I discredit Zielinski's testimony because I found him to be an unreliable witness.

When Flower Shop Supervisor Rich Glauser gave former employee Marilyn Feeback an evaluation in July 1980, he gave her 2 on a scale of 10—for loyalty and for absenteeism When she asked him why he gave her zero for loyalty, Glauser replied that she never did any work outside of business hours that she was not paid for and he knew for a fact that she had attended union meetings

[13] Union sympathizers would occasionally greet friends having the same persuasion by attaching the ending "Lou" to the other employee's name, e g , Mary would become Mary Lou, Cindy would become Cindy Lou, etc

and functions.[14] Feeback asked how he had become aware of this fact and he simply replied that he had heard it through the grapevine. Later, after she had complained about this rating to Dembowski, the latter called Glauser into his office and gave him some instructions about the proper method of completing employee rating sheets. Thereafter, Glauser changed the rating from a zero to a four.

Following her evaluation, Feeback received a raise in her hourly rate. However, her hours were cut. In September, after returning from bereavement leave, she noticed from the posted schedule for the flower shop that her weekly working time had been reduced by a full day. When she asked Glauser why this change had been made, Glauser told her that the shop was losing money and cut backs had to be made. Feeback testified that she thought she was the only person in the flower shop to suffer reduced hours and further testified that she was the second most senior employee in that department. However, Glauser testified that reductions in hours were made across the board with respect to all flower shop employees. (Glauser had previously told Winans that if the Union came in he could probably afford to keep only one or two of his employees because of union rates.) Dembowski explained in his testimony that the flower shop had been running for several months with excessive labor costs and he told Glauser that the costs had to be reduced. He further explained that the impact of the cutback was imposed more heavily on part-time employees, such as Feeback, because a reduction in hours of a full-time employee might change his status to part-time and thus cause her to lose fringe benefits as well as hourly compensation. Part-time employees, as noted above, receive few fringe benefits.

Since her employment in September 1978, Rebecca Donnelly had been employed on the midnight shift as a clerk and cashier in the hardware department at the Monroe Street store. She was classified as a part-time employee, meaning that she worked less than 32 hours per week. She was employed between the hours of 11:30 p.m. and 7:30 a.m. Until some time in January or February 1980, she was engaged to Robert Spitler, the assistant night stock manager at that store.

Donnelly had been unhappy for a period of time because she had failed to receive a wage increase that assertedly had been promised to her. In fact, she had made a discrimination complaint to an unnamed organization because of the failure of the Respondent to grant her a wage increase. An investigator came to the store to inquire into her complaint but apparently nothing came of the investigation. In January, her ex-fiancee asked Donnelly if she wished to join the Union. She said that she needed more time to think about the matter. I credit her statement that despite the fact that Spitler was a member of the Respondent's management he said he would retain a card for her to sign if she desired to do so.

Donnelly attended the union meeting that took place about January 29. She signed a card at that time. She attended other union meetings as well. On the day following the union meeting, she had a discussion with Carr concerning a pay raise. Carr responded to her inquiry about a raise by asking her about phone calls that she made to various outside organizations concerning the raise. I credit her testimony that, during this conversation, she told Carr that she had signed a union card.

During the midnight shift of January 16–17, Donnelly and a fellow employee, Nancy Hendricks, were taking a break. Apparently they had overstayed the time allotted for the break because Spitler, who was in charge of the store that night, came out of his office to tell them to go back to work. Donnelly retorted by asking Spitler whether he had been checking timecards. They got into an argument, in the course of which Donnelly suggested that Spitler go back in the office and read a magazine or watch television, adding "You are not my supervisor." Hendricks immediately returned to work and, after the exchange of words with Spitler, so did Donnelly.[15]

A few minutes later, Spitler wrote up a disciplinary report on Donnelly for insubordination. In setting forth the facts, he stated on the report, "She was on her break period. Then when she came back then sat down for 15 minutes more and then I went up to her and asked her to go back to work and then she said that, I don't have to, and said that Larry and I was not her boss [sic]. She said that Bob Carr told her that. I wonder if Bob told her it was all right to walk around and talk half the night!" [sic].[16] He forwarded the writeup to Carr, who in turn gave it Geerken. Although no recommendation had been made by Carr or Spitler to fire Donnelly, Geerken decided on this course of action and instructed Carr to notify her of this decision on Monday night when she reported for work. At the same time, Geerken decide to discontinue the night operation of the hardware department immediately because it had proved to be unprofitable. A decision to discontinue the operation had been previously made and was scheduled to take effect the week following Donnelly's discharge, but the dispute that arose between Spitler and his former fiancee prompted Geerken to accelerate the termination of this shift.

At the beginning of the midnight shift on February 18, Carr presented the writeup slip to Donnelly and discussed it with her. Donnelly wrote on the back of the slip, "All I have to say is it was not Co. concerned. It [was] a personal matter between Charlie and myself." Carr also told her that the midnight shift in the hardware department was being discontinued and informed her that she would be able to collect unemployment compensation. Donnelly asserts, and Carr denies, that he offered to give her a letter of recommendation to assist here in

[14] Glauser said he did not know anything about Feeback's union activities or sympathies He later testified that he saw her picture in a union newspaper I find his testimony in this regard unreliable and conclude that he knew that Feeback was a union supporter.

[15] In an unusual conflict of testimony, Donnelly testified that she told Spitler to "go to hell" Spitler said he had no recollection of this remark She also said that Spitler called her a "bitch" and a "whore" Spitler's denial of the latter accusation is corroborated by Hendricks

[16] In Donnelly's view, she was never under the supervisory control of Spitler She felt that she was never under the supervisory control of the night manager, Larry Stribe. However, Stribe was not at work on the night in question and Spitler was the highest ranking management representative at the store

getting a job. She was given the equivalent of a week's wages, which Dombowski said was accrued vacation pay.[17]

Spitler played no part in the decision to discharge Donnelly nor was he asked for a recommendation in this regard. He testified that, when he wrote up the disciplinary slip in question, he envisioned that what would occur would be that someone would "talk to her and straighten her around." He further testified that he did not know whether in fact she had been laid off or had been discharged for insubordination. Donnelly felt that she had been laid off and called Dombowski and Geerkin on two occasions during the ensuing weeks to see if they had additional hours for her. However, Carr and Geerken testified that she was in fact discharged for insubordination.

