Blue Grass Industries, Inc. *and* **United Food and Commercial Workers International Union, Local 68-R, AFL-CIO.** Cases 9-CA-16786-1-4, 9-CA-16867-1-2, 9-CA-16965-2, 9-CA-17018-2, 9-CA-17540-1, and 9-RC-13724

16 December 1987

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN DOTSON AND MEMBERS STEPHENS AND CRACRAFT

On 19 September 1983 Administrative Law Judge Burton S. Kolko issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed exceptions and a supporting brief, 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[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision, Order, and Direction.

The Respondent manufactures "Jockey" brand underwear. The Union organized employees at the Mt. Sterling, Kentucky plant during 1980 and 1981.[3] The tally of ballots from the election held on 19 June shows that 205 employees voted against, and 202 for, the Union, with 17 challenged ballots remaining, a number sufficient to affect the results.

We adopt the judge's finding that the election must be set aside because the Respondent's preelection conduct interfered with the employees' free choice in the election. In so doing, we rely on the several antiunion demonstrations that the Respondent's president and supervisors led through the plant during worktime 6 weeks prior to, the day before, and on the day of the election, as well as on the judge's finding of other unlawful conduct occurring during the critical period,[4] except for our reversal of the following 8(a)(1) findings.

I. 8(A)(1) DISMISSALS

1. When the judge reviewed Supervisor Sue Easterling's antiunion conduct, he delineated statements she made to employees in April and on 1 May and found the threats she made of "plant closure, economic reprisal and loss, and the futulity [sic] of voting in the Union" all violated Section 8(a)(1) of the Act. We agree with that conclusion, but in so doing find that not all the examples of Easterling's comments cited in the judge's decision constitute violations. The judge thus failed to distinguish between Easterling's expressions of opinion protected by Section 8(c) of the Act (wondering orally why employees would want a union, given the Respondent's generous benefits, and asserting that the Union just wanted the employees' money) and unlawful threats (stating that the Respondent's president did not have to negotiate with the Union, that negotiations would have to start at the bottom and go back up,[5] and that the Respondent could transfer work to the union-free Carlisle plant and shut down the Mt. Sterling plant). We find that only the latter statements constitute threats and violate Section 8(a)(1) of the Act.

2. On 16 June Plant Manager Montgomery sent employees a letter stating:

[1] The Respondent has requested oral argument on the Board's Orders of 5 April and 24 May 1982 regarding a subpoena duces tecum it filed with the judge and on the appropriateness of a bargaining order The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties

[2] 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

[3] All dates are in 1981 unless otherwise indicated

[4] We agree, inter alia, with the judge's finding that Plant Manager Betty Montgomery's meetings with employees, during which she solicited their grievances, violated Sec 8(a)(1) of the Act The Respondent was not privileged, through its appointment of Montgomery as a "conciliatory" manager, to solicit employee grievances and grant employee benefits during the organizational campaign The Board has held that the solicitation of grievances at preelection meetings "raises an inference that the employer is making a promise [to correct grievances], "which inference is rebuttable by the employer " *Uarco Inc*, 216 NLRB 1, 2 (1974) There is no basis in the record here for concluding that the inference that the Respondent implicitly promised to redress grievances had been rebutted The record, in fact, shows that the Respondent actually corrected some grievances identified by employees

Chairman Dotson would dismiss the allegation that Montgomery's meetings with employees constituted unlawful solicitations of grievances and grants of benefits The timing of these meetings (3 weeks after the representation petition was filed) and their novelty are explained by a lawful event Montgomery was made plant manager approximately 3 weeks after the petition was filed and was placed, for the first time, in a position where she could call such meetings and effect changes In this context, Chairman Dotson would find that the General Counsel has failed to establish a violation of law Further, for the reasons stated in his concurring and dissenting opinion in *Adams Super Markets Corp*, 274 NLRB 1334 (1985), Chairman Dotson would dismiss the finding that the Respondent violated Sec 8(a)(1) by changing the order of layoff, noting in this regard that the only evidence supporting this finding is the timing of the change in layoff procedure

[5] Implicit in Easterling's statement that negotiations would have to start at the bottom and go back up is the suggestion that existing benefits would be diminished or discontinued if the Union wins the election and the Employer is required to negotiate with it Such a "bargaining from scratch" statement, in the circumstances of this case, is improper *Saunders Leasing System*, 204 NLRB 448 (1973), enfd in relevant part 497 F 2d 453 (8th Cir 1974)

> One of the things that United Food and Commercial Workers Union has tried to make you believe in the past few weeks is that there is no way you can lose if the Union wins the election and gets the right to deal with Blue Grass about your job, including your wages and benefits. That is not true. You have seen the newspaper clippings about Bata Shoe Company in Salem, Indiana. Some of the employees there believed that there was no way they could lose, but after voting the Union in and negotiating for months, the Union called a strike. The employees received no paychecks while they were on strike and after 18 weeks of striking, the Company announced that the plant would have to close and that all jobs would be lost.
>
> . . . .
>
> I am not saying that those things that happened at Bata Shoe will happen here, but these things have happened to other employees at other places and you have to decide whether you want to take the chance of having such things happen here.

The judge found that Montgomery's references to the Bata Shoe Company constituted an implied threat that the Respondent would close down if employees were to select the Union. We disagree.

Montgomery referred to incidents at another plant as an example of what actually transpired when other employees organized. Not only were these comments in response to union campaign rhetoric that promised a bright future for the Respondent's employees if they organized, but Montgomery stated that what occurred at Bata Shoe need not occur at the Respondent's facility. We find that her letter comes within the range of permissible campaign conduct and was protected by Section 8(c) of the Act.

3. Contrary to the judge, we find that Product Managers Peggy Stull and Edna Cole and Supervisor Marie Hunt did not unlawfully interrogate employees concerning their union activities. Stull, on two occasions, asked Hart, an active prounion employee, how the Union was going and later expressed disbelief that employees would want to pay union dues.[6] Cole, on the day of the election, separately asked Calvert and Goodpaster, two prounion, button-wearing employees, if they had changed their minds or would reconsider their support for the Union. Hunt, on several occasions, told prounion employee Bowling that she could not understand why Bowling supported the Union given the latter's high rate of pay.

Employees Hart, Calvert, Goodpaster, and Bowling were, as noted, all open union adherents. Hart, in particular, had been a leader in the unionization effort from the very beginning. Clearly, the questions directed at these employees by Stull, Cole, and Hunt were not made concerning any threats or other unlawful acts and do not appear from their context to have been aimed at obtaining information that the Respondent could in turn use to take adverse action against them or the Union. In these circumstances we conclude that the supervisors' inquiry of these open union supporters concerning their union sentiments did not interfere with their Section 7 rights and did not restrain or coerce them.[7] Compare *Rossmore House*, 269 NLRB 1176 (1984), affd. 760 F.2d 1006 (9th Cir. 1985), with *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985).

4. The Respondent's personnel manual prohibits:

> 16.A. Any soliciting of employees by other employees on the Company's premises (or parking lot) during worktime except during authorized breaks or lunchtime, regardless of the nature or the purpose of such solicitation.
>
> 16.B. Distribution on the Company's premises by employees, of any written or printed material or other literature of any kind, nature or description (other than in connection with the performance of employee's regular duties), except in nonworking areas.

The judge found the statement in 16.B. about distribution ambiguous and its maintenance violative of the Act because it does not expressly state that employees *may* distribute literature during breaktime and mealtime in nonproduction areas, as is permitted under *Essex International*, 211 NLRB 749 (1974). We disagree with this finding.

Paragraph 16.B. prohibits distribution, *except* in nonworking areas. The rule places *no* express restriction on distribution in nonworking areas. Thus, if there is any ambiguity in this rule, it lies in the possibility that the rule allows distribution during working hours—an interpretation that would not interfere with employees' Section 7 rights. We, therefore, find nothing unlawful in the Respond-

[6] Stull's additional remark that "if the union dies down, things will get better," made in response to a comment by Hart, in context is ambiguous and does not, without more, constitute an unlawful promise of benefits for rejecting the Union. Member Cracraft disagrees and would find the statement to be an implied promise of benefits

[7] We find it unnecessary to decide if Stull's further questioning of Hart over the filing of an unfair labor practice charge was an unlawful interrogation

Member Cracraft finds it unnecessary to pass on the question whether these interrogations violated the Act because the finding of such additional violations would be cumulative and would not affect the Order.

ent's rule and dismiss this allegation of the complaint.[8]

5. In response to a union request to debate, on 10 June the Respondent's president, Don Haney, told employees that Board law prevented him from debating with them. The Union filed an election objection over Haney's representation of the law. The judge found that because Board law does not proscribe such a debate, Haney's statement constituted a misstatement involving the Board and its process. Accordingly, he upheld the objection and, sua sponte, found Haney's statement violated Section 8(a)(1) of the Act. In *Riveredge Hospital*, 264 NLRB 1094 (1982), however, the Board established that mischaracterizations of Board actions are viewed the same as other misrepresentations that we find nonobjectionable. *Midland National Life Insurance Co.*, 263 NLRB 127 (1982). Thus, we find Haney's statement did not impugn the Board's neutrality. For the same reason that we find mischaracterizations do not interfere with employees' free choice in an election process, we find they do not constitute interference with employees' Section 7 rights. Haney's statement that he could not debate cannot be said to have interfered with the employees' right to engage in collective activity. Accordingly, we shall reverse the finding that Haney's statement violated Section 8(a)(1) of the Act.

6. On 18 June the chairman of the Respondent's board of directors, Wayne Shumate, presented a speech and slide show to employees. Included in the slide show were pictures of a plant, recently closed by the Respondent, showing its "For Sale" sign. The slide show also depicted a conversation among three employees, one for and two against the Union, with the latter telling the former she did not need a union. The antiunion employees also made references to two other companies, Bata Shoe and Hobart. They pointed out that the union organizer at the Respondent was the same one who had organized Bata Shoe and that Bata Shoe had closed down. One also mentioned that her husband worked at the unionized Hobart plant, but was out of work for 8 months because the plant had not been operating. The judge found that "the message was clear that strikes were inevitable, and because of such strikes and closings, selecting the Union would be futile. These messages, whether implied or explicit, violated Section 8(a)(1)."

The Respondent contends that all references to plant closings and strikes were factually accurate and, absent any prediction that the same thing would occur at the Respondent's facility, are permissible under Section 8(c). We find merit to the Respondent's exception.

The slide show clearly portrayed the Union's role at the nearby unionized plants, as well as that of a particular union organizer, in a negative light. The events pictured in the slides actually occurred, however, and the Respondent did *not* state that the same sort of events would occur at Blue Grass if the employees selected the Union. Under these circumstances, the Respondent is permitted by Section 8(c) to present its view of the economic realities of unionization. Accordingly, we dismiss the complaint allegation that the slide show violated Section 8(a)(1) of the Act insofar as that allegation rests on the factually accurate descriptions of closings at other plants.

II. A BARGAINING ORDER IS NOT WARRANTED

The Respondent unlawfully interfered with the employees' protected right to organize, but we find that the imposition of a bargaining order is not necessary to remedy the Respondent's misconduct.[9] Considering the degree of seriousness of the violations found, and their extent, we conclude that a direction of second election, rather than the imposition of a bargaining order, is appropriate here. The Respondent did not commit any violations of Section 8(a)(3). As set forth above, we have reversed several of the judge's findings of violations of Section 8(a)(1). The most coercive unfair labor practices the Respondent has committed, the threats of plant closure, were not shown to have been disseminated among employees in the unit. The remaining 8(a)(1) violations, in our view, are less serious and unlikely to have a lasting effect on election conditions. Accordingly, we shall direct a second election in the event the Union loses the first election.[10]

[8] We agree with the judge's conclusion that par. 16 A clearly does not restrict solicitation during break periods and meals. We, therefore, find the rule valid under the principles established in *Our Way, Inc.*, 268 NLRB 394 (1983).

[9] Since the judge issued his decision, the Board issued *Gourmet Foods*, 270 NLRB 578 (1984), in which it overruled *Conair Corp.*, 261 NLRB 1189 (1982), and found that no bargaining order shall issue when a majority of employees in the appropriate unit have not authorized the union to represent them. Thus, the judge's reliance on *Conair* is no longer apposite. As we find that the Respondent's unfair labor practices can be remedied by traditional methods and do not warrant a bargaining order, regardless of whether the Union achieved majority status, we need not pass on the judge's determination of the validity of the individual authorization cards

The judge ordered that the notice shall be posted in all the Respondent's plants and be signed by its chairman of the board, president, and plant manager of each plant Because of the fact that there are no special circumstances here warranting such extraordinary remedies, we shall delete these provisions from our Order Compare *S. E. Nichols, Inc*, 284 NLRB 556 (1987). Chairman Dotson dissented in *Nichols* and regarded the extraordinary remedies as unnecessary even in that case.

[10] We adopt the judge's unit determinations. In so doing, we note that the judge stated that the quality control inspectors worked adjacent to

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ORDER

The National Labor Relations Board orders that the Respondent, Blue Grass Industries, Inc., Mt. Sterling, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Causing, aiding, or permitting groups of its employees to enter the Mt. Sterling plant and interfere with or disrupt the work of employees in that plant in order to coerce them in the exercise of their rights under Section 7 of the Act.

(b) Threatening employees that the plant will be closed and/or relocated because they engage in union or other protected concerted activities.

(c) Threatening employees with loss of benefits because they engage in union or other protected concerted activities.

(d) Conveying to employees the futility of their engaging in union or other protected concerted activities.

(e) Coercively interrogating employees about their union or other protected concerted activities.

(f) Threatening to refuse to bargain with the Union if the employees select it as their bargaining representative.

(g) Creating the impression of surveillance of employees seeking to exercise their rights to organize collectively.

(h) Telling employees that they will be bothered, pestered, or harassed if they display union insignia.

(i) Asking employees to choose whether to display or wear antiunion insignia.

(j) Removing employees' union posters placed on the bulletin board containing antiunion posters.

(k) Promising and granting benefits or soliciting the presentation of grievances and adjusting such grievances to discourage its employees' designation of a collective-bargaining representative.

(l) Telling employees that the grant of benefits will be delayed by a representation campaign.

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

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

(a) Post at its facility in Mt. Sterling, Kentucky, copies of the attached notice marked "Appendix A."[11] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) 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 the allegations of unlawful conduct not found to be violative of the Act shall be dismissed.

[Direction of Second Election omitted from publication.]

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the production employees We find the worksite of the quality control inspectors to be physically distinct from the production area Nevertheless, we agree with the judge's finding that the quality control inspectors share a community of interest with the production unit and are properly included in the appropriate bargaining unit

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

APPENDIX A

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 cause, aid, or permit persons to enter the Mt. Sterling plant and interfere with or disrupt the work of employees in that plant in order to coerce them in the exercise of their rights under Section 7 of the Act.

WE WILL NOT directly or indirectly threaten employees with plant closure or relocation, loss of employment, loss of present or future benefits, or other unspecified retaliation because they support a labor organization.

WE WILL NOT tell employees that the selection of a labor organization to represent them is an exercise in futility.

WE WILL NOT directly or indirectly question employees regarding their union sympathies or activities or those of other employees.

WE WILL NOT threaten to refuse to bargain with United Food and Commercial Workers, International Union, Local 68-R, AFL-CIO.

WE WILL NOT create the impression that employees who are attempting to organize collectively are under surveillance.

WE WILL NOT tell our employees that benefits will be delayed by a representation campaign, and WE WILL NOT promise or grant benefits or solicit or adjust employee grievances for the purpose of discouraging our employees from selecting a labor organization as their collective-bargaining representative.

WE WILL NOT tell employees that they will be bothered, pestered, or harassed if they display union insignia, and *we will not* ask employees to choose whether or not to display or wear antiunion insignia.

WE WILL NOT remove union posters that are on a bulletin board that contains antiunion posters.

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

BLUE GRASS INDUSTRIES, INC.

James E. Horner, Lynne D. Schmidt, and *Bruce H. Meizlish, Esqs.*, for the General Counsel.

Alan L. Rolnick, Chris Mitchell, and *Townsell G. Marshall, Jr., Esqs.*, of Atlanta, Georgia, for the Respondent.

Stanley A. Gacek, Esq, of Washington, DC, for the Charging Party Petitioner.

DECISION

BURTON S. KOLKO, Administrative Law Judge. The United Food and Commercial Workers International Union, Local 68-R (the Union) organized the employees of Blue Grass Industries at Mt Sterling, Kentucky, continuously during 1980 and 1981, culminating in an election held on June 19, 1981. Although it had obtained the support of the majority of the employees the day before the election, it lost the election by a vote of 205 to 202. The Union has filed objections to that election to set it aside, and it seeks an order that compels the Employer to bargain with it as the employees' representative. So, too, does the Board's General Counsel, whose complaint alleges that the Employer's conduct interfered with the election and constituted unfair labor practices under Section 8(a)(1) and (5) of the National Labor Relations Act.[1] I grant both requests.

