

Contris Packing Co., Inc. and Mark Nolting and John Van Hoose and Local 545, United Food and Commercial Workers, AFL-CIO

Contris Packing Co., Inc.; Clinton Packing Co., Inc.; Avco Meat Co., Inc.; Dennis Contris, William Contris, and David Contris and Contris Local 545, United Food and Commercial Workers, AFL-CIO. Cases 14-CA-13913, 14-CA-14023, 14-CA-14065, and 14-CA-14418

28 October 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 12 July 1982 Administrative Law Judge Thomas E. Bracken issued the attached decision. The Respondents Dennis Contris, an individual, and William Contris, an individual, filed joint exceptions and a joint supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified herein.

The judge concluded that Clinton Packing, Co., Avco Meat Co., William Contris, and David Contris did not constitute a single employer with, nor were they alter egos of, Contris Packing Co., Inc., the principal named Respondent. However, the judge did conclude that Dennis Contris was an alter ego of Contris Packing Co., Inc. and further that "it is necessary to find William Contris individually liable as to any backpay order so that a total frustration of the Act may not be perpetrated."

Further, the judge concluded that the Respondent committed 48 independent violations of Section 8(a)(1) of the Act, including the discharge of four employees but did not commit such violations on 11 other occasions, as had been alleged. The judge also concluded that the Respondent violated Section 8(a)(3) and (1) by instituting a warning system and issuing nine written reprimands pursuant thereto; by reducing the workweek of the employees; by discharging employee Gorman; by temporarily closing the plant from 29 July to 22 September 1980;² and by discharging employees when the plant closed on 5 November. However, the judge decided that neither the Respondent's discharge of employee Hunt, the layoff of employee Morrell,

the method of recall of employees from the temporary closing of the plant, nor its permanent closing of the plant on 5 November violated Section 8(a)(3) and (1). The judge found that the Respondent violated Section 8(a)(4) and (1) by failing to rehire employee Nolting, and by permanently closing the plant on 5 November. In addition, the judge concluded that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the Union, inasmuch as the Union had attained majority status among the unit employees and the Respondent had committed other unfair labor practices sufficient to justify the imposition of a bargaining obligation. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Finally, the judge concluded that the Respondent violated Section 8(a)(5) and (1) by failing to notify the Union of its decision to close the plant, and by failing to bargain in good faith about the effects of the plant closure upon the employees.

The General Counsel has not filed exceptions to any portion of the judge's decision. The Respondent has filed extremely limited exceptions; accordingly, only a few of the many issues litigated at the hearing are before us.

Specifically, the Respondent excepts to the judge's conclusions that Dennis Contris is an alter ego of Contris Packing Co., and that William Contris be held individually liable as to the backpay provision of the recommended Order. In addition, the Respondent excepts to the judge's conclusion that the Respondent violated Section 8(a)(4) and (1) by permanently closing its plant on 5 November, and that it violated Section 8(a)(3) and (1) by discharging employees on the same date, and to the corresponding provisions in the recommended remedy and Order.

For the reasons set forth below, we agree with each of the Respondent's exceptions. However, we also find that the judge did not provide an adequate remedy for his conclusion that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union about the effects of its permanent closure of the plant, as set forth in *Transmarine Corp.*, 170 NLRB 389 (1968).³

Accordingly, we shall issue new Conclusions of Law, and an amended remedy, and substitute a new Order in lieu of that recommended by the judge.

1. William Contris has been in the hog slaughtering business for 25 years or more, having owned and operated various slaughterhouses throughout

¹ The Respondents have requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² All dates herein are in 1980, unless stated otherwise.

³ We shall also date the Respondent's bargaining obligation from 30 July 1980, rather than 24 July 1980, inasmuch as the Respondent embarked upon its unlawful course of conduct prior to the Union's demand on 30 July. See *Trading Port*, 219 NLRB 298 (1975).

the continental United States. Dennis Contris, son of William Contris, is also engaged in the hog slaughtering business.

Respondent Contris Packing Co., Inc. (herein called Contris), until the final plant closure on 5 November, was engaged in the operation of a hog slaughterhouse located in the city of Wentzville, Missouri. The plant, and the real estate upon which the facility was located, had been purchased at auction in 1979, by William and Dennis Contris in equal shares. Dennis Contris retained full stock ownership in the corporation, which paid rent to William and Dennis for the use of the plant and real estate. The corporate officers include Dennis, as president; David Contris, another son of William Contris, as vice president; and William Contris, as secretary-treasurer. The record establishes that neither David, William, nor any Contris family member other than Dennis participated in the management or operation of Contris.

In December 1979 Contris began killing hogs under the direction of Bruce Loyd. In early January 1980, Robert Newman was hired by Dennis Contris to replace Loyd as manager, who assumed the duties of assistant manager. Newman was given full responsibility in running the plant, including hiring employees, setting terms and conditions of employment, bookkeeping, and purchasing hogs, supplies, and equipment. Newman telephoned Dennis once or twice a week to discuss matters concerning the plant. Dennis was rarely at the plant. Newman did not call either Dennis or William Contris for guidance or direction on how to run the plant.

The judge concluded that Dennis Contris, as an individual, was an alter ego of Contris, because he was completely indifferent to the "form of the Company."

The judge found that Dennis solely controlled Contris and owned all of its stock, and was its self-appointed president. Also, the judge found that Dennis made the decision to close the plant permanently and lay off all employees on 5 November. The judge found that Dennis personally refused to bargain with the Union concerning the effects upon the employees of the decision to close the plant. The judge further concluded that Dennis first stated he owned a "partnership" in Contris, though he owned all the stock; he further testified that he was vice president of Contris, though the record revealed he was president of the corporation. In addition, the judge relied on Dennis' use of Avco Meat Co., Inc.,⁴ stationery on 21 October when he

filed an answer to the complaint in the instant matter; and, on 10 November, when he used Avco stationery to notify the Union of the plant closure.

The relevant law was summarized by the Board in *Riley Aeronautics Corp.*, 178 NLRB 495, 501 (1969):

"[E]asily the most distinctive attribute of the corporation is its existence in the eye of the law as a legal entity and artificial personality distinct and separate from the stockholders and officers who compose it." Wormser, *Disregard of the Corporate Fiction and Allied Corporation Problems* (Baker, Voorhis and Company, 1927), p. 11. "The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." *N.L.R.B. v. Deena Artware, Inc.*, 361 U.S. 398, 402-403. Nevertheless, the corporate veil will be pierced whenever it is employed to perpetrate fraud, evade existing obligations, or circumvent a statute. *Isaac Schieber, et al., individually, and Allen Hat Co.*, 26 NLRB 937, 964, enfd. 116 F.2d (C.A. 8). Thus, in the field of labor relations, the courts and Board have looked beyond organizational form where an individual or corporate employer was no more than an *alter ego* or a "disguised continuance of the old employer" (*Southport Petroleum Co. v. N.L.R.B.*, 315 U.S. 100, 106); or was in active concert or participation in a scheme or plan or evasion (*N.L.R.B. v. Hopwood Retinning Co.*, 104 F.2d 302, 304 (C.A. 2)); or siphoned off assets for the purpose of rendering insolvent and frustrating a monetary obligation such as backpay (*N.L.R.B. v. Deena Artware, Inc., supra*, 361 U.S. 398); or so integrated or intermingled his assets and affairs that "no distinct corporate lines are maintained." *Id.* at 403.)

