

**Phoenix Glove Company, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC. Cases 11-CA-9942 and 11-RC-4990**

27 January 1984

**DECISION, ORDER, AND  
CERTIFICATION OF  
REPRESENTATIVE**

**BY MEMBERS ZIMMERMAN, HUNTER, AND  
DENNIS**

On 3 September 1982 Administrative Law Judge J. Pargen Robertson issued the attached decision. The General Counsel, the Respondent, and the Charging Party filed exceptions and supporting briefs. Respondent filed an answering brief to the General Counsel's and the Charging Party's exceptions. The General Counsel and the Charging Party each filed answering briefs to Respondent's exceptions.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions,<sup>2</sup> as modified,<sup>3</sup> and to adopt the recommended Order, as modified.

<sup>1</sup> 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In adopting the judge's recommendation that Objection 2 and Objections 1 and 3(e) be overruled, we disavow reliance on the law set forth in *Burris Chemical, Inc.*, 246 NLRB 205 (1979), and *Hickory Springs Mfg. Co.*, 239 NLRB 641 (1978), which the Board has overruled in *Home & Industrial Disposal Service*, 266 NLRB 100 (1983). This change in Board law does not affect the ultimate resolution of the objections.

In adopting the judge's recommendation that Objections 1 and 3(b), par. 1 (concerning the conversation between McCray and Avis McFadden), be overruled, we disavow reliance on the statement that it is unlikely McFadden would have changed her position given her status as a Jehovah's Witness. We also find it unnecessary to pass on the judge's comments concerning McCray's possible status as a union agent because the threats allegedly made by him either bore no relationship to the election or did not constitute objectionable conduct which could interfere with the results of the election.

Finally, because the judge would discredit the testimony of Mary Ann McKnight, we find it unnecessary to pass on his conclusions as to whether her testimony fell outside the scope of various objections.

<sup>3</sup> In the absence of exceptions, we adopt pro forma the judge's conclusions with respect to the 8(a)(1) allegations concerning the conversation between Nancy Frazier and Grover Mixon, and the March 1981 conversation between Derrick McCray and Production Manager Hughes.

We find it unnecessary to decide whether the Respondent's plant manager, Grover Mixon, illegally solicited grievances in a conversation with Linda Jay Casselman. Given other findings of unlawful solicitation which we adopt, a similar finding here would be cumulative and have no effect on the remedy.

The judge also found that the Respondent violated Sec. 8(a)(1) when Supervisor Wineglass told employee Casselman that the employees did

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Phoenix Glove Company, Inc., Andrews, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 1(b).

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

**CERTIFICATION OF  
REPRESENTATIVE**

It is certified that a majority of the valid ballots have been cast for Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees on all shifts including the Group Leader in the Electrode Department, excluding all office clericals, guards, and supervisors as defined in the Act.

not need a union and that they would be "messing up" if they got one. We find these comments to be too vague and ambiguous to rise to the level of a violation of the Act, and, therefore, we dismiss that part of the complaint related to the incident.

**DECISION**

**STATEMENT OF THE CASE**

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard before me in Andrews and Georgetown, South Carolina, on April 13-16, and May 13 and 14, 1981. The charge in Case 11-CA-9942 was filed on June 15, 1981, and amended on June 24, 1981. The complaint issued on July 28, 1981. On January 12, 1982, Case 11-CA-9942 was consolidated for hearing with Case 11-RC-4990.

The complaint alleges that Respondent<sup>1</sup> engaged in various conduct violative of Section 8(a)(1) during an or-

<sup>1</sup> Through its answer, Respondent admitted the commerce allegation in the complaint. The complaint alleges, Respondent admits, and I find that at all times material herein, Respondent, a corporation with facilities located in Andrews, South Carolina, engaged in the manufacture of gloves and during the past 12 months, a representative period, Respondent paid in excess of \$50,000 for goods and materials purchased directly outside the State of South Carolina, and during the same 12-month period Respondent sold goods to points directly outside the State of South Carolina valued in excess of \$50,000. Respondent admitted and I find that it is an employer within the meaning of Sec. 2(6) and (7) of the Act.

Respondent also admitted and I find that the Charging Party (the Union) is, and has been at all times material herein, a labor organization within the meaning of Sec. 2(5) of the Act.

ganizing campaign conducted at its Andrews, South Carolina, facility by Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC (the Union). That campaign was initiated by the Union in December 1980. The 8(a)(1) activity allegedly occurred from February through May 1981, and was alleged to include various threats and promises to employees, interrogations of employees, solicitation of grievances, and the granting of a pay increase.

Additionally, Respondent allegedly discharged employee Derrick McCray in violation of Section 8(a)(1) and (3) during the Union's organizing campaign.

Consolidated for hearing with the above-mentioned complaint were various employer objections to conduct affecting the results of election. The petition in Case 11-RC-4990 was filed by the Union on April 9, 1981. The election was conducted on June 19 and 20, 1981. The Union received 102 votes, 52 votes were cast against the Union, and there were 3 challenged ballots.<sup>2</sup>

#### A. Derrick McCray

During the investigation of an alleged theft of a power handsaw from its facility, Respondent suspended Derrick McCray from work on April 24, 1981. Subsequently on May 1, 1981, McCray was discharged. When told of his discharge McCray was advised that Respondent's action resulted from his refusal to cooperate in the investigation of the missing saw and because of his work record.<sup>3</sup>

There is no dispute regarding Respondent's knowledge that McCray was deeply involved in assisting the Union's organizing campaign at the time of his discharge. McCray was one of the first employees contacted by the Union during December 1980. He accompanied union representatives to homes of other employees, and he visited employees at their homes alone to discuss the Union and solicit authorization cards. McCray attended union meetings and he discussed the Union and solicited cards from other employees. Respondent's plant manager, Grover Mixon, admitted that he knew McCray was "involved" with the Union.

Shortly after Easter 1981, employee Jerome Brockington told Plant Manager Mixon and Production Manager Roger Hughes that he had seen McCray with a company saw downtown on Easter Sunday.

McCray, Brockington, and a few other employees worked Easter Sunday along with Supervisor Joyce Hudson. McCray admitted that he went to the tool cage, where the handsaw was normally left, during his work on Easter Sunday. However, other employees including Jerome Brockington also had occasion to visit the tool crib.

Following work Brockington and employee Charles McCutchen drove downtown where they parked to observe an apparent accident. While there, according to testimony from both Brockington and McCutchen, they saw Derrick McCray in a brown Ford. Brockington testified that he looked from the accident toward McCray

on three occasions and on the last of those occasions, he saw McCray with what appeared to him to be Respondent's saw. McCutchen, who was looking toward the accident, did not see McCray with the saw.

Shortly after Easter, while at work, Brockington reported to Plant Manager Mixon and Production Manager Hughes that he had seen McCray with the saw. Unrebutted testimony indicated that Respondent noticed that the saw was missing when it was checked on Monday following Easter.

On Friday, April 24, 1981, McCray was suspended pending investigation into the question of the missing saw. On that occasion McCray was asked to submit to a polygraph examination.

On April 28, McCray called Roger Hughes, and advised Hughes that he would not take the polygraph exam but that he was filing charges with the Union.

On May 1, 1981, McCray was discharged allegedly for his failure to cooperate with Respondent in the investigation of the missing saw and because of a review of McCray's work record.

#### Conclusion

At the outset it should be mentioned that the question of whether Derrick McCray was involved in removing Respondent's saw without authorization is not before me. If I were deciding that issue, I may very well find that Derrick McCray was innocent. However, my inquiry involves the motives of a party other than McCray. I must decide the guilt or innocence of Respondent. Specifically, the sole question before me is whether Respondent is guilty of violating Section 8(a)(3) of the Act by discharging Derrick McCray. In deciding that question I need not, and do not, reach the issue of McCray's guilt or innocence.

Respondent cited *Classe Ribbon Co.*, 227 NLRB 406 (1976), for the proposition that it should prevail if it had an honest belief of McCray's guilt absent a showing by the General Counsel that McCray did not actually steal the saw. That standard is inapplicable here since, unlike the instant question, the alleged discriminatee in *Classe Ribbon* was discharged because of union activities even though those activities were found to be unprotected.<sup>4</sup> Here, there is no contention that the activities in question, i.e., someone stealing a saw, involved union or concerted activity.

Obviously an employer is justified in actions designed to protect its property even though those actions may involve discharging employees suspected of theft. Conversely, of course, the law does not permit an employer to discharge an employee for union activity on the pretext that it suspects the employee of stealing. Therefore, unlike the test in *Classe Ribbon*, the ultimate question here is whether Respondent's asserted basis for discharge was pretextuous.

The General Counsel cited *Fixtures Mfg. Corp.*, 251 NLRB 778 (1980), in support of its argument that Re-

<sup>2</sup> I have considered briefs filed by the General Counsel, Respondent, and the Union.

<sup>3</sup> The precise reason other than refusal to cooperate with the investigation is disputed. McCray testified that he was told that he had "too many early leaves."

<sup>4</sup> Cf. *Magnolia Manor Nursing Home*, 260 NLRB 377 (1982); *Associated Grocers of New England*, 227 NLRB 1200 (1977); *Co-Con, Inc.*, 238 NLRB 283 (1978); *AMPAC*, 259 NLRB 1075 (1982); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964).

spondent placed McCray in an untenable position by discriminatorily demanding that McCray take a polygraph test and then suspending him from work.

In *Fixtures Mfg. Corp.*, the administrative law judge and the Board found that the alleged discriminatee was given a polygraph test because of his union activity. Subsequently, the discriminatee was discharged because the polygraph test implicated him in thefts. Here, the evidence failed to show that McCray was asked to take a polygraph test because of his union activities. To the contrary, the record evidence proved that Respondent had reason to believe that McCray had taken the saw. In that regard, the evidence showed that Respondent discovered the saw was missing on Monday, April 20. McCray and others had worked the previous day. Supervisor Hudson testified that McCray had an opportunity to take the saw during work on that day, Easter Sunday. Subsequently, Respondent was told that McCray had been seen with the saw in Andrews following work on Easter Sunday.

The General Counsel argues that neither employee Jerome Brockington nor employee Charles McCutchen should be believed. Brockington was the employee that told Respondent that he had seen McCray with the saw downtown on Easter, following work. McCutchen was with Brockington at the time. As to McCutchen's testimony at the hearing, I agree with the General Counsel. McCutchen's testimony was in direct conflict with his adopted pretrial statement to counsel for the General Counsel and, for that reason, I am unable to credit his testimony at hearing.

Nevertheless, the issue remains whether Respondent would not have discharged McCray absent his union activities. The fact that McCutchen cannot be believed, and that Brockington may have been discredited at the hearing, does not resolve the issue of Respondent's motivation.