[1] The General Counsel's fourth consolidated amended complaint is dated March 17, 1982 The Union's representation proceeding petition was filed on April 6, 1981 On April 28, 1981, the Union and Respondent stipulated to a certification upon consent election, that was held on June 19, 1981 The Union's first charge is dated May 4, 1981 The Report on Challenged Ballots, etc , dated July 20, 1981, found the following election results against the Union, 205, for the Union, 202, challenged ballots, 17 The order dealing with that report is dated August 12, 1981 The hearing began on March 31, 1982, and ended on September 21, 1982 Briefs were filed on December 10, 1982

I. THE UNFAIR LABOR PRACTICES THAT INTERFERED WITH THE ELECTION

Respondent's plant at Mt. Sterling is one of several Kentucky plants where sewn and knitted underwear is produced under contract for Jockey International, whose "Jockey" trademark is well known. The Union is also well known, being the successor to the former Retail Clerks International Union [2]

The Union began its organizing campaign in January 1980 at the Maysville plant. In early March 1980, the Union began circulating union authorization cards among the employees of the plants at Cynthiana, Carlisle, and Mt. Sterling. Thirteen months later the Union filed a representation petition for the Mt Sterling bargaining unit (April 6, 1981), culminating in the election held on June 19, 1981. It is during this "critical period" that we focus our attention, for it is during such preelection period that the party attempting to control the election can put his tactics of interference to best use. *Ideal Electric & Mfg. Co.*, 134 NLRB 1275, 1277 (1961)

The conduct of which the General Counsel and the Union complain the most involves the in-plant demonstrations that occurred on May 1 and June 18-19, 1981. In their view "the demonstrations . . constitute ample evidence of the extent to which the Respondent would go in putting fear into the employees for even considering union representation." (G.C. Br. 21.) Respondent feels that the General Counsel is seeing the events of those days with a jaundiced eye, because from its perspective the worst that can be said is that there was "boisterous conduct accompanied by loud music." (Br 74.)

A. *The Demonstration of May 1, 1981*

The May 1 events at Mt Sterling were set in motion the day before. On April 30, 1981, an election was held at Respondent's Carlisle plant at which the Teamsters Local 651 was roundly defeated by a vote of 338 to 66.[3]

[2] The instant Local 68-R had its origins in 1895 as Local 68 of the Boot and Shoe Workers International Union In 1977 the Boot and Shoe Workers International Union merged with the Retail Clerks International Union Local 68 was issued a charter on September 1, 1977, by the newly merged union, which in turn, subsequently merged with the Amalgamated Meat Cutters and Butcher Workmen of North America in June 1979 That merger produced the present United Food and Commercial Workers International Union Shortly after the last merger Local 68 was issued a new charter that changed the Local's designation to Local 68-R That Local was erroneously designated as Local 68-F shortly after the merger between the Boot and Shoe Workers and the Retail Clerks Because of the confusion over the Local's designation at the hearing, the General Counsel and the Charging Party successfully moved (Tr 4939) to correct the complaint insofar as it shows that Local 68-F is also known as Local 68-R, but that both locals are one and the same I find that Local 68-R is a labor organization as defined in Sec 2(5) of the Act Respondent is an employer engaged in commerce within the meaning of Sec 2(2), (6), and (7) of the Act

[3] This was not the first union setback in Carlisle, Kentucky, that excited the Respondent In July 1980 "the employees of Blue Grass Knitting

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In celebrating, the Carlisle employees were allowed to have a good time in lieu of working. The next day, about 1 p.m., the Carlisle employees rode over to Mt. Sterling in four of Respondent's buses, with Don Haney, Respondent's president, driving the lead bus. About 270 employees, including 6 supervisors, made the trip On their arrival at Mt. Sterling they poured into the plant, led by Don Haney.

As they were arriving, the plant's interior loudspeaker system was turned up to boom out the playing of Roger Miller's well known song, "King of the Road." It was played differently than Miller had recorded it, however, for as Don Haney admitted, he had looped the tape so that Miller's voice repeated, "Don't pay no union dues" seven times in succession. With this gentle hint dropped on them by Miller's voice booming over the loudspeaker, the stunned employees were then treated to Haney as grand marshall of the Carlisle employees' parade through the aisles of the Mt. Sterling plant.

As in any good parade there were banners and streamers; there was marching; there was dancing; there were cheers and shouts; there was loud music—indeed about the only things that there were not were floats, and perhaps that omission was meant to be cured by the mannequin, at times carried by Haney, that bore a T-shirt with "Union Buster" on the front and "Blue Grass, Love it or Leave it" on the back. And what was lacking in decibels from a brass band was made up for by the loudspeakers. For what to Haney was, grudgingly, loud music (Tr. 4960), was clearly very loud, and for some, "deafening."

But the Mt. Sterling employees were not left to be just spectators at this parade. They became participants and, in many instances, victims.

The Carlisle employees blew whistles, often close by the Mt Sterling workers whose machines they were passing, rang cowbells, and yelled at the workers at their machines to join them. The marchers stood on the machines and on crates and yelled down at the seated workers. Then they began putting antiunion buttons on the Mt Sterling employees. Supervisor Sue Easterling climbed up on a table and while undoing the top buttons of her blouse began dancing and encouraging her charges to join in the demonstration. She also pinned antiunion buttons on nearby employees. Another supervisor, Edna Reed, asked an employee that she supervised to wear an antiunion button, but the employee declined. Supervisors Marie Hunt and Edna Cole urged employees to join in the fun. Supervisor Mary Miller handed an antiunion button to her daughter, who put it in her pocket, only to be further cajoled by Mary Miller to join in.

During all this, Supervisors Karen Richards, Peggy Stull, and Edna Cole were pushed around in crates, the latter two waving posters saying "Union Free, Proud To Be" and "Momma, don't let your babies grow up to be Teamsters."

All this went on for between 1 and 2 hours. Not surprisingly, many of the Mt. Sterling employees could not work because of the noise and confusion, causing them to lose money. Their "visiting" counterparts from Carlisle were getting paid. But even worse, the sudden sports-arena atmosphere of the workroom caused discomfort to many employees. One, Mildred Faye McNabb, collapsed in the restroom Others complained to their supervisors, who made no attempts to stop the demonstrations. Some left early, others tried to work, but found that their ability to do so was impaired by the demonstrators—boxes were kicked away, thread was broken, and the orderly movement of production down the line slowed down or outright stopped.

B. *The Demonstrations on the Days of and Before the Election*

Respondent was not content to lead one antiunion demonstration a distant 7 weeks before the election. It chose to repeat, amplify, and reinforce the impact of the May 1 demonstration by restaging it on the day before the election and on the day of the election itself.

The intimidation of the union-oriented and undecided employees began even before the workbell rang on the morning of Thursday, June 18, 1981. It was common for supervisors and employees to arrive early and take coffee in the plant cafeteria before the workbell rang But on that morning, the arriving employees were greeted by a parade of supervisors in the cafeteria. They marched through the aisles banging on pie pans and lard cans alternately chanting "Go Union, Go—Go Union, Go" and "Two bits, four bits, six bits, a dollar, all for Blue Grass stand up and holler." As they came to antiunion employees seated in their path, the supervisors would urge the employees to get up and join the parade. Many employees did join, and the demonstration continued. When the workbell rang at 7:30 a.m. the supervisors went to work, but the parade continued. The supervisors involved included just about every floor supervisor—Sue Easterling, Mary Miller, Edna Cole, Peggy Stull, Marie Hunt, Mary Sue Stamper, Karen Richards, and Edna Henry—and Personnel Manager Shirley Spradling and Cafeteria Supervisor Virginia Horseman. Most wore red buttons inscribed "Union Free and Proud to Be."

The continuation of the demonstration past the 7:30 a.m. workbell involved not only the parading employees whom the supervisors had launched, but Plant Manager Betty Montgomery, who came out of her office at 7:30 a.m. followed by employees chanting and beating on the empty lard can that was serving as a drum.

The parading, demonstrating, and chanting continued throughout the day, either abetted or condoned by the supervisors. Roger Miller's "King of the Road" was again blasted over the loudspeaker, again repeating

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after the UFCW withdrew their petition to have an election, simulated a burial of the UFCW, and they placed a sign over the top of the grave" (Testimony of Don Haney, Tr 4974) The sign read, over a wooden box placed in the grave, "ashes to ashes, dust to dust Here lies the ones you now can trust" During this graveside service, between one-half to all Respondent's employees were present during worktime at the gravesite in the lawn between two plants in Carlisle, one owned by Blue Grass Knitting (a separate entity owned by Jockey International) and the other owned by Blue Grass Industries (Respondent, owned by the Wolff Family, who Haney described as "major shareholders in Jockey International," Tr 4973) I agree with the General Counsel that this episode alone warrants a finding of union animus on the part of the Respondent, notwithstanding that Respondent lays the episode at the feet of Blue Grass Knitting, not itself The attempted corporate distinction is too cute

"Don't pay no union dues." Throughout the day the antiunion employees paraded through the aisles in the work area, banging on buckets and pans, blowing whistles, and ringing cowbells. During the morning, Supervisor Edna Cole handed out balloons to the antiunion employees. Cafeteria Supervisor Virginia Horseman handed out pie pans and metal spoons

The continuous cacophony took its toll.

The economic toll is obvious Amid the din and distractions, concentration on work became difficult. Many of the witnesses testified that because of the demonstration they could not "make their production." Don Haney testified that only 25 to 35 percent of the employees worked throughout that day. The following examples typify the production falloff on June 18

Employees	*Normal Production (Bundles)*	*Production*
Linda Rogers	19–22	2–3
Daisy Marshall	14–15	8
Lola Johnson	50–60	6
Elizabeth Norris	17	1

The toll in human terms paralleled the decline in production—indeed, the production decline was caused by the impact of the commotion on the workers' health and state of mind. Instead of the normal humming of the workplace environment, what they had to put up with was a carnival For some employees, this change in the working environment was of no untoward moment, but for many it was disturbing. Faye Willoughby passed out in the bathroom and was taken away, finally, after a delay in calling the ambulance because of the carnival commotion She returned to the plant before lunch, and wore earplugs the rest of the day.

Lola Johnson crawled under the worktable to avoid the "beating on pans . . . blowing horns, and hollering" (Tr. 1990). When this failed, she retreated to the bathroom and passed out. "[W]hen she came to, she had to leave to go home " (Tr. 1902, Nancy Gillon's testimony.)

Diana Reffitt, who was known to have worn antiunion buttons, almost fainted, but was walked to the office by coworkers.

Elizabeth Bradshaw "cried all night long. I couldn't sleep much. And my husband refused to let me come back to work the next day . . . but I did come down to vote." (Tr 133)

Altie Lou Clemons testified that the demonstration made her "real nervous. . And I couldn't sew. I got up and went to the bathrooms and smoked a cigarette and stuff, and then I come back and sat down and was going to try to sew again, but I just kept getting so nervous and when I get nervous, my fingers and stuff draws." (Tr 249.) She also broke out in welts and had to go outside to calm down. She tried working again, but "with the music and stuff going and dancing by my machine . . . I just said, 'to heck with it,' and got up and left." (Tr. 252, 280) This was at 1:30 p.m. Delorice Becraft left at 3 p.m. because of the noise. Anna Gross left at 2:30 p.m. because of a headache. Vickie Rister thought she was used to noise because of her big family; she became so nervous that she had to leave for the day before her lunchbreak.

Although employees who could muffle the noise continued to work, earplugs were not plentiful, and in any event they were ineffectual against the whistle-blowing-in-the-face-technique frequently employed by the demonstrators. Some of the union supporters retreated to the plant cafeteria while some went outside. Those in the cafeteria were soon joined by antiunion employees, who surrounded them and cheered and hollered. The prounion employees cheered and hollered back. Union supporters who walked out of this vocal melee were catcalled by the antiunion demonstrators, who interrupted their chanting of "Go union, go on the floor and out the door." Wanda Sue Martin asked Plant Manager Betty Montgomery to end the catcalling, but "she just grinned and [Martin] got mad and walked off " (Tr. 3209.) Brenda George asked Supervisor Sue Easterling "if she would have the girls to sit down and quit the parading that there was people getting sick. She said 'Everyone is fine, everyone is just having fun.' I told her . . the girls are getting sick. She said 'Well, if they can't take that, they shouldn't be in here working.'" (Tr 3292.)

This brings us to election day, June 19, 1981. Incoming employees were greeted with the sight of big balloons in front of the plant with streamers urging the employees to "Vote No." Otherwise, the morning's events were a continuation of the demonstrations of the day before—more beating on lard cans, shouting, and parading through the factory. By 8 a.m., there were 50 to 75 employees marching behind Cafeteria Supervisor Virginia Horseman.

Again, the prounion workers, finding no work to do and a hostile environment in which to do any constructive work, went to the cafeteria or outside the plant. The latter group sang gospel songs; the former, again surrounded by "the anti's" chanting "Go union go," responded by singing, "We shall not be moved." Again, Cafeteria Supervisor Horseman handed out pie pans and spoons for "the anti's" to bang. There were, not surprisingly, some instances of pushing and bumping, but the atmosphere was less charged than the previous morning's. But in effect no meaningful production was accomplished that morning.

This changed as the hour of the election drew nearer. Employees returning from their lunchbreak were told by their supervisors to go to their stations and proceed to work as usual This instruction emanated from Don Haney, who had Plant Manager Betty Montgomery pass the word that "after lunch, we're expecting everybody to sit down and start working " (Tr. 6376) But the supervisors could not resist further entreaties. Supervisors Mary Sue Stamper and Edna Reed asked employees Norma Jean Calvert and Betty Goodpaster if they had reconsidered or changed their minds about voting for the Union. Supervisor Reed told Tammy Barber that "the right way to vote is 'No' for no union." (Tr. 1026.)

This pitchmanship was presaged, insofar as we are talking only about the events of June 18–19, by a slide show and speech presented to the employees after lunch

on June 18. The speaker was Wayne Shumate, the chairman of Respondent's board of directors. The slide show, prepared by Jockey International's advertising department, presented pictures of Mt Sterling and its environs, which Respondent nicely describes as being "in the midst of the picturesque, rolling hills of the Blue Grass region." (Br. 4.) Homes, churches, and stores were shown But this was not a presentation of the type calculated to lure plants and commerce to an area. The audience was a group of employees who were to vote slightly more than 24 hours later on whether their plant was to go union One wonders, then, why the slide of Respondent's recently closed Maysville plant with its "For sale" sign was shown at various intervals during the slide show. One would doubt that this was to acquaint the employees with the picturesque scenery in Maysville. Or, as Chief Justice Warren put it, "[w]hat did the speaker intend and the listener understand?"[4]

A part of the slide presentation depicted three Mt. Sterling employees talking about the upcoming election at a pizza parlor. The portrayal had "three girls, one was for the union and two were against and they were telling her how she didn't need a union and explaining that she could lose her job for being for a union. The union only took her money for union dues" (Tr. 3297, testimony of employee Brenda George.)

But the foci of this staged melodrama were the companies Bata Shoe and Hobart. The principal antiunion speaker stated that the UFCW had represented the employees at Bata Shoe—indeed that the same organizer as at Blue Grass, David Gray, was at Bata Shoe—and that Bata Shoe had shut down, as was stated in the "newspaper clippings."[5] (The next day, election day, the supervisors wore buttons that read "What did Gray do for Bata Shoe?")

The reference to Hobart was to a unionized manufacturing company located in Mt. Sterling. One of the antiunion speakers in the pizza parlor vignette stated that her husband was not working at Hobart and that the whole factory had been down for 8 months. The more outspoken antiunion speaker said that all the union plants in the Mt. Sterling area had been on strike and had suffered many layoffs than Blue Grass had.

Finally, the speakers in the drama turned their attention to Blue Grass. The Company had been transferring employees between departments, which meant a pay reduction for the transferees, a sore point among the employees. In the pizza parlor scene, one of the women stated that she was going to be transferred, and that she would have to settle for the minimum wage of $3.35 per hour. Another said that things did not have to be that way because they had changed at Carlisle. When asked why Blue Grass could not change things at Mt. Sterling, she replied, "It's because of the Union, the union campaign. You know that wages can't be changed until this union campaign is over" (Tr. 3650, testimony of employee Joann Richmond.)