We are unpersuaded that the facts, as found by the judge, justify the imposition of personal liability upon Dennis Contris.

First that he appointed himself president of Contris and was sole owner of the corporation is of minimal consequence in light of the fact that, standing alone, neither sole ownership nor status as corporate officer warrants piercing the corporate veil. *Chef Nathan Sez Eat Here, Inc.*, 201 NLRB 343 (1973). Further, the judge found that Newman was given full responsibility in all aspects of plant operation and management, including labor relations, with Dennis Contris rarely being at the plant.

Second, the judge based his decision on the fact that Dennis Contris solely made the decision to close the plant and lay off all employees on 5 November. As of 5 November, Manager Newman had

⁴ Respondent Avco Meat Co., Inc. is engaged in the processing, nonretail sale and distribution of hog meat and related products, with its offices and plant located at Gadsden, Alabama. As noted the judge found Avco not to be an alter ego of Contris.

quit, leaving Loyd the sole remaining management employee. There was no one left but Dennis Contris, corporate president, in a position to make the decision. Indeed, he would be the only logical official to decide in any case.

Third, the judge looked at the fact that Dennis Contris personally refused to bargain with the Union. However, there is no evidence in the record even to suggest he was acting in any capacity other than corporate president in so doing.

Fourth, the judge found that the statement by Dennis Contris that he owned a "partnership" in Contris Packing was evidence that he ignored the corporate form. It is clear that Dennis Contris' use of the term "partnership" was vague, merely his inartful use of a term with legal significance and meaning independent of his use herein to describe his business relationship. With his father and himself sharing ownership of the physical plant and real estate, it can readily be seen how a layman with a seventh grade education could describe the relationship as such.

Finally, the judge found that the use of Avco stationery on 21 October and 10 November by Dennis Contris when corresponding with the Board and the Union was evidence that he ignored corporate form. Yet, the judge found that Contris Packing and Avco were not a single employer, nor alter egos. When both letters were written Dennis Contris was not at the facility in Wentzville, Missouri. He did not have any Contris Packing stationery in his possession. Clearly, under these circumstances, the use of Avco stationery is not a fact which indicates his disregard for corporate form.

In *Chef Nathan Sez Eat Here, Inc.*, supra at footnote 6, a case involving stronger facts for the imposition of individual liability, the Board failed to find the corporate president and sole owner liable on an individual basis, although noting that he controlled the firm's assets, business operations, and labor relations policies, and participated in the commission of unfair labor practices. The instant record fails to establish, or even intimate, that Dennis Contris as corporate officer was the disguised continuance of the corporation, or that he dissipated the corporation assets, or that he intermingled personal and corporate affairs, or that he attempted to evade backpay liability. *Riley Aeronautics Corp.*, supra.

2. The judge concluded that William Contris, though not an alter ego of Contris, was individually liable as to any backpay order so that a total frustration of the Act may not be perpetrated. His decision to hold William Contris individually liable was grounded on the facts that he was co-owner of the Contris Packing plant, equipment, and real

estate, and would share in future revenues from its lease or sale, and that William Contris' plant in Petersburg, Virginia, received two checks from Contris Packing on 10 December in the amount of \$81,439.60 under what he termed "incredible circumstances."

The same legal principles set forth above in *Chef Nathan Sez Eat Here, Inc.*, and *Riley Aeronautics Corp.*, applied to the issue of Dennis Contris' alleged liability also apply to that of William Contris. Although William did share equal ownership with Dennis in the real estate and plant, he did not have any ownership in the corporation. Therefore, William was one step further removed from the corporate veil than Dennis. Having found it improper to hold Dennis individually liable, it would also be improper to hold William individually liable on the basis of his half interest in the physical plant and real estate.

Second, the judge concluded that no record of any kind was offered to justify the payment of \$81,439.60 to Diamond Meat on 10 December. On the same date, another check was issued in the amount of \$40,437.50 from Contris to Clinton Packing. In explanation of these payments, Loyd testified that three meat invoices were found stuck in the back of a drawer in September, but that he held on to them because there was not enough money to pay them at the time. Loyd also testified that Clinton Packing had dunned Contris in writing in August, and by telephone in September or October, leading him to believe that Clinton Packing had billed Contris in May or June. The judge also noted that Loyd admitted he was surprised to find the Diamond Meat invoices, and he did not know who owned Diamond Meat.

Whatever the circumstances surrounding this transfer of funds, Diamond Meat is not a party to this proceeding,⁵ nor is there any evidence in the record to show what William Contris' precise relation is to Diamond Meat; i.e., whether it is a sole proprietorship, corporation, etc. Accordingly, the payments to Diamond Meat provide no basis for imposing individual liability on William Contris for acts committed by the Respondent.

3. The judge concluded that Contris violated Section 8(a)(4) and (1) of the Act by closing the plant on 5 November because it was due in part to the Board charges brought by the employees. This conclusion was based on Dennis Contris' testimony that he made the decision to close the plant in the courtroom inasmuch as the charges "had some influences on it as far as that goes, but not near as

⁵ The General Counsel did not allege that Diamond Meat was an alter ego of, a single employer with, or that it had any relationship to Contris Packing.

much as the problems we had with the city." In addition, the judge concluded that the discharge on 5 November of all the employees violated Section 8(a)(3) and (1) of the Act.

The judge found, and we agree, that the closing of the plant did not violate Section 8(a)(3) and (1) of the Act. In *Textile Workers v. Darlington Co.*, 380 U.S. 263, 273-274 (1965), the Court stated, "We hold here only that when an employer closes his entire business, even if the liquidation is motivated by vindictiveness toward the union, such action is not an unfair labor practice." The Court went on to say, "a partial closing is an unfair labor practice under § 8(a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing would likely have that effect." See *id.* at 275.⁶

In addition, at 270-271, the Court stated:

The courts of appeals have generally assumed that a complete cessation of business will remove an employer from future coverage by the Act. Thus the Court of Appeals said in these cases: The Act "does not compel a person to become or remain an employee. It does not compel one to become or remain an employer. Either may withdraw from that status with immunity, so long as the obligations of any employment contract have been met." 325 F.2d, at 685. The Eighth Circuit, in *Labor Board v. New Madrid Mfg. Co.*, 215 F.2d 908, 914, was equally explicit:

"But none of this can be taken to mean that an employer does not have the absolute right, at all times, to permanently close and go out of business . . . for whatever reason he may choose, whether union animosity or anything else, and without his being thereby left subject to a remedial liability under the Labor Management Relations Act for such unfair labor practices as he may have committed in the enterprise, except up to the time that such actual and permanent closing . . . has occurred."