The day following Donnelly's termination she engaged in handbilling the store on behalf of the Union. Shortly thereafter, she was referred for employment to a unionized grocery store. When she called Geerken in March to ask for employment at Churchill's, he asked her why she wanted to come back to work at the Respondent's store when she was making more money at Food Town. Her reply was that she just liked working at Churchill's. She was never reemployed by the Respondent.

William D. Winans worked for the Respondent for about 3 months in early 1980 as a carry-out and front-end employee at the Monroe Street store. He signed a union card, attended union meetings, and, before his termination, handbilled the store on two occasions on behalf of the Union.[18] He also wore a union button at the store and engaged in a lengthy discussion with his supervisor, Joyce Petree, in which he vigorously supported the Union's position in the organizing campaign. During a discussion, which lasted about half an hour, Winans told Petree that he was in favor of the Union and nothing she could say would change his mind.[19] Petree had no answers to certain questions he posed concerning wage rates and promotions so she told him he could talk with Geerken and Dombowski about these matters if he wanted. Petree did say to Winans that her husband had worked for a unionized trucking company and the union at that firm had done nothing for him. As the discussion wore on, Petree then escorted Winans to the front of the store and asked him, in the presence of Geerken and Dombowski, if he had any questions. Winans responded by asking Geerken and Dombowski one question, the substance of which does not appear in the record.

Sometime before his discharge, Winans had another conversation regarding the union campaign with Glauser. I credit Winans' testimony to the effect that Glauser asked him on this occasion if he supported the Union and also asked him whether any interesting points had been raised at the union meeting the preceding evening. Winans informed Glauser that he was in favor of the Union, but apparently said nothing about the meeting. Glauser told Winans that if the Union came in, he would reduce his section from four to two girls.

Within 2 weeks preceding his discharge, Winans received three disciplinary writeups, which ostensibly brought about his termination. On March 5, he was written up by Petree for overstaying a 15-minute break. Winans admitted that he had spent an excessive amount of time on this occasion discussing the union campaign with Glauser. On March 13, Winans was written up for parking his car in a section of the store parking lot reserved for customers. On March 19, Winans received his third and final disciplinary writeup. The narrative on the writeup stated in pertinent part, "Marcie [Zielinski] and Bill were bagging at the end of register 10, talking and not paying attention to the cashier next door, who had to bag her own groceries." He was told by Cheryl Hartline that he was being written up for talking at a register while working with another employee. Following this infraction, he was fired the next day by higher management.

An eyewitness account giving the Respondent's version of the incident leading to Winans' termination is not available since Cheryl Hartline, the supervisor who wrote up Winans, did not testify. Her absence from the hearing was not explained. According to Winans, he and Zielinski had both been bagging a large order of groceries at a checkout register and were talking about a show or concert that was coming to Toledo. The best that Winans can say about the incident was that a customer at the next register must have had to bag her own groceries. He did not notice anyone at the next register nor was his attention invited to the situation by the cashier who was checking out the customer's groceries. Having been written up, he was called to the office the following day and told by Petree and Dombowski that he was being discharged because he had three writeups during his probationary period. Dombowski informed him that Petree had recommended this action but Winans objected, saying that the action was being taken because of his union activities. He was told he could appeal this decision to Geerken if he wished. Winans went upstairs to the corporate offices to see Geerken and again accused the Respondent of firing him for union activities. Geerken denied the accusation, so Winans left the store.

C. *The Alexis Road Store*

Carole Ebersole is a part-time cashier at the Respondent's Alexis Road store. In April 1980, Douglas Bortz, the manager of the Byrne Road store, was temporarily transferred to Alexis Road. During his stay at Alexis Road, Bortz talked with many employees concerning the organizing campaign. I credit Ebersole's testimony that Bortz had a private conversation with her in a small

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[17] The Respondent's employee handbook states that "employees who are terminated for dishonesty, insubordination, or other serious infraction of rules and regulations will forfeit any earned vacation pay."

[18] I credit Winans' testimony that as he was handbilling the Monroe Street store Carr came to the front of the store and took pictures of the event with a Polaroid Instamatic camera Carr admitted taking pictures, denied he took pictures of employees engaged in handbilling, and explained that he was only photographing stranger pickets because he feared they might do damage to his personal vehicle that was parked in the store parking lot

[19] Petree did not testify at the hearing and her absence was unexplained Under well-established rules of evidence, I conclude that had she testified her testimony would have supported the allegations in the amended complaint

room on the store premises During this conversation, he told her that if the Union came in, the Company might as well "throw the box away" His reference was to a small box that the Respondent maintained for the purpose of collecting written applications from employees for time off and for schedule changes On the topic of wages, Ebersole complained to Bortz that she did not think it was fair that some cashiers were paid more than others and expressed the thought that all cashiers should be paid the same amount Bortz' reply was that he was aware that Churchill had done wrong in the past, but they would have to make things right if the Union lost. Bortz also told her that he did not care how she personally felt about unionization

D. *The No-Solicitation Rule*

Both the General Counsel and the Respondent agree that the Respondent has maintained a no-solicitation rule in effect at the Respondent's stores. They sharply disagree about the parameters of this rule. The exact nature and description of the rule are difficult to determine from the evidence in the record. The employee handbook contains the statement on solicitations quoted supra in footnote 11.[20] While these restrictions are set forth in a company publication, it does not appear that either the Respondent's management or employees were apprised of this regulation When asked about the source of the Company's no-solicitation rule and an explanation of its contents, various witnesses gave various replies. Several witnesses pointed to the sign "No solicitation" that appeared on the front of the Monroe Street store and testified that this was the rule with which they were familiar Some expressed the opinion that this posted rule was directed to employees and strangers alike. Pieh stated that the rule that was posted on the front door of the Monroe Street store meant that communications by an employee were prohibited except on his own time, meaning breaktime, lunchtime, and after work After checking with his superiors, Pieh told Nebb that it was permissible for Nebb to solicit if he was off the clock and the employee being solicited was off the clock, but his efforts would have to be confined to nonwork areas Pieh explained that the prohibition against soliciting for the Union on the company telephone was a longstanding policy and stemmed from the fact that an employee is hired to do a job and not to solicit for some other business Katt expressed some familiarity with the rule as set forth in the employee handbook and said that an employee's breaktime was his own time but that employees were not free to solicit on paid breaks, i.e., time off for which they did not have to punch out as distinguished from breaks when they punched out. Donbowski testified that the no-solicitation rule that prevailed at the Respondent's store was an orally promulgated rule. He stated that the rule, as posted on the front of the Monroe Street store, applied both to employees and to customers, but then qualified his statements by saying that the no-solicitation policy prohibited solicitation on company time, not on working time. He said that employees could organize only on their breaks or at lunch but could do so before and after work According to Dombowski, solicitations of any kind were not permitted outside the store in the parking lot but exceptions were made for these veterans' annual poppy sales and a campaign for funds in the Toledo area known as the old newsboys' campaign.