C *Findings and Conclusions Regarding the Events of May 1 and June 18–19, 1981*

What are we to make of all this? Why would Respondent organize and countenance in-plant parades, resulting in 2-1/2 days of work disruption and lost production, flash recurrent images of one of its own closed plants, relate the Charging Party union to the closings and layoffs in the area, and tie its not stopping the employee transfers to the organizing campaign? And what could we reasonably expect would be the effect of Respondent's action?

1. The unfair labor practices

"By the demonstrations on June 18 and 19, Respondent managed to coerce, intimidate and discriminate against every union supporter in the plant." (G.C Br. 100) I agree, and would apply that conclusion to the demonstration of May 1 as well. Short of mayhem, I can imagine a no more coercive atmosphere for a workplace environment than the organized chaos that encompassed the entire workfloor on those days, right up to the afternoon of the election. What are employees to think when the president, leading nearly 300 strangers, bursts in on the plant, or when their immediate supervisors lead parades throughout the plant or stand smiling while employees sing "Go union go?" Respondent's answer, that prounion employees were also demonstrating on these days, begs the questions just posed. There is nothing in the record to support, and Respondent's brief does not allege, that the prounion employees started any of these events But it is clear that Respondent was in control of its workplace at all times, as exemplified by the ease with which it established silence and normalcy after the lunchbreak on June 19 as the election drew near. It is apparent that Respondent controlled the demonstrations and parades, and that it did so, ostensibly in a lighthearted manner, to infuse the workplace with its antiunion animus. Nothing can be more convincing of this than the deterioration of production that Respondent allowed to occur. For production was the watchword at Blue Grass, and the power and attitude of the Respondent could be no more tellingly displayed than when it threw that watchword out the window in order to deal with a more pressing concern—the Union. The employees did not have to have written out what this employer wanted them to do—they had it blasted into their ears at their own workstations. By its actions Respondent interfered with the election that was held on June 19, 1981

Respondent relies on "the pictures taken by Mary Etta Vanlandingham [to show] that the atmosphere in the plant on the day before and the day of the election was considerably more relaxed than General Counsel would have anyone believe." (R Exhs. 98–113; Br. 75.) And, indeed, those photographs show smiling faces, work being performed, guitars being strummed, and the blue sky of Kentucky in late spring. But the apparent innocence of these scenes is belied by the testimony of many, out of which I have formed the above composite of dis-

[4] *NLRB v Gissel Packing Co*, 395 U S 575, 619 (1969) (quoting from A Cox, *Law and the National Labor Policy* 44 (1960))

[5] There had been newspaper clippings from a Salem, Indiana paper reporting on labor relations at Bata Shoe that were posted on the Blue Grass bulletin board The clippings stated that Bata Shoe had been on strike for 13 weeks (which was underlined in ink) and that it closed for economic reasons

ruption and lost production But, in any event, the fact that Respondent three times turned its plant into a carnival is not materially different than if it had done so to produce mayhem. What counts is the not so subtle message being given to employees—that their employer was so concerned with how they would vote in the imminent election that it would do anything (represented by the de facto suspension of production) to influence the outcome, blatantly intrusive into and coercive of the employees' free choice. Respondent's purported beneficence—good times on the plant floor—is the same "fist inside the velvet glove" approach condemned by the Supreme Court in *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964), for like the unilateral benefits granted before an election there, Respondent's "good, clean fun" demonstrations here suggest an aura of employer good will that "is likely to be ephemeral if prompted by a threat of unionization which is subsequently removed." 375 U.S. at 410.

Nor was the fist inside that velvet glove all that hidden. The slide show that followed the June 18 demonstration had as its purpose the message that a prounion vote would lead to the shut down of the plant, the most chilling message that could be imparted by management to workers contemplating unionization. Closure was the clear implication from the repeated showing of the closed Maysville plant, and from the pizza-parlor dramatization linking the Union and its organizer to strikes and plant closures in the area. And the message was clear that strikes were inevitable, and because of such strikes and closings, selecting the Union would be futile. These messages, whether implied or explicit, violated Section 8(a)(1).[6]

Finally, as the General Counsel points out, there was more going on than mere "boisterous conduct" on the election's eve. There were, in the guise of a carnival, many instances of employee interrogation. Every adjuration by a supervisor to an employee to join the demonstrators, whether in the cafeteria or on the plant floor, was an interrogation, for it forced the employee to an immediate choice. So, too, was the supervisors' handing out of union buttons, a classic form of coercive interrogation. *Garland Knitting Mills*, 170 NLRB 821 (1968). And finally, Respondent's handing out of kitchen utensils, through Cafeteria Supervisor Virginia Horseman, provided the tools for their use in harassing the prounion employees. Although Respondent points to the in-plant chanting of and exterior guitar playing by the union supporters, that conduct was both provoked by and is distinct from the kitchen utensil parade. The purpose of those parades, on both June 18 and 19, cannot have been to provide a diversion from a dull workday—the election's imminence makes that clear. Rather, it was intended as a means to show and drum up support against the Union. Even if Respondent's misconduct were deemed minor, in the circumstances of an election so close that 3 ballots out of 407 made a difference, such misconduct would have to be deemed as having influenced the election and having caused it at least to be set aside. *NLRB v. Triplex Mfg. Co.*, 701 F.2d 703 (7th Cir. 1983). But these were not minor actions. They constituted interrogation and harassment violative of Section 8(a)(1) of the Act. Further, they destroyed the atmosphere necessary to the employees' exercise of free choice in an election. Coming as they did during the critical period, indeed on the eve of the election, Respondent's practices constituted objectionable conduct sufficient to warrant setting aside the election. *Conair Corp.*, 261 NLRB 1189 (1982).

2. The remedy for the disrupted election

That brings us to the next question. Should the election merely be set aside for a rerun, or are more drastic remedies called for? The General Counsel and the Union urge that the traditional remedy of a rerun election be foregone and that a mandatory bargaining order issue. Failing that, the Union urges that the special requirements found in *Teamsters Local 115 v. NLRB*, 640 F.2d 392 (D.C. Cir. 1981), be imposed on Respondent to ease the Union's ability to reach the employees and attempt to undo the damage to the election process wrought by Respondent.

I conclude that a bargaining order is warranted.

The Supreme Court stated in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), that the Board may impose a bargaining order on a company that has won a union representation election when the employer's serious and pervasive unfair labor practices have so tainted the election process that the possibility of ensuring a fair rerun election is slight. Thus, whether or not the Union ever achieved a card majority (i.e., a majority of the employees who signed and returned cards designating the Union as their collective-bargaining representative), Respondent's practices warrant a bargaining order. This is because the lingering effect of the Respondent's disruptive conduct, amounting to unfair labor practices involving, inter alia, interrogation, harassment, intimidation, and coercion, must be presumed still to be present to taint a rerun election, with the result that a fair and reliable election cannot be held—at least not between this Employer and this Union at this plant.

With the exception of employee discharges, which, happily, are not alleged here, this case evokes findings and conclusions similar to those in *Conair Corp.*, supra, that warrant the issuance of a remedial bargaining order whether or not the Union achieved a majority status on the basis of signed authorization cards. And assuming here, arguendo, that the Union did achieve such a majority (see, infra), the facts here are far more compelling for issuance of a bargaining order than were those in *NLRB v. Delight Bakery*, 353 F.2d 344 (6th Cir. 1965). In that case, involving "only" violations of Section 8(a)(1), the court of appeals had no problem enforcing the Board's mandatory bargaining order even though "[n]one of the heavy-handed, coercive devices so familiar to NLRB records . . . were employed," 353 F.2d at 345. Indeed, the Sixth Circuit's principal concern in bargaining order cases is that the reasons be clear why those unfair labor practices that undermined the election require a bargain-

[6] *United Supermarkets*, 261 NLRB 1291 (1982) An explicit statement was made by Don Haney to Mary Hall on the morning of the election that a union victory could produce a strike because Blue Grass would not negotiate (Tr 3351) This clearly violates Sec 8(a)(1) *Devon Gables Nursing Home*, 237 NLRB 775 (1978)

ing order instead of a rerun election. Compare *NLRB v. Naum Bros., Inc.*, 637 F.2d 589 (6th Cir. 1981), with *Big Star v. NLRB*, 697 F.2d 157 (6th Cir. 1983). Here, those reasons are clear: the massive in-plant demonstrations and the slide-show presentation created an atmosphere of harassment, impression of surveillance, coercion, and fear of plant closure that were plantwide. These events were so memorable that even the passage of time for this proceeding to occur cannot be assumed to have erased them from the minds of any future electorate that would be the subject of a rerun election. And since that lingering, residual effect of Respondent's conduct would foreclose the holding of a fair election, even the extraordinary access and notice remedies urged in the alternative by the Union would be useless because they would merely be leading up to a rerun election. For as the Board found in *Conair*, "[i]n moment and duration, the timing of Respondent's unfair labor practices underscored its enduring resolve to oppose unionization by any means and deeply imprinted on employee memories the drastic consequences of seeking union representation." *Conair Corp.*, supra, 261 NLRB at 1193.

D. *Other Unfair Labor Practices*

Apart from the foregoing, Respondent committed many other unfair labor practices during the critical period. These interfered with the election and, because of the closeness of the election, require that it be set aside. But for Respondent's outrageous conduct in the in-plant demonstrations and slide show and the pervasive effect of those actions on the atmosphere in which the election was held, a rerun election would be in order because of the following unfair labor practices alone. But, because the outrageous conduct and pervasive atmosphere have a lingering effect at the Mt. Sterling plant, they would taint a rerun election, as discussed earlier.

The General Counsel alleges "repeated 8(a)(1) violations of interrogation, threats of loss of benefits, threats of plant closure, threats that Respondent will not negotiate with the Union." (Br. 85.) These will be discussed seriatim, listed by supervisor or event.

1. Edna Henry

On April 3, 1981, this supervisor asked employee Faye Willoughby about the Union, and told her that if employees wanted to work at a union plant they should quit their jobs at Blue Grass and go to a union plant. (Tr. 5722–J.) This violates Section 8(a)(1) of the Act. *Rolligon Corp.*, 254 NLRB 22 (1981).

Faye Willoughby also testified that Edna Henry said that she had heard Wayne Shumate say that the plant would close if the Union got in. This was said to Dolly Becraft, seated near Willoughby, in response to Becraft's inquiry about a rumor of plant closing. Although Henry denied saying this, I credit Willoughby about the substance of the remark, although she was of a different view about the date than is alleged in the complaint. Both on direct examination and cross-examination she placed it about a week before the April 3 episode with Henry, although the complaint alleges late April. Because I credit this witness generally, I accept her recollection that it was a late March, not late April episode. In any event, threatening plant closing violates Section 8(a)(1). *Charge Card Assn. v. NLRB*, 653 F.2d 272 (6th Cir. 1981).

On April 6, Henry asked Willoughby which way employees Wanda Sue Martin and Sue White were leaning, also repeating her April 3 sentiment that anybody who wanted a union at Blue Grass could go where there was one. Henry denied saying this, but I again credit Willoughby's testimony over Henry's perfunctory denials. This interrogation violates Section 8(a)(1) because it "suggests to the employees that the employer may take action against them because of their pro-Union sympathies." *Frito-Lay, Inc. v. NLRB*, 585 F.2d 62, 65 (3d Cir. 1978).

2. Don Haney

During the June 19, 1981 demonstration, before the election that afternoon, Don Haney was asked by employee Mary Hall "what he would do if the union came in. He told her [according to employee Brenda George, whose machine faced Hall's] that the girls would be out on strike, they'd be out of work because he would refuse to negotiate a contract." (Tr. 3295.) Haney denied this and Mary Hall, according to George, an "anti," did not testify. I credit George and find that this remark tended to indicate the futility of voting for the Union, a violation of Section 8(a)(1).[7]

The complaint also alleges that on April 24, 1981, Haney coercively interrogated an employee concerning her and others' union activities. According to employee Venus Hurt, this occurred when she asked Don Haney to sponsor her in the upcoming cancer walkathon. He agreed, and then asked Hurt to "tell me about the union." (Tr. 2074.) She mentioned that she had been visited at home. In response to Haney's query what was her gripe, Hurt "told him that I didn't have any; that it was the same as everybody else's: Putting the girls back on minimum wage and giving one break-down per day." (Tr. 2075.)

Haney's testimony about that conversation was not quite the same as Hurt's. He testified that after pledging for the walkathon, he asked Hurt "what's going on? 'She said, you mean about the union?' I said, 'yes, and all the other things about transfer policy'" (Tr. 6340), after which he explained the Company's financial plight.

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[7] *Custom Trim Products*, 255 NLRB 787 (1981). The General Counsel moves for reconsideration of my ruling at the hearing on the last day excluding testimony of a new witness, Jean Hall, of a similar statement that Haney made to her on the day before the election. (Tr. 6611.) Because this episode was not alleged in the complaint, I excluded testimony on it for the reason of irrelevance. In so ruling, I relied on a ground that I see now was erroneous The testimony was relevant to show Respondent's antiunion animus, as proffered by the General Counsel, and would have been proper rebuttal to Haney's denials. But the error is harmless because the evidence is cumulative. Respondent's animus toward the Union has been found, supra, and can be amply inferred from the other statements by Shumate and Haney, the supervisors' actions that are found to violate Sec. 8(a)(1) and, of course, the demonstrations. Indeed the supervisors' actions that appear in the complaint impart only the flavor of Respondent's union animus. The fact that Respondent did not display this animus more heavy-handedly than it did is probably owing to its being counseled throughout the campaign.

Hurt was one of the General Counsel's most credible witnesses. Not that Haney was an incredible witness, just that he could, by omission or nuance, shape his answers toward Respondent's best use, the instant episode being a good example. I credit Hurt's version. And, notwithstanding Haney's general amiability, I find that his "questioning . . . reasonably . . . tended to coerce under the circumstances." *Graham Architectural Products v. NLRB*, 697 F.2d 534, 538 (3d Cir. 1983) Here we have the Company's president asking an employee about the Union in the midst of an organizing campaign. Whatever the employee answers, it puts her on the spot, an interference with her right to participate or refrain from participating in the campaign of no less magnitude than is the question "How will you vote?" See *Quartrol Corp.*, 266 NLRB 120 (1983).

3. Peggy Stull

Judy Hart, an active prounion employee, testified that in March 1981 Peggy Stull, product manager, asked her twice, "How's the Union going?" Hart responded that she did not know, and rejoined with "How do you think it's going?" Stull then responded, "I don't know" and walked off. Later that day Stull went back to Hart and said, "Judy, I can't understand why anybody would pay . . . $12 a month union dues took out of their checks." Hart replied that before she had been laid off she was earning $6.07 an hour, but now was making $3.26. She told Stull, "The Company took that away from me. . . . I'd be glad to pay $12 to help get that back." Stull responded to this by saying, "Well, if the union dies down, things will get better." (Tr. 4402–4403.)

The Union subsequently filed an unfair labor practice charge about this episode. According to Hart, on June 2, 1981, Stull accosted her with a copy of the charge, telling Hart that it was untrue Showing the charge to employee Sue Staton in Hart's presence, Stull then turned to Hart and said, "Judy you could be fined $300 or sent to prison for 3 years for giving false statements to the Labor Board." Hart responded that she would not be fined "because they're true" (Tr 4405.)

Stull denied the interrogation incident. As for the unfair labor practice charge incident, she testified that she merely handed the paper to Hart, let her read it, and passed it to employees Staton and Norris nearby, and that was the end of it.

I credit Hart's testimony over Stull's, particularly on the charge issue, where I doubt that the clearly peeved Stull showed the paper to Hart without comment.[8] Stull, a top-line supervisor, by her conduct toward Hart, engaged in coercive interrogation concerning union sympathies, the promise of benefits, and coercive interrogation concerning the filing of an unfair labor practice charge, each reasonably tending to restrain and coerce employees in the exercise of their Section 7 rights, and each, thus, a violation of Section 8(a)(1).

[8] Norris credibly testified that when Stull approached, she showed Norris the paper "where Judy Hart had filed charges" and said "Judy Hart made these charges and she could be in bad trouble" (Tr 2723–2724)

Stull's interchange with Norris went further than the Hart episode mentioned in footnote 8, supra. For after showing her the Hart charge, Stull put another piece of paper in front of Norris, this one being a list of "questions addressed to [Union Organizer] David Gray, and . . that I should give the answers to them that night." Stull showed the same list of questions to employees Nora Dalton, Judy Hart, and Pam Ballard. Norris recalled that there were about four questions, one of which was "ask David Gray how many elections had he won over the last two years" and "How many plants have closed that David Gray organized?" (Tr 2726–2728.)