Obviously, evidence that Respondent was presented with a patently false statement from Brockington would reflect on the credibility of Respondent's supervisors and would contribute to a finding of pretext. However, I am unable to find such evidence in the record.

Plant Manager Mixon, Production Manager Hughes, Jerome Brockington, and Charles McCutchen all testified that on Monday, April 20, Brockington told Mixon and Hughes that he saw McCray with the saw after work the previous day. I find nothing in that evidence or in Brockington's subsequent statement to Respondent, which should have caused Respondent to suspect that Brockington was not telling the truth.

Moreover, although there was some evidence of a rumor circulating that Brockington was the one that took the saw, no evidence was presented to show that Respondent's supervision was presented with evidence linking Brockington with the theft. Additionally, nothing was received which demonstrated any basis on which I can discredit either Plant Manager Mixon or Production Manager Hughes on the question of what evidence they had at the time of McCray's suspension and subsequent discharge.

The record shows that McCray was the only person accused before Mixon and Hughes. The record shows

that Mixon and Hughes conducted an investigation. That investigation produced evidence from an alleged eyewitness and other circumstantial evidence linking McCray to the theft. In that regard, Mixon and Hughes learned that McCray had both access to the saw on Easter Sunday and an opportunity to take the saw.

Against that background, I am unable to find that Respondent's actions demonstrated pretext. When McCray was confronted on Friday, April 24, he was asked to take a polygraph test. At that time, and subsequently, McCray was the only one accused of taking the saw. Therefore, I find that Respondent's request that he take a polygraph examination was reasonable. Moreover, due to the evidence linking McCray to the theft and the obvious effect inaction could have had on Respondent's continuing equipment security at its facility, I find Respondent's action in suspending McCray pending final investigation was also reasonable.

The following week McCray told Respondent he would not take a polygraph examination. At that point Respondent's awareness involved the above-mentioned evidence linking McCray to the theft which was offset solely by McCray's denial that he took the saw. Assuming Respondent's good faith, and the record showed nothing apparent to Respondent which would enable me to question their good faith, it is obvious that Respondent was thereupon presented with a difficult dilemma. Respondent could either ignore the evidence against McCray and reinstate him or it could terminate his employment. The first alternative would have seriously damaged Respondent's ability to protect its own property. It would have had the effect of demonstrating that Respondent was ignoring another employee's claim that he witnessed a theft of company property and thereby discouraging future employee disclosure of similar evidence.

The above convinces me that Respondent's action against McCray on May 1, 1981, was reasonable under the circumstances apparent to Respondent at that time. I find no basis for determining that Respondent's asserted grounds for the discharge of Derrick McCray were pretextual. Moreover, there was nothing in the record which would justify finding that Respondent's actions, in hindsight, were unreasonable. I recommend that the 8(a)(3) allegation be dismissed. See *H. M. Patterson & Son*, 244 NLRB 489 (1979); *General Electric Co.*, 253 NLRB 1189 (1981); *Houston Coca Cola Bottling Co.*, 256 NLRB 520 (1981).

#### B. The 8(a)(1) Allegations

##### 1. Plant Manager Grover Mixon

Former employee Athelia Blanks testified that she was called into Mixon's office in February 1981. Blanks testified:

When I came in I asked the question, did I do anything wrong, you know, for him to call me in. And then he said "No," that he wanted to talk to me, and he asked me was I aware that there was a union going on, you know, trying to get in the plant, and I told him "no" at the time. And he said

that he would appreciate it that I didn't get involved with the union and to let him know if I knew anything that was going on.

Blanks testified that subsequent to the above conversation, but before she signed a union card on March 8, 1981, she went to Mixon's office. She went in and told Mixon that she "knew some people who were trying to get me to participate in this union." Blanks testified that she gave Mixon some names including Derrick McCray who was the "main one trying to get [her] to join this union."

Mixon recalled having a conversation with Athelia Blanks about the Union around February 1981. Mixon testified that he expressed Respondent's opposition to a union and that Respondent would do everything legally possible to keep the Union out. Mixon testified that he did not ask Blanks how she felt about the Union. He denied that he asked Blanks to let him know if she heard anything about the Union.

#### Discussion

With the exception of Mixon's denial that he asked Blanks to let him know if she heard anything about the Union, Mixon did not deny material aspects of Blank's testimony.<sup>5</sup> Athelia Blanks appeared to respond candidly to cross-examination. I was impressed with her demeanor. Her admission that she revealed names of union pushers to Mixon lends support to her credibility for several reasons. Firstly, her version of that second conversation was not denied. Secondly, her testimony reveals a willingness to disclose actions which would have appeared reprehensible to union supporters (i.e. disclosing their names to management). And lastly, it is supportive of her first conversation by showing that she followed up on Mixon's alleged request that she let him know anything that was going on.

On the other hand, Mixon, who admittedly called in Respondent's employees and discussed the Union with each in one-on-one conversations, testified that he did not recall all the particulars of his conversation with Blanks. Mixon's candor appeared limited to those matters which would not constitute a violation of the Act. I was more impressed with Blanks' testimony and her demeanor than that of Mixon, and I shall credit her version of the two conversations.

#### Conclusion

The credited evidence reveals that Mixon called Blanks into his office where she was obviously uncomfortable. Blanks demonstrated her discomfort by asking Mixon "did I do anything wrong." Mixon then asked of her awareness of the union campaign to which Blanks replied no. Subsequently, Blanks was asked to let Mixon know if she learned anything that was going on. The total context of that conversation, including its location, convinces me that Mixon's actions were coercive. I find that he interrogated Blanks about her knowledge of the

<sup>5</sup> Although Mixon denied asking Blanks how she felt about the Union, Blanks did not contend such a question was asked. In fact, on cross-examination, she testified that Mixon did not ask her how she felt about the Union. Mixon did not deny asking Blanks about the union campaign.

union campaign and solicited her to report to him about the employees' union activities in violation of Section 8(a)(1). See *Convalescent Emory Home*, 260 NLRB 540 (1981); *E. I. DuPont de Nemours & Co.*, 257 NLRB 139 (1981); *Custom Trim Products*, 255 NLRB 787 (1981).

Former employee Nancy Frazier testified that she was called to Grover Mixon's office in March 1981, where she met with Mixon and Production Manager Roger Hughes. Frazier's testimony was as follows:

A. He told me to have a seat and asked me how I was doing, and I was asked about the company; was I happy there, what did I think about the company . . . .

Q. Who is asking these questions?

A. Grover Mixon, and I said everything was all right; I didn't have nothing to say. He said "Well, you know there's a union trying to come in, and I'm going to tell you plain . . ." or, he said "We don't want it." And he asked me did I have anything to say, and I said "no, no comment," and that was it.

Q. You state that in that conversation he asked you if you knew about the union?

A. Yes.

Q. What did you reply?

A. "No comment."

Q. After he asked you if you knew about the union and you replied "No comment" do you recall anything else being said?

A. No, all I remember is that he said "Well, you know there's a union been trying to come in." And he said "We don't want it."

Q. Do you recall anything else being said in that conversation?

A. No, other than what I said, recited the first time. He asked, you know, was I happy there and things like that. He asked was I happy there, ". . . and so everything is all right? You're satisfied with your position?", like that. I said "Everything is all right." I didn't have nothing to say, and then he brought on about the union, and that's when, after that he said "Well, you know that there's a union trying to come in." And he said "We don't want it." And I didn't say anything. He said, he asked me did I have anything to say, and I said "No." He told me to go ahead home, you know, "Thank you," but for me to go back to work.

Although, as shown above, Frazier responded to the General Counsel's question, "did Mixon ask you if you knew about the union?" in the affirmative, she subsequently clarified her testimony to show that Mixon actually said in that regard, "Well, you know there is a union trying to come and we don't want it."

Grover Mixon admitted talking with Frazier in March about the Union. Mixon testified that he told Frazier of Respondent's position regarding the Union. He denied asking Frazier how she felt about the Union.

#### Discussion

There appear to be no material conflicts in Frazier's and Mixon's testimony regarding their March meeting. Therefore, I shall credit Frazier's version which was more complete.

#### Conclusion

I find nothing in Nancy Frazier's version of her conversation with Mixon and Hughes in March 1981 which reveals that she was coercively interrogated about the Union. Her testimony reveals nothing more than Mixon telling her that Respondent was opposed to the Union. I find that Mixon and Hughes did nothing violative of Section 8(a)(1) on that occasion.

Former employee Linda Joy Casselman testified that she was called into Mixon's office in late March 1981. Casselman's testimony was as follows:

When I walked in he greeted me and told me to have a seat and got directly to the point about knowing the union was trying to come in, and then he went on to tell me that we didn't need it, that we were one big family out there, and if we ever had a problem to come to him or Mr. Gallaher, or to head supervision if need be, that he didn't want the union in and he would do everything legally possible to keep it out of the plant.

Mixon did not recall talking with Casselman. However, on cross-examination he admitted that he was not denying the conversation.

#### Discussion

Since her testimony was undenied, I shall credit Casselman's testimony as to her March conversation with Grover Mixon.

#### Conclusion

Although Casselman's testimony does not reveal interrogation, it is clear from Mixon's comments that he was asking Casselman to bring her grievances to management rather than bringing in a union. In view of the other evidence revealing that Respondent solicited employee grievances on other occasions and took steps to remedy those grievances, I find that Mixon's request in March for Casselman to come to him or President Gallaher with her problems constitutes an 8(a)(1) violation. *K-Mart Corp.*, 255 NLRB 922 (1981).

#### 2. Supervisor Wineglass<sup>6</sup>

Linda Joy Casselman testified that she was talking with her fellow employees in early March 1981 about the Union, when:

Mr. Wineglass walked up and I continued to go on about it, telling her, and he said that we did not

need a union, that we would be messing up if we got one.

Wineglass did not testify.

#### Conclusion

In view of there being no rebuttal, I shall credit Casselman's testimony. Wineglass' comment "we would be messing up if we got one," reveals an unspecified threat that employees would suffer if they selected the Union. I find that comment constitutes an 8(a)(1) violation. See *Le Roy Fantasies, Inc.*, 256 NLRB 211 (1981); *St. Anne's Hospital*, 245 NLRB 1009 (1979); *Cone Mills Corp.*, 245 NLRB 159 (1979).

#### 3. Jimmy Washington

Athelia Blanks testified about a conversation she had with Supervisor Washington at the plant in the packing room in March 1981. Blanks recalled:

Well, I had went to Jimmy, and I asked him now that he was a supervisor how did he feel about the union, and he told me that his feelings had changed because of his position, and for my own good, for me not to talk about it anymore.

Washington did not testify. I shall credit Blanks' testimony in view of her testimony being un rebutted.