[20] Elsewhere in the employee handbook "unauthorized solicitations" are set forth as a minor infraction of company rules

II THE ENLARGEMENT OF THE RESPONDENT'S HEALTH INSURANCE PLAN

For a number of years, the Respondent maintained a health insurance plan with a private carrier, which covered the medical and hospital expenses of its full-time employees, i e., those who worked in excess of 32 hours per week. However, the plan did not provide for dependent coverages unless the employee paid an extra premium out of his own pocket. This omission was a cause of employee criticism [21]

Beginning in the late summer or fall of 1979, the Respondent began to consider the possibility of discontinuing the use of an outside carrier and of providing health insurance coverage to its employees through self-insurance fund It asked the broker who had provided the Company with casualty insurance coverage to investigate this possibility and to provide the Respondent with quotations about the cost of such a plan and whether any increase in benefits that could be realized from self-insurance without an increase in cost to the Company. The broker delayed several months in providing the requested information but, in late February or early March, gave the Respondent a quote that included the estimated cost of self-insurance for normal loss and the cost of a catastrophe override premium with a carrier who would pay unusually large claims that might occasionally arise. The broker also suggested at that time that the Respondent wait a few more weeks before concluding a deal because he felt that he could obtain better catastrophe coverage from another insurance company. The Respondent agreed

Early in April, the broker presented the Respondent with another quotation and, within a matter of days, the Respondent executed the documents necessary to put the insurance plan into effect One of the elements contained in the new plan was dependent coverage. On April 14, 1 month after representation petitions were filed and 2 weeks before the existing health insurance coverage with an outside carrier was due to expire, General Churchill sent a letter to all employees announcing a new health insurance plan, effective May 1 The announcement stated that the new plan included no change for dependent coverage, fully paid hospital coverage, free prescriptions, improved diagnostic, X-ray, and laboratory services, no deductible for surgery or anesthesia, $100 per week disability income, improved dental coverage, and $5000 in life insurance Churchill commented in his letter that the new plan was "one of the finest health care plans in the Toledo area and it is far better than any of

[21] For example, Nebb included among his longstanding grievances a complaint to Pieh about lack of dependent coverage in the Respondent's medical and hospital plan Shultz mentioned lack of dependent coverage in the letter, which she mailed to all the Respondent's employees on behalf of the Union sometime in April 1980

those offered by our competitors All full-time employees are eligible for this plan "

Analysis and Conclusions

A. *Independent 8(a)(1) Violations*

The record in this case contains an undifferentiated combination of the trivial and the serious. The independent violations of Section 8(a)(1) to be found in the record are the following:

(a) It is well established that the solicitation of employee grievances during an organizing campaign with a view toward ultimately redressing those grievances is an unfair labor practice. *Hi-Lo Foods*, 247 NLRB 1079 (1980); *Montgomery Ward & Co.*, 253 NLRB 196 (1980), and *Berger Transfer Co.*, 253 NLRB 5 (1980). In February 1980, immediately after learning of the organizing campaign, Shook held a meeting of warehouse employees, at which he stated that he thought that the warehouse group was one big happy family. He asked specific employees what their problems were, adding that they should have settled their problems internally without third-party intervention, and then threw the floor open to a general discussion of employee complaints. Some of these complaints, such as lack of a specified lunch hour and Tucker's complaint that he was entitled to health insurance benefits, were quickly remedied. Another discussion, held a few days later between the same group of employees and Geerken when employee complaints were rehashed, was simply a resumption of the earlier meeting. Both events constitute solicitations of grievances in violation of Section 8(a)(1) of the Act.

At a later time, during an employee evaluation session, Pieh and Nebb discussed the Union. They also discussed, in response to Pieh's invitation, the grievances that prompted Nebb to take an active role in the organizing campaign Pieh's statement to Nebb that his complaint concerning a small wage differential for assistant managers should be looked into after this "union thing" is over, is clear evidence of the purpose of soliciting the grievance. This solicitation of Nebb's grievances by Pieh constituted a violation of Section 8(a)(1) of the Act, and Pieh's statement to Nebb accompanying the solicitation amounts to an unlawful promise of the benefits, which also violates Section 8(a)(1) of the Act.

(b) Shook's admitted threat to warehouse employees at the February 1980 meeting that if the Union came in the warehouse would be closed and employees would be out of jobs and ineligible for unemployment compensation is a serious violation of Section 8(a)(1) of the Act.

(c) Glauser's statement to Wielgopolski that in the event of unionization there would be layoffs at the store constitutes a threat that violates Section 8(a)(1) of the Act.

(d) Glauser's statement to Wielgopolski on the same occasion that there would be a strike because the Respondent would not give the Union a contract constitutes another violation of Section 8(a)(1) of the Act

(e) Glauser's questioning of Wielgopolski, in the context of the above-recited remarks, about how he felt about the Union constitutes coercive interrogation and a violation of Section 8(a)(1) of the Act

(f) Credited testimony indicates that, in February 1980, Langenfelder asked Wingler if he attended a union meeting, how large the meeting was, and what he thought of the meeting. Such questioning is coercive and violates Section 8(a)(1) of the Act

(g) Credited testimony also indicates that, shortly after the discharge of Rebecca Donnelly, Wingler, and Kay Miller stated in Langenfelder's presence that she had obtained a job at Food Town, a unionized store. Langenfelder then told them that, in a couple of weeks, he hoped the Union could find a lot of other jobs This statement was an implied threat to discharge union sympathizers and violated Section 8(a)(1 of the Act. The fact that Dombowski tried to calm Wingler's fears of discharge after hearing Wingler's complaint about Langenfelder's statements does not prevent the earlier remarks from being an unfair labor practice. His efforts simply confirm the coercive character of Langenfelder's statements