Stull's testimony about this incident was that "I had a paper in my hand with that about Bata Shoe Company just to ask . . . and I said 'Why don't you ask David Gray about Bata Shoe Company, what happened to Bata Shoe Company?'" (Tr. 5338–5339.) This really bolsters Norris' account, which I credit The upshot is that Stull again injected the Respondent into its employees' rights to consider or reject the Union, and it was in the nature of coercive interrogation, tending to put the employees on the spot about their conduct regarding the Union. Therefore, I find a violation of Section 8(a)(1)

Finally, concerning Stull, we have the episode involving employee Darlene Conner. Toward the middle of May 1981, Stull told Conner that if the Union got in, when Conner's children got sick she would not be able to take off to take them to the hospital. This statement, which I credit over Stull's self-conscious denial, implied a threat of loss of benefits for voting in the Union, and is a violation of Section 8(a)(1)

4. Marie Hunt

During April 1981, Hunt admonished union supporters not to talk to each other during production, while allowing herself to talk at length on the plant floor to employees who did not support the Union. The prounion employees involved were Dianne Smith, Mina Patrick, Lotus Bowling, Linda White, and Venus Hurt. Hunt, in turn, was observed by employees White and Bowling talking to employee Dorothy Denton for between 15 to 20 minutes. Although the General Counsel presses the point of disparate treatment, there is no indication that there was further enforcement of Hunt's edict or that it was more than a de minimis infraction Therefore, I do not find an 8(a)(1) violation.

But, during April and May 1981, Hunt, several times told Bowling that she could not understand why Bowling would support the Union when she already had such a high piecework rate. Bowling's reply was that "money wasn't everything, that the treatment of the people have a lot to do with what we were working for." (Tr 4705.) This would usually end the conversation.

The General Counsel argues that this was unlawful interrogation, and I agree This constant repetition of antiunion sentiment by a first-line supervisor on the plant floor is not the robust debate on a plantwide basis that Respondent would have us believe in the preface to its brief, nor is it the possibly uncoercive give-and-take among friends that might have been the case had the supervisor been Edna Reed, Bowling's friend of 10 years

(although the campaign ended that friendship). Given the closeness of the election, if Respondent, through these endless supervisory infractions, turned any vote, its actions potentially affected the outcome of the election. Thus, the many allegations of supervisory misconduct alleged in the complaint must be looked at very closely. In this light, Hunt's interrogations of Bowling, as described by Bowling, are credited, and a violation of Section 8(a)(1) is found

Venus Hurt testified that after the May 1 demonstration by the Carlisle employees, Hunt, her supervisor, told her that "the union wasn't the ones that got us over contracts and stuff, that we could go on strike . . . that Wayne Shumate would not negotiate with the Union . . . if a union was voted in . . . it could affect our vacation pay, that it could affect a lot of our things; but it could affect our vacation pay and everything; like it could hold it up, you know, and we wouldn't get it." (Tr. 2087-2089.)

Hunt denied this, but, as earlier, I credit Hurt As we shall see presently, Hunt's statement about Respondent's chairman, Wayne Shumate, not bargaining was echoed by Supervisor Sue Easterling, the most ardent and uninhibited antiunion supervisor Although Hunt's conduct is surpassed by Easterling's, it is no less a prediction of the futility of selecting the Union, plus a threat of the loss of benefits, clear violations of Section 8(a)(1).

Early in June 1981, Respondent changed its layoff procedure from the least senior to the most senior employee being the first to be laid off when needed to balance the lines (i.e., when necessary to equalize the workflow). Marie Hunt testified that she had been wanting to do this for some time because the more senior workers never had the sought-after opportunity to be away for a day or so when this need occurred. She sought permission to make the change, and did so when prompt approval was granted. As the General Counsel points out, making changes in the terms and conditions of employment during the pendency of a representation petition raises an inference that Respondent unlawfully granted a benefit to dissipate employee support for the Union, *NLRB v. Exchange Parts Co*, supra. Here Respondent has not proven that there was a valid reason unrelated to the organizational campaign for making the change in layoff procedure, hence a violation of Section 8(a)(1) is found.

Finally, we have the timeclock incident. Employee Shirley Poe testified that a few days before the election she saw Edna Cole and Marie Hunt standing near the timeclock counting the number of employees who were wearing union insignia or who were known union adherents. As she passed by she heard one of the supervisors say "It looks like a lot of them " (Tr 2578.) Both supervisors denied that this episode occurred.

Between the testimony of Poe and the two supervisors on the issue of credibility there is little from which to choose. The supervisors' denials follow a consistent pattern of seeing no evil, hearing no evil, and telling no evil. Poe on the other hand, was an ardent union supporter who soured on the Union and, in particular, David Gray, after the election Thus, her testimony requires careful weighing to sift out the credible from the incredible.[9]

Here, Poe's testimony rings truer than the supervisors' denials. With the election looming near, it is entirely conceivable that management would be discussing among themselves who were the "pros" and who were the "antis " The error of Supervisors Hunt and Cole was their doing so in such blatant manner as to create the impression of surveillance, a clear violation of Section 8(a)(1).[10]

5. Sue Easterling

Easterling, who did not testify, was the most energetic supervisor in opposing the Union. The complaint focuses on six examples of Easterling's zeal.

Diane Williams testified that sometime during the second week of April 1981, she heard Easterling say to employee Revena Mullins "that if the people who wanted the Union didn't like the way things were here, why didn't they leave and go some place where there was a union." (Tr. 698.) Williams testified that Easterling repeatedly made that statement to various employees. Employee Mildred Crouch testified similarly, in this instance Easterling having prefaced her remark with the view "that she didn't know why we would want a union at Mt. Sterling, that we had good benefits, and that all the union was after was our money " (Tr. 4099.)

On April 29, 1981, as Crouch recalled, "Sue walked up to my machine and she said that the Union would take everything we had. That we'd have to start at rock bottom and go back up" (Tr. 4100) On that same day Easterling told employee Brenda Lawson, in the presence of Crouch, that "if the Union got in, we would strike." Failing to get the assent of nearby employee James Holt to this assertion, Easterling repeated, according to Crouch, that "we will strike." (Tr. 4101.)

Two days later the Carlisle employees paraded through and demonstrated in the Mt. Sterling plant, much to Easterling's enjoyment. Employee Darlene Conner testified that on this day Easterling told her that if she voted "for a union, that I would be sorry . . . that Don Haney did not have to negotiate with the Union because Carlisle was union-free. And they could work 6 days a week. And, then, therefore, we would be out of a job." And, that if the Union came in, Wayne Shumate, Respondent's chairman of the board, could "just transfer the contracts to—on to Carlisle and that would knock us out of a job. And he could shut it down " (Tr. 557.)

Not content with threats of plant closure, economic reprisal, and loss, and the futility of voting in the Union, all violations of Section 8(a)(1), Easterling, on May 5, 1981, instructed Conner to remove her union button and told her she would be pestered every day until she removed it. This threat, like Easterling's others, clearly tended to coerce employees in the exercise of their Sec-

[9] There is no inconsistency in crediting only a part of a witness' testimony, *Maximum Precision Metal Products*, 236 NLRB 1417 (1978)

[10] I cannot conceive why Poe would fabricate this event, whereas the supervisors would have many reasons to deny it When she testified, Poe was working for Respondent, which adds weight to her veracity about this event

tion 7 rights, thereby violating Section 8(a)(1) of the Act.[11]

Finally, employees Shirley Poe and Janice Hensley testified that they saw Sue Easterling tear down a poster on June 15, 1981, about 45 minutes after Hensley had put up the poster. Poe testified that the poster was not covering anything (Tr. 2670). The bulletin boards were used by both sides, although disputes occurred over the denial of space, the covering of one side's posters by another's, and the removal of posters. But here we have Easterling pulling down a prounion poster with no provocation or justification, hence a violation of Section 8(a)(1). See *Honeywell, Inc.*, 262 NLRB 1402 (1982).

6. Betty Montgomery

Montgomery, a longtime Blue Grass employee, became the Mt. Sterling plant manager in mid-May 1981. Soon thereafter she began to hold meetings with the employees in small groups to find out what problems they had and get suggestions for improving working conditions and operations. Various problems were identified: having to hunt for more work to do; having machines located poorly on the line, requiring excessive walking; having frequent machine breakdowns, and the Company's policy regarding compensation for time lost because of breakdowns; plant ventilation; and, a major irritant, the transfer of employees to different jobs, causing a loss of pay (from a high piecework average to a lower minimum wage). Montgomery, a conciliatory manager, admitted that the latter "was not her doings and that if she had anything to do about it, she would have tried to have done a little differently."[12] Concerning those matters that she could control, she told the employees that "she would work on it "[13]

Some of the solicited employees' requests bore fruit. Machines were moved, for less walking, and air conditioning was implemented to lessen the heat buildup. But even without these implementations the General Counsel finds fault with the solicitation of the employees' grievances by Montgomery. The reason for the General Counsel's concern is that "[w]hen an employer who has not previously had a practice of regularly soliciting employee complaints suddenly embarks upon such a course during an election campaign, there is a strong inference that he is, in effect, promising to correct any inequities he discovers as a result of his inquiries, and impliedly urging on his employees that the combined program of inquiry and correction will make collective action unnecessary." *Raytheon Co.*, 188 NLRB 311, 312 (1971). *General Merchandise Distributor*, 263 NLRB 931 (1982).

That inference is raised both by the atrocious timing of Montgomery's employee meetings—2 to 3 weeks after the parties had consented to an election—and the fact that such meetings were novel. The only mitigating thing that can be said (but not by Respondent, whose brief, by silence, concedes the point) is that Montgomery, having moved up through the ranks, sincerely wanted her management style to be more employee conscious than her predecessor's And from my observation of Montgomery's testimony, I sense that this could be the case.[14] But my speculation does not overcome this strong inference of election interference that the facts raise, and I find a violation of Section 8(a)(1).

On June 16, 1981, Plant Manager Montgomery sent a letter to the employees (G.C. Exh. 242) stating:

> One of the things the United Food and Commercial Workers Union has tried to make you believe in the past few weeks is that there is no way you can lose if the Union wins the election and gets the right to deal with Blue Grass about your job, including your wages and benefits. That is not true. You have seen the newspaper clippings about Bata Shoe Company in Salem, Indiana. Some of the employees there believed that there was no way they could lose, but after voting the Union in and negotiating for months, the Union called a strike. The employees received no paychecks while they were on strike and after eighteen weeks of striking, the Company announced that the plant would have to close and that all the jobs would be lost.
>
> . . . .
>
> I am not saying that those things that happeened at Bata Shoe will happen here, but these things have happened to other employees at other places and you have to decide whether you want to take the chance of having such things happen here.

Of course, an employer is free to predict the economic consequences it foresees from unionization so long as it sticks to "objective fact [conveying her] belief as to demonstrably probable consequences beyond [its] control." *Gissel Packing Co*, 395 U.S. 575, 618 (1969) Further, an employer's conveyance of belief, however sincere, that the plant would or might close as a result of unionization is not a statement of fact unless the possibility of closing is capable of proof, a situation that is highly unlikely. Id. at 618–619. Otherwise, what the employer's statement becomes is a "threat of reprisal or force or promise of benefit," and thus not protected by Section 8(c) of the Act

Plant Manager Montgomery's letter omits discussing the demonstrable probable consequences of Blue Grass-Mt. Sterling going union. Instead, it gratuitously and rather heavy-handedly brings in the Bata Shoe closing and implies that a similar fate could befall Blue Grass, the employees having it in their power to avert a closing by not voting for the Union. This implied threat clearly tends to coerce employees in their choice, and violates Section 8(a)(1) of the Act.[15]

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[11] Easterling did not testify, which was a loss, since we would like to have observed her demeanor in giving her testimony about these matters The overwhelmingly credible testimony of the General Counsel's witnesses allows us to lament Easterling's absence but not find it an impediment See *Locke Insulators*, 218 NLRB 653, 656 (1975)

[12] Testimony of Jo Ann Richmond, Tr 3575

[13] Testimony of Diane Williams, Tr 702

[14] Montgomery prefaced each meeting by telling "them that I was the new plant manager and that I wanted their cooperation and their help and if there's anything that I could do to help them I'd be glad to help them " Tr 6104

[15] Cf *TRW-United Greenfield Division v NLRB*, 637 F 2d 410, 418 (5th Cir 1981)

7. Edna Reed

Employees Tammy Barber, Sheila Brinegar Baker, and Betty Jean Goodpaster testified that they were interrogated by Reed, a supervisor. Baker testified as follows (Tr. 4245–4247):

> Q. Who was your supervisor during the spring of 1981?
>
> A. Edna Reed.
>
> Q. Do you recall having any conversations with her sometime around early June 1981?
>
> A. Yes.
>
> Q. And where were you when you had this conversation?
>
> A. When we had our conversation? In a little corner.
>
> Q. Do you remember what day it was?
>
> A. June the 2nd.
>
> Q. Okay. What did she say and what did you say?
>
> A. Well, she come over to me and told me she wanted to talk to me in this little corner where they always talk to you and so I went to the corner. And she asked me if I was wearing my Union button.
>
> And I said, "Yes," and showed it to her.
>
> And she said she was going to do the talking for a change and I was going to do the listening.
>
> So I told her, 'Okay.'
>
> And she said Blue Grass did not need a Union and Wayne Shumate did not want a Union and was not going to negotiate with no Union.And I asked her, "Didn't I have the right to feel like I wanted to?"
>
> And she said, "Yes," but she wanted me to know how things stood.
>
> Q. Do you recall if anything else was said?
>
> A. No.
>
> Q. Okay. Do you recall—what if anything happened after you were walking away from the corner?
>
> A. Well, after I walked away from her I was going back toward where I worked and she looked at Betty Goodpaster and told Betty Goodpaster she wanted to talk to her about her Union. And her and Betty went to that same little corner.
>
> Q. Could you hear what they said?
>
> A. No.
>
> Q. Did you have any other conversations with Edna Reed that particular day?
>
> A. Yeah, about 15 minutes before I got off from work. Her and Edna Cole was together and they had some papers in their hand and they said they wanted to see me in the corner again.
>
> So I went back to the corner and she told me that she just wanted me to know that Blue Grass had the papers and she knowed it was a lie and that they had not tried to bribe me.
>
> And I told her that it was the truth when I wrote it down. And I asked her if she was trying to harrass me or trying to get rid of me and fire me.
>
> And she said, no, she just wanted me to know that she had them.
>
> Q. Do you know what kind of papers these were?
>
> A. It was the papers I'd wrote to the National Labor Board.

Employee Goodpaster testified that in her conversation in "the corner," Supervisor Reed said "that David Gray didn't care anything about us and the Union only wanted our money and look at Hobart's, they were laying off. And I told her that Hobart was laying off because of their work, not the Union, it was the lack of the work." (Tr. 3385.)

Supervisor Reed testified that the only discussion on June 2 was about the charge Baker had filed against her, that she had received it.

I credit employees Baker and Goodpaster about the June 2 conversations. Again, this supervisory interjection into employees' union sentiments on the plant floor tends to coerce employees in their Section 7 rights. Such interrogations and indications of futility in voting for the Union constitute violations of Section 8(a)(1) of the Act.

Baker also testified that on May 4, as she was leaving Plant Manager Montgomery's office (having there been informed of a transfer to a higher paying job as discussed below, Supervisor Reed came over to her: "She wanted to know if I was happy now and what I was going to do about my union badge." (Tr. 4242.) Baker testified that she kept the badge on. Supervisor Reed denied this. I credit Baker and find that the comment of Reed implied the badge's removal as a quid pro quo for the beneficial transfer, an action clearly tending to be coercive interrogation tied to the promise of benefits, hence a violation of Section 8(a)(1).

8. Edna Cole

Another election day interrogation was testified to by Norma Jean Calvert, i.e., that while at her machine she was urged by Product Manager Edna Cole "to reconsider," to which she replied, "No, I thought and thought about it and I don't want to change at this late date." (Tr. 2926.) Product Manager Cole denied this, but I credit Calvert who, although nervous, testified sincerely without imparting any basis for finding that the episode was an invention. Since Cole's election day interrogation reasonably tended to coerce an employee's vote, it impinged on a Section 7 right, constituting a violation of Section 8(a)(1) of the Act. *PPG Industries*, 251 NLRB 1146 (1980).

Edna Cole also denied that, as testified to by employee Goodpaster (Tr. 3386), on the day of the election "she came up and wanted to talk to me and she asked me if I had changed my mind and I said 'no,' and she asked me if I was sure that I hadn't changed my mind about voting yes." I credit employee Goodpaster, and find that Product Manager Cole's interrogation reasonably tended to coerce the employee in the exercise of her Section 7 rights and, thus, violates Section 8(a)(1) of the Act.