This rationale is equally applicable where it is alleged that the Respondent violated Section 8(a)(4) and (1) of the Act, by permanently closing the facility; accordingly, we shall reverse the judge and dismiss this allegation of the complaint. Further, the preceding quotation from *Darlington* makes it plain that the Respondent cannot be found guilty of violating Section 8(a)(3) and (1) of the Act by the discharge or layoff of employees in connection

⁶ The record reveals that the Respondent neither owns nor operates any other facilities.

with the permanent plant closure; indeed, any plant closure is likely to include the layoff or discharge of employees. See *A. C. Rochat Co.*, 163 NLRB 421 (1967). Accordingly, we shall also reverse the judge's finding that the Respondent discharged employees on 5 November in violation of Section 8(a)(3) and (1) of the Act.

4. No exception is taken to the judge's finding that Contris violated Section 8(a)(5) and (1) of the Act by failing to notify timely the Union of its decision to close the plant and by failing to bargain with the Union about the effects upon the employees of closing the plant. However, the judge failed to provide a full remedy for this unfair labor practice. See *Caltrans Systems*, 245 NLRB 708 (1979); *Interstate Tool Co.*, 177 NLRB 686 (1969); *Transmarine Corp.*, 170 NLRB 389 (1968); *Royal Plating Co.*, 160 NLRB 990 (1966).

THE REMEDY

Having found that Respondent Contris Packing Co., Inc. has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), (4), and (5) of the Act, we shall order that the Respondent cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of Act.

With respect to Contris' unlawful failure to bargain with the Union about the effects of its decision to close its Wentzville, Missouri plant, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of the shutdown on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring that the Respondent pay backpay to its employees in a manner similar to that required in *Transmarine*, *supra*. Thus, the Respondent shall pay employees backpay at the rate of their normal wages when last in Respondent Contris' employ

from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant shutdown on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from 5 November, the date on which the Respondent terminated its operation, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

With respect to the 8(a)(3) violation concerning the institution of a formal warning system and the issuance of reprimands thereunder, we shall order, inter alia, that the Respondent cease and desist using said unlawful formal warning system and expunge from the employees' records all references to any reprimands issued thereunder. With regard to the 8(a)(3) violations concerning the discharge of employee Gorman, and the temporary layoff of employees from 29 July to 22 September; the 8(a)(4) violation concerning the refusal to rehire Nolting from 15 July to 21 July; and the 8(a)(1) violations concerning the unlawful discharge of Hunt, Morrell, Nolting, and Menteer, and the unlawful reduction of the employees' workweek, the Respondent shall make all adversely affected employees whole for any loss of earnings they may have suffered due to the discrimination practiced against them, by paying each of them a sum equal to what he would have earned, less net interim earnings, plus interest, with backpay and interest thereon to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). In view of the Respondent's widespread violations of Section 8(a)(1), (3), (4), and (5), which reveal a general disregard for employees' fundamental statutory rights, a broad cease-and-desist order will be issued. *Hickmott Foods*, 242 NLRB 1357 (1979).

CONCLUSIONS OF LAW

1. Respondents Contris Packing Co., Inc.; Clinton Packing Co., Inc.; and Avco Meat Co., Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 545, United Food and Commercial Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees employed by Respondent Contris Packing Co., Inc., at its Wentzville, Missouri facility, excluding all office clerical and professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.
4. Since 30 July, Local 545, United Food and Commercial Workers, AFL-CIO, has been the exclusive collective-bargaining representative of all employees in the unit found appropriate in paragraph 3, above, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act, and by failing to bargain with the Union, the Respondent violated Section 8(a)(5) and (1) of the Act.
5. By failing and refusing to notify the Union that it was closing its Wentzville plant on 5 November, and by failing and refusing to bargain with the Union over the effects upon employees of closing the Wentzville plant, the Respondent violated Section 8(a)(5) and (1) of the Act.
6. By threatening to close the plant down, by threatening employees with discharge for engaging in the protected concerted activity of seeking wage increases; by telling an employee that employees who engaged in protected concerted activities were troublemakers, and that the Respondent would discharge employees who engaged in protected concerted activity; by threatening employees with discharge for engaging in union activity; by threatening employees with reprisals for engaging in union activity; by threatening an employee with reprisals for wearing a union button; by telling an employee that another employee was discharged for engaging in protected concerted activity; by interrogating an employee as to what he told an agent of the Board; by threatening an employee with reprisals for talking to an agent of the Board; by promising an employee a raise if he would withdraw the charges he had filed with the Board; by telling employees not to talk about unions and threatening discharge if they did so; by telling an employee he would be rehired if he withdrew the charge he had filed with the Board; by interrogating employees about union meetings; by creating the impression of surveillance of employee union

activities; by soliciting grievances; by promising employees free beer, free barbecue, and gloves at cost, if they would vote against the Union; by telling an employee he had not been rehired because he filed charges with the Board; by telling an employee that, if the employees selected the Union as their collective-bargaining agent, the plant would be closed down; by interrogating an employee about who the union leaders were and which employees were going to vote for the Union; by telling an employee he was not rehired because the employee talked about the Union; by telling an employee that the plant would be closed in order to avoid having to bargain with the Union, the Respondent violated Section 8(a)(1) of the Act.

7. By discharging Rick Hunt, Robert Morrell, Mark Nolting, and Dennis Menteer because of their protected concerted activity, the Respondent has violated Section 8(a)(1) of the Act.

8. By instituting a formal type of warning system and by the issuance of written warnings to Glynn Burton, Greg Bruckerhoff, Steve Gorman, Steven Jefferson, and Donal French to discourage union activity, the Respondent has violated Section 8(a)(1) and (3) of the Act.

9. By reducing the workweeks from 5 to 4 days for the period of 15 July through 29 July, so as to dissuade employees from seeking union representation, the Respondent has violated Section 8(a)(3) and (1) of the Act.

10. By discharging Steve Gorman because of his support for the Union, the Respondent has violated Section 8(a)(3) and (1) of the Act.

11. By closing the plant down from 29 July to 22 September and laying off Greg Bruckerhoff, Glynn Burton, Roy Clark, Mike Dunn, Michael English, Donald Morrell, Robert Morrell, Tom Morrell, Mark Nolting, David Price, Terry Turman, Albert Vehige, and Romel Wyatt because the employees were seeking union representation, the Respondent has violated Section 8(a)(3) and (1) of the Act.