(h) Pieh repeatedly questioned Nebb about union matters He asked Nebb on one occasion how many people had showed up at a union meeting, pointed Nebb out to another supervisor as being a union leader who was a source of information concerning union efforts, asked Nebb how many of his people were getting involved with the Union, and asked Nebb if the Union was compensating him for his union activities Despite the fact that such questions were posed to a known sympathizer, such questions and statements constitute violations of Section 8(a)(1) of the Act. *PPG Industries*, 251 NLRB 1146 (1980)

(j) Pieh's statement to Nebb that the Company had sources of information within the union organizing effort constitutes an attempt to convey the impression that union activities of employees were the subject of company surveillance and is a violation of Section 8(a)(1) of the Act

(k) Pieh's statements to Dewayne Bell that he heard he had attended a union meeting and his admission that he made the statement in order to get Bell to admit his union activities constitutes unlawful interrogation which violates Section 8(a)(1) of the Act.

(l) Pieh's statement to Nebb that General Churchill would be shocked to see his name at the top of the list of union organizers constitutes an attempt to create the impression that the union activities of employees were subject to company surveillance in violation of section 8(a)(1) of the Act.

(m) After Penelope Shultz disseminated a campaign letter to 400 store employees, Pieh asked her where she got the information contained in the letter to the effect that the Company had made $6.4 million in profits. I do not regard this question as coercive interrogation, inasmuch as Shultz stated in the letter that she invited inquiries concerning its contents and would personally stand behind whatever she had written

(n) Katt asked Christine Curtis several questions concerning her union efforts, including why she wanted a union and why she thought a union was necessary. These questions constitute a violation of Section 8(a)(1) of the Act.

(o) Pieh's statements to Sheila Lemble near the smokehouse at the Monroe Street store in February 1980, concerning changes that would occur in working conditions if the Union were successful, constitute unlawful threats which violate Section 8(a)(1) of the Act.

(p) Pieh's statement on the day following a union meeting to Lemble that he knew where she had been when she failed to show up for a card game at his house the previous evening constitutes an attempt to convey the impression that the union activities of employees were subject to company surveillance and violates Section 8(a)(1) of the Act.

(q) When Kennedy told Marci Zielinski that there had been a change in company policy concerning the granting of leaves of absence to summer employees to work at Christmastime and that the discontinuance of this policy was due to the union organizing campaign, this statement violated Section 8(a)(1) of the Act.

(r) Having discredited the testimony of Gordon Zielinski, I recommend that so much of the amended complaint that relates to allegations concerning him and Richard Carr be dismissed

(s) When Petree took William Winans to see Geerken and Dombowski and asked him in their presence, if he had any questions concerning the organizational campaign, she caused him some embarrassment because she was, in effect, interrogating him and pointing out to Respondent's top management the identity of a union activist. Such an action is an interference with union activities and a violation of Section 8(a)(1) of the Act.

(t) Glauser's questioning of Winans about how he felt about the Union and whether any interesting points had been raised at a union meeting Winans attended constitute unlawful interrogation within the meaning of Section 8(a)(1) of the Act. Glauser's further statement to Winans that he would reduce the size of his section if the Union came in is a threat to discharge employees in reprisal for union activities and violates Section 8(a)(1) of the Act.

(u) Bortz' statement to Ebersole that he would discontinue the practice of permitting employees to ask for days off and to rearrange their schedule in the event of unionization is a threat that violates Section 8(a)(1) of the Act.

(v) Bortz' further statement to her that the company would make improvements in benefits if the union lost is a promise of unstated benefits that violates Section 8(a)(1) of the Act.

(w) Carr admitted photographing pickets as they were patroling at the Monroe Street store, but denies photographing any employees in the process of doing so. I discredit the denial and conclude that, by photographing employees in the exercise of rights guaranteed to them by Section 7 of the Act, the Respondent violated Section 8(a)(1) of the Act.

(x) An employer may lawfully forbid employees from engaging in solicitations for any nonwork related object so long as the prohibition is limited to working time, is nondiscriminatory in its application, and there is no independent evidence that the rule is being imposed for union-related considerations. However, if a no-solicitation rule is overly broad, it is an unlawful interference with employee rights guaranteed by Section 7 of the Act.[22] Furthermore, if the parameters of a no-solicitation rule are vague or ambiguous, the risk of noncompliance with the limitations established by the Supreme Court falls on the employer *G. C. Murphy, Inc.*, 171 NLRB 370 (1968); *Knapp Foods*, 247 NLRB 1079 (1980), *NLRB v. Charles Co.*, 341 F 2d 870 (2d Cir 1965)

The scope of the rule set forth in the Respondent's employee handbook complies with the requirements of the Supreme Court decisions. However, it appears that both management and employee witnesses were unfamiliar with the rule as recited therein and several pointed to the flat "no solicitation" notice posted on the front door of the store as being the rule by which they were bound This rule is drastically overly broad and, if applicable to employees, constitutes an interference with their Section 7 rights. Some witnesses indicated that the posted rule applied both to strangers and to employees Other witnesses indicated that the no-solicitation rule was an oral rule that permitted soliciting on nonwork time and forbade soliciting during working time. Such a rule is a valid rule Another witness said that employees could solicit during those breaks they took when they were not required to punch out

In light of these varying versions of the scope of the Respondent's no-solicitation rule—some describing a legal and some describing an illegal one—it can only be concluded that the Respondent's employees were being subjected to restrictions that suffer from the vice of vagueness Accordingly, when the Respondent attempted to restrict the union activities of its employees on company premises by means of an ambiguous no-solicitation rule, it violated Section 8(a)(1) of the Act.

Nowhere in the rule in any of its announced versions was a clerk forbidden to greet or have casual conversations with customers Indeed, it would hardly be in keeping with the functions of a clerk or waitress to avoid greeting or speaking to a customer Accordingly, when Katt issued a warning to Christine Curtis after she gave a casual greeting to two union organizers who were customers at the Monroe Street coffeeshop, Katt was not enforcing the provisions of any no-solicitation rule. The real thrust of her warning was to prevail on Curtis to avoid union representatives Such a warning constitutes a violation of Section 8(a)(1) of the Act. *Montgomery Ward Co.*, 256 NLRB 800 (1981).