9. Denial of a pay increase to Sheila Brineger Baker

There are two issues concerning the alleged failure to grant a wage increase to Sheila Baker: Whether Re-

spondent violated Section 8(a)(1) and (3) of the Act by failing to grant a wage increase to Sheila Baker on October 4, 1981, and whether Respondent violated Section 8(a)(1) of the Act by statements allegedly made to Baker that Respondent could not grant pay increases because of employees' activities on behalf of the Union.

Baker testified that on May 4, 1981, at 9 a.m., her supervisor took her to Betty Montgomery's office. Montgomery informed her that there was a job opening in woven boxing, where Baker had previously worked before being transferred, and Montgomery asked Baker if she wanted the job.[16] When Baker asked Montgomery about her rate of pay, she was told she would go back at the same rate she had been making when she was transferred After discussing the matter with the outgoing plant manager, Virginia White, it was determined the job should be offered to Baker because of her prior experience, and that she would be paid the same amount she had previously earned while working on that job.

Baker testified that subsequently she had three conversations with Plant Manager Montgomery concerning a wage increase. The first conversation took place in June, the second in September, and the last on October 12, following the general wage increase given to all employees at the Mt. Sterling facility, that was effective October 4 In the first two converstions, Baker testified that she asked Montgomery about "going up equal" with the other boxing employees, and in the conversation on October 12, that she asked Montgomery why the other boxing employees were making $5.25 per hour and she was making $4.80 per hour. Baker testified that Montgomery's response to her question in June was that her hands were tied while the union activities were going on and other girls in the plant could file charges of bribery if the Company gave Baker a raise. She further testified that Montgomery's response to the conversation in September was that she would check on the books, and that her reply to Baker's question on October 12 was that she told Baker her hands were tied until March when the case "came to court," and that Montgomery again brought up that the other employees could file charges of bribery if Baker were given a raise of more than 9-1/2 percent (Tr. 4241–4243).

Montgomery's testimony concerning the conversations in June and October was different from that of Baker Montgomery testified that she and Baker had a conversation in the dining room in June before the election where Baker asked Montgomery why she could not get a raise. Montgomery testified that she replied they were not giving any raises, and further testified that she had a conversation with Baker on October 12 when Baker came to her office and wanted to know why she was not getting a raise. Montgomery told her she was getting a 9.5-percent raise that the other operators received, and it was all they were giving. Baker then stated that she did not file a charge against Montgomery, but Montgomery told her she did not know who was for the Union and who was not, that it was everyone's privilege, and reiterated that it was all they could give.

Montgomery's version of these conversations is a bit more cryptic, and I am inclined to view Baker's as more indicative of what took place. But even so, the material effect is the same, for I do not find a violation of Section 8(a)(1) That Montgomery referred to the union activity (defined as the before-the-election campaign and the pending election objections) is to my mind nothing more than a statement of reality, without any placement of onus. And Montgomery was entirely right in expressing to Baker that any wage increase out of the ordinary would look very suspicious, since only one employee (Janet Sandlin) had received a pay increase in 1981 after the fall 1980 plantwide increase, and she for assuming extra duties. In effect Montgomery was telling Baker that a pay increase just to her, without Sandlin-type justification, might be considered to influence her or other employees on the union representation matter. See *Centre Engineering*, 253 NLRB 419, 421 (1980).

Nor did Respondent violate Section 8(a)(3) in not giving a special wage increase to Baker. The chronology of events shows this. Baker transferred into the woven boxing and shipping department in June 1980, at her existing rate of $3.60. In September 1980, she received a discretionary increase to $4 The following month a plantwide increase of 9.5 percent brought her wage up to $4.40. In April 1981, she was transferred to the folding briefs department at $3 35. On May 4, 1981, she was transferred back to boxing, and was told by Montgomery that she would receive the same pay ($4 40) as previously because she was already qualified for the job.[17] No further raises (other than to Janet Sandlin) were given until the plantwide one in October 1981, when Baker went from $4.40 to $4.80 and the rest of the employees in the department went from $4.80 to $5.25. All this does is reflect the fact that Baker started below the rate of other workers in boxing when she first joined that department and stayed proportionately below them throughout the discretionary and plantwide increases just described. The General Counsel would have a better case if he could prove that employee Baker was discriminatorily treated regarding her initial rate in boxing because her transfer into that department occurred during the 1980 phase of the Union's campaign. But he has neither alleged nor attempted to prove this, and we will let it rest at that I do not find that Respondent violated Section 8(a)(3) by denying employee Baker's June 1981 request for a discretionary wage increase and by, instead, making her rate increase part of the plantwide increase that was granted in October 1981 See *NLRB v. Travis Meat Seafood Co.*, 653 F 2d 233, 235 (6th Cir. 1980).

[16] Montgomery testified that due to the retirement of one of the boxing employees, Edith Muncie, there was a need for a replacement

[17] This is the first day that Baker wore a union button to work I also note that this was the episode, i e , Baker's transfer back to boxing, after which, as described earlier, Supervisor Reed came up to Baker and asked her if she was happy now and what was she going to do about her union badge But, other than the General Counsel's innuendo, there is nothing to suggest that Baker's move back to boxing was part of Respondent's plan to influence her There were many job transfers, which became a bone of contention with the employees

E *Respondent's Distribution and Solicitation Rule*

The Blue Grass Industries, Inc personnel manual (G.C. Exh 8), 1980 edition,[18] prohibits the following, inter alia

> 16. A. Any solicitation of employees by other employees on the Company's premises (or parking lot) during worktime except during authorized breaks or lunchtime, regardless of the nature of the purpose of such solicitation.
>
> B. Distribution on the Company's premises by employees, of any written or printed material or other literature of any kind, nature or description (other than [in] connection with the performance of employee's regular duties), except in nonworking areas
>
> C Solicitation of employees on Company premises at any time by persons who are not employees of the Company, regardless of the purpose of such solicitation. Distribution of any written or printed matter, of any nature, kind or description, on the Company's premises by persons who are not employees of the Company.

Concerning distribution, the Board has held that employees may distribute literature during breaktime and mealtime in nonproduction areas. *Essex International*, 211 NLRB 749 (1974); *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962). The instant rule, paragraph B, is ambiguous on this point, too much so to leave unresolved. Accordingly, I find its maintenance to violate Section 8(a)(1) of the Act.

As for paragraph 16.A., the General Counsel alleges that prohibition against employees soliciting during "worktime" is, without a clear statement that the restriction does not apply to break periods and mealtimes, presumptively invalid as being too ambiguous. *T.R.W. Bearings*, 257 NLRB 442 (1981) I disagree, and find enough clarity under *T.R.W.*

F *The Union's Election Objections*

The Union filed objections to the election, as follows, on June 24, 1981 (G.C Exh 1(n))·

> 1. The Employer's conduct that resulted in the issuance of the General Counsel's complaint interfered with the election.
>
> 2 On the day of the election the Employer's supervisors polled employees concerning their union sympathy and informed them that if the Union won the election the plant would be closed
>
> 3 On June 18, 1981, in a captive audience speech, the Employer's board chairman, Wayne Schumate, informed employees [through the slide presentation] that if the Union were successful in the election there would probably be a long strike resulting in moving production to another facility operated by the Employer.
>
> [19]
>
> 6 The employer furnished employees who did not support the Union badges, bells and other loud noisemakers and let them run through the factory at will.
>
> 7 Although the employer claimed at the representation hearing on April 28, 1981, that the election had to be held on a Friday because they could not afford to lose production, on June 17, 1981, two days before the election, the Employer did not make the employees who opposed the Union work and permitted them to roam all over the plant, causing supporters of the Union to lose production and money.[20]
>
> 8 A letter to all employees signed by the Employer's plant manager, Betty Montgomery, dated June 16, 1981, implied that if the Union were successful in the election, there would be a strike and the plant would close just like the Bata Shoe Factory in Salem, Indiana
>
> 9. On June 10, 1981, the Employer erroneously informed employees that the Board would not allow the Employer to debate the Union.[21]
>
> 10. The conduct engaged in by the Employer in Cases Nos. 9-CA-14963, 9-CA-15048, 9-CA-15423, 9-CA-14369, 9-CA-15470, 9-CA-15595 and 9-CA-15641 [resolved by a Board approved settlement agreement] interfered with the election.

In the main these are resolved in the discussion of the unfair labor practices, and as the Union puts it[22] "because these charges have been thoroughly covered, there is really nothing more to add" excepting Objection 10. As for that one, given the ruling on the other objections, I see no value in adding Respondent's "recidivist unfair labor practice history"[23] to the litany of conduct that warrants setting aside the election and imposing a bargaining order. Where conduct has been resolved by a settlement agreement, it is more encouraging to the settlement process not to dredge up the agreement in a subsequent proceeding unless it is necessary to bring in the underlying conduct. Here, it is not necessary.

Accordingly, I find that Respondent engaged in conduct that interfered with the rights of its production (and production-related) employees to select freely in a Board-conducted election whether they desired to be represented by Local 68-R for purposes of collective

[18] Amendment dated April 18, 1980

[19] Objection 4 was overruled by Board Order, dated August 12, 1981 Objection 5 was not prosecuted

[20] The Union later moved to amend its objections to change June 17, 1981, to the dates of June 17, 18, and 19, 1981 The motion is granted, but my findings on this conduct put it on June 18 and 19, 1981

[21] The Union's motion to amend its objections to change June 18, 1981, to June 10, 1981, is granted I credit employees Richmond and Conyers that Don Haney then told assembled employees that Board law prevented their debating (through a union representative) with him There is no such law, and Haney's misrepresentation of employee rights, presumably relied on by some employees, violates Sec 8(a)(1), as it improperly involves the Board and its processes *Midland National Life Insurance Co*, 263 NLRB 127 (1982), *Shopping Kart Food Market*, 228 NLRB 1311 (1977)

[22] Br 30

[23] Id at 41

bargaining. Therefore, I shall recommend that these objections be sustained and that the results of the election held on June 19, 1981, be set aside.

II. THE UNION'S MAJORITY VEL NON

Whether the Union ever achieved authorization cards from a majority of Respondent's employees is moot. Nevertheless, I will deal with the issue because this is essentially the basket into which the Respondent's brief puts all of its figurative eggs.

Seizing on the fact that the Union (through the General Counsel) offered cards that were, in compass, signed over a year apart, Respondent challenges the Union to prove that its putative majority does not contain "stale" cards. To do this, Respondent argues, the Union must show that those cards that were signed within 1 year before its April 3, 1981 request for recognition, were signed during a continuous union representation campaign, not during separate campaigns. And for those cards that were signed more than 1 year before April 3, 1981, Respondent argues that their potential validity depends on whether there was any discontinuity in the Union's campaign during that year-plus period, and if so whether it was the result of unfair labor practices committed by the Respondent that interrupted the Union's campaign. In sum, the Respondent's position is that those authorization cards older than 1 year are "stale" and cannot be counted toward the Union's majority; that no unfair labor practices interrupted the Union's campaign to cure the cards' staleness; and that in any event no 1980 card may be counted toward a 1981 majority because the 1980 and 1981 union campaigns were discontinuous, depriving the 1980 cards of any relevance.

These issues are red herrings. They offer initial allure because they allow focus on specific dates and specific events or indicia that define a 1-year period and describe when the Union was on the scene It is easier to focus on these issues than on the real one what was the state of employee sentiment on the date that the Union claims to have acquired authorization cards from a majority of the Respondent's employees, May 28, 1981? That requires looking at the cards and the testimony relating to them [24]

Moreover, Respondent's intervening unfair labor practices make the distinction between 12 and 13 months immaterial. The rule of "reasonable time" is inapplicable when the card signing occurred during an organizational campaign that was interrupted by the Employer's unfair labor practices, *Grand Union Co.*, 122 NLRB 589 (1958), because those practices in effect toll the running of the clock on card signing. As it happens, several unfair labor practice charges were filed by the Union against Respondent from March-September 1980. One, in Case 9–CA–15469, involved the Mt Sterling plant, and along with those involving the Cynthiana and Maysville plants, was part of a settlement agreement reached in October 1980, which required a notice posted at the Mt. Sterling plant for the rest of 1980. Although Respondent is correct that there is no proof that this matter actually interrupted the Union's campaign, none is needed, *Blade-Tribune Publishing Co*,, supra, and all the cards received as evidence, whether signed in 1980 or 1981, may be considered to determine whether the Union ever achieved a majority before the election

A. *Questionable Cards*

On brief Respondent challenges 24 cards received in evidence as "invalid . . . because of repudiation, misrepresentation or any other reason which showed the authorization card was not executed by an individual for the purpose of having the Union represent them." (Br. 49.) To these and some others we now turn, in groupings of my doing.

1. Repudiation

Linda Allen (G.C. Exh. 39), signed a card on April 8, 1980. On June 4, 1980, she wrote to the Union asking that her card be returned because she changed her mind about the Union. She sent a copy of the letter to the Board's Regional Office, receiving a response dated June 5, 1980, that was in bureaucratic doubletalk and told her nothing. She showed a copy of her letter to Plant Manager Virginia White, and told White what she thought of the Union, which was that one was not needed at Blue Grass because things were going smoothly there. A year later, June 1981, Allen signed a card; shortly thereafter she asked for it back and tore it up. She could not remember on what dates these acts occurred.

From my observation of her credible testimony, there is nothing to indicate that Allen's attempted revocation in 1980 was other than self-motivated. Although her then going to the plant manager to apprise her of this deed appears officious, there is no indication that she did so in a context of fear that her job might be jeopardized be-

[24] In any event I find that the Union's campaign was continuous, and that cards older than 1 year may be used because of Respondent's unfair labor practices that interrupted the Union's campaign

Continuity Employee Elizabeth Norris, typifying the testimony of employees Diane Gay, Jo Ann Richmond, Deborah Conyers, and Judy Hart, testified that meetings were held from April 1980 through November of that year, and resumed in late January or early February 1981 These were either meetings of the in-plant organizing committee, or were open to interested employees I credit this testimony completely, putting more faith in it than that of organizer David Gray, who, as quoted in the Union's brief, "stated that he met with the Mt Sterling employees during the organizing campaign from the spring of 1980 to the summer of 1981 " Br 8 This is overbroad There was a hiatus during the year-end holidays, just as there was a marked slow down in the summer of 1980 after the Union lost an election at the Blue Grass Maysville plant But throughout, contact was maintained, if even at the level just of the in-plant organizing committee Thus, while no cards were signed during these slow periods, the Union suffered no setback at the Mt Sterling plant, but kept plugging doggedly away This diminished intensity is an insufficient basis to infer that the Union conducted two entirely separate campaigns at Mt Sterling in 1980–1981 See *NLRB v Greenfield Components Corp*, 317 F 2d 85, 89 (1st Cir 1963)

Staleness This is truly the more odorant red herring Respondent amalgamates the Board's early statement that cards should be signed within "a reasonable time" before the employer's refusal to bargain (*Surpass Leather Co*, 21 NLRB 1258 (1940)), with the Board's later assumption, for purposes of deciding the case before it, "that this rule (of equating one year with a reasonable time)" is of continued vitality (*Blade-Tribune Publishing Co*, 161 NLRB 1513 (1966), reversed on other grounds 180 NLRB 432 (1969)), and comes up with the proposition that 12 months is reasonable, but 13 is not This is ludicrous on its face What is reasonable depends on the facts of the case, and Respondent offers no reasons why the 1 month here should make any legal difference

cause she had signed the card. I find that Allen's 1980 card was invalid, and shall *not count* it toward the Union's majority.

Gary Williams (G.C. Exh. 209) signed a card on April 11, 1980, and the next month wrote to the Board's Regional Office seeking return of his card. He, too, received a turgid form letter of acknowledgment The General Counsel argues that this attempted revocation was invalid because it was addressed to the Board, not the Union, citing *Struthers-Dunn, Inc.*, 228 NLRB 49 (1977). But, as the court noted in reversing that case, *Struthers-Dunn, Inc. v. NLRB*, 574 F.2d 796 (3d Cir 1978), there is no indication that employee Williams had been given any indication of how to revoke his authorization, and giving his right to free choice its due, I find that it was not unreasonable for him to seek out the Board's Regional Office (even though there was no necessity for that office to notify the Union, a fact known to us but not, apparently, to employee Williams). Because his revocation antedated the Respondent's 1980 unfair labor practices that interrupted the Union's campaign, there is no basis for inferring a basis for Williams' action other than his own second thoughts. I find that he validly revoked his authorization for union representation, his card is invalid, and *will not be counted* toward the Union's majority.