#### Conclusion

Washington's comments to Blanks clearly imply that Blanks should not discuss the Union under the threat that she would personally suffer. That, as alleged, constitutes an 8(a)(1) violation. *Statler Industries*, 244 NLRB 144 (1979); *Production Stamping*, 239 NLRB 1183 (1979); *Dillingham Marine & Mfg. Co.*, 239 NLRB 904 (1978).

#### 4. Roger Hughes

##### *Derrick McCray*

McCray recalls a conversation with Production Manager Hughes in March 1981. McCray testified:

A. Well, he came to me outside of the plant and he said "Derrick, can I talk to you," or "I want to talk to you."

And I told him "yes." And so on the outside of the plant they've got some benches over, maybe 100 feet or more or less from the building, normally, where you can go out on a nice sunny day, or a warm day, and eat on your break.

So we walked over to the benches and we sat down and he started to talk to me. He said "Derrick, you know, you are a bright kid and you have potential," but I had to stop politicking for the union, and that he was concerned and he wanted to help me if I was getting caught up with the wrong bunch.

And I told him that I wasn't politicking for the union on company time, that I was doing it on my personal time.

<sup>6</sup> In its answer Respondent denied that Wineglass was employed at the time of his alleged violation. At the hearing the General Counsel amended the date of the allegation and Respondent admitted that Wineglass worked for Respondent in March 1981.

Q. Do you recall anything else being said in this conversation?

A. Not at this time, except for he told me that if I didn't stop politicking for the union that he was going to make me work my regular shift; that he wasn't going to, you know, he was going to cut out working during the week, so I guess he was going to cut out the overtime I was making and just let me work the 24 hours.

Subsequently, McCray had another conversation:

Well, he stopped me and he asked me why didn't I go in to talk to Grover about the supervisor's job, and I told him that I wasn't interested. And he told me, he said I needed to go in and talk to him or either see what it was about, but I never went to see what it was about.

Hughes admitted talking to McCray outside the plant in March 1981. However, Hughes' version of that conversation differed from McCray's:

A. I don't remember the exact wording of the conversation. I remember the basis of the conversation. The basis of the conversation was that Derrick had been observed by myself not being in his work area during time when he was supposed to on several occasions, and I had talked to him at that time about that and told him that he had to stay in his work area doing his job and he couldn't be wandering around talking or whatever.

Q. Was anything said about the union in this conversation?

A. Not that I recall.

Q. Is there anything else that you can recall during the conversation?

A. Derrick had talked to me about trying to get some extra work and that was the reason that he was working during the week and I had come upon Derrick outside of the area talking three or four times, and I said to Derrick, "you are going to have to start staying in your work area, you are going to have to stop being out of your area, and start doing your job during the time that you are supposed to be." I don't remember a lot of details about anything else.

Q. Anything else that he might have said during the conversation?

A. He said something. He said some things about working for a former employee but I don't remember really exactly all of the wording he said.

Q. During this conversation, did you ever tell him that he just stop "politicking for the union?"

A. No.

Q. Did you make the statement to him, If you don't stop politicking, I will make you work just your regular shift?

A. I could have told Derrick that if he didn't start doing his job he wouldn't be able to work any extra during the week. But I don't remember exactly the wording that I used.

## Conclusion

Roger Hughes impressed me as a witness primarily interested in protecting his employer's interest. Throughout his testimony, including portions of his testimony noted above, Hughes evidenced reluctance to recall anything detrimental to Respondent's interest. I find that this testimony was not reliable in consideration of the entire record.

However, the testimony of Derrick McCray also presented credibility difficulties. McCray admitted making a false statement that he received no funds from the Union in his pretrial affidavit to the Regional Office. Moreover, McCray was evasive on cross-examination. In view of the above, I am unable to credit McCray's testimony. Since the burden of proof rests on the General Counsel, I find that the evidence in support of the allegations regarding Hughes' conversation with McCray must fail.

## 5. Billie Bell Gamble

Gamble testified to a conversation she had with Roger Hughes in his office on the Wednesday before the election in June 1981:

He called me into his office and he asked me if I had any kind of problems, and I told him that I didn't, and he told me, he said that I didn't need a union to come in and speak for me. He said that I could talk for myself, and that he didn't want the union in, you see, because we didn't have to pay a union to, you know, talk for us; that we could do that for ourselves.

Around noon that same day Gamble had a second conversation with Hughes. This conversation occurred outside the packing room. Gamble testified that she stopped Hughes and:

I asked him could I come in early that Thursday morning to get off for the funeral, and he told me, he said that I couldn't come in early, that; and he said I couldn't come in early and leave early. So he told me, he said he would let me get off if I was to talk to the girls about not joining the union, and he asked me not to talk to anybody else concerning the conversation we just had, and I was supposed to not tell Marcella Grant and Gloria Nesmith.

Q. Who are Ms. Grant and Gloria Nesmith?

A. These are two employees at Phoenix Glove.

Q. And what did you say?

A. I told him "All right."

Hughes testified that he did not recall, but could have had, the first of the conversations recalled by Gamble. As to her testimony regarding the second conversation, Hughes testified:

A. I think I did. I think she asked me if she could get off early, and the next day, I think I do remember having a conversation about that, I think she asked me if she could come in early and get off early, or something along those lines, a lot of

people ask me that and I think that I remember B.B. asking me that.

I said, I think I said "I will see what I can do, B.B., you know, if I have got somebody to cover for you" but I remember, I remember something about her asking me "could she come in early" and I told her "no, she couldn't." I didn't have anything for her to do if she came in early.

Q. Do you recall making a statement to her that "you would let her off if she would talk to the other girls about not joining the union?"

A. No, I didn't say anything like that.

Q. You are sure you didn't say that?

A. I know I wouldn't, I know I didn't say that.

#### Discussion

As noted above, I am unable to credit Roger Hughes' testimony. I was generally impressed with Billie Bell Gamble's testimony. However, I note that Gamble's pre-trial affidavit to the Region evidenced a more detailed recollection of her conversation with Hughes than her testimony at the hearing. Of course, that affidavit which she gave on July 31, 1981, was made at a point in time much closer to the events than was her hearing testimony. With that in mind I have decided to credit her affidavit<sup>7</sup> version of the second Hughes conversation:

Later that Wednesday about 12 noon, I stopped Hughes outside the packing room door. No one else was present. I asked could I leave early on Thursday because I wanted to go to a funeral. I wanted to come in early so I could leave early. He told me he would check it and see what he could do. He said he couldn't let me come in early and leave early. He said he would work out something. He said he would let me get off early but I couldn't tell no one and not to mention what he was going to do to Nesmith and Grant. I said O.K. I wouldn't tell them. He then said he needed my help. He said he wanted me to talk to the girls about not joining the Union. I said O.K. That was all of that conversation.

#### Conclusion

The credited evidence reveals that Production Manager Hughes asked employee Gamble to assist Respondent in soliciting other employees not to join the Union. That request was coupled with Hughes granting a favor to Gamble, a favor which Hughes, by asking Gamble not to reveal it to other workers, implied it would not be available to all employees. The implication was obvious, Hughes was in effect saying, I am taking care of you, now you do something for me. Gamble was thereby placed in the dilemma of agreeing to talking against the Union or risk the withholding by Hughes of future favors. As presented, I find a violation was proved.<sup>8</sup>

<sup>7</sup> *Alvin J. Bart & Co.*, 236 NLRB 242 (1978).

<sup>8</sup> See par. 8(j) as amended at the hearing (Tr. 5). *Apple Tree Chevrolet*, 237 NLRB 867 fn. 2 (1978); *Lammert Industries*, 229 NLRB 895 (1977); *C. Markus Hardware*, 243 NLRB 903 (1979).

#### The "Point" Meetings

The complaint alleges that Respondent violated Section 8(a)(1) by soliciting employee grievances and by promising a raise and other benefits. Evidence was received showing a relationship between those allegations and meetings involving several employees with Grover Mixon and Roger Hughes.

Linda Joy Casselman, who started working for Respondent in April 1980, testified that she attended meetings between management and employees before and after the union organizing campaign. Before the campaign the meetings usually involved three employees and one supervisor. Afterwards, the meetings involved six employees and Grover Mixon, the plant manager.

Casselman recalled a meeting in February 1981. Grover Mixon conducted the meeting. At the beginning Mixon bought the employees cokes. Casselman testified that the employees were not given cokes in previous meetings. Casselman stated that various suggestions were made by the employees in the February 1981 meeting and that Mixon noted those suggestions. Those suggestions included a request that a microwave oven be installed for employee convenience on lunchbreaks, for updating material books for warehouse stock, for employees to be permitted to leave the facility during their 30 minute-lunchbreak and for a pay raise. According to Casselman, a microwave oven was installed after the meeting and employees received a pay increase.

Athelia Blanks attended a meeting held by Mixon in 1981, during which Mixon showed the employees on the second shift charts on how the employees would be getting pay increases. Mixon told employees that if they "gave the plant a chance to grow" the employees would be getting raises.

Nancy Frazier testified that she attended a meeting involving 12 employees and Roger Hughes in the office next to the packing department in March 1981. Frazier recalled the employees were asked if they had problems or suggestions and they asked Hughes:

When would the lines be put up and when would the parking lights be put up, and about the bathroom and we needed a new machine, a vending machine, because one was always taking our money or never being filled.

Hughes informed the employees "that they would work on it." According to Frazier the Company subsequently put the employees' suggestions into effect by cleaning the bathrooms two or three times a day, putting in one or two new vending machines, and putting up lights and parking lines in the parking lot.

Production Manager Hughes testified that in 1980 Respondent held meetings involving two or three employees and one of the supervisors, during which working conditions were discussed and the employees were asked what they needed. Hughes testified those meetings would be held in "spurts" with three or four held, then going 2 or 3 weeks or a month. Hughes recalled that Respondent converted from window air conditioning "in the strip," to duck type air-conditioning because of em-

ployee suggestions in those meetings. Also employees' suggestions resulted in Respondent enlarging the cafeteria area. Hughes recalled that Grover Mixon purchased a larger refrigerator because of employee suggestions.

On cross-examination Hughes testified that he was sure that part of the decision to expand the cafeteria was based on the fact that Respondent had expanded operations by putting in a second glove production line. It was also brought out on cross-examination that the first written memo, which Hughes was able to locate, of employee meetings was dated February 1981. Hughes admitted that those so-called three point meetings, those with three employees, stopped during the union campaign and meeting with larger groups of employees started. Those meetings with large groups were conducted by Grover Mixon.

Hughes admitted attending a meeting with employees in March 1981, during which Grover Mixon showed the employees charts and explained that if the Company grew they would try and give the employees wage increases and improved benefits. Hughes testified that he did not recall attending a meeting with 12 employees in March 1981 in the office next to the packing room, during which the Union, Respondent's bathrooms, and the parking lot were discussed. However, Hughes admitted that he could have told employees in a meeting that they would try to do something about the lights in the parking lot.