Similarly, an employer had every right to restrict the use of company telephones to business-related conversations and to forbid employees from using company phones for personal reasons. However, this employer did not do so and a practice grew up over a long period of time of permitting employees to use company phones for personal matters so long as their calls did not tie up the switchboard The only exception to this admittedly loose practice came about when Nebb called his counterparts in the meat department at another store, informed them of an upcoming union meeting, and asked if anyone was

[22] *Republic Aviation Co v NLRB*, 324 U S 793 (1945), *NLRB v Babcock & Wilcox Co*, 351 U S 105 (1956), *NLRB v Steelworkers*, 357 U S 357 (1958), *Stoddard-Quirk Mfg Co*, 138 NLRB 615 (1962), see also *T R W, Inc*, 257 NLRB 442 (1981)

interested in taking part in the organizing effort. For this call he was reprimanded and told that such calls should not be made on company phones. When an employer singles out union activity as its only restriction on the private use of company phones, it is not acting to preserve the use of the phones for company business. It is interfering with union activity, and such interference constitutes a violation of Section 8(a)(1) of the Act.

(y) When an employer confers on his employees an increase in wages or benefits during the course of a union organizing campaign, its action is presumptively a violation of the Act. *NLRB* v. *Exchange Parts*, 375 U.S. 405 (1964). It is incumbent on any employer seeking to avoid the consequences of this presumption to justify its action on some nondiscriminatory business-related basis In the present case, the Respondent announced to all its employees a new and enlarged program of medical and insurance benefits on April 14, 1980, just a month after it received a demand for recognition from the Union covering its warehouse unit and two petitions for representation elections relating to its Monroe Street and Alexis Road stores Respondent's defense is that it was contemplating the institutions of these improvements in its insurance program all along and that the timing of the announcement and the implementation of the program coincidental with the Union's organizing effort was purely happenstance. The argument strains credulity.

Respondent's longstanding desire to improve the criticized deficiencies in its medical insurance program was a low priority item on the corporate agenda until the advent of the union drive. In its discussions with its insurance broker concerning self-insurance and enlarged benefits, months went by, nothing happened, and no one said anything. Shortly after the organizing campaign swung into a serious preelection phase, a greatly expanded program of health insurance, as well as other insurance, was in place in a matter of days

It was by no means indispensable for the Respondent to await the expiration of its former insurance policy to adopt a program of partial self-insurance in order for it to provide the insurance benefits announced to employees on April 14. The improvements could have been made months or years before the Union started its organizing campaign. In announcing the revised plan, General Churchill pointed out to his employees that "it is far better than any of those offered by our competitors." This was simply a veiled reference to health insurance plans then in effect in the unionized stores in the Toledo area. Far from being coincidental with the union drive, the new health plan was prompted by a desire to head off the union drive, a desire that also manifested itself in nearly two dozen separate and different violations of the Act, which the Respondent committed within the same time frame it was revising its health insurance program. Accordingly, I conclude that by instituting and announcing a revised and improved plan of health and other insurance for its employees the Respondent herein violated Section 8(a)(1) of the Act.

B. *The 8(a)(3) Violations*

As noted above, the acts and conduct of the Respondent in discharging, transferring, or otherwise adversely affecting the hire and tenure of its employees during the course of the organizing drive[23] must be measured against a background of repeated and well-established unfair labor practices aimed at preventing the unionization of its warehouse and stores. As a result, events that might otherwise take on a neutral coloration become tinged with illegality as the Respondent's determination to resist unionization spilled over from threats and promises into adverse actions taken against employees.

1. The discharge of Richard Doll

Richard Doll was a reliable and likeable employee, according to Faust He had worked at the warehouse for nearly 2 years at the time of his discharge in late March 1980. He had a problem and his problem was well known to supervisors and employees alike, but it was a problem that they were willing and able to live with. At no time did his immediate supervisors at the warehouse have any disposition to discharge Doll but, as in the cases of the other discriminatees named in the amended complaint, deficiencies that the employee's immediate supervisors were willing either to overlook or to recommend for routine internal correction became, in the mind of Company Vice President Richard Geerken, grounds for discharge. Doll's termination was a case in point

Doll had been coming to work from time to time with beer on his breath for as long as he had been working for the Respondent. His drinking habits had come to the notice of Shook and Faust, as well as supervisors outside the warehouse, because of a string of minor accidents that presumably arose as a result of Doll's operating company equipment under the influence of alcohol. None of these events provoked more than a mild rebuke. Indeed, none of these events prevented Respondent's management from having an occasional beer with Doll at lunchtime at the Roadhouse, then returning to work afterwards. However, once Doll had evidenced his union sympathies by handbilling a store, the Respondent's attitude, at least as it was reflected in the actions of Geerken, dramatically changed. On Doll's final day of work, Geerken visited the warehouse and orchestrated a series of events designed to provide the Company with conclusive proof that Doll had been drinking in violation of a provision of the employee handbook, a provision that had been overlooked in his case for nearly 2 years. Faust found Doll on his lunchbreak at his usual haunt doing his usual thing and reported her expected findings to Shook, who confirmed them by phoning the bartender. After Doll returned, he was written up for a 3-day suspension. When the disciplinary form reached Geerken's desk, the recommended suspension was converted into a discharge and Doll was so informed.

Doll was a known activist who was discharged for a habit that had been indulged by the Respondent until his union sympathies became known and reported. The discharge came just after the Respondent received a demand for recognition as the bargaining agent for the

[23] In fact, the threat of unionization is still extant because the representation petitions filed early in 1980 have not resulted in elections because of blocking charges that are yet unresolved

warehouse unit and at a time the Respondent was engaging in a campaign of unfair labor practices designed to prevent unionization at any cost. In light of these factors, as well as the difference of opinion within the ranks of the Respondent's management as to the gravity of the event that triggered the discharge, I conclude that Respondent's stated reason for firing Doll was wholly pretextual and that its real reason was its desire to eliminate a known union enthusiast from its payroll. Accordingly, the discharge of Richard Doll violated Section 8(a)(1) and (3) of the Act

2. The reduction in hours of Charles Tucker

Tucker was also a known union supporter who had evidenced his union sympathies by handbilling two of the Respondent's stores. His complaint before the Board was not that he was discharged, but that his working hours were cut because of his union activities The weekly summary of Tucker's hours during the late winter and spring of 1980 show a fluctuation in his workweek, but hardly a steady decline or a precipituous drop. Indeed, in the mid-summer of 1980, he was working more hours than he had worked in several individual weeks in March and April. Faust's refusal to provide Tucker with his timecards at a time Tucker was voicing a complaint to her about a reduction in working hours is a suspicious circumstance, but it is not enough to show either discriminatory motivation or, more importantly, that any discrimination in fact took place In light of the paucity of evidence on this latter point, I must conclude that the General Counsel has failed to prove by a preponderance of the evidence that Tucker suffered an illegally motivated loss of hours, so the provision of the amended complaint on this point must be dismissed.