Deborah Means Curran (G.C Exh 219) testified that in April 1980 she signed a card in the Company's bathroom, having filled it out but not having read it (although she could not be sure whether she was the one who dated it). She found out the next day that it was a union authorization card that she had signed, and about a week later asked "some more people how [she] could go about getting it back." (Tr. 5235.) These people said, "If they got enough cards signed to get a vote up, but I could vote no if I didn't want the Union in " (Tr. 5236.) No further testimony on her revocation was elicited (and I rejected Respondent's request to go into whether she ever signed a card in 1981, because only the validity of the 1980 card was in issue.)

I find that no revocation occurred, only some tentative probing that never produced action. Respondent stresses in the alternative that she did not want the Union when she signed the card. Yet she neatly filled out a single-purpose card that said boldly on its face "Authorization for Representation" under the Union's name. Not a single syllable was uttered to her that would cause her to disregard that plain language, and she is bound by it. *Curlee Clothing Co*, 240 NLRB 355 (1979). Therefore, I find that this card is valid and *will be counted* toward the Union's majority

Anice Ballard (G.C. Exh 180) signed a card in April 1980, but when asked to sign again early in 1981 refused because she did not see the utility in having the Union. Although Respondent considers that a repudiation of the 1980 card, I do not. At no time did she act to get the 1980 card back, and her failure to sign another card, whatever the subjective (and, thus, irrelevant) reason for doing so, does not substitute for that lack of direct action on her part. The whole episode of having 1980 card signers "update" their signatures, while prompted by concern at the Board's Regional level for the "staleness" of the 1980 cards, created needless confusion and uncertainty. This is, of course, a hindsight observation based on my finding that the Union's campaign at Mt. Sterling was a continuous one. There could have been any number of reasons why persons did or did not sign a 1981 card when they had already signed a 1980 card,[25] and inferring from a 1981 nonsigning that a signed 1980 card is invalid is reading too much from a nonevent. Therefore, I find (G.C. Exh. 180) valid and *will count* it toward the Union's majority

Wilma James (G.C Exh 84) signed a card in 1980 but refused to do so in 1981 because she changed her mind a month or two before the election. Her refusal is too subjective and speculative to cancel her 1980 card. Moreover, the change of mind seems to have occurred at a time when Respondent's unfair labor practices were occurring. To allow the "change of mind" to undermine the validity of the card signed by James would give Respondent the benefit from those acts that is not its due. *Marcus J. Lawrence Memorial Hospital*, 249 NLRB 608, 617 (1980).

But Respondent finds further fault with this card because there is no proof of when it was signed. The card is filled out in different colors of ink. James' signature, her home telephone number, and her hire date were filled out in blue ink. The rest of the card is filled out in black ink James remembered signing the card and giving it to Linda Haddix, but was confused the rest of the card, which was filled out by someone else, was done so before or after she signed it.[26] Linda Haddix compounds the seeming confusion by having testified that the card was signed and dated when James gave it to her. Respondent makes much of this confusion, but we do know from James that she signed and filled out part of the card and gave it to Haddix some time after she had broken her hand in March 1980. Thus, Respondent's cited cases[27] are inapposite; I find James' card valid and *will count* it toward the Union's majority.

Wanda Hale (G.C. Exh. 86) signed a card on April 1, 1980 Counsel for Respondent attempted to prove that she changed her mind in 1980, which I precluded him from doing. I adhere to that ruling because I do not view a card signer's subjective intentions subsequent to the signing of a card any more relevant than the signer's subjective intentions at the event of the card signing, see *Levi Strauss & Co.*, 172 NLRB 732, 738 (1968). I find the card valid and will count it toward the Union's majority.

Mary Margaret McClain (G C. Exh. 23) signed a card on April 15, 1980 Respondent's counsel was precluded from attempting to prove that when asked to sign a card in 1981, she refused. I adhere to that ruling, finding that any such refusal is insufficient to negate the validity of the signed 1980 card.[28]

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[25] Among the reasons for some refusals would be the coercive effect of the Respondent's unfair labor practices I cannot make that finding here because of the uncertainty about when Ballard refused to sign a 1981 card

[26] Someone else became involved because James had a broken hand, making it difficult to write

[27] *Mandels Management Co*, 245 NLRB 273, 277 (1979), *Fort Smith Outerwear*, 205 NLRB 592, 594 (1973) (card of Linda Moore)

[28] Counsel's motion to correct the transcript is noted and corrected

Respondent further argues that McClain relied on a misrepresentation that induced her to sign the card in the belief that the card only meant there would be an election. McClain testified that she read the authorization card "hurriedly" and that she was told that there were two purposes of the card, one to get an election and the other for representation, but that she thought that it was just for an election. I find that what she thought, testified to by an admittedly nervous witness with her employer sitting 20 feet away, hardly negates the effect of her having read and signed the card. *Gissel Packing Co.*, supra, 395 U.S. at 608. Thus, I find the card valid, and *will count* it toward the Union's majority

2. Employee signed a card but did not want the Union to represent him/her

Mae Helen Gose (G.C. Exh. 13) read and signed a card on April 2, 1981, when asked to do so while on her lunchbreak. Yet, she testified that when she signed the card she did not want the Union to represent her. The employee asking her to sign, Diane Smith, told her that a union was needed at Blue Grass, gave Gose the card, and promptly got it back signed and dated. In these circumstances, it is time to repeat the oft-quoted passages from *Gissel*, supra, that deal precisely with this situation:[29]

> . . . employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.

The card that Ms. Gose signed and completed read:

United Food & Commercial Workers International Union affiliated with AFL-CIO-CLC

AUTHORIZATION FOR REPRESENTATION

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

And finally, a further quotation from *Gissel*, 395 U.S. at 608:

> We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union, particularly where company officials have previously threatened reprisals for union activity in violation of § 8(a)(1). We therefore reject any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry.

Accordingly, I find Gose's post hoc statement of her subjective intent insufficient to invalidate her signed card, and *will count* it toward the Union's majority.

[29] 395 U S at 606

Emma Jean Brooks (G.C. Exh. 35) signed her card on March 20, 1981 Like Mae Helen Gose, Brooks testified that at the time she signed the card she did not want the Union to represent her. Without more, my discussion of Gose's card would apply here. But there is a bit more, since "[t]he only reason I signed the card was because I was hassled everyday to sign that card from . . . Tammy Becraft (her cousin)." (Tr. 5238-5239.) According to Brooks, this was the reason, not that she had just been demoted in pay, an action which she testified she not only was not much bothered about, but "enjoyed" (Tr. 5246.) This incredible testimony[30] alone shows the wisdom in following the Supreme Court's admonition to avoid the thicket of subjective intent of card signers (and, as I have previously stated, nonsigners). Brooks will be bound by her uncoerced card signature, and I *will count* her card toward the Union's majority.

Donna Anderson (G.C. Exh. 184) signed her card on April 8, 1981. She testified that when signing she did not want the Union to represent her, but because her friends had asked her to sign she did so to keep them as friends. In these circumstances I *will count* her card toward the union majority for the reasons stated about Ms. Gose's card, supra.

Marjorie Manning (G.C. Exh. 190) and *Gary Kleczinski* (G.C. Exh. 191),[31] mother and son, signed their cards in their home on May 28, 1981, 3 weeks before the election. After the election she went to the office of Respondent's counsel and told him that she was ashamed that she had signed the card. In her testimony Manning did her best to impart the impression of having been "hassled" to sign her card. This prompted the following colloquy (Tr. 5274-5280):

> Q. Do you know the name of this man who came to your home, this Union representative?
>
> A. His first name seemed as though it was Bob. I cannot remember his name. I was very sick at the time, and I wanted—
>
> Q. Well, if you would—
>
> A. —them out of my house. I didn't want to be bothered with them. I wanted them off my back.
>
> MS SCHMIDT Your honor, could you instruct the witness to please answer my questions?
>
> JUDGE KOLKO: Okay. It's probably the easiest if you stick to yes or no. And if he feels the need, Mr. Marshall will have some more questions for you.
>
> BY MS. SCHMIDT: (resuming)
>
> Q. Do you remember about how long Ms. Richmond and this Union representative stayed at your house?
>
> A. Well, I'd say maybe 30-35-40 minutes, somewhere in there, I'd say.
>
> Q. But he did tell you what his name was, right?
>
> A. Yes, ma'am. He did But I can't—

[30] This testimony may be understood when noticing that after a 7-month layoff, Brooks' telephone rang with a notification from Blue Grass that there would be hiring That call came on a Friday She testified that she came to work the following Monday The hearing in this case started later that same month, March 1982

[31] Although initially rejected (Tr 3523), G C Exh 191 was later received as evidence (Tr 4664)

Q. You just don't remember?

A. No.

Q. Mr. Marshall was asking you questions—you said that they came to hassle you. Did they walk through the door and say, "We came to hassle you"?

A. Honey—

Q. Would you please answer that yes or no?

A. Yes, they came to hassle me. Yes.

Q. No, I said, did they come through the door and did they say, "We came to hassle you"?

A. Not in so many words, no.

Q. And so they came in and they started talking about benefits that—

A. Right.

Q. —Union representation may be about to get for you. Is that correct?

A. Uh-huh.

Q. And they talked about a sick leave policy that—

A. Uh-huh.

Q. —Union representation might be able to get you.

A. Uh-huh.

Q. And your son was laid off at that time?

A. Now, honey, I'm not —yes, but I'm not here to represent my son. He can take care of himself.

. . . .

Q. Did you discuss with Ms. Richmond and this Union representative that Orville Vanlandingham was called back to Blue Grass Industries—

A. No, ma'am. No, ma'am.

Q. You just discussed sick benefits?

A. That was their reason for coming to talk to me.

Q. And they were there for about an hour and you just—

A. No, they weren't. They were there for around, I guess, maybe 35 or 40 minutes.

Q. Okay. And during this 40 minutes, you just discussed sick benefits?

A. And I was telling them to leave.

Q. I believe you testified in response to a question by Mr. Marshall that you glanced at the card?

A. Yes, ma'am.

Q. Do you have a habit of signing things that you only glance at?

A. No. I wanted them out of the house and I wanted them off my back, ma'am, and I signed the card to get rid of them.

Q. Again, if you would please answer my questions.

A. No, I don't make a habit of signing anything without reading it usually.

Q. Well, did Ms. Richmond and this Union representative talk about wages?

A. I asked him about wages, and he said he couldn't guarantee me anything if the Union got in. That's what he said.

Both Manning and Kleczinski testified that they signed the cards, Manning having "glanced" at the card and Kleczinski having "not really" read the card. Kleczinski knew he was signing a union card, and filled it out completely, as did Manning. Manning testified that the union representative kept telling her that she could sign a card and vote anyway she wanted to in the election, prompting her to sign the card to get rid of the visitors. Kleczinski testified that he did not sign the card to have the Union represent him, but only to have the visitors leave him alone.

From this the Respondent argues that neither wanted the Union and that Manning was the victim of misrepresentation. Apart from the latter, we are back to the question of the subjective motivations of card signers. Here we have two cards signed at home in the absence of coercion. The cards were unambiguous and were completely filled out. I find no basis for invalidating the cards based on hidden motivations and second thoughts.[32]

The misrepresentation issue is one with slightly more surface substance. The General Counsel concedes "that Renner told them that they could vote any way in the election." (Br. 125.) Yet, this is analogous to "handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election," found acceptable in *Gissel*, supra at 606. As the Board has found, this kind of statement is not a misrepresentation but is an accurate statement of an employee's rights, not a clear direction to disregard the language on the card. *Montgomery Ward & Co.*, 253 NLRB 196 (1980). Therefore, I find both cards valid, and *will count* them toward the Union's majority.

Debbie Harvey (G.C. Exh. 231) signed her card on April 21, 1981. But Harvey testified that she did not read the card because Lotus Bowling, who handed her the card, rushed her. She further testified that she did not want the Union to represent her at the time she signed the card, but signed it so that Bowling (and employee Bonnie Cassidy) would leave her alone and quit asking her to sign cards. As elicited on cross-examination (Tr. 5328):

> Q. Did Lotus Bowling make any threats to you of any kind?
>
> A. No, she just told me to sign the card and hand it back to her.
>
> Q. Okay. Did she grab it away from you the minute you put your name to it?
>
> A. No, she told me to hurry up and sign it so she could send it back in.
>
> Q. But you filled out the card in its entirety, right?
>
> A. Yes.

I find that Harvey knew what she was signing, and that her card is valid and *can be counted* toward the Union's majority.

Mary A. Carpenter (G.C. Exh. 119) signed her card on May 11, 1981, while riding in a van with other employees. She did not read that one, but had read others be-

[32] As for inducing the visitors to leave, Manning's hinting that she had to get dinner on the table hardly constitutes a direct request Manning never testified that she felt in any fear or danger, just annoyance

cause she had been asked previously to sign. She testified that she "knew what it was about." (Tr. 5422.) Yet when asked on direct examination by Respondent's counsel if she wanted the Union to represent her, she replied, "no" (Tr. 5419) There were no threats, promises, representations, misrepresentations, or apparently, anything other than the statement by employee Janice Otis that "it would be a good time to sign it" (Tr. 5418). There is no reason to find Carpenter's testimony as overriding her signature on and completion of that card. The card is valid and will be counted toward the Union's majority.

Margaret Crouch's card (G.C Exh. 33) was signed by her daughter, Diana Norris, on May 13, 1980, in her presence and at her request. Crouch told Norris, according to the testimony of each, that she needed the card signed because the employees with whom she rode harassed her, and she was afraid she would lose her ride if she did not sign a card. Yet she testified that no one ever told her that; and the "harassment" consisted of the playing of music that was loud and riding with the vehicle's windows down. Yet, Crouch took that card, put it in an envelope, tucked the flap in, and the next day handed it to Janice Hensley after work Hensley attended a union meeting that night, where she opened the envelope, took out the completed card, initialed it, and put it on the desk at the meeting. Hensley, a very credible witness, testified that as Crouch was giving her the envelope, Crouch said "that she gave it to me in a white envelope because she didn't want Jearn (her husband, who along with Crouch, Hensley said she knew for 25–30 years) to know that she had signed the card." (Tr. 6570.)

Thus, I find that Crouch authorized a card to be filled out for her, saw it done, knew what the card was for, and ratified her intent to have the Union represent her by transmitting the card to a prounion employee who was going to a union meeting. I find the card valid and *will count* it toward the Union's majority.

3. Employees who signed cards on the basis of an alleged misrepresentation

Jeffrey Wayne Toy signed his card (G.C. Exh. 105) on April 8, 1981. Toy gave the card to employee Billy Scott Roberts, who testified that no conversation occurred when employee Toy handed him the signed card. Employee Toy testified that he was told that he was the only one, along with Gary Kleczinski, who had not signed cards in their department, and that he signed the card for that reason even though he did not want the Union. Toy said that it was employee David Centers who gave him the card to sign, having asked him to sign several times. Toy could not remember at which time it was that employee Centers told him that all but he and employee Kleczinski had signed Although in one breath he was "pretty sure" that it was on the day that he signed, shortly before he so testified he was not sure, he "guessed" it was that day

Employee Centers flatly denied ever discussing the Union with employee Toy, let alone having given him a union card

The most illuminating testimony came from employee Arthur Spencer, who, like witnesses Centers and Toy, was an employee of Blue Grass at the time he testified. He stated that it was he who gave Toy the card, having done so at the urging of another employee (Juanita Gorrell). He brought the card over to employee Toy, told him he should sign it if he wanted to, or if he did not want to, then not to sign, and walked away. He had already signed a card some time earlier (G.C. Exh. 70, dated March 28, 1981),[33] and other than being the deliverer of the card to employee Toy, did not participate in the distribution of the union cards.

Thus, we have testimony on this card from four men who were employees of Blue Grass when they testified. Employee Spencer testified to handling the card only briefly and at someone else's behest. Employee Centers denied having any involvement at all. Roberts testified that he was given the card without any words passing. And employee Toy said he was led into the error of signing the card by employee Centers.

Based on my observation of these witnesses when they testified, I make these findings. The card was given to employee Toy by employee Spencer at employee Gorrell's insistence. Spencer presented the card, told Toy that whether he signed it or not was up to him, and withdrew.[34] Employee Toy signed the card and passed it to employee Roberts.[35] Whether these happened on the same day cannot be discerned. During the 2 weeks compassing employee Spencer's and employee Toy's signatures, the cutting department employees occasionally uttered sentiments about the Union. Both Spencer and Centers thought they personally would be better off with a union. At some point in these weeks Centers told Toy that Kleczinski and Toy were the only cutting department employees not to have signed. This did not necessarily happen just as Toy had his pencil poised because Centers had mentioned signing a card a few times, and Toy struck me as straining his memory to place Centers' remarks at the time he was signing his card. I do not find that Toy was misled into signing his card, nor that he did so in fear of some reprisal from the rest of the employees in the cutting department. Beyond this we get into Toy's subjective intent, which *Gissel* wisely teaches us to avoid.