Grover Mixon testified that he held meetings for the employees beginning in 1979. Mixon stated those meetings were sporadic. Mixon testified that he tried to hold one-on-one meetings or meetings with two or three employees, at their work stations. However, from the summer until November 1980, Respondent was installing a second glove machine and Mixon's time was limited, so he did not have any employee meetings.

Mixon agreed that the 1980 formal meetings, which were called point meetings, were conducted by direct supervisors of involved employees. Mixon's initial involvement in the point meetings was evidenced by a memo to all employees dated March 3, 1981. That memo solicited employee comments, questions, or suggestions and indicated the meetings would begin on March 4. Mixon admitted that he held those meetings and that he sometimes opened the meeting by buying employees Cokes or 7-Ups. Mixon admitted that Respondent made changes following employee suggestions regarding vending machines, cleaning restrooms, and lines in the parking lot, but he testified that he did not recall when those changes were made.

Grover Mixon was subsequently recalled and testified from Respondent's "Fixed Asset and Depreciations Schedule" as to specific items which he contended Respondent purchased pursuant to employee comments and suggestions made in meetings in 1980 and before. Those items included tote tanks which are used for transporting plastisol, air hoses, and vacuum cleaners for cleaning up on the lines, a refrigerator for employees' lunches, a work bench and stool, a heater for a work area, employee lockers, electric clocks, and a chain hoist for machine operators. According to the records, all the above items were purchased in the second half of 1980.

Respondent also produced a notice to employees dated January 23, 1980, advising that "employee informational meetings will be held Thursday, January 24."

#### Conclusion

The testimony regarding the "point meetings" presents little conflict. I credit the undisputed testimony which illustrates that point meetings of six or more employees were initiated in 1981, after Respondent learned of the union campaign. I also credit the above-mentioned evidence showing that although informational meetings were held in January 1980, and other point meetings were held in 1980, those meetings differed from the 1981 meetings.

The informational meetings involved larger groups and there was no evidence showing that those meetings resulted in solicitation of employee suggestions, comments, and questions. In fact, Grover Mixon specifically testified that the employees' suggestions, which resulted in purchases by Respondent, occurred in "small group meetings."

The 1980 point meetings were conducted by the direct supervisors, not by Grover Mixon. I credit Mixon's admission that he first became involved in the point meetings in March 1981. Although the record does show that purchases were made in the second half of 1980 and that those purchases followed employee suggestions, I note from Mixon's testimony that all those items, with the exception of a used refrigerator, related to productivity as opposed to items solely for employee benefit and comfort.

On the other hand, once the union campaign started, Grover Mixon personally conducted six point meetings. Unlike prior situations, the memo advising of the March 1981 meetings solicited employees' suggestions, comments, and questions. Those employee comments resulted in improvements in the parking lot with both lights and parking lines, in increased vending machines, cleaner restrooms, and a microwave oven for the employees' convenience. None of those improvements directly involved productivity.

The above, and the entire record of credited evidence, convinces me that Respondent initiated a new program of soliciting employee grievances, complaints, and suggestions in March 1981. The proximity of that new program to Respondent's admitted first knowledge of its union organizing activities in February 1981 is obvious. Therefore, I find that Respondent solicited employee grievances after the union campaign started in violation of Section 8(a)(1). Moreover, the benefits conferred on employees, admittedly as a result of those employee comments including lights and lines in the parking lot, cleaner bathrooms, added vending machines, and a microwave oven, constitute additional 8(a)(1) violations.<sup>9</sup>

<sup>9</sup> *Stride Rite Corp.*, 228 NLRB 224 (1977); *Cutting, Inc.*, 255 NLRB 534 (1981); *Parkview Acres Convalescent Center*, 255 NLRB 1164 (1981); *K-Mart Corp.*, 255 NLRB 922 (1981); *Town & Country Supermarkets*, 244 NLRB 303 (1979); *Arrow Molded Plastics*, 243 NLRB 1211 (1979).

### C. The Pay Increases

It was not disputed that Respondent's employees were granted a pay increase in May 1981, following an April announcement that the increase was forthcoming. An increase was requested by the employees during the six point meetings which started in March 1981. Grover Mixon testified that the wage increase was announced on April 13, 1981.

Previously, Respondent's employees received a wage increase in December 1980. According to Grover Mixon's recollection that increase was effective on December 15, 1980. Mixon testified that he told the employees in December 1980 that their wages and benefits would be reviewed and changes would be made at least every 6 months if it were possible.

In deciding to grant the May 1981 increase, Mixon testified that he considered Respondent's performance in the first quarter of 1981 and in 1980.

According to Mixon, he first discussed the prospect of the May 1981 increase with Respondent's president, Gallaher, in February and March 1981.

President Walter Gallaher testified that, before February 1980, he had conversations with Grover Mixon regarding the wage rates in comparison with other industries that compete with Respondent for quality employees. Gallaher expressed that it was his opinion, his and Mixon at that time, that they needed to increase the wage rates as rapidly as they could within the range of their ability.

Gallaher testified that he prepared a production cost estimate which included labor cost, in early 1980, and at that time it was his intention to grant a wage increase in mid-1981.

Subsequently, according to Gallaher, he and Mixon discussed wages in November or December 1980. At that time Mixon was preparing to announce the December 1980 wage increase. Gallaher testified that at that time Respondent had experienced a good third quarter 1980, and it was clear "we were going to have a better fourth quarter of 1980." Gallaher authorized Mixon to discuss the fact that Respondent would make another wage increase as early as it could in 1981.

Gallaher testified that around April 8 or 10, 1981, shortly after conclusion of the first quarter in 1981, Grover Mixon was anxious to announce a wage increase. Gallaher admitted that it was obvious at that time "there was labor activity within our plant and at that point, I told Mr. Mixon that I could not make a decision until I talked with counsel." On that day or the next, Gallaher talked with his labor attorney. He was advised to proceed with the wage increase if he would have done so without the "outside pressure." Gallaher "immediately authorized Mr. Mixon to go ahead with the increase." As mentioned above, Mixon made that announcement on April 13, 1981.

On cross-examination, Gallaher admitted that his early 1980 cost estimate which was made regarding a Farmers Home Administration loan package projected a wage increase after the second quarter 1981. Gallaher testified that projection never changed until the increase was granted after the first quarter 1981.

### Conclusion

The general test regarding wage increases during an organizing campaign involves query into whether the employer would have granted the increase absent the employees' union activity. The Board has considered whether the increase was planned at a point before the Union, and whether the increase was given in accord with establish practice. It is well recognized that across-the-board wage increases during organizing campaigns constitute one of the most effective antiunion weapons. Therefore, those increases must be subjected to critical examination.

Here the testimony of Gallaher and Mixon illustrate that when the December 1980 increase was granted they were aware that both the third quarter, 1980, had been profitable and that the fourth quarter, 1980, which was nearing conclusion, was going to be profitable. At that time, as shown on Respondent's documents prepared for a Farmers Home Administration loan and through Gallaher's testimony, Respondent did not anticipate granting another raise until after the second quarter of 1981. That projection appears in line with what Mixon apparently told the employees before their December 1980 raise. The employees were told their wages would be reviewed and raises granted when the Company was able, at least every 6 months.

Subsequently, two material factors intervened between the end of 1980 and the end of the second quarter 1981. Firstly, Respondent had a profitable first quarter. However, there was no showing that the first quarter of performance was unexpected. In fact, that quarter showed a continuation of profitable quarters from the last half of 1980. Moreover, there was no projection by Respondent or comments to employees or others demonstrating any plans before April 1981 to grant another raise before the end of the second quarter of 1981.

Secondly, there was the intervention of the union campaign. As shown in the previous section of this decision, Respondent thereupon initiated a series of employee meetings designed to precipitate employee comments, questions, and suggestions. One such comment, which surfaced frequently, was a request for higher wages.

I am convinced on the basis of the record evidence that, but for the union campaign, Respondent would not have granted its employees a wage increase in May 1981. The testimony of President Gallaher proved that the May increase was first considered after the employees union activity became obvious and after the March 1981 employee "point meetings" resulted in employees requesting a raise. Once the increase was proposed by Mixon on April 8 or 10, Respondent moved swiftly to an April 13 announcement that the increase would go into effect the following month. The proximity of that announcement to the climax of the employees' union activities is illustrated by the timing in relation to the Union filing its petition for an election on April 9, 1981.

I find that Respondent granted the May increase in wages during its employees' organizing campaign in violation of Section 8(a)(1) of the Act. *Jefferson National Bank*, 240 NLRB 1057 (1979); *Van Pelt Fire Trucks*, 238

NLRB 794 (1978); *Advanced Mining Group*, 260 NLRB 486 (1982); *Colorado Forge Corp.*, 260 NLRB 25 (1982).

#### D. *The Employer's Objections*

By order dated December 31, 1981, and January 11, 1982, the Board directed a hearing on Objections 1 and 3(a); 1 and 3(b); 1 and 3(e); 2 and 6(a), (b), (c); and 10. Those objections are outlined in the Report on Objections issued by the Acting Regional Director for Region 11 on August 19, 1981, as follows:

##### 1. *Objections 1 and 3(a) and (b)*

(a) An Employer witness alleges that on or about the middle of the week of the election she and other second shift employees were in the packing room talking when a female union supporter, whom the Employer witness refuses to name, told the Employer witness that she better be careful how she voted because she just got a new car. This Employer witness alleges that a second Employer witness was present. This second Employer witness denies that she heard any female union supporter make this statement to the first Employer witness.

(b) An Employer witness alleges that employee-union supporter Derrick McCray asked him, on or about a week before Easter if he decided to sign a union card. When the Employer witness responded no, that he was still thinking about it, McCray stated if he didn't sign one, he was going to ram him down.

An Employer witness alleges that in June before the election, employee-union supporter Willie Lee Hannah told her if she didn't stop going around telling people to vote against the union that he would get her. Further, he said she better shut her mouth or he would get her. Shortly thereafter, during that same work shift, Hannah told this Employer witness that she was going around telling people to vote no and she had better shut her mouth if she knew what was best for her. This Employer witness alleges that Hannah, on two or three occasions away from the plant in April, May and June, told her that she better shut her mouth and stop telling people to vote no or else he was going to get her.

An Employer witness alleges that about the middle part of April, Derrick McCray and Willie Lee Hannah talked to her about signing a union card. When the Employer witness told them no, McCray replied if she didn't they were going to get her. He also said she better stop telling people to vote no or they would get her.