3. The reassignment of Joseph Wielgopolski

Wielgopolski worked for the Respondent about 5 months as a front-end employee, meaning that he was normally rotated into and out of a number of menial jobs in the grocery store as the demand for his services arose. He testified that he signed up employees in the store and that not long after Geerken saw him signing up an employee, he was placed in isolation by being assigned consistently to load groceries into customer cars in front of the store. The impression that Wielgopolski left with the Respondent's supervisory force was of such magnitude that they cannot even remember him as an employee, though no formal contention was advanced that he did not in fact work at the store.

Isolating an employee from other employees for discriminatory reasons is a violation of the Act but, like any other discriminatory act, it must be established in the record by something more than surmise or suspicion. In this case, we have little more to go on than Wielgopolski's surmise. Loading groceries into customer autobmobiles was one of the jobs normally assigned to a front-end employee so there is nothing unusual or noteworthy in the fact that such an assignment was made to Wielgopolski Wielgopolski is apparently unhappy about the fact that he filled this job for 2 consecutive weeks before being shifted to some other task However, on the state of the record in this case, there is no way to determine how long a normal tour of duty was at this particular post or what personnel demands and options existed at the time that might have dictated this assignment. Moreover, Wielgopolski was ultimately given another less isolated assignment or series of assignments, an unlikely turn of events had the Respondent maintained any fixed intention of placing Wielgopolski in a position where he could not talk union to other employees at the jobsite. Accordingly, I would dismiss the portion of the amended complaint that alleges that Joseph Wielgopolski was given a job assignment on a discriminatory basis.

4 The reduction in overtime hours of Clyde Nebb

Nebb's complaint that his overtime hours were reduced because of his union activities presents a very close question of fact. Nebb was an activist and was suspected by his immediate supervisor of being a leader in the union movement A great deal of independent 8(a)(1) conduct committed by the Respondent was directed particularly at Nebb As indicated from the summary of hours worked by Nebb throughout 1980, Nebb did suffer in the aggregate a differential in hours worked between the first part of 1980 and the last part of 1980 of approximately 1.4 hours per week. The reduction coincided with the replacement at the Monroe Street meat department of his longtime friend and associate, Jack Pieh, by Vern Viers, a manager who was transferred to Monroe Street from another store. From time to time, Viers brought in employees from his former location to work at Monroe Street, thereby diminishing the overtime opportunities of employees at the Monroe Street meat department, including, but not limited to, Nebb. Nebb stated without contradiction that all the meat department employees at the Monroe Street were union supporters.

The fact that other employees were brought in to work at the Monroe Street meat market from time to time by the Respondent means that the predictable effect of such assignments resulted from deliberate action on the part of the Respondent, not from chance or from unplanned fluctuations in the workload The record is barren of any explanation for this revised personnel practice other than the one suggested by Nebb, namely, that he and other union supporters at Monroe Street were being punished for their known union sympathies. This explanation is made quite plausible by heavy-handed demonstration of animus exhibited by the Respondent on other occasions. Accordingly, I conclude that, by reducing Nebb's hours of work, the Respondent violated Section 8(a)(1) and (3) of the Act.

5. Restrictions on picnic guests

There is no factual dispute that, in previous years, employees attended the annual company picnic for a nominal charge and were free to bring family members and guests without any stated limitations or advance screening. In 1980, two employees sought to invite union representatives to attend as their guests and were rebuffed. A system had been devised whereby purchasers of tickets to the outing had to state in writing in advance the names of guests they wished to invite. When the names

of union organizers were found on the lists submitted by Lemble and Shultz, tickets were withheld. These employees were told that the reason for the Respondent's action was that it blamed union organizers for misconduct at the Central Avenue store and did not want them to attend the picnic. While the right to invite guests to an annual social event was a nominal fringe benefit, it was still part of the terms and conditions of employment at the Respondent's stores. When this benefit was withdrawn in order to insulate employees from social contacts with union representatives, the Respondent violated Section 8(a)(1) and (3) of the Act.

6. Refusal of a leave of absence to Marci Zielinski

The record establishes that, prior to 1980, the Respondent followed a practice of granting leaves of absence to summer employees who left for college in September, thereby assuring them of employment when they returned home at Christmastime. The advantage to employees of assured Christmas employment is obvious and the policy had advantages for the Respondent as well, inasmuch as it assured the Respondent not only of extra help during its holiday rush, but the availability of experienced employees during this season. Zielinski, a known union sympathizer, wished to take advantage of this policy in 1980 and made repeated requests to obtain such a leave. On each occasion, she was instructed to fill out a form, which was never furnished. I have credited her testimony that she was finally told by Kennedy that the Company had discountinued the policy of giving leaves of absence to summer employees permitting their return at Christmastime and that, if she wanted Christmas employment, she would have to apply at or near the date she wanted to come back to work and, in effect, take her chances with other applicants who were interested in coming to work at that time. He stated that the reason for this change in policy was the union organizing campaign. When Zielinski was denied a leave of absence and, in effect, denied reemployment, the Respondent violated Section 8(a)(1) and (3) of the Act. Zielinski became a discriminatee as of that moment. The fact that the discrimination might not have been limited to her and may have flowed from the implementation of a discriminatory general policy is immaterial to this finding. Nor is it material to the finding that six other summer employees were rehired on application in December, while Zielinski did not make such an application. If it has any relevance at all, Zielinski's failure to make what, in essence, is a second application for Christmas employment bears only on the amount of backpay to which she might be entitled.