12. By refusing to rehire Mark Nolting from 15 July to 21 July because he had filed a charge with the Board, the Respondent has violated Section 8(a)(4) and (1) of the Act.

13. Respondents Contris Packing Co., Inc.; Clinton Packing Co., Inc.; and Avco Meat Co., Inc. do not constitute a single integrated business enterprise and are not a single employer within the meaning of the Act, and Respondents David Contris and William Contris are not alter egos of Clinton Packing Co. and Avco Meat Co., Inc.

14. William Contris is not an alter ego of the Respondent, nor is he individually liable for the unfair labor practices of the Respondent.

15. Dennis Contris is not an alter ego of the Respondent; and, therefore, not individually liable for the unfair labor practices of the Respondent.

16. The Respondent did not violate Section 8(a)(4) and (1) of the Act by closing the Wentzville, Missouri plant on 5 November; nor did the Respondent violate Section 8(a)(3) and (1) of the Act by the layoff of the employees on 5 November.

ORDER

The National Labor Relations Board hereby orders that the Respondent, Contris Packing Co., Inc., Wentzville, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 545, United Food and Commercial Workers, AFL-CIO, as the exclusive representative of the employees in the following appropriate bargaining unit:

All production and maintenance employees employed by the Employer at its 701 Pierce Boulevard, Wentzville, Missouri, facility, EXCLUDING all office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain in good faith about the effects upon the employees in the unit described in paragraph 1(a), above, of the decision to close the plant.

(c) Discouraging membership in Local 545, United Food and Commercial Workers, AFL-CIO, or any other labor organization, by instituting a formal warning system and by the issuance of written reprimands thereunder, by reducing the workweek from 5 to 4 days for the period 15 July to 29 July 1980, by discharging employees, by closing the plant down from 29 July to 22 September 1980 and laying off the employees in the unit described in paragraph 1(a), above, and by discriminating against employees in any manner with regard to their hire and tenure of employment or any term or condition of employment.

(d) Threatening employees with plant closure, discharge, and reprisals if the unit employees selected the Union as their collective-bargaining agent.

(e) Threatening employees with reprisals for talking to an agent of the Board.

(f) Informing employees that the Respondent would discharge employees who engaged in protected concerted activity that an employee would be rehired if they would withdraw charges from the Board, that an employee was not rehired because he talked about the Union, and telling em-

ployees that the plant was closed in order to avoid having to bargain with the Union.

(g) Interrogating employees about their conversations with Board agents, about union meetings, about the leading union adherents, and about which employees were going to vote for the Union.

(h) Promising employees raises if they would withdraw charges they had filed with the Board, and promising employees benefits if the employees would not select the Union or vote for the Union as their bargaining agent.

(i) Creating the impression of surveying the union activities of the employees.

(j) Soliciting grievances of employees and impliedly promising to remedy those grievances if the employees do not support the Union.

(k) Discharging employees because they engaged in protected concerted activities under the Act.

(l) Refusing to rehire employees because they have filed unfair labor practice charges with the Board.

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

(a) Upon request, bargain collectively with Local 545, United Food and Commercial Workers, AFL-CIO, with respect to the effects of closing its Wentzville, Missouri plant on its employees in the unit described in paragraph 1(a), above, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Pay the employees laid off on 5 November their normal wages for the period set forth in the section of this Decision and Order entitled "The Remedy."

(c) Make whole Rick Hunt and Robert Morrell for any losses they may have suffered from 9 June until their reinstatements 15 July, and Mark Nolting for any losses he may have suffered from 9 June until his reinstatement 21 July, and Dennis Menteer for any losses he may have suffered from 10 June until his reinstatement 15 July, in the manner set forth in the section of this Decision and Order entitled "The Remedy."

(d) Make whole Steve Gorman because of his discharge 24 July, the employees on the payroll during the weeks of 14 July and 21 July because of the reduction of their workweek from 5 days to 4 days, and the employees on the payroll 29 July because of their layoff from 29 July until their recall 22 September, for any loss of earnings they may have suffered in the manner set forth in the section of this Decision and Order entitled "The Remedy."

(e) Expunge from its files any references to the discharges of Rick Hunt, Robert Morrell, and Mark Nolting 9 June, Dennis Menteer 10 June, and

Steve Gorman 24 July; and expunge from its files any references to the disciplinary warnings issued after 14 July to Glynn Burton, Greg Bruckerhoff, Steve Gorman, Steven Jefferson, and Donald French, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

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

(g) Post at its plant in Wentzville, Missouri, and forthwith mail to all affected employees, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by them immediately upon receipt in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. A copy of the notice, signed in the same manner, shall be immediately mailed to the last known address of each person formerly employed at Contris Packing Co., Inc., as described in paragraphs 2(b), (c), (d), and (e) of this Order.

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

⁷ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

WE WILL NOT refuse to recognize and bargain with Local 545, United Food and Commercial Workers, AFL-CIO, as the exclusive representative of the employees in the following appropriate bargaining unit:

All production and maintenance employees employed by the Employer at its 701 Pierce Boulevard, Wentzville, Missouri, facility, EXCLUDING all office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain in good faith about the effects upon the employees in the appropriate unit of the decision to close the plant.

WE WILL NOT discourage membership in Local 545, United Food and Commercial Workers, AFL-CIO, or any other labor organization, by instituting a formal warning system and by the issuance of written reprimands thereunder, by reducing the workweek from 5 to 4 days for the period 15 July to 29 July 1980, by discharging employees, by closing the plant down from 29 July to 22 September 1980 and laying off the employees in the appropriate unit, and by discriminating against employees in any manner with regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT threaten employees with plant closure, with discharge, and with reprisals if the unit employees selected the Union as their collective-bargaining agent.

WE WILL NOT threaten employees with reprisals for talking to Board agents.

WE WILL NOT inform employees that the Respondent would discharge employees who engaged in protected concerted activities, or that an employee was discharged for engaging in such activity, that employees would be rehired if they would withdraw charges from the Board, that an employee was not rehired because he talked about the Union, and telling employees that the plant was closed in order to avoid having to bargain with the Union.

WE WILL NOT interrogate employees about their conversations with Board agents, about union meetings, about the leading union adherents, and about which employees were going to vote for the Union.

WE WILL NOT promise employees raises if they would withdraw charges they had filed with the Board, and promising employees benefits if the employees would not select the Union or vote for the Union as their bargaining agent.

WE WILL NOT create the impression of surveying the union activities of the employees.

WE WILL NOT solicit grievances and impliedly promise to remedy the grievances if the employees do not support the Union.

WE WILL NOT discharge employees because they engaged in protected concerted activities under the Act.