An Employer witness alleges that beginning in April and continuing up until the election, she received anonymous telephone calls at her home about twice weekly. She did not recognize the male callers who would breath heavily into the phone and slam down the receiver. On other occasions the male caller would say "we are going

to get you." On one occasion the male caller, whom the Employer witness recognized as either Derrick McCray or Willie Lee Hannah, said if she didn't stop going around telling people to vote no, that they were going to tell her husband about her having an affair with another man.

An Employer witness alleges that on June 19, Willie Lee Hannah told her he hoped she knew that someone would be waiting down the road for her.

An Employer witness alleges that on June 17, Willie Lee Hannah told her that if the union got in, the union would find out the employees who voted no and were against them, and these employees would be fired. Hannah said that the Employer witness especially would be fired.

##### 2. *Objections 1 and 3(e)*

An Employer witness alleges that the same week Derrick McCray was fired, McCray accused him of ratting on him. When the Employer witness denied this, McCray stated if he found who ratted on him and he got fired, he would take that person with him.

This same Employer witness alleges that in late April, an employee friend and nonunion supporter informed him that he heard around the plant that McCray said if he found out who caused him to get fired, he would kill that person because it would cost him only two years in jail.

##### 3. *Objection 2*

The union and its agents threatened supervisors and management representatives of the Company with reprisals of force and otherwise intimidated, harassed and coerced them.

##### 4. *Objections 6(a), (b), and (c)*

(a) An Employer witness alleges that in April and May, employee-union supporter Willie Lee Hannah told her and other employees that if the Union did not win the election, the Union would turn over the union cards to the Company and the Company would find out who signed union cards and they would be fired. Hannah stated if the Union did get in, then the employees that were against it would be fired.

An Employer witness alleges that on or about the last week in April, Willie Lee Hannah, a black female union representative, and AFL-CIO field representative George Kiser visited her home. The Employer witness alleges Kiser stated that if the Union did not win the election, the Company would find out who signed union cards because if the Company asked, the Union would probably have to turn over these cards and the Company would try to fire these employees.

(b) An Employer witness alleges that about a week before the election, employee-union sup-

porter Nat Brown told her and other employees seated at a picnic table outside the plant that when they went to vote, that they better know how to vote because if they didn't vote right, they (Company) was going to fire them by next year and hire more people to take their place. The Employer witness alleges that a second Employer witness was present. This second Employer witness denies that she heard Nat Brown make this statement to employees seated at the picnic table.

(c) An Employer witness alleges that she heard second and third shift employee-union supporters, whom she could not identify, state that if the Union did not get in, and employees then missed too many days, they would get fired but if the Union was in, employees could go to them and the Union would help employees from getting fired.

A second Employer witness alleges that on the day before the election she received a telephone call at home from a male caller who identified himself as a union representative. This Employer witness alleges that this union representative told her if she stayed out sick, the Company would fire her but if she voted for the Union, the Company would not be able to fire her.

A third Employer witness alleges that in April prior to Easter, she was visited at her home by union representative Verney Cumbee, employee Derrick McCray, and an elderly white union representative previously identified as AFL-CIO field representative, George Kiser. The Employer witness alleges Kiser stated if she joined the Union, she would have security and she could not be fired.

##### 5. *Objection 10*

In support of this allegation, the Employer presented a witness who alleges that on the day before the election, she received a telephone call at home from a male caller who identified himself as a union representative. This Employer witness alleges that the Employer issued to employees two paychecks that day, the second paycheck representing the amount of union dues payable by the employee. The Employer witness further alleges that the union representative told her what the Company said about union dues was a lie. He stated that the union dues would be \$2.00 per week but that she would not have to pay it and it would not be coming out of employee paychecks because the Company would have to pay it for her.

As noted above, the record reveals that the Union's organizing campaign at Respondent's Andrews facility commenced around December 1980. The petition in Case 11-RC-4990 was filed by the Union on April 9, 1981. The Union prevailed in an election conducted by Region 11 on June 19 and 20, 1981. The election resulted in the

Union receiving 102 votes, 52 votes were cast against the Union and 3 votes were challenged. The Employer filed timely objections.

During its campaign the Union employed a number of admitted agents including James Johnson, George Kiser, Verney Cumbee, Louis Washington, Ruby Rose, and Clayola Brown. Also, for a time during May and June 1981, the Union employed former employee Derrick McCray. James Johnson testified that the Union paid McCray a small salary in order to "give [McCray] some income that he could both continue to work on the campaign on and sustain the bare, you know, to sustain life."

A consensus of the evidence demonstrated that various union representatives including George Kiser and Verney Cumbee attempted to form a union organizing committee among the employees supporting the Union. While those efforts were never fully successful and no effort was made to notify Respondent of the names of the employees on the organizing committee, the evidence reveals, and I find, that an informal organizing committee was formed. The Union used the employees on the committee, which included Derrick McCray and Willie Lee Hannah, to assist in soliciting cards, contacting employees, oftentimes at the employees' homes, and to relay information about occurrences at Respondent's facilities to the Union.

##### Objections 1 and 3(a)

In support of this objection Respondent called employee Rosetta Brown.<sup>10</sup>

<sup>10</sup> Respondent also identified witness Mary Ann McKnight as a witness called in support of Objections 1 and 3(a), and in support of Objection 6(b). Regarding McKnight's testimony allegedly in support of Objections 1 and 3(a), I permitted Respondent to make an offer of proof by questions to McKnight. I then rejected that offer as being outside the scope of the objection matters which I was directed to hear. Moreover, McKnight's testimony was found by me to fall within the scope of Objections 1 and 3(c) which the Region and the Board overruled. I hereby reaffirm my ruling in that regard. However, in the event my ruling may be overturned, I shall now consider McKnight's testimony. McKnight's pretrial affidavit testimony given to the Regional Office identifies the conversation at issue, which involved employee Maxine Eddy, as occurring after the election and, therefore, outside the critical period. Moreover, McKnight specifically stated, in that pretrial affidavit, that "at no time prior to this Monday after the election did Eddy say anything to me personally or in my presence that employees voting against the union would be fired." Her pretrial affidavit to the Region was given on July 15, 1981.

On June 26, 1981, McKnight submitted an affidavit to Respondent during which she made the following statement, *inter alia*, "Before the election, Maxine Eddy told many people on second shift that they had better vote for the union, that if they did not, they would be fired."

Although McKnight testified at hearing in corroboration with her June 26 statement to Respondent, she also testified that during a conversation which she then identified as coming before the election, Maxine Eddy told the employees, among other things, "that the union people would get the 52 people who voted against them because we don't have no kind of protection."

Under the circumstances, I could not credit McKnight's testimony. Her testimony at trial was in direct conflict with her pretrial affidavit to the Region. Moreover, the substance of the conversation she alleged as occurring before the election reveals knowledge of Eddy which she could not have known at that point in time. According to McKnight, Eddy said the union people would get the 52 people who voted against them. Obviously, Eddy could not have known 52 people would vote against the Union at that time. Therefore, if the evidence was before me, I would discredit McKnight's testimony.

Employee Rosetta Brown testified to a conversation in the packing room at the plant during the week before the election, involving employees Harrietha Robinson, Brenda Darby, Mary Ann McKnight, Mary Sue Brown, Christine Scott, and Billie Bell Gamble. According to Rosetta Brown, Billie Bell Gamble told her "that I had better be careful how I voted because I just bought a new car." Brown said that she replied, "yes, I know and I intend to keep it." On cross-examination, Rosetta Brown testified in regard to her pretrial affidavit:

Q. And you told this, you told Billie Bell Gamble that you didn't want anything to do with the union because you didn't think that we needed the union, isn't that right?

A. Yes.

Q. And then Billie Bell Gamble replied, and laughed and said "you had better be careful how you vote because you just got a new car?"

A. Yes.

Q. That is correct?

A. Yes.

Q. And you said "yes, I know, I intend to keep it," is that right?

A. Yes.

Q. And then you say here, "I took it as a joke first but not too long before this incident, the company had a meeting with all employees and told us that some employees were receiving threats concerning the union," is that right?

A. Yes.

Q. And then you say that "after thinking about it, the company had told us earlier;" strike that; and then you say "after thinking about what the company had told us earlier in the meeting, I started taking this seriously," you mean you started taking the idea that people were threatening you seriously?

A. Yes.

Q. And that was an idea that you got from the company?

A. [No answer.]

Q. At that meeting?

A. Yes.

Q. And then you say "the only place where I heard that employees were receiving threats about the union was from the company in the above-mentioned meeting?"

A. Yes.

Rosetta Brown also admitted stating that "everyone in the room heard this conversation."

Former employee Harrietha Robinson admitted that she was present in the packing room in June 1981 when Billie Bell Gamble asked employees, including Rosetta Brown, how they were going to vote. Robinson testified that she did not remember Billie Bell Gamble saying "you had better be careful how you vote because you just got a new car." Robinson also testified in conflict with Rosetta Brown, that, at the time of that conversation, she did not know that Billie Bell Gamble favored the Union.

Although Mary Ann McKnight was called by Respondent, she was not asked and did not testify about the

above conversation even though Rosetta Brown recalled that McKnight was present. I noticed in McKnight's affidavit to the Regional Office she denied that she was present in the cafeteria and overheard a conversation between Rosetta Brown and a female union supporter where the union supporter told Brown that she better be careful how she voted because she just got a new car.

Billie Bell Gamble denied that she ever told Rosetta Brown "You better be careful how you vote because you just got a new car."

#### Discussion

I have trouble crediting Rosetta Brown's version of Billie Bell Gamble's comments to other employees. In consideration of Brown's credibility, I note that Respondent had an opportunity to corroborate her testimony with other employees but failed to do so. The witnesses called by the Union indicated that Gamble did not make the alleged comments. Moreover, I am bothered by Rosetta Brown's admission that it was because the employees were cautioned about alleged threats from union supporters during a company meeting, that she concluded that she may have been threatened by Gamble. Her testimony reveals that initially she viewed Gamble's comments as a joke or a light-hearted remark. That testimony by Brown leads me to believe that her reconsideration of the packing room incident may have been unduly influenced by Respondent's indication that threats were being made by the Union's supporters. Therefore, I shall not credit Rosetta Brown's testimony.

#### Conclusion

In view of my credibility findings, I find that Respondent failed to prove objectionable conduct as alleged in Objections 1 and 3(a).

#### Objections 1 and 3(b), paragraph 1

Employee Avis McFadden testified that after she was first visited at her home regarding the Union by union representatives Kiser and Cumbee, along with employee Derrick McCray, she had a conversation with McCray as she was approaching the cafeteria in the plant, in late April, before Easter 1981. McFadden testified:

A. Okay, well, I was coming in the cafeteria. He came up behind me, walking behind me; he asked me whether I was ready to sign the card, the union card, and I told him "no, that I was still thinking about it" and so he told me that he would "ram me down if I didn't sign the card."