Accordingly, I find that employee Toy's card is valid and *will count* it toward the Union's majority.

Brenda Maloney filled out a card (G.C. Exh. 65) and signed it, although she did not believe that she dated it (the date, May 12, 1980, appears in a different shade of ink than does the rest of the card).[36] She testified that she signed the card, despite her not wanting the Union to represent her, because she was told by employee Minnie Lawson, who gave her a card, "that they had 49 percent of the cards signed. They needed 51 percent of the cards signed before we could have an election. . . . That if I signed a card, no one would know—there was no way anyone would ever know that I signed a union

[33] Centers' card, G C Exh 5, was dated April 8, 1981

[34] This was the only statement made concerning the card at that time

[35] Although Toy testified that he gave it to Centers, I credit Roberts that Toy gave the card to him

[36] For this reason Respondent challenges the card's authenticity I reject the challenge Noting the Regional Office's date stamp on the card to be April 6, 1981, I find that Maloney signed her card before the June 18, 1981 date of the Union's achieved majority

card." (Tr. 5425–5426.) This last piece of information was important to employee Maloney because, as she later told the General Counsel, her husband would not like it if he knew she signed a card, and would divorce her. Indeed, she was fearful of this happening if the General Counsel called her as a witness. At the hearing she testified as Respondent's witness.

Because of her fear, I do not credit her testimony that she completed, signed, and returned the card without having read it and without wanting the Union to represent her. Therefore, the issue raised by this card is whether Lawson's statements to Maloney amount to misrepresentations. But the Board's law is that the statements themselves do not invalidate the cards. *American Beauty Baking Co.*, 198 NLRB 327 (1972) (employee told that no one would find out about card-signing); *Lincoln Mfg. Co.*, 160 NLRB 1866 (1966) (statement concerning the percentage of cards needed does not conflict with the purpose stated on the card). Nor do I credit employee Maloney's testimony that she relied on those statements. Accordingly, I find the card valid and *will count* it toward the Union's majority.

4. Employees who were told that a card was for an election

Shirley Douglas signed her card (G.C. Exh. 186) on April 9, 1981, in the plant cafeteria. She testified that she had been asked a number of times to sign a card, even though she had told employee Mary Sparks, a member of the Union's in-plant organizing committee, that she did not want to sign. When asked to sign, she had been told (how often and by whom is unknown, "[J]ust that they were trying to get enough cards to have a vote." (Tr. 5307.) Yet not only did she read and sign the 1981 card relied on by the General Counsel, she read and signed a similar card in 1980. I find, therefore, that she read the instant card, knew what it meant, and signed it. She was neither directed to disregard the card's language, nor was she bullied into signing it.[37] Her card is valid, and will be counted toward the Union's majority.

Kathy Howard signed her card (G.C. Exh. 188) on March 26, 1981. She testified that she was told by Mary Sparks and Jo Ann Richmond, as the three of them were driving home from work, that "[I]t was just meant to have an election. . . . [T]hey had to have 51 percent before they had the election and that I was free to vote yes or no." (Tr. 5210.) Employee Richmond testified that she did not tell Howard that the card was just for an election, rather she told her that a purpose of the card was for an election. From observing Howard, whose testimony struck me as being sincere, I find that what she heard was that the sole purpose of the card was to get an election, effectively canceling out the language on the card.[38] Therefore, Howard should not be bound by her signature on the card; her card is invalid and *will not be counted* toward the Union's majority.

Deborah Thornsburg signed her card (G.C. Exh. 132) at her house on May 20, 1981. Respondent contends that she was told by employee Shirley Poe that she could vote anyway she wanted in the election, and that this statement, plus Thornsburg's desire to get Poe and the union representative to leave her house, caused Thornsburg to sign a card that she did not want to sign.

The testimony of both witnesses establishes that at most Poe told Thornsburg that a purpose of the card was for an election, a true statement that does not invalidate the card. At no point was Thornsburg directed to disregard the language on the card that she was filling out and signing. Thus, she is bound by her signature on that card, absent coercion.

The 1-hour visit of Poe and a union representative was not coercive. During their visit they repeatedly asked Thornsburg to sign a card, and she refused. Yet at no time did Thornsburg ask them to leave her home. Although Thornsburg may have viewed them as a nuisance, I am not struck with any feeling that she felt coerced.[39] Accordingly, I find her card valid and will count it toward the Union's majority.

Phyllis Bowman signed her card (G.C. Exh. 233) on April 30, 1981. She testified that she read the card, but that prior to her signing it, gossip among employees led her to believe that there would be a vote if 51 percent of the cards were signed. Bowman also testified that at the time that she signed the card she did not want the Union to represent her. But there is no indication that this "gossip" came from an agent of the Union, that Bowman was coerced, or that she was in any way steered away from the explicit, straightforward, and unambiguous language printed on the face of the card. The *Gissel* standard is met here in every way, and Bowman will be

[37] The card is signed only; the remainder is not filled in. This could cut both ways. Either the witness signed it without completing it because this was the second card she signed, or dashed off a signature just to placate those who kept asking her to sign. I find it unnecessary to press the matter because her testimony makes no mention of it, nor do the parties' briefs.

[38] Subsequently employee Howard asked her husband's aunt, Gloria Conn, to sign a card, telling her, as employee Howard testified, "just what I was told, that it was all meant to just have an election. . . . We had to have 51 percent chance . . . and that she was to vote yes or no in the election." (Tr. 5212.) Employee Conn testified 4 months before Howard and to the same effect, adding that Howard was the only employee to tell her that. As far as Howard, then, was concerned, that was the purpose of the card. (Conn's card was not challenged, and my own review of that card and the testimony bring to light nothing that would warrant invalidating her card.)

[39] Shirley Poe, an active union supporter, was called as Respondent's witness, having previously been called by the General Counsel. On direct-examination she related how she kept begging Thornsburg to sign a card. She also testified that she had told the General Counsel before the hearing that she had pressured Thornsburg into signing a card. On cross-examination, we discovered that Poe felt scorned by the Union, for which she had worked so hard, because the Union's determination after it lost the election to seek a bargaining order had not been broached to her. She became angry at the Union and stayed that way. Her testimony is an admixture of fact and exaggeration, more factual where there was potential corroboration (as in supervisory activities that could have been unfair labor practices), less so when she was describing an event in which she had been on her own (as in card solicitation). Regarding Ms. Thornsburg's card, for part of the solicitation Poe was alone with Thornsburg, so that when she testified about that episode no union testimony could contest her testimony that she pressured Thornsburg.

The upshot is that I do not credit Poe's account—my findings have been drawn from Thornsburg's testimony, which I deem insufficient to invalidate the card that she signed.

bound by her signature.[40] The signature card is valid and *will be counted* toward the Union's majority.

Pamela Vice Ballard signed her card (G.C. Exh. 64) on April 2, 1981. She testified that she did not read the card before she signed it, and that "the talk" was that if she signed the card she would get to vote, which is why she signed the card.

But on direct examination she had answered "yes" to the question, "Did you want the Union when you signed the card?" (Tr. 1131.) The first suggestion of an election came on cross-examination when this colloquy took place:

> Q. Did any representative of the Union or any employee ever tell you the purpose of the card was only for an election?
>
> A. Yes.
>
> Q. They did? Who was that?
>
> A. Nobody in particular said it . . . that's what we were all told. Or I feel like we were all told . . . that if you sign a card you'll get to vote. (Tr. 1140–1141.)

That is Ballard's state of mind, which is not only irrelevant but springs only from "talk" in the plant. For the reasons just stated regarding Bowman's card, I find Ballard's card valid, and *will count* it toward the Union's majority.

5. Misplaced cards

Ella Ketchum testified that she signed a card in 1981, but the General Counsel did not have any union card identified by Ketchum, and none was offered into evidence. Thus, according to the Respondent, there is no proof of any authorization by Ketchum to the Union to represent her.[41]

But Respondent's most telling point is "that Ketchum's testimony cannot be credited. Ketchum testified that she retired July 1, 1981 (2 weeks after the election) and therefore her last months of work would have been those preceding and including the month of the election. However, Ketchum did not know that any union election took place (Tr. 173–174), which, in view of the testimony concerning the events of May 1 and June 18 and 19, as well as all of the posters in the plant, boggles the mind. (Br. 69.) I agree, finding that the witness' memory is tenuous. Thus, while she is positive that she signed a union card, she did not remember whether it was in January, February, or March 1981, other than it was "quite a while back." (Tr. 176.) This flimsy recollection is too fragile a prop on which to support a finding that she signed a card authorizing the Union to represent her.[42] Therefore, I *do not count* the card of Ella Ketchum toward the Union's majority.

Phyllis Penick[43] testified that she signed a card, but the General Counsel did not have one to offer for the record. But, unlike the case of the allegedly mislaid card just discussed, here I find that Penick's credible testimony, corroborated credibly by union organizer David Day, establishes clearly and convincingly (let alone by a preponderance of the evidence, which is the necessary threshold) that Penick signed a card authorizing the Union to represent her, did so in May 1981, knew what she was signing, and did so wanting the Union to represent her.

We start with Penick's own testimony. She describes a meeting hosted by her sister (Peggy Adkins) at her sister's house after the May 1 demonstration by the Carlisle employees. Other than Adkins, David Day, and employee Judy Hart,[44] Penick was the only one to show up. When asked what happened Penick testified that "we just talked about the Union. . . . And I wanted them to represent me, so I signed a card." (Tr. 1624.) David Day gave her the card; she read it; she signed it; and she dated it. She wanted the Union to represent her. She gave the card to David Day, who gave it to Judy Hart, who after initialing it returned it to David Day, who put it in his satchel. Cross-examination elicited only that as the election drew nearer she began wearing union buttons.

David Day very credibly corroborated Penick's testimony, adding that he then turned in Penick's card to David Gray and never saw it again. The only discrepancy between the testimony of Penick and Day was that after getting the initialed card back from Hart, Day testified that he put it in his pocket; Penick said he put it in his satchel. It is a meaningless discrepancy. Day's recall of the event was credible, aided particularly by his recollection of a discussion about hearing aids with Penick, a discussion that Judy Hart testified went on "for a long, long time." (Tr. 4438.)

But Respondent is suspicious of this testimony, particularly because Adkin's card (G.C. Exh. 221), was signed on April 14, 1981, 2 to 3 weeks before this home call. Why, asks Respondent, would an early May home call on Adkins be necessary when she had signed a card the previous month?

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[40] Bowman is another employee who just before the hearing received a phone call inviting her back to work. She testified for Respondent on the fifth day that she had resumed working there

[41] Respondent acknowledges the Board's decision in *Hedstrom Co*, 223 NLRB 1409, 1411 (1976); *Aero Corp*, 149 NLRB 1283, 1291 (1964); *Howard-Cooper Corp*, 117 NLRB 287, 288 (1957); and *Idaho Egg Producers*, 111 NLRB 93, 107 (1955), but argues that they do not call for testimonial evidence to be substituted for an authorization card as proof of authorization when there was no other alleged form of authorization My disposition of the card moots the issue.

[42] Jo Ann Richmond testified that Ketchum signed a card in her presence in May 1981, and that Richmond turned that card in to organizer David Gray after initialing the back of it. Indeed, Richmond clearly recalled saying to Ketchum, "Ella, I'm going to put my initials on the back of this card to show that I brought this card in" (Tr. 3557) I do not credit this testimony. Richmond had been present for Ketchum's testimony, which was given 15 days earlier. Richmond was the most active supporter of the Union, and it was through her efforts and testimony that many cards were signed and authenticated Occasionally, Richmond's enthusiasm got the better of her memory, where, as here, too facile a tale was offered when a card's validity was in jeopardy.

[43] Two witnesses named Phyllis Kay Penick testified consecutively on the same day The discussion here concerns the witness whose testimony occupies Tr. 1622–1632. The other signed the card that is G C Exh 103 and is not in issue.

[44] Hart was home calling with Day.

Hart's testimony answers this (Adkins did not testify). While Adkins' card was signed in April, she did not turn it in to Hart until some days after the home call visit in early May. At that visit, when Penick signed her card, Adkins told Hart "that she had to think about it to make up her mind so she'd be sure before she signed one." (Tr. 4438.) Before the home visit Adkins "had told [Hart] that she had signed one, but that she hadn't made up her mind whether or not she was going to turn it in or not" (Tr. 4438), hence the logic (that Respondent questions) of the home call. I completely credit Hart's testimony.

Thus, even though the card itself is missing, Penick's use of it to authorize the Union to represent her is accepted, and she *will be counted* toward the Union's majority. *Hedstrom Co.*, supra; *Aero Corp.*, supra.

6. Unchallenged cards

The General Counsel's brief mentions some cards that were not challenged by Respondent.[45] I have examined these cards and the attendant testimony, find that they are valid, and will count them toward the Union's majority.

7. Cards of employees not in the bargaining unit.

General Counsel's Exhibit 241[46] "is the names of all employees and their job classifications at the Mt. Sterling plant who are employed in the bargaining unit." (Tr. 4966.) It is overbroad, depending on the parties' theories of whether employees doing nonproduction work should be included, infra, but it is the document all agreed to use. On its last page are the names of employees who were terminated, which the General Counsel "would agree that those persons listed on the last page of the document, the terminations should be omitted from the overall bargaining unit." (Tr. 4968.) Yet the General Counsel relies on the card of one of these terminated employees to establish the Union's majority. If these employees are not to be included in the denominator of the majority fraction, they ought not to be in the numerator. Accordingly, I *invalidate* the card of Linda Sue Masters (G.C. Exh. 16), who quit her employment on May 1, 1981.[47]

B. *Did the Union Have Signed Cards From a Majority of Employees in the Bargaining Unit?*

1. The numerator

The briefs of the General Counsel and the Respondent differ in their listing of the cards that are relied on by the General Counsel as proof of the Union's majority status. The appendix to the General Counsel's brief lists 226 employees whose cards are to be used to support the Union's majority. The Respondent's corresponding list shows 225 names. The difference is that Respondent's list has one name not found on the General Counsel's, and omits two.

Respondent's list includes Marie Lucas (G.C. Exh. 168.) But (G.C. Exh. 168) is the card of Dottie Lykins. I have searched the record for the card of Marie Lucas and do not find it. Therefore, I find that Respondent's inclusion of her name as a card signer is in error.

Not found on Respondent's list are the names of Janice Little (identified as G.C. Exh. 60) and Alice Gail Everman (G.C. Exh. 115). The latter was received in evidence on May 3, 1982 (Tr. 1882), and will be counted toward the Union's majority (see fn. 45, supra).

The card of Little is another matter. The card was introduced on the fifth day of the hearing, but was withdrawn by the General Counsel so that Little herself could testify about the card. She never did testify, and her card was never received. Therefore, Respondent is correct in not including her name on its list.

In sum, from Respondent's list of 225 names subtract Marie Lucas and add Alice Everman. The result is 225 names of persons whose cards are relied on by the General Counsel to support the Union's claim of majority status before the election. But I have invalidated 5 of the cards on that list[48] leaving 220 names representing valid cards. Those names are on the list attached as Appendix B.

2. The denominator

How many employees were in the bargaining unit from the date the Union demanded recognition[49] to the

[45] The cards are (parentheses indicate G C Exh. number).

Patsy Willoughby	(38)
Sandy Mynhier	(112)
Linda D. Alfrey	(120)
Lois Ritchie	(107)
Dorothy Reddix	(45)
Wilma Tolson	(133)
Delorice Kay Becraft	(62)
Jeanette Wells (Hawkins)	(80)
Judy L Snedegar	(125)
Brenda L Copher	(95)
Cheryl K Penick	(128)
Phyllis Penick	(103)
Alice Everman	(115)
Sharon R. Reffitt	(126)
Brenda Ralls	(90)
Nora C Mitchell	(85)
Mildred Goldie	(159)
Loretta White	(73)
Lorraine Manley	(92)
Mary E. Fair	(109)
Martha B. Whittington	(81)
Mary A Carpenter	(119)

[46] The last page of this exhibit bears the number G.C. Exh. 242 This is in error, and the correct number is 241, as received pursuant to counsel's stipulation (Tr 4966)

[47] While this is the same day that Respondent violated Sec. 8(a)(1) of the Act with its orchestrated disruption of the Mt. Sterling plant by the employees from the Carlisle plant, Masters did not quit because of the disruption, but because she had been cut in pay back to the minimum wage (Tr 421). Thus, Respondent's unfair labor practices cannot resuscitate this card.

[48] Linda Allen, Gary Williams, Kathy Howard, Ella Ketchum, and Linda Sue Masters.