WE WILL NOT refuse to rehire employees because they had filed unfair labor practice charges with the Board.

WE WILL, upon request, bargain collectively with Local 545, United Food and Commercial Workers, AFL-CIO, with respect to the effects of closing its Wentzville, Missouri plant on its employees in the unit described above, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL pay the employees laid off 5 November 1980 their normal wages, with interest.

WE WILL make whole Rick Hunt and Robert Morrell for any losses they may have suffered from 9 June until their reinstatements 15 July, and Mark Nolting for any losses he may have suffered from 9 June until his reinstatement 21 July, and Dennis Menteer for any losses he may have suffered from 10 June until his reinstatement 15 July, with interest.

WE WILL make whole Steve Gorman because of his discharge 24 July, the employees on the payroll during the weeks of 14 July and 21 July because of the reduction of their workweek from 5 to 4 days, and the employees on the payroll 29 July because of their layoff from 29 July until their recall 22 September, for any loss of earnings they may have suffered, with interest.

WE WILL expunge from our files any references to the discharges of Rick Hunt, Robert Morrell, and Mark Nolting on 9 June, Dennis Menteer on 10 June, and Steve Gorman on 24 July; and expunge from our files any references to the disciplinary warnings issued after 14 July to Glynn Burton, Greg Bruckerhoff, Steve Gorman, Steven Jefferson, and Donald French, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

CONTRIS PACKING CO., INC.

DECISION

STATEMENT OF THE CASE

THOMAS E. BRACKEN, Administrative Law Judge: Consolidated Cases 14-CA-13913, 14-CA-14023, and 14-CA-14065 were originally heard at St. Louis, Missouri, on November 3, 4, and 5, 1980,¹ pursuant to charges duly filed and served against Contris Packing Co., Inc. On December 16, a complaint in Case 14-CA-14418 was issued, together with a motion to consolidate it with the three cases cited above, and to reopen the record in the cited cases. Upon my granting the motion of the General Counsel, the cases were reopened and consolidated with

¹ All dates are in 1980 unless otherwise indicated.

Case 14-CA-14418, which in addition to the original Respondent, Contris Packing Co., Inc., named as additional Respondents Clinton Packing Co., Inc., Avco Meat Co., Inc., Dennis Contris, an individual, William Contris, an individual, and David Contris, an individual.² On March 31, April 1, 2, and 3, 1981, hearing was held on the four consolidated cases in St. Louis, Missouri.

The complaints in Cases 14-CA-13913, 14-CA-14023, and 14-CA-14065 allege some 55 independent violations of Section 8(a)(1) of the National Labor Relations Act, as well as extensive violations of Section 8(a)(3), (4), and (5) of the Act. In Case 14-CA-14418 there are allegations of additional violations of these same sections of the Act, but its chief thrust is that Respondents Contris Packing Co., Inc., Clinton Packing Co., Inc., Avco Meat Co., Inc., Dennis Contris, William Contris, and David Contris constitute a single integrated business enterprise and are a single employer within the meaning of the Act, and further that Dennis Contris, David Contris, and William Contris are alter egos of Contris Packing Co., Inc., Clinton Packing Co., Inc., and Avco Meat Co., Inc., and a single employer within the meaning of the Act. Thus, it is alleged that when Contris Packing Co., Inc. closed down on November 5 all six Respondents constituted a single employer, and are responsible for violations of the Act.³

Respondent Contris Packing Co., Inc., in its answer dated July 24 to Case 14-CA-13913, denies having violated the Act.⁴ By letter dated October 23, Dennis Contris stated that he was answering the charges in Cases 14-CA-13913, 14-CA-14023, and 14-CA-14065. His letter did not comply with the Board's Rules 102.20 and 102.21, as his letter merely undertook to explain why the plant had been closed in Wentzville, Missouri. On the opening day of the original hearing, Dennis Contris entered his appearance as the representative of Contris Packing Co., Inc. and, over objection, was permitted to answer on the record the allegations in Cases 14-CA-14023 and 14-CA-14065, denying any violation of the Act.

As to Case 14-CA-14418, Clinton Packing Co., Inc., by letter dated January 23, 1981, denied all charges, and William Contris, by letter dated January 20, 1981, denied all charges. By an answer filed by its attorneys, dated January 30, 1981, Respondents Contris Packing Co., Inc., Avco Meat Co., Inc., and Dennis Contris denied having violated the Act.⁵

² The charge in Case 14-CA-13913 was filed on June 12 by Mark Nolting, and an amended charge on July 10. The charge in Case 14-CA-14023 was filed on July 15 by John Van Hoose. The charge in Case 14-CA-14065 was filed on July 31 by Local 545, United Food and Commercial Workers, AFL-CIO. The charge in Case 14-CA-14418 was filed on November 7, by the same Union.

³ Contris Packing Co., Inc. is hereafter referred to as Contris Packing or Respondent. Clinton Packing Co., Inc. is referred to as Clinton Packing, and Avco Meat Co., Inc. is referred to as Avco. Individual Respondents are referred to by their names.

⁴ The attorney who filed this answer, Gerald L. Birnbaum, withdrew his appearance by letter dated October 3, stating that he had been instructed by William Contris to do so. G.C. Exh. 3.

⁵ Although these answers were not filed within the 10-day time period provided by Sec. 102.20 of the Board's Rules they were allowed over objection.

The issues involved are whether Respondents violated Section 8(a)(1), (3), (4), and (5) of the Act by engaging in unlawful interrogations, threats, promises of benefits, by discriminating against certain employees because of their union or concerted activities, by discharging or laying them off, by refusing to recall employees, by issuing them warnings and cutting their hours of work; by changing its warning procedure; by temporarily closing its facility; by refusing to recall or rehire employees when the plant reopened; and by terminating all of its employees on November 5; whether Respondents unlawfully refused to bargain with the Union about its decision to close and the effects of closing the Wentzville plant; whether Respondents constitute a single integrated business enterprise as a single employer, and whether the three named individual Respondents are the *alter egos* of the three corporate Respondents.