I told him "if I get up, I will get him back."

On cross-examination, McFadden admitted that she saw McCray socially before McCray's discharge and that she visited McCray's apartment after he was discharged.

McCray admitted visiting McFadden at her home with union representatives and he admitted that subsequently he asked her at the plant to sign a union authorization card. However, McCray denied that he threatened

McFadden. McCray testified that he and McFadden dated.

#### Discussion

McFadden impressed me with her demeanor. She appeared to respond to questions from all the attorneys candidly. On the other hand, as mentioned above, McCray admitted making an untrue statement in his pre-trial affidavit to the Region. I shall credit McFadden's version of her conversation with McCray at the plant in April 1981.

#### Roberta Pipkin's Testimony

Employee Roberta Pipkin testified in support of Objections 1 and 3(b), paragraphs 2, 3, 4, 5, and 6; and Objection 6(a), paragraphs 1 and 2.

As to *Objections 1 and 3(b), paragraph 2*, Roberta Pipkin testified to a conversation with employee Willie Lee Hannah. Pipkin, in response to the question of whether she had a conversation with Hannah in June 1981, stated:

Well, we had so many, okay; between the #1 and the #2 packing room one day he came up to me and he told me, he said "that I had better shut my mouth up; if not, he was going to get me."

Pipkin was subsequently asked by Respondent's counsel if she continued the conversation with Hannah at another place. She replied:

We went over in the, okay, just before, well, I am trying to tell it like I know, just before Derrick got fired; I remember Hannah and Derrick; they had come to me in the cafeteria to try to get me to sign a card, and I wouldn't and they told me that "if I didn't sign a card that they were going to get me." Now back there in June, I remember me and Willie Lee left out of the Packing Room, #1 Packing Room; I went in the cafeteria and he came in there behind me; he told me, he said, "Roberta, I still say, you know, if you know what is good for you, you had better keep your mouth shut and stop running around telling people . . ."

Pipkin was asked if other employees were there where they could hear Hannah's comments and she replied: "I don't see why somebody couldn't have heard, but everybody claims that they didn't hear."

On cross-examination, Pipkin had difficulty recalling that her above conversation with Hannah occurred in June. At that time in her testimony she recalled the conversation occurred in April or May. Counsel for the Union then read to Pipkin her affidavits stating the conversation occurred on June 17, 1981, and asked Pipkin whether it occurred in April, May, or in June. Pipkin replied, "I had so much real enemies, good Lord!"

Willie Lee Hannah denied ever telling Pipkin to shut her mouth up or he was going to get her or telling her to keep her mouth shut about the Union or we are going to get you. Hannah testified that he probably asked Pipkin to sign a card. Hannah stated that he and Pipkin

were friendly to each other during material times. He testified without rebuttal that on one occasion Pipkin accompanied him on a trip to Pawleys Island and that they stopped along the way to sign up another employee to a union card. On that trip Pipkin spoke in favor of the Union but Hannah later heard, near the election date, that Pipkin had gone over to the Company's side. Hannah also testified without rebuttal that Pipkin told him about the hearing saying that, "They had set her up," that "she didn't know that it was going to happen."

Regarding *Objections 1 and 3(d), paragraph 3*, Pipkin was asked by Respondent's attorney if she recalled a conversation with Derrick McCray in the plant during mid April 1981. Pipkin responded:

A. He told me "that I had better shut my mouth or else they were going to get me" and Hannah also told me that.

Q. How many times did he tell you that?

A. Several times.

Q. Did you have occasion to see him away from the plant?

A. Sure, down town.

Q. What did he say to you at that time?

A. Oh, he told me "that I had better keep my mouth shut or else he would get me."

Q. Is there anything else that you recall McCray saying during these conversations?

A. No. They just kept saying that "if I didn't keep my mouth shut that they were going to get me."

Q. Was anyone else present when these statements were made to you by McCray?

A. Well, a few people, I don't remember like who they were or who was present at this time.

Q. Do you recall his making the statement to you in the cafeteria at the plant one day?

A. Yes, sir.

Q. How many employees were present?

A. Okay, like, let me see, between like six and seven or eight people because when you go to lunch; we have different sets of groups, you know.

Q. Was this when you were on the Mini Shift?

A. I worked over on graveyard with them, overtime; if somebody didn't come in, I would work over.

Q. At this time in the cafeteria, can you recall who some of these six or seven people might have been?

A. No, sir.

Pipkin expressed her opinion, "Derrick and them knew that I was going around talking against the union and they did not like it, they really did not like it."

Derrick McCray admitted asking Pipkin to sign a union card but he denied that either he or Willie Lee Hannah, in McCray's presence, ever told Pipkin that he or they were going to get her. McCray denied ever telling Pipkin to shut her mouth. McCray testified regarding Pipkin's reputation, "You can't believe Bertie." McCray testified that he did not hear Pipkin speak against the

Union but that he heard her speaking in favor of the Union.

As to *Objections 1 and 3(b), paragraph 4*, Pipkin testified that she received numerous phone calls at her home during the organizing campaign in which the caller stated, "you had better shut your mouth up; if not, we are going to get you." Pipkin alleged she received other calls in which the caller told her "if you don't keep your mouth shut like they were going to tell my husband that I was having an affair with another man." Pipkin said she received other calls where the caller "breathed heavily" into the phone. Originally, when asked if she could identify the callers, Pipkin first responded, "Well to me, I would say that it was Derrick; and Willie Lee; and why I would say it is because I was having so much problems with him." At another time in her testimony, regarding identity of the callers, Pipkin testified, "Well, it sounded like either Hannah or McCray."<sup>11</sup> Pipkin subsequently admitted that she could not actually identify any of the callers but, "it was a man's voice, a young man."

McCray and Hannah both denied making calls to Pipkin as she testified. Hannah testified that he never called Pipkin. McCray called Pipkin on one occasion but that was to arrange for him and union representatives to visit at her house. Both Hannah and McCray testified that it was common knowledge that Pipkin was seeing a man other than her husband. McCray testified without rebuttal that Pipkin's boyfriend stayed with her and brought her to work and that Pipkin told him and other employees about her relationship with the boyfriend.

Regarding *Objections 1 and 3(b), paragraph 5* Pipkin testified that after she served as company observer and the polls closed that particular voting session, she and Willie Lee Hannah (the union observer) were walking away and Hannah said, "I hope you know that somebody could be waiting on you down the road." Pipkin stated that she replied, "Oh, yeah? I will see in you in your yard tomorrow morning."

Hannah admitted that he served as union observer and that Pipkin was an observer for the Company. According to Hannah, he walked away from the polls either ahead or behind Pipkin but not with her. He denied telling Pipkin, "I hope that you know that somebody could be waiting on you down the road."

Pipkin's testimony reveals that she had voted before Hannah's alleged threat. Moreover, immediately after her alleged conversation with Hannah, she went home and did not return until the election was over. The evidence failed to show that she told any other employee of the alleged comment by Hannah before the election concluded.

Pipkin also testified regarding *Objections 1 and 3(b), paragraph 6* and *Objection 6(a), paragraph 1*. She testified that Willie Lee Hannah would go around a lot telling employees "we have to get the union in there because if not that the company, the plant, or company would find out who all signed union cards and that they were going to get fired." Pipkin was asked how many times she heard Hannah make that statement. She re-

plied, "That is what he brain-wash a lot of people with, even Derrick." When asked specifically if she recalled that statement by Hannah in the week before the election, Pipkin answered yes. She was also asked specifically by Respondent, if she heard Hannah say the Union would turn over the union cards to the Company and she replied yes. When asked when Hannah said the union cards would be turned over to the company, Pipkin replied that "he would be all around the plant saying that."

Additionally, Pipkin recalled that Hannah also threatened her with discharge if the Union won. According to her, Hannah told employees, "Then he said that the ones that had voted 'no' if the union would get in that the ones that didn't had been for the union would get fired and he said even to you, too, Roberta; he said, 'I will see that you get fired, too.'"

Subsequently, Pipkin testified that she was told that Hannah made the above comments to employee Wayne Collins. She then testified that Jacob Brown told her Hannah made the statement. Then Pipkin testified that she heard Hannah make the statement to Debra Collins and Wayne Collins.

Wayne Collins was called. He testified that he did not hear Willie Lee Hannah say if the Union did not get in the people would be fired or if the Union did get in those who were against the Union would be fired. Collins stated that he never told Roberta Pipkin that Hannah had made such statements.

Hannah denied making any of the above statements to Pipkin.

Pipkin testified that she was visited at her home in April 1981 by George Kiser, Willie Lee Hannah, and a black lady.<sup>12</sup> In regards to *Objection 6(a), paragraph 2*, Pipkin related that Kiser told her:

A. Mr. Kiser. He said that we needed a union in, and then he said "that if we didn't get the union in then the plant will find out who had already signed cards" and stuff like that, and "that they would be, if the union didn't get in that they would be fired, they would have to turn the cards over to the plant, and then the company;" he didn't say "the plant;" he said "the company would find out who-all sign a card and that they would get fired" because he ever like what, I asked him "why they would get fired" and he said "that anybody, once a man strikes at you, he will strike at you again"; something like that.

Q. Did Mr. Kiser tell you that if the union did not win that the union would turn the cards over to the company?

A. They had to turn the cards over to the company, if the company wanted the cards, they had to turn the cards over to the company.

#### Discussion

I found Roberta Pipkin to be an overeager witness in support of her employer's position. Her testimony ap-

<sup>11</sup> I noticed during the hearing that McCray and Hannah's voices are not similar.

<sup>12</sup> First Pipkin said Derrick McCray was also present. Subsequently, she said only three, Kiser, Hannah, and the lady were there.

pears to involve numerous exaggerations. According to her repeated testimony, she was threatened on innumerable occasions. She indicated a belief that she had many enemies and she appeared to assert that those enemies were out to get her. As shown above, Pipkin testified to a number of threatening phone calls which she attributed to Derrick McCray and Willie Lee Hannah. However, she subsequently admitted that she could not identify the phone callers. Additionally, there is un rebutted testimony that Pipkin's reputation was that of an untruthful person. I also noted that Pipkin admitted that none of the witnesses to her alleged conversations supported her recollection.

Outside her own testimony, there is no support for Pipkin's material allegations in the record. Respondent offered no corroboration for her material testimony even though some employees were named by Pipkin as witnesses to those incidents. The one neutral witness that testified regarding Pipkin's allegations, Wayne Collins, specifically denied statements were made as alleged by Pipkin.

I find it incredible that comments were made by McCray and Hannah on the numerous occasions alleged by Pipkin without those comments being overheard by others.