[49] The Union made its demand to Respondent for recognition on April 3, 1981, and on April 6, 1981, filed a representation petition. On neither

Continued

date of the election? The General Counsel says there were 431 if certain nonproduction employees are excluded.[50]

At the election on June 19, 1981, 17 employees' votes were challenged either by the Union or by the Board agent conducting the election. The Regional Director issued his Report on Challenged Ballots[51] (G C. Exh. 1(u)), and recommended that 5 of the votes challenged by the Union be opened and counted and further recommended that the 11 remaining union challenges and 1 vote challenged by the Board agent conducting the election be resolved after the hearing. The challenged ballots at issue in this hearing and the classifications in question are as follows:

June Rogers	Cafeteria
Edith Otis	Cafeteria
Rhonda Burns	Cafeteria
Winfred Johnson	Watch and sweep
Willie Dragoo	Watch and sweep
Charles Shrout	Watch and sweep
Earl Reed	Watch and sweep
Jimmy Hollan	Watch and sweep
Margaret Stewart	Quality control inspector
Bertie Lane	Quality control inspector
Janice Sandlin	Mill clerical
George Logan	Supervisor

Of course the determinations of the challenged ballots will both affect the unit's size and bear on the issue raised by the 8(a)(5) allegation of whether the Union had a card majority before the election that would warrant Respondent's duty to bargain.

a. *The challenge to the ballot of George Logan*

At the hearing, counsel for Respondent moved to dismiss the challenge to the ballot of George Logan inasmuch as no evidence had been submitted by the Union in support of its challenge. I granted the motion to dismiss the challenge to Logan's ballot subject to allowing the Union to file a written opposition to the motion prior to the close of the hearing. Because no opposition was filed by the Union prior to the close of the hearing, the ruling stands, and George Logan should be included in the bargaining unit.

b. *Mill clerical Janice Sandlin*

Janice Sandlin's office is in an enclosure off the cutting room floor, where she spends the majority of her time. Her main duties involve keeping track of the flow of the raw materials through the plant. She compares the actual weight of the raw materials with what it should be. She records what orders have been prepared and sent out, and makes periodic production reports to her supervisor, Plant Manager Betty Montgomery. In addition, she works with the quality control inspectors in preparing weekly calculations concerning the percentage of defective goods produced. All this occupies about 60 percent of her time.

Some 30 minutes of each day she devotes to bookkeeping for the cafeteria, paying bills, and recording money taken in. Cash that the cafeteria does not need is placed in a safe in her office and deposited in the bank once a week.

The rest of her time is spent on the production floor straightening out problems with the orders in the cutting and boxing departments. She works with the unit employees to maximize production.

The General Counsel argues in his brief that Sandlin's duties make her a supervisor. According to Section 2(11) of the Act, however, a supervisor must have the power to hire, discipline, or lay off an employee. The General Counsel has not brought any evidence to light demonstrating this authority. Instead, he asserts that Sandlin does not share a community of interest with the unit employees.[52]

The facts recited above indicate that Sandlin's job is closely related to the plant's production. She monitors output chiefly by means of a system of job coupons. These are affixed to the material, torn off by operators as each successive step is completed, and returned to her as a record of each employee's output. Cf. *IFF Corp.*, 249 NLRB 441 (1980) (similar job, with similar monitoring process). This coupon method of recording production data is highly integrated into the plant's overall production procedures. Furthermore, as the person to whom the cutting and boxing department personnel turn to for assistance and guidance, she appears to be a vital link in the production chain. See *Avon Products*, 250 NLRB 1479 (1980) (the "order flow process" an integral part of production).

The significant amount of time she spends out on the floor working with the unit employees also shows a high degree of interaction with the unit employees. See *ITT Corp.*, supra (employee goes out on production floor every other day); *Raytee Co.*, 228 NLRB 646 (1977) (frequent contact with production employees by large amount of time spent on production floor).

Sandlin's community of interest is not overcome by being under different supervision from the employees with whom she works. Although she reports directly to the plant manager, her duties are closely connected to the work of the unit employees. See *Container Research*

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date did it represent a majority of the employees Yet, should it be found to have represented a majority between those dates on the election, its request for recognition and bargaining will be deemed continuing from April 3, 1981, to the date of majority status See *American Compressed Steel Corp*, 146 NLRB 1463 (1964)

[50] Respondent and the Union entered into a Stipulation for Certification Upon Consent Election, which was approved by the Regional Director for Region 9 on May 5, 1981, and which set forth the appropriate unit for bargaining as "All production and maintenance employees employed by the Employer at its Mt Sterling, Kentucky facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act" (G C Exh 1(u))

[51] The Regional Director's recommendations in his Report on Challenged Ballots were adopted by the Board in its Order dated August 12, 1981 (G C Exh 1(x))

[52] The Board requires that employees included in a bargaining unit share a community of interest so that the bargaining unit created is an appropriate one See, e g, *E H Koester Bakery Co*, 136 NLRB 1006 (1962) Factors the Board will look at include the operational integration of the members of the bargaining unit, their geographic proximity, common supervision, similarity in job function, and the degree of employee interchange

Corp, 188 NLRB 586 (1971) (employees' interests lie with those of unit employees, despite being supervised by plant superintendent) Nor is the mere fact of her having a separate office enough to refute this community of interest. In the first place, it is merely a metal and glass cubicle, adjacent to the cutting room, and in any event she is out on the floor a large part of the time See id at 587; *Raytee Co*, supra, 228 NLRB at 646.

Finally, additional factors indicating a community of interest, though by no means dispositive, are that Sandlin enjoys the same benefits and works the same hours as the production and maintenance employees. See, e.g., *ITT Corp*, supra; 249 NLRB at 442.

Based on the foregoing, I find that Janice Sandlin is a plant clerical employee, who should be included in the bargaining unit.

c *The quality control inspectors*

Margaret Stewart's and Bertie Lane's jobs are to gather finished goods from the end of the sewing lines and check them for defects. They also inspect the packaging of the garments once a day. If defects are found, they are reported to the plant supervisor. Their work stations are located in the woven packing area of the plant, next to the woven area. Lane's hours are the same as the woven employees' hours, and Stewart's hours coincide with those of the knit employees. Their pay is within the range paid other employees at the plant, and their benefits are the same.

The General Counsel contends that the quality control inspectors are in a position to criticize unit employees or cause disciplinary action to be taken against them for faulty work. Therefore, they would not share a community of interest with the unit employees. But there is no evidence in the record that they possess such authority. Even if they did, however, the Board has held that that is not enough to exclude them, absent some indication the inspectors actually exercised this authority. See *Modine Mfg. Co.*, 180 NLRB 472, 473 (1969).

It is not clear how much interaction takes place between the inspectors and the unit employees. However, given that their workstations are on the production floor adjacent to production areas, it is reasonable to infer a substantial amount of interaction. Cf. *Arkansas Grain Corp.*, 163 NLRB 625 (1967) (laboratory employees worked in a different building) Given that the quality control inspectors work the same hours and take breaks at the same time as the unit employees, the inference is especially strong

In addition, the role of the quality control inspectors is a vital part of the production of the plant. They keep records of their findings, which are passed on to Janice Sandlin, who includes them in her reports. Employees who ensure that production is of a uniform high quality are an integral part of the overall manufacturing process. *Owens-Illinois, Inc.*, 211 NLRB 939, 941 (1974), *W. R. Grace & Co.*, 202 NLRB 788, 789 (1973). Although the important criterion is community of interest with bargaining unit members rather than the relationship of the job to the production process, *Beatrice Foods Co.*, 222 NLRB 883 (1976), the importance of quality control jobs in the production of garments is a further consideration when a community of interest has already been demonstrated. See, e.g., *Avon Products*, supra, 250 NLRB at 1483–1484.

Although the General Counsel points out that Stewart and Lane are under different supervision from the unit employees, the Board held in *W. R. Grace*, supra, that this would not preclude their inclusion in the unit where, as here, they share a community of interest with the unit employees and their duties are an integral part of the manufacturing process.

Therefore, the two quality control inspectors should be included in the unit.

d *The cafeteria employees*

June Rogers, Rhonda Burns, and Edith Otis work in the cafeteria at the Mt. Sterling facility. Along with their supervisor, Virginia Horseman, they prepare food for the employees' breakfasts, lunches, and breaks. Rogers and Burns work from 5 a.m. to 1:30 p.m., and Otis and Horseman are on duty between 6 a.m. and 2:30 p.m. Because of the nature of their duties, the cafeteria workers do not eat lunch or take breaks at the same time as the production and maintenance employees.

The evidence strongly suggests that there is little or no contact between the cafeteria employees and the production and maintenance employees The cafeteria is physically separated from the rest of the plant by a wall. The cafeteria workers spend virtually all their time in the kitchen, and the only contact they have with the production and maintenance employees is when the latter come in for food. Aside from nourishing the workers, there cannot be said to be any work-related contact between the cafeteria workers and the unit employees. Furthermore, Horseman, the supervisor, testified that some of the cafeteria workers had never gone into the production area. Yet despite the seeming lack of a community of interest between the cafeteria employees and the production and maintenance employees, normal Board policy is to include the cafeteria workers in the unit. See, e.g., *Scholastic Magazines*, 192 NLRB 461, 462 fn. 4 (1971); *Mead-Atlanta Paper Co*, 123 NLRB 306, 309 (1959). This is even true where, as here, the cafeteria employees are under separate supervision. *Murray Ohio Mfg. Co.*, 118 NLRB 1027, 1028 (1957).

In conjunction with the Board policy of including cafeteria workers in plantwide bargaining units, the Board's test for inclusion is whether the interests of the cafeteria workers "are not so dissimilar as to preclude their proper representation in a single unit." *Kohler Co.*, 93 NLRB 398, 405 (1951). See also *Foley Mfg. Co.*, 115 NLRB 1205, 1207 (1956). Cf *Famous-Barr Co.*, 153 NLRB 341, 345 (1965) (cafeteria workers excluded because "[i]t does not apppear that their working conditions or interests are sufficiently like those of employees who perform typical warehousing functions to warrant their inclusion"; however, no underlying reasons cited for this conclusion).

Although the interests of the cafeteria workers are no doubt far from identical to those of the production and maintenance workers, that is much different from saying they are incompatible, which is what the Board's test seems to require. Indeed, one decision regarded the mere

fact that the cafeteria was for the convenience of the employees, and having a "close and intimate" relation to the employees' work, as sufficient to find a community of interest. *Weston & Brooker Co.*, 154 NLRB 747, 764 (1965).

The cafeteria workers received the same benefits, and received about the same pay, as the other unit employees. The Board considers these factors to be further evidence for including cafeteria workers in the bargaining unit. See *Weston & Brooker Co.*, *Foley Mfg.*, and *Kohler Co., supra.*

To my mind the three cafeteria employees should be included in the bargaining unit because their interests have not been shown to be irreconcilable with those of the other employees. It is therefore appropriate to follow Board policy by including them in the bargaining unit.

e. *The watch and sweep employees*

The Union has challenged the ballots of watch and sweep employees Winfred Johnson, Willie Dragoo, Charles Shrout, Earl Reed, and Jimmy Hollan, claiming that they were ineligible to vote in the election because they are guards. The Respondent maintains that they perform essentially janitorial functions and therefore should be included in the bargaining unit.

The five workers are at the plant when it is not in operation at night, during the week, and on weekends. Their duties involve cleaning the different areas of the plant and maintaining the plant machinery. In addition, every hour a watch and sweep employee is required to make a circuit of the premises, checking that the doors are secure and that everything is in order. There is an eight-station clock system that the employee making the rounds is required to punch as he moves about the plant. One check of the plant in this fashion takes about 10 minutes.

The watch and sweep employees have the authority to prevent unauthorized persons from entering the plant. All authorized persons must sign in and out. If an intruder is spotted, the watch and sweep employees must notify the police and then their supervisor or the plant manager. The job interviews for the watch and sweep positions include an instruction that the job entails security duties and enforcing plant safety rules. Though generally there are no employees present during the time the watch and sweep employees are on duty, and thus they are less likely to enforce plant safety rules against other employees, it remains an ongoing duty.

The inclusion of guards in a bargaining unit is not determined by a "community of interests" test but rather is subject to a specific section of the Act. Section 9(b)(3) defines a guard "as any individual employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." 29 U.S.C. § 159(b)(3). The section goes on to state that no labor organization will be certified as the representative of guards if it also has nonguards in its membership. The rationale for this limitation is that a guard's duty to protect his employer's premises during a labor dispute would be undermined by his loyalty to his fellow union members. See, e.g., *Kolcast Industries*, 114 NLRB 1311, 1312 (1955). The major question, then, is whether the watch and sweep employees enforce rules to protect the Employer's property or the people on that property. Based on the above evidence, I find that they do.

Respondent points out that less than 9 percent of the total manhours served by the watch and sweep employees is devoted to security activities. However, the Board makes clear that "it is the nature of the duties of guards and not the percentage of time which they spend in such duties which is and should be controlling." *Supreme Sugar Co.*, 258 NLRB 243, 245 (1981). See also *Walterboro Mfg. Corp.*, 106 NLRB 1383 (1953). Furthermore, despite Respondent's contention, the evidence that none of the watch and sweep employees has been deputized or carries a gun is not dispositive. Instead, "[i]t is sufficient that they possess and exercise responsibility to observe and report infractions." *Supreme Sugar*, 258 NLRB at 245.

Respondent cites *Arkley Lumber Co.*, 169 NLRB 1098 (1968), to support its contention that janitors who made periodic rounds of the building have been held not to be guards. However, the purpose of the patrols in *Arkley* was to reduce fire hazards and to satisfy a requirement of the insurance carrier. Furthermore, the Board found that those employees had no authority to enforce rules. See also *Bear River Lumber Co.*, 150 NLRB 1295 (1965) (cleanup employees had no authority to order anyone off premises unless "a bandit or madman came in"). In *Watchmanitors, Inc.*, 128 NLRB 903, 905 (1960), also relied on by Respondent, the janitors were not considered guards because they were only expected to take "some action" if they observed a fire or break-in. They had no ongoing duty of checking security or enforcing rules. Here, by contrast, it is apparent that security and enforcement of plant rules were explicitly made a part of the watch and sweep employees' jobs

I find that the five watch and sweep employees are guards within the meaning of Section 9(b)(3) of the Act, and should be excluded from the bargaining unit.

C. *Summing Up*

I have found that 220 cards claimed by the Union are valid. I have further found that of the challenged employee ballots, only the five watch and sweep employee ballots should not be counted in the bargaining unit. The remaining six plus George Logan should be counted as part of the unit These 7 plus the General Counsel's unit figure of 431 total to a unit of 438 employees. The 220 cards are a majority, which was achieved when the last two cards were signed on June 18, 1981 (G.C. Exhs. 43 and 166, Teresa Jamison and Bonnie Jones). Thus, I find that on the day prior to the election the Union represented a majority of the unit's employees.

Under established principle, *Trading Port*, 219 NLRB 298, 301 (1975), the bargaining order shall be dated from the date, May 1, 1981, "the time the employer has embarked on a clear course of unlawful conduct" in the attempt to undermine the Union's efforts at attaining a majority status and to prevent the holding of a fair election. Although unfair labor practices were committed earlier, the demonstration of the Carlisle plant employees in the

Mt. Sterling plant marks the beginning of Respondent's most serious unfair labor practices.

CONCLUSIONS OF LAW

1. By each of the actions found in section I, supra, Respondent has violated Section 8(a)(1) and (5) of the Act and has engaged in preelection misconduct interfering with the free choice of employees at the election conducted on June 19, 1981.

2. The unfair labor practices that constitute the violations of Section 8(a)(1) and (5) of the Act have an effect on commerce within the meaning of Section 2(6) and (7) of the Act.[53]

3. The appropriate remedy for the foregoing unfair labor practices is to require Respondent to bargain collectively with Local 68-R as the exclusive collective-bargaining representative of "all production and maintenance employees employed by the Employer at its Mt. Sterling, Kentucky facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act."[54]

4. Objections 1-3 and 6-9 filed in Case 9-RC-13724 to the election held on June 19, 1981, should be sustained and the results of that election set aside.

5. As the issuance of a bargaining order to Local 68-R precludes a finding that a question concerning representation exists regarding the unit of employees stated in paragraph 3, the Union's petition in Case 9-RC-13724 should be dismissed, if not withdrawn.

[Recommended Order omitted from publication.]

[53] Respondent is located in Mt Sterling, Kentucky, where it manufactures, sells, and distributes wearing apparel. In 1981, it purchased and received directly from points outside of Kentucky products, goods, and services valued in excess of $50,000

[54] This unit definition is the result of a stipulation between Respondent and the Union that was approved by the Regional Director on May 5, 1981 (G.C. Exh. 1(u))