Upon the entire record in these cases, including my observation of the demeanor of the witnesses, and after due consideration of the brief filed by the General Counsel and the brief filed on behalf of Contris Packing Co., Inc., Avco Meat Co., Inc., and Dennis Contris,⁶ I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Contris Packing Co., Inc., a Missouri corporation with its office and place of business located in Wentzville, Missouri, is engaged in the processing, nonretail sale, and distribution of boar hog meat and related products. During the year ending September 30, 1980, this Respondent purchased and received at its Wentzville plant hogs and supplies valued in excess of \$50,000 directly from suppliers located outside the State of Missouri. Respondent Contris Packing Co., Inc. admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent Clinton Packing Co., Inc., a Missouri corporation with its office and plant located at Clinton, Missouri, is engaged in the business of processing, nonretail sale, and distribution of boar hog meat and related products. During the year ending October 30, 1980, this Respondent purchased and received at its Clinton plant hogs and supplies valued in excess of \$50,000, directly from points located outside the State of Missouri, and sold and shipped products valued in excess of \$50,000 directly from Clinton to customers located outside the State of Missouri. I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Avco Meat Co., Inc., an Alabama company, with its offices and plant located at Gadsden, Alabama, is engaged in the processing, nonretail sale, and distribution of boar and sow hog meat and related products.⁷ During

⁶ No briefs were submitted by Clinton Packing Co., Inc., David Contris, or William Contris. David Contris did not appear at the hearing, and William Contris testified that he only appeared because he had been subpoenaed.

⁷ Respondent Avco Meat Co., Inc., in its answer to the complaint, denied that it was a corporation. Dennis Contris, in his testimony, referred to Avco as a corporation. It is unnecessary for the purposes of this case to resolve this conflict.

the year ending October 30, 1980, Avco purchased and received at its Gadsden plant, hogs and supplies valued in excess of \$50,000 directly from points located outside the State of Alabama, and sold and shipped products, valued in excess of \$50,000, directly from Gadsden to customers located outside the State of Alabama. I find that Avco Meat Co., Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 545, United Food and Commercial Workers, AFL-CIO (the Union or Local 545), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

In September 1979, William Contris and his 34-year-old son, Dennis Contris, attended a foreclosure sale of the Bi-Rite Meat Company plant in Wentzville, Missouri,⁸ for the purpose of buying a hog hoist. Finding that there were no bidders on the plant itself, William Contris placed the only bid, \$80,000, and agreed to assume a Small Business Administration loan of \$112,000. This bid was accepted, making William and Dennis Contris the owners of the plant and real estate in equal shares. The plant was in operation slaughtering hogs that day. William Contris had extensive experience in the slaughtering and boning of hogs and selling their meat, as he had been in the packing house business for over 25 years. In 1979 he owned two other small hog slaughtering plants, the Diamond Meat Company which was operating in Petersburg, Virginia, and the Warsaw Packing Company which lay idle in Warsaw, North Carolina.

After finishing the seventh grade Dennis Contris had started to work in the packing house business for his father, about 1961, when he was 15 years of age. In 1975 he had acquired the real estate, plant, and stock of Avco in Gadsden, Alabama. Dennis Contris had named his father and his brother David as fellow corporate officers of Avco because he had been advised that, under state law, three corporate officers were required. Avco was about twice as large as any of the meat packing plants owned by any member of the Contris family in 1980, having about 50 employees. In November 1979, Dennis Contris, as incorporator, had Contris Packing incorporated under the laws of Missouri, naming himself as president, his brother David as vice president, and his father William as secretary-treasurer. Dennis owned all of the corporate stock.

In 1974 William Contris had started another of his sons in the meat packing business, David Contris, who owned and operated the Clinton Packing Co., Inc., a boar hog slaughter house in Clinton, Missouri.⁹ Prior to 1974, William Contris had owned and operated Clinton Packing in its entirety, and after the sale to his son, David, the father retained the ownership of the real

⁸ Wentzville has a population of about 4,000 and is located about 40 miles west of St. Louis.

⁹ Clinton was located about 200 miles west of Wentzville.

estate on which the Clinton plant was located, and received rent therefor. David owned everything else relating to this company. In late 1979, David filed articles of incorporation with the State of Missouri, naming himself president, Dennis vice president, and Clarence Turner as secretary-treasurer. In 1980, the plant's 22 employees were killing about 130 hogs a day.¹⁰

In late November 1979, Dennis Contris hired Bruce Loyd as the manager of Contris Packing, at the recommendations of his brother David Contris. Loyd had worked as a butcher at Clinton Packing during the prior 2 years, and although he was only 23 years of age, David Contris regarded him as a good butcher, intelligent and honest. Loyd came to Wentzville and commenced getting the plant in operating condition, opening up a corporate bank account, and hiring employees. Two employees, newly hired at Wentzville, were sent to Clinton Packing for about 1 week of training. Contris Packing first began killing hogs in the second week of December 1979. In December, Loyd taught the newly hired employees how to butcher and bone hogs, while also purchasing hogs and keeping the books. Dennis sold the meat that Contris Packing was producing.

In early January 1980, Dennis Contris hired Robert Newman as the manager of Contris Packing. Newman, who was working at B&M Meat Company in Tupelo, Mississippi, at the time, had previously worked for Dennis Contris for about 2 years as the manager of Avco in Gadsden.¹¹ When Newman commenced managing the plant around January 15, Loyd became the assistant manager.

Following the hiring of Newman, Dennis Contris was rarely at the Wentzville plant, allowing Newman virtually full responsibility in running the plant. Newman hired employees and set the terms and conditions of employment for the Company. He purchased the hogs, some locally, but chiefly from the St. Louis terminal stockyards, and sold the meat produced by the employees. During Newman's tenure as manager, Contris Packing's main customers were two Chicago, Illinois companies, Ur-Way Boning Company and Wichita Packing. Newman's duties also included keeping the Company's books and purchasing supplies and equipment. In February Newman posted a list of 12 rules and regulations that had been forwarded from Dennis Contris at Avco for the employees of Contris Packing. Newman talked to Dennis on the telephone once or twice a week to discuss matters of importance to the Company. He never called William or David Contris to ask for guidance or directions on how to run the plant.

B. Credibility

Throughout these cases there were testimonial conflicts in the sharpest manner between the testimony of

¹⁰ Another son of William, Donald Contris, owned a meat packing plant in Bowling Green, Ohio, the Pioneer Packing Company, but it plays no part in these cases.

¹¹ B&M Packing was owned by "members" of the Contris family, as were other packing plants that Newman had previously worked for, the Garfield Packing Company in St. Louis, Missouri, and Contris Packing Company in Findlay, Ohio. Newman had started in the Findlay plant in 1968.

the General Counsel's witnesses and Respondents' witnesses. The majority of the witnesses presented by the General Counsel impressed me as sincere, blunt, minimally educated, honest butchers, telling the truth as best they could recollect it, and letting the chips fall where they would. Also, many of these men testified on November 3, 4, and 5 while still in the employ of Respondent, further supporting their testimony. I have in the main credited the testimony of the General Counsel's witnesses over that of Respondents' witnesses where there is a conflict. There are several specific instances in which I have not credited their testimony, and these incidents will be discussed when such incidents involved are analyzed. It is fundamental that a trier of fact need not believe all of witnesses' testimony before he may believe any of it, as "nothing is more common in all kinds of judicial decisions than to believe some and not all" of a witness' testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 745 (2d Cir. 1950).