7. The evaluation of Marilyn Feeback and the reduction in her hours

In July 1980, Glauser gave known union suporter Marilyn Feeback a wholly unsatisfactory rating on her personnel evaluation sheet—a 0 on a scale of 10—for loyalty. He explained to her that the fact that she had attended union meetings contributed to this evaluation. A possible effect of such an evaluation could have been to place her future employment with the store in jeopardy. Accordingly, it amounts to a discrimination in hire or tenure aimed at discouraging union activity and violates Section 8(a)(1) and (3) of the Act. The fact that the illegal entry was later removed does not detract from this finding, inasmuch as it is well settled that the discountinuance of an unfair labor practice is not a defense to the entry of a Board order.[24]

A few weeks later, the Respondent reduced Feeback's hours by 1 full day each week. The record is indistinct as to how the reduction in her hours compared with reductions in the hours of other flower center employees, although there is no contradiction in the record for Glauser's assertion that all flower center employees received reduced hours. One unanswered question is why a large store with a considerable turnover made no effort to provide these clerks with additional hours in other departments when cutbacks took place at the flower center. An inference can be drawn from Dombowski's testimony that a greater impact from this reduction fell on Feeback than on other employees, since care was taken not to reduce the hours of full-time employees in the flower center to the point where they would no longer be eligible for medical insurance and other fringe benefits.

Feeback was a known union supporter. In September 1980, when her hours were cut by 1 day per week, she had already been subject to one discrimination in the form of a poor evaluation. Glauser once told Winans that, if the Union came in, he might have to cut back his staff from four employees to two. While this statement might arguably be a prediction rather than a threat, it illustrated the tenor of his thinking. No objective standard was suggested or established by the Respondent as the basis on which it cut Feeback's hours in the amount they were cut. Accordingly, in light of this evidence and the strong animus established elsewhere in the record, I conclude that, by cutting Feeback's hours of work in September 1980, the Respondent violated Section 8(a)(1) and (3) of the Act.

8. The discharge of William Winans

Winans was a union sympathizer whose support was both voluble and conspicuous. He handbilled the store, attended meetings, wore a union button to work, and engaged in a lengthy discussion with his supervisor in which he told her that nothing she could say could change his mind about supporting the Union. In the mind of a discriminatory employer, such an employee is a prime candidate for removal, especially if he is a short-term employee.

The basis for the discharge of Winans was three write-ups in 2 weeks for manifestly petty misdeeds. He was detained by a supervisor, Glauser, during his break because Glauser wanted to discuss the union campaign and was thereafter written up for returning late to the job. He parked his car in the wrong part of the store parking lot, but instead of asking him to move his car, the Respondent left the car where it was and gave Winans a writeup instead. The third and final infraction that led to his termination was that he was talking with another employee

[24] *NLRB v. Mexia Textile Mills*, 339 U S 563 (1950), *Bandag, Inc*, 225 NLRB 72 (1976), enfd 583 F 2d 765 (5th Cir 1978)

while bagging a large grocery order and evidently did not see a customer who was being checked out at the next register No one called his attention to the customer's need for assistance when the event was occurring, nor is there any rule, practice, or custom that says that employees at the Respondent's store may not talk with each other while working. Moreover, there is no evidence that he was not, in fact, working while talking to Zielinski, and it is difficult to see how he could be bagging groceries at two different locations at the same time. This was at most a trivial oversight, one which was too insignificant to bring to his attention while it was occurring so it could be rectified if necesary, but important enough to be the subject of a terminal disciplinary action. Because the Respondent was able to collect three of these writeups during Winans' probationary period, all of which arose after his union sentiments became known, the Respondent felt that there was a technical basis for Winans' discharge and he was fired

Winan's discharge is a classic pretext case. The Board has said many times that it is motivation, not justification, that determines the legality of a discharge, because there is hardly a case in which some kind of justification, however strained or tortured, cannot be found to support an employer's action in terminating an employee In this case, there is little doubt that, but for Winans' union enthusiasm, the pecadillos that found their way into disciplinary writeups would have passed without notice or would have been corrected on the spot. If an employer who wishes to reserve parking spaces in front of the store for its customers prefers to discipline an employee for illegal parking and does not even ask him to move his car, it is clear that it was much more interested in punishment than in parking spaces. If an employer insists on writing up an employee for failing to bag a customer's groceries, but fails to tell him, while the customer is waiting, that he should stop talking and assist the customer, it is equally clear that the employer was more interested in punishment than in servicing its checkout counter. Such is the case presented in this record relating to William Winans. Accordingly, when the Respondent discharged Winans, it did so to discourage his membership in and support of the Union and violated Section 8(a)(1) an (3) of the Act. I so find and conclude.

9. The discharge of Rebecca Donnelly

The discharge of Rebecca Donnelly presents the closest of the three discharge cases because, unlike Winans and Doll, Donnelly was not a leading supporter of the Union and confined her union activities to signing a card and attending a meeting or two She was initially reluctant to sign a card and put off doing so The Act does protect casual union suporters as well as zealous ones and credible evidence supports a finding that Respondent was aware of Donnelly's union sympathies because she told Carr she had signed a card.

While the Respondent now states that Donnelly was discharged for insubordination growing of an incident occurring on the midnight shift of February 16-17, 1980, it is not at all clear that it treated the termination as such when it occurred Carr discussed with Donnelly in detail the fact that the Respondent was closing down the midnight shift in her department and I credit her testimony that he offered to provide her with a reference for other employment. He left her with the impression that she was being laid off for an indefinite period of time, not that she was being discharged for misconduct. It is established that she received a week's pay on her termination and, in light of the stated policy in the employee's handbook that employees fired for insubordination forfeit accrued vacation pay, I discredit the explanation that the money in question represented vacation pay. In general, employees discharged for cause are not given severance pay, although such sweeteners are not uncommon in cases of layoff or in situations when an employer wishes simply to ease an employee off the payroll because a sticky situation has arisen. I credit Donnelly's statement that Carr told her she would be eligible for unemployment compensation, an entitlement she could not enjoy immediately if she was being discharged for cause. The supervisor most concerned with Donnelly's abrupt behavior made no recommendation to terminate her nor was he even consulted about the decision. In fact, all that he wanted when he wrote up Donnelly was that some other supervisor speak to her and straighten her out He was unsure even at the time of the hearing why it was that she was terminated