Moreover, segments of Pipkin's testimony are nonsensical. Why would a union representative, especially one with the experience of George Kiser, threaten an employee that she may be fired if she signed a union authorization card, during the conversation in which he was soliciting her to sign a card. Obviously such a threat, if made, would have the effect of influencing an employee not to sign. That was precisely what Kiser did not want.

Additionally, there was evidence that Pipkin did not speak against the Union and that her procompany position was not apparent until shortly before the election. Obviously, if that was the case, there would be no incentive for McCray, Hannah, or any other union supporter, to harass Pipkin.

Under the circumstances and also on the basis of my observation of Pipkin's demeanor, I find that her testimony is unworthy of belief.

#### Conclusion

In view of my finding that Pipkin cannot be believed, I recommend that Objections 1 and 3(b), paragraphs 2, 3, 4, 5 and 6, and Objection 6(a), paragraphs 1 and 2 be overruled.

*Objections 1 and 3(e), paragraphs 1 and 2.* In support of these objections Respondent called employee Charles McCutchen. McCutchen testified that he had a conversation with Derrick McCray at the plant after a question arose regarding the missing saw. McCutchen recalled the conversation occurred in the week after Easter. According to McCutchen:

Well, he came over to where I was at, and he said, "I heard that you ratted on me." And I said, "What do you mean I ratted on you?" And he said, "Well, somebody told me you said I stole the saw."

And I said, "well, he asked me where the saw was at."

He said, "That's what I know, man."

And I said back to him, "How could I say that you stole your saw?"

He said, "Well, I don't know. I heard you said that." And he said if someone—if I find out who ratted on me, and I get fired, I am going to take them with me."

I said, "Well, I didn't rat on you," And so, he went on back to where he was working at.

McCray admitted making a similar statement but, according to McCray, he used the term "lied" as opposed to "ratted." McCray appeared confused as to whether he made the statement to McCutchen or to Supervisor Joyce Hudson.

#### Discussion

Although, as noted above, there is a conflict between McCutchen's testimony at the hearing and his pretrial statement to counsel for the General Counsel, I shall credit his testimony to the extent of McCray's admission.

*Objection 2.* Supervisor Joyce Hudson testified to a conversation with Derrick McCray at the plant, shortly after his April 24 suspension from work:

McCray told me that he was very upset because he was accused of stealing the saw. He told me that he was "mad with Mixon and he would blow Mr. Mixon's fucking brains out."

McCray said that "if he ever tried to get a job any place that it would always be on his record that he stole a saw and he didn't." He said "that he would find out who told on him."

Yes, sir. He said, when he said that "he would blow Mr. Mixon's brains out," he raised his hands at my forehead, and he point, you know, and aimed like a gun.

Hudson testified that she told Production Manager Roger Hughes of the above conversation.

McCray denied that the above incident occurred but he admitted telling Hudson that if he found out who lied on him he would take that person with him—try to get him fired.

Roger Hughes testified that he gave Derrick McCray a ride after McCray's discharge, and:

All right, as we were leaving the plant, Derrick turned to me and said "Do you"—I may not have this exactly as he said it but he said "Do you value your life," or do you think a lot of your life?"

Did you say anything in response to that?

Yes, I said, "Sure, you damn right." And he said, "Do you think Mixon values his life or do you think that he thinks a lot of his life?"

I said, "I suppose he does." And he said, "Well, I don't think nothing of mine." I don't value mine. I don't think nothing of mine." He said, "I bet you and Mixon thinks a whole lot more of your life than I do of mine." And I said, "Well, what do you mean?" And he says, "Mixon, he has got a big job, you know, he thinks a lot of his life, he has got a big job, he thinks he is important." "Me, I don't think nothing of mine but he thinks a lot of his. I bet he values his life a lot more than I value my life." And I said, "Derrick, what do you mean by those statements?" He said, "That's all right, you will see, that's all right." That, and when we got to the car, he said, "I will see you around" and he got out of the pick-up. I don't remember anything else. That is basically all that it was.

McCray's testimony regarding the above conversation with Hughes was as follows:

Well, we started to talk; or I started to tell him that Mixon had all the money, and you know, his life was valued, you know, a whole lot, being that I was just an employee, you know, he could fire me and do anything to me; my life didn't mean nothing to him, you know, whatever happened to me was fine with him; you know.

#### Discussion

Joyce Hudson appeared to testify candidly. In view of my above findings regarding Derrick McCray's credibility, I shall discredit his denial and credit Joyce Hudson.

In view of McCray's admission, I shall credit Roger Hughes' testimony regarding his conversation with McCray following McCray's termination.

*Objection 6(b)*, Mary Ann McKnight testified to a conversation which she recalled as occurring during the period before the election, in the picnic table area at the plant. Also present were Nat Brown, Rosetta Brown, Mary Sue Brown, and Venetta:

Well, Nat told us, he said that "you had better vote for the union; if you don't, you will be fired"; and "they would make sure this time, they would hire a lot of people to make our, that we would be fired by next year this time; they would hire a lot of people to take our place."

He said "they would have a lot of applications out at the plant, that you know, they would hire more people, you know, to vote for the union that would be fired by next year."

Rosetta Brown, another of Respondent's witnesses, testified before McKnight's above-mentioned testimony. Brown was not asked about the picnic table incident.

Nat Brown admitted to a conversation at the picnic tables involving several employees including Mary Ann McKnight and Rosetta Brown. However, Nat Brown's testimony, which follows, differed from McKnight's:

A. Mary Ann McKnight, she said she was scared, and the rest of the girls sort of mumbled,

you know, and I said, "Scared of what," you know, I said, "it can only help."

Q. Did she say anything else?

A. I can't recall.

Q. Did you remember saying anything about the possibility of people getting fired?

A. The possibility of people getting fired?

Q. Yes.

A. Yes, I did.

Q. What did you say?

A. I said, "well"; after she said that she was scared; I said "scared of what"; and she said "well, if we don't get the union in, you know, by next year they could fire all of us."

Q. Did they say anything?

A. No. It was getting close to time to go in, you know, like I said, the day was about over.

Q. Did you tell them if they did not vote for the union, the company would fire them?

A. No, I did not.

Brown testified that some employees, including Derrick McCray and Easter Collins, had been fired before the above-mentioned conversation. He admitted that following those discharges he was afraid that other union supporters would be fired.

#### Discussion

As noted above in footnote 9, Mary Ann McKnight was not a credible witness. I shall credit Nat Brown's testimony which is otherwise un rebutted.

#### Conclusion

I see nothing objectionable in the credited evidence of the picnic table conversation. The employee comments, including McKnight's, evidence a normal reaction to an explanation that an employee was afraid to sign a union card when considered against the background of previous discharges of union supporters. Concern was expressed over other discharges, but the expressions clearly evidence that no threats were being made. In fact, just the opposite was expressed—concerns of what others, in this case the Employer, could do to union supporters if they were unsuccessful. I find that the above conversation did not involve objectionable conduct and recommend that the objection be overruled.

*Objection 6(c), paragraph 1.* I find no record evidence in support of this objection. Therefore, I recommend that the objection be overruled.

*Objection 6(c), paragraph 2 and Objection 10.* Employee Sandra Greene testified to a phone call she received a few days before the election. Greene recalled that the caller gave his name and said "that he was a member from the Union representative." However, Greene testified that she does not recall the caller's name, but she felt it was a white man. She testified the caller did *not* sound like Union Representative George Kiser. Greene recalled the phone conversation:

When he called, he told me that they did the pay check differently, and he said they took out the in-

surance, what the check would be like when they started taking out union dues, and he also said that we didn't have to pay the \$2 fee from the check; he said that the company will have to pay that from the, for the union dues, that we didn't have to pay it, that the company would have to pay it.

Well, he told us that the company did our check differently, right, you know, take out what the union dues would be, you know, per week. He said that they just do it, you know, so we would, so we wouldn't have no, you know, like he do the check differently so that we could pay what the union would be taking out of our check, and he said that the \$2 fee that would come out of the check wouldn't be all; he said that the company, you know, would be paying that; he said that we won't be paying that, that that will be coming from the company, that the company would be paying the \$2.

He also said that if like if you be out sick, or we be out, you know, and any reason that we come back and we be fired, and if the union be in there, they wouldn't; you know, we won't get fired because they would help us, you know, not to get fired; if we be out sick or anything and we come back and try to explain or tell them what was going on, and then, you know, they didn't give us a chance, and he said the union, you know, would be right there to help us not to get fired.

And he said that about the raises, and the holiday pay and stuff like that, he said that the union would also help us have more raises and get paid for the holiday, and more vacations and stuff like that.

All the male union representatives, who, with the exception of George Kiser, are black, denied making the phone call to Greene. Derrick McCray, who is black, made calls to employees about the paychecks but he denied making comments as expressed in Greene's testimony.

#### Discussions

Sandra Greene was admittedly preoccupied taking care of her baby, during the above phone call. I have no doubt that Greene received a phone call regarding the Employer's recent two paychecks.<sup>13</sup> However, Greene's testimony reveals confusion over the substance of the call, which is not unexpected in view of Greene's preoccupation. In view of her admitted distraction and her in-

<sup>13</sup> Before the election the Employer distributed two paychecks in lieu of its regular weekly paycheck to the employees. The regular paycheck was \$10 short. A second check for \$10 was paid with an indication that it was the amount of dues that would be withheld for union members if the Union were successful. At two points during the hearing, counsel for Respondent agreed to produce a sample of the two paychecks. However, the sample was never produced.

ability to remember the caller, I am unable to credit her testimony to the extent it would show misrepresentation.

The relevant testimony regarding the paychecks would appear from Greene's recollection to constitute an indication that the Company, not the employees, would pay each employee's union dues. However, the Union's quarrel with the Company's two paychecks dealt with the fact that the monthly dues of \$10 was deducted from a weekly paycheck, giving the impression, in the Union's view, that the dues would be \$10 a week. That was the issue covered by Derrick McCray in his calls to employees regarding the paychecks. I am convinced that Greene was confused regarding the substance of that portion of the conversation.

As to the discharge for sickness portion of the phone call, Greene's testimony reveals a statement that the Union would help the employees regarding discharges for sickness. While I cannot attribute that comment to a union representative or any other agent of the Union, due to Greene's inability to identify the caller, I credit her testimony to the extent it evidences an assertion that the Union would help employees regarding possible discharges for sickness.

#### Conclusion

I find nothing in the credited evidence which constitutes objectionable conduct. The evidence does not support a finding of misrepresentation by an agent of the Union. Moreover, even if there was misrepresentation, the most recent Board law would find that does not constitute objectionable conduct in this instance.<sup>14</sup> As to the allegation of help in discharge for sickness situations, I find that nothing was said which constitutes objectionable conduct. Greene was told that the Union would help the employees. Obviously, there is nothing wrong with such a comment.