Respondents' witnesses Newman and Loyd, did not impress me as witnesses in whose testimony I could have confidence, as to its accuracy or reliability. Rather, I received the strong impression that they were advocates, evasively trying to furnish answers that helped their cause, rather than trying to state the facts as they actually remembered them and I do not credit their testimony where contradicted in most instances. Newman was closely linked to Dennis Contris as well as William Contris, having worked for them as set forth above, in various plants almost all his working years, including the day of his testimony in this case. He was an evasive and contradictory witness who gave generalized answers. An example is his testimony that he never went into the employees' locker room because it smelled so bad due to the employees defecating on the floor. However, on cross-examination he admitted that the locker room was cleaned every morning by an employee, and that it did not smell until after the end of the workday.¹² Another example is his denial that he knew the employees were trying to organize a union in the plant at the time he left in July. However, when pressed, he admitted that he had been contacted by a Board agent about an election "in the middle of June or something like that."¹³ Loyd's working career in the meat packing industry was also linked to companies owned by members of the Contris family. His first 2 years were with Clinton Packing, his next job with Contris Packing, and at the time of his testimony in April, he was working for Avco in Gadsden, Alabama. Loyd gave his testimony in a hesitating and argumentative manner. At the reopened hearing on April 2, 1981, Loyd testified that he first found out that some of the employees were interested in securing a union when he was at the hearing in November. However, this is incredible in view of the fact Loyd received the

¹² Newman admitted that a United States Department of Agriculture inspector was present in the plant at all times, and it is incredible that these inspectors would allow the employees to defecate on the floor as testified to by Newman.

¹³ The Union filed the petition for an election on July 15, and Newman signed the Board's "Stipulation for Certification Upon Consent Election" on July 25 at the plant's office. Newman had signed a registered receipt on June 13 acknowledging the receipt of a copy of the charge filed by Mark Nolting. G.C. Exh. 1(b).

Union's request for recognition on July 31, and he signed the postal receipt therefor. (G.C. Exh. 44.) Also, Newman himself said that he had shown Nolting's unfair labor practice charge to Loyd in June, and that Loyd was present in the company office when the Labor Board representative was there talking about the forthcoming election. I do not find Loyd to be a credible witness.¹⁴

Dennis Contris was a vague and rambling witness, given to contradictions, with a poor recall and memory for details. An example is his testimony that Loyd was never the plant manager. However, when pressed, he admitted that Loyd was the plant manager on September 22, and also on the very day he was giving that testimony. When asked what office he held with Respondent, Dennis Contris stated that he believed he was the vice president, whereas the articles of incorporation signed by him showed he was president. When asked on April 3 what time he left the office of the Labor Board on November 5 when the hearing ended, he replied that it was around 5:30 p.m. The transcript of testimony for that day set forth that the hearing ended at 9:50 a.m., and the record shows that he arrived at Wentzville around noon.

There were various peripheral witnesses for Respondents and I have generally credited their testimony. Most, if not all, were businessmen, who had some contact with Respondent Contris Packing and they, in the main, were straightforward, sincere witnesses who told the facts as they remembered them.

C. The Single Employer and Alter Ego Issues

1. Single employer

The General Counsel contends that, during the period material to this case, Contris Packing, Clinton Packing, Avco, Dennis Contris, William Contris, and David Contris constitute a single employer within the meaning of the Act, and are alter egos of each other. If the General Counsel is correct, each of Respondents could then be held liable for the unfair labor practices encompassed in the consolidated amended complaints. The facts relating to this issue are largely uncontroverted, so that the disposition of the issue principally depends upon the resolution of a question of law. The criteria against which the facts must be measured to determine whether Contris Packing, Clinton Packing, and Avco are a single employer for purposes of the Act are summarized by the Supreme Court in *Radio Union Television Broadcast Technicians Local 1264 v. Broadcast Service*, 380 U.S. 255, 256 (1965). The Court said:

The controlling criteria, set out and elaborated in Board decisions, are interrelation of operations, common management, centralized control of labor relations and common ownership.

¹⁴ The testimony of Nolting, Richard Morrell, and Van Hoose that they considered Loyd to be an honest person has been considered, but under the circumstances, it does not affect my finding as to his credibility on the witness stand in this proceeding.

a. Interrelation of operation. All three packing houses completely produced their product, raw hog meat, in their own individual packing house, with each plant having its own office, records, and bank accounts. From the time the squealing pigs were unloaded into each plant until the time the processed meat came out of the plant, there was no aid or contribution to the processing of the pork by either of the other two plants. In typical cases where the Board has found an interrelation of operation, the evidence often reveals that the various employees worked in the same building, shared in producing parts of the same product, have offices in the same facility, one corporation takes care of all clerical needs of the others, and one furnishes services for the other. *Mastell Trailer Corp.*, 258 NLRB 1234 (1981); *Stoll Industries*, 223 NLRB 51 (1976). No such interrelationship exists among the three meat packing companies involved in the instant case, each of which operated its own plant as a complete unit, hundreds of miles from the other two.

Each of the three companies purchased their hogs from entirely different sources, with Contris Packing buying chiefly from the St. Louis Stockyards. Clinton Packing received its hogs from stockyards in towns west of it, such as Kansas City, St. Joseph, Missouri, and Sioux City, Iowa. Avco in turn purchased its hogs from locations in Alabama, Georgia, Tennessee, and Florida.

The General Counsel in his brief contends that the various plants "sell" meat to each other and that these "sales" were mere book transactions, whereby shipments were made from the plant most conveniently located to make the shipment. I do not find that the record sustains the General Counsel's position. Tom Chatelain, manager of Clinton Packing, testified without contradiction that at times he had a chance to sell more than his Company had on hand. On "several" occasions he checked with Newman at Contris Packing and found out that Contris Packing could sell him some meat. The Clinton Packing truck would pick up the meat at Wentzville and deliver it to the customers on its way to Chicago. Contris Packing would bill Clinton Packing for the sale, and Clinton Packing would issue its own invoice to the ultimate customer.¹⁵ On occasion Contris Packing would buy from Clinton Packing on the same basis.¹⁶ In either event, the buyer would pay the seller by check, just as it would pay any other seller. Thus it is evident from the above, sales between Contris Packing and Clinton Packing were on a very sporadic basis, and for relatively unsubstantial amounts. There were no sales between Avco and either Contris Packing or Clinton Packing.

The General Counsel also contends that Respondent packing houses serviced the same customers, but only points to one common customer, Ur-Way Boning, Inc. of

¹⁵ Jt. Exh. 1, a summary of Contris Packing's invoices to customers covering all of 1980, shows that it sold meat to Clinton Packing in only the months of January, February, and June, in the amounts of \$16,775, \$35,187, and \$1,564. These sales represented 18 percent, 17 percent, and .007 percent of that month's sales by Contris.