There is no doubt that Donnelly was insubordinate with Charles Spitler on her final night of work, and there is likewise no doubt that the incident, minor though it was, arose in substantial part because of a close personal relationship between the two individuals that had recently been severed. I believe that the Respondent eased out Donnelly because it did not want a repeat of a personal incident that occurred and felt, perhaps with some justification, that another spat between the lovelorn might take place if Donnelly were allowed to remain on the Respondent's payroll. Although this might be no way to treat a lady, it does not amount to a violation of law that this agency can remedy Accordingly, I would dismiss so much of the amended complaint that alleges that Rebecca Donnelly was discharged in violation of Section 8(a)(1) and (3) of the Act.[25]

C. *The Respondent's Refusal to Bargain in the Warehouse Unit*

The Union made a demand for recognition with respect to the warehouse unit about March 10, 1980. The Respondent refused the demand and insisted on an election. At the time there were five employees in the unit and all five had signed designation cards, which they later authenticated at the hearing in this case. Respondent's counsel admitted that the Respondent had no doubt about the Union's majority status, as indeed he could not, because that status had been already demonstrated in open court Accordingly, any insistence on an election to reaffirm or redemonstrate that status is at best an unnecessary imposition.

[25] Donnelly handbilled the store on the day following her termination and got a well-publicized job at a unionized store However, this is all postdischarge activity and can have no bearing on the moving cause behind her removal

In 1969, the Supreme Court declared in *Gissel Packing Co.*, supra, that the Board may issue a bargaining order in lieu of directing an election in cases where an employer's unfair labor practices are so serious that a fair and free election cannot be held. In the period of time that has elapsed since *Gissel*, this approach to remedying serious unfair labor practices has been repeatedly applied both by the Board and the courts. *NLRB v. Medley Distilling Co.*, 454 F.2d 374 (6th Cir. 1971); *NLRB v. Sullivan Electric Co.*, 479 F.2d 1270 (6th Cir. 1973); *NLRB v. Scott-Gross Co.*, 477 F.2d 64 (6th Cir. 1973); *Litton Business Systems v. NLRB*, 497 F.2d 262 (6th Cir. 1974).

The employees in the unit in question were threatened with loss of their jobs, coercively interrogated, solicited for grievances, and subjected to the sight of one of their members being discharged for union activities. Such conduct alone would warrant the issuance of a *Gissel* remedy. The other unfair labor practices found in this case—some of them applicable throughout the Respondent's system and others a matter of individual misconduct toward employees at two of the Respondent's four stores—serve only to confirm this recommendation and to emphasize a violation of Section 8(a)(1) and (5) of the Act.[26]

CONCLUSIONS OF LAW

1. Respondent Churchill's Supermarkets, Inc. is now and at all times material has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers International Union, AFL–CIO–CLC, Locals 954 and 626 are labor organizations within the meaning of Section 2(5) of the Act.

3. All regular full-time and part-time employees employed at the Respondent's Toledo, Ohio warehouse, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act are a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since about March 10, 1980, United Food and Commercial Workers International Union, AFL–CIO–CLC, Locals 954 and 626, have been the exclusive collective-bargaining representative of all the employees in the unit found appropriate in Conclusion of Law 3 for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to recognize and bargain collectively with the above-named unions as the exclusive collective-bargaining representatives of its employees employed in the bargaining unit found appropriate in Conclusion of Law 3, above, the Respondent violated Section 8(a)(5) of the Act.

6. By discharging Richard Doll and William Winans; by reducing the hours of Clyde Nebb; by forbidding employees from inviting guests to the annual company picnic; by refusing to grant a leave of absence to Marci Zielinski; and by giving Marilyn Feeback and unfavorable personnel evaluation and by reducing her hours of work, all because they were members of or active on behalf of the Union, the Respondent violated Section 8(a)(3) of the Act.

7. By the acts and conduct recited above in Conclusions of Law 5 and 6; by soliciting grievance from employees for the purpose of providing remedies; by threatening employees with discharge with the closing of the warehouse; by threatening layoffs in the event of unionization; by stating that the Respondent would never give the Union a contract and would thus provoke a strike; by coercively interrogating employees on several different occasions concerning their own union sentiments and activities and the union sentiments and activities of other employees; by creating in the minds of employees the impression that their union activities were the subject of company surveillance; by threatening unfavorable changes in working conditions in the event of unionization; by telling employees that leaves of absence had been discontinued because of the union organizing drive; by threatening to reduce the size of a work section in the event of unionization; by threatening to discontinue the practice of granting days off and work schedule readjustments in the event of unionization; by promising unstated benefits if the union lost the election; by photographing employees as they were picketing by imposing and enforcing an overly broad no-solicitation rule; and by granting improvements in medical insurance and other related benefits in order to dissuade employees from supporting the Union, the Respondent violated Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent had engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions, which are designed to effectuate the purposes and policies of the Act. Because the independent violations of Section 8(a)(1) of the Act found are repeated and pervasive, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to supress any and all violations of that section of the Act. I will recommend that the Respondent be required to reinstate Richard Doll and William Winans to their former or substantially equivalent positions, that it be required to reinstate the working hours that have been discriminatorily cut from the workweek of the employees involved in this case, and that it make whole all the discriminatees for any loss of earnings that they have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth* formula,[27] with interest

[26] Respondent challenges here, as it did in the representation case, that a single-store or single-unit bargaining unit is appropriate. It is well-established in the retail trade that a single-store unit is presumptively appropriate *Haag Drug Co*, 169 NLRB 877 (1968) There is nothing in the record before me that would overcome this presumption, and there was apparently nothing in the record of the representation cases (which are not before me) to lead the Regional Director and the Board to a contrary conclusion. See also *Gray Drug Stores*, 197 NLRB 924 (1972).

[27] *F. W. Woolworth Co*, 90 NLRB 289 (1950)

thereon at the adjusted prime rate used by the Internal Revenue Service for the computation of tax payments. *Olympic Medical Corp*, 250 NLRB 146 (1980); *Isis Plumbing Co.*, 138 NLRB 716 (1961). I will also recommend that the Respondent be required to post the usual notice, advising its employees of their rights and of the results in this case.

[Recommended Order omitted from publication.]