*Objection 6(c), paragraph 3.* Employee Avis McFadden testified that she was visited at her home before the election by Derrick McCray along with Union Representatives George Kiser and Verney Cumbee. McFadden recalled the following material statements were made to her by Representative George Kiser:

Yes, he also said that if I joined the union, "if I signed the card, joined the union that I would have nothing to lose, that I would only gain;" okay, they also said that "if I joined the union that I would have security."

Mr. Kiser also said that "if I joined the union, that I would have security and that I would not be fired or could not be fired."

On cross-examination, McFadden testified that she could not recall whether Kiser went into other specifics as to what would occur if the Union was elected.

Derrick McCray testified that he did not know of Kiser telling McFadden that she could not be fired if the Union came in.

<sup>14</sup> See *Midland National Life Insurance Co.*, 263 NLRB 27 (1982).

George Kiser testified in detail about his visit to the home of Avis McFadden. Kiser recalled McFadden telling him she was a Jehovah's Witness and did not believe in voting. Kiser testified that he had previous experience with Jehovah's Witnesses, and realized it would be fruitless to pursue other discussions with McFadden. Therefore, Kiser said he did not "say much to her." Kiser recalled a more extensive conversation with McFadden's mother. Kiser specifically denied telling McFadden that she could not be fired if she joined the Union. Kiser testified that he occasionally tells employees that they "couldn't be fired for their union activity."

#### Discussion

I was impressed with Kiser's demeanor. I find it difficult to believe that Kiser, who has been employed by unions for 28 years, would make such an obviously false statement especially to an employee who had declared it was contrary to her religious beliefs to vote. I am convinced and find that McFadden was mistaken as to the content of Kiser's remarks. Kiser may have well indicated that employees were protected by the law from discharge because of union activities.

#### Conclusion

In view of my above credibility findings, I find that the credited evidence does not support the objection.

#### Findings as to Objections

As indicated above, I find that Objections 1 and 3(a), 1 and 3(b), paragraphs 2, 3, 4, 5, and 6; Objection 6(a), paragraphs 1 and 2; Objection 6(b); Objection 6(c), paragraphs 1, 2, and 3; and 10, are not supported by credible evidence and should be overruled.

As to the remaining Objections 1 and 3(b), paragraph 1; Objections 1 and 3(e); and Objection 2, I find, as shown above, those allegations were supported by credible evidence. I shall now consider whether the facts support the Employer's contention that the election should be overturned.

#### Objections 2, 1, and 3(e)

The above objections all deal with evidence showing that Derrick McCray made alleged threatening remarks to one employee and two supervisors, because of Respondent's actions against him in regard to the missing saw.

As to Objections 1 and 3(e), the credited evidence shows that Derrick McCray told Charles McCutchen, during the week after Easter 1981, that if he (McCray) found out who lied on him and, if he was fired, he was going to take them with him. I find that McCray's comment constitutes a threat to try and have the employee or employees that alleged McCray had stolen the saw, fired. As developed above, the evidence shows that McCutchen was aware at that time, that employee Jerome Brockington had told the Employer that McCray had taken the saw.

As to Objection 2, the credited evidence shows that around April 25, 1981, Derrick McCray threatened Joyce Hudson that he would blow Plant Manager

Mixon's brains out. At the time of that threat McCray raised his hand to Hudson's forehead as though he was pointing a gun. Other credited evidence shows that McCray complained to Production Manager Hughes on May 1, 1981, that Plant Manager Nixon valued his life more than McCray valued his. I am convinced that at that moment McCray, in a depressed state over his discharge, was simply stating that his life was considered to be of little value. His testimony at the hearing convinced me that McCray, during his conversation with Hughes, did not intend to threaten anyone. However, I also find that Hughes, in consideration of McCray's threat to Joyce Hudson the week before, had reason to be alarmed by McCray's comments. While those remarks to Hughes did not include a threat, McCray's comments did have a disturbing overtone.

I find that McCray's actions, especially his threat to Hudson, create grave concern. However, as to the issue before me, I must consider the overriding question of how they may have affected the employees' election.

Regarding all the above comments, it is apparent that McCray's remarks did not involve the union campaign or the election process. The factors which precipitated McCray's remarks arose over the missing saw question and the context of those remarks to McCutchen, Hudson, and Hughes, was limited solely to the missing saw question, and the Employer's consequent personnel actions against McCray. Moreover, at that point in time McCray was not a paid agent of the Union. He was a strong union supporter. He had talked to employees about the Union. He had solicited employees to sign union cards. He had visited employees at their homes and discussed the Union and oftentimes his visits were made in the company of union representatives; and McCray was a member of the Union's informal employee organizing committee. Subsequently, of course, McCray was employed by the Union but that did not occur until after his discharge.<sup>15</sup>

As to McCray's threat to Hudson and his comments to Hughes, no employee overheard those remarks and the evidence failed to show that employees learned of the remarks before the election. Therefore, I must question how those statements, made to supervisors and regardless of their frightening overtones, could have affected the election outcome.

The Board has found that threats of violence are not sufficient to set aside an election where no connection is shown between the threats and the election [*Methodist Home*, 253 NLRB 458 (1980)]. The test in "atmosphere of fear" objections was set out in *NLRB v. Gulf States Cannery*, 585 F.2d 757, 759 (5th Cir. 1978). There the court stated the "assay should seek to find whether the questioned action by an election candidate had a tendency to influence the outcome of the voting."

The Board has found that remarks referring to possible violent activity, even though connected with union ac-

<sup>15</sup> Cf. *Brown Steel Co.*, 230 NLRB 990 (1977), where the Board found it unnecessary to find that an employee who was the union's chief organizer, was an agent. See also *Certain-Teed Products Corp. v. NLRB*, 562 F.2d 500, 510 (5th Cir. 1977), where members of a union's organizing committee were not agents of the union.

tivities, are "unrelated to the outcome of the election" where the threat is connected to events that would occur after the election. *Burriss Chemical, Inc.*, 246 NLRB 205 (1979); *Hickory Springs Mfg. Co.*, 239 NLRB 641 (1978).

Here, as shown above, McCray's comments to Hudson, Hughes, and McCutchen were not connected by context or circumstances to either the Union, its organizing campaign, or the election process. Moreover, there was no showing that his comments to Supervisory Personnel Hudson and Hughes were communicated to any employees. Therefore, I cannot find that those comments had a "tendency to influence" any potential voters. See *NLRB v. Gulf States Cannery*, supra; *Hamilton Label Service*, 243 NLRB 598 (1979); *Beaird-Poulan Division v. NLRB*, 649 F.2d 589 (8th Cir. 1980); *NLRB v. Production Plated Plastics*, 663 F.2d 709 (6th Cir. 1981); and *Zeigler Refuse Collectors*, 245 NLRB 449 (1979).

I recommend that Objection 2 and Objections 1 and 3(e) be overruled.

#### Objections 1 and 3(b), paragraph 1

In April, before Easter, 1981, Derrick McCray told employee Avis McFadden that he would ram her down if she did not sign a union card. McFadden replied that if she got up she would get McCray back.

Both before and after the above incident, McCray and McFadden were on good terms. McCray testified that he and McFadden dated and that she visited his apartment after his May 1 discharge. McFadden's testimony supports McCray in that regard.

There was no showing that McCray's comments to McFadden were ever known by other employees eligible to vote. McCray did nothing further to McFadden and there was no evidence of any physical violence during the organizing campaign.

Moreover, McFadden had already advised the Union that she was a Jehovah's Witness and did not believe in voting. There was no evidence showing that her position was affected by McCray's comments.

I find that McCray's comments to McFadden did not have the "tendency to influence" any potential voters, *NLRB v. Gulf State Cannery*, supra, nor did they contribute to "a general atmosphere of fear" (*Zeigler Refuse Collectors*, supra; see also *Hamilton Label Service*, 243 NLRB 598 (1979), and *Beaird-Poulan Division v. NLRB*, supra).

In view of my above findings, I recommend that all the Employer's objections be overruled and an order issue certifying the election results.

#### CONCLUSIONS OF LAW

1. Respondent Phoenix Glove Company, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees about its employees' union activities; soliciting employees to report to management on union activities of other employees; soliciting employees to bring grievances to management during its employees' union organizing campaign; threatening its

employees that they were messing up if they selected the Union as their bargaining representative; threatening its employees with reprisals if they discussed the Union with other employees; requesting employees to speak against the Union with other employees and implying that the employees would thereby receive special favors; instituting employee meetings and soliciting grievances from employees during the employees' union organizing campaign; granting improved benefits during its employees' union organizing campaign upon request from the employees; and granting a wage increase to employees in order to persuade them not to support the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. Respondent did not otherwise engage in violation of Section 8(a)(1) and (3) of the Act as alleged in the complaint.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. However, nothing in this Order shall authorize or require the withdrawal or elimination of the wage increases and other improved benefits found violative in this Decision.

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

#### ORDER<sup>16</sup>

The Respondent, Phoenix Glove Company, Inc., Andrews, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed to them in Section 7 of the 10 Act, in violation of Section 8(a)(1) of the Act, by interrogating its employees about its employees' union activities; by soliciting its employees to report to management on the union activities of other employees; by soliciting employees to bring their grievances to management during its employees' union organizing campaign; by threatening its employees that they would be messing up if they selected the Union as their bargaining representative; by threatening its employees with reprisals if they discussed the Union with other employees; by requesting employees to speak against the Union with other employees and implying that the employees would thereby receive special favors; by instituting employee meetings and soliciting grievances from employees during the union organizing campaign upon request from the employees; and by granting wage increases to its employees in order to persuade its employees not to support the Union.

<sup>16</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

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

(a) Post at its Andrews, South Carolina facility copies of the attached notice marked "Appendix."<sup>17</sup> Copies of said notice on forms provided by the Regional Director for Region 11, after being signed by the Respondent's representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps should be taken by Respondent to ensure that the notice is 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 Respondent has taken to comply.

<sup>17</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

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

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT solicit our employees to report to management on union activities or other employees.

WE WILL NOT threaten our employees that they will be messing up if they select the union as their bargaining representative.

WE WILL NOT threaten our employees with reprisals if they discuss the Union with other employees.

WE WILL NOT request our employees to speak against the Union with other employees and imply that the employees will thereby receive special favors.

WE WILL NOT institute employee meetings and solicit grievances from employees during the employees' union organizing campaign.

WE WILL NOT grant improved benefits during our employees' union organizing campaign upon requests solicited from employees in order to persuade our employees not to support Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT grant a wage increase to our employees in order to persuade them not to support the Union.

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 National Labor Relations Act, as amended.

PHOENIX GLOVE COMPANY, INC.