¹⁶ Jt. Exh. 2, a summary of Clinton Packing's invoices to customers covering June 1980 to February 1981, shows that during that period, in only July, did it make any sales to Contris Packing. The total amount sold was \$91,160, which represented 17 percent of its total monthly sales of \$537,811.

Chicago, Illinois. It is true that all three Respondent Companies sold meat to Ur-Way, but Ur-Way is a unique company in the meat industry. Ur-Way buys meat from over 50 slaughter houses, which constitute almost all such houses in the United States. Both George Elrod, Avco's manager, and Tom Chatelain, Clinton's manager, testified that they sell to Ur-Way as a dumping ground when their regular customers were loaded with meat. Avco and Clinton Packing could only hold meat in their coolers for 3 to 5 days, and then they had to dispose of it. When they reached this point, as a last resort, they would sell to Ur-Way whose price would be under the daily market rate established in the National Provisioner Yellow Sheet.

Ur-Way was undoubtedly the major customer of Contris Packing, and commencing with March 1980, became almost its only customer, buying over 90 percent of its production in March, April, May, June, and September, 80 percent in July and 81 percent in October. Avco had 46 customers as shown in Joint Exhibits 3 and 4, with its two major customers being Land of Frost in Searcy, Arkansas, and Cudahy in Atlanta, Georgia. Ur-Way was a minor customer of Avco, with sales being made to it of 7 percent in May, 8 percent in June, and 4 percent in July. No sales were made in August, just as no sales were made in February, March, or April. It is true that in September, sales to Ur-Way rose to 14 percent, but for the last 3 months of the year, sales fell back to 4, 8, and 3 percent.

The General Counsel asserts that Ur-Way was not a large customer for Clinton Packing until the Contris plant was shut down in July. Actually, Ur-Way never was a major customer of Clinton Packing. Clinton had two major customers, Amelio Brothers and Crest Mark Packing, who, month in and month out, purchased from 54 to 75 percent of Clinton Packing's meat. It is true that from July through October its sales to Ur-Way increased from 5 to 7 to 9 percent, cresting at 11 percent in November. However, in December its sales declined to 6 percent and remained at that level in January and February 1981. From the above it is evident that Clinton Packing and Avco serviced many customers, with each company having its own two distinct major purchasers, both before and after Contris Packing closed its plant. Their minor sale of meat to Ur-Way remained basically the same both before and after the closing of the Contris plant. The General Counsel's reliance on the selling of meat to each other and selling to Ur-Way is too thin a hawser to rely on to establish an interrelationship of operations.

Avco did lend a spare truck and some meat bins to Contris Packing when it started operations. This truck and bins were returned to Avco when the plant closed down on November 5. This minor loan of equipment is too sparse to find that the operation of the three plants were interrelated.

b. Common management. The record is clear that each of the three Respondent Companies did not participate in a common management. Newman, as manager of Clinton Packing during most of the applicable period, had complete authority from Dennis Contris to run the plant and

make all decisions, as did Loyd after he succeeded Newman. After January 1980, Dennis Contris was rarely at the Wentzville plant, but Newman did consult with him by telephone about once or twice a week. However, he never consulted William Contris, or George Elrod for guidance on how to manage his Company. On one single occasion Newman discussed with David Contris over the telephone an emergency labor problem he was having with his employees. Here he was faced with the extreme situation that arose out of a sudden unexpected work stoppage, with a demand by his butchers for a \$1 raise. The chain of calls to David Contris was originated by an employee, Donald Morrell, and after Newman spoke with Donald Contris, he did give his employees a 25-cent raise, and did not fire Daniel Leuthauser as he had planned. The record discloses no other consultation concerning any management matter between Newman or Loyd with David Contris at Clinton Packing, or with George Elrod at Avco.

Clinton Packing also was managed strictly by its in-plant staff, without outside assistance. David Contris spent the majority of his time at this plant, and the day-to-day management was performed by Tom Chatelain, the manager, and Clarence Turner, the assistant manager. Chatelain bought the hogs and sold the meat. Neither Dennis Contris nor William Contris ever told Chatelain how to run Clinton Packing.

Avco was also managed on a daily basis by its manager, George Elrod. Elrod buys the hogs and supervises the selling of the plant's meat. He can increase the daily hog kill so as to achieve more production per employee, and he grants raises to employees. He advises Dennis Contris of these decisions at a later date. Elrod never consulted with the managers at the other plants when deciding on raises, hirings, firing, or any other aspect of employee relations.

William Contris, on several occasions, visited his sons at the three plants, but there is no evidence to indicate that they were anything other than visits of a retired father with his sons.

c. Centralized control of labor relations. There is nothing in the record to support a claim that there was a centralized control of labor relations at the three slaughterhouses, and the General Counsel correctly does not point to any such control. Each plant manager hired and fired its own employees, set the rates of pay applicable to the butchers of that plant, and established what fringe-benefits it cared to give to its employees. It is fair to say that labor relations at Contris Packing were not in an advanced state of the art, but were handled in a most primitive on-the-spot, shoot-from-the-hip, in-plant manner.

Common ownership. The fourth factor used in determining a single employer, common ownership, appears to some degree as between Dennis and William Contris with Contris Packing. On the opening day of the hearing, Dennis Contris stated on the record that he owned "a partnership" in Contris Packing, and that the partnership was with his father. He also said he thought his brother David owned some stock in Contris Packing. When the hearing reopened, Dennis Contris testified that he owned all of the stock in Contris Packing. The record

also shows that Dennis Contris and his father owned, on a 50-50 basis, the plant and real estate. These two owners of the real estate rent the plant to the corporation for \$2,500 a month. This monthly rent is then paid over to the Small Business Administration on the loan assumed by Dennis and William Contris when they bought the plant at the November 1979 auction.

As asserted by David Contris in his letter of January 23, 1981, to Region 14, General Counsel Exhibit 44(R), he owned 100 percent of the stock of Clinton Packing, and he did not own any stock of Contris Packing. David also owned the plant and all equipment at Clinton Packing. His father, William Contris, owned the real estate on which the plant was located, under a lease between David and his father, originally entered into on August 19, 1974.¹⁷ The findings of the Special Master were adopted by the United States Court of Appeals, Eighth Circuit in *NLRB v. Clinton Packing Co.*, 527 F.2d 560 (1976).

As to Avco, on the opening day of the hearing Dennis Contris stated on the record that he owned a "partnership" in Avco. At the reopened hearing, he testified that he personally owned the real estate, plant, and equipment used by Avco. No evidence was presented to show any ownership other than that of Dennis Contris.

From the evidence it is apparent that there was a close family relationship between William, Dennis, and David Contris. But this does not bear the burden of proving a common ownership of the three companies, or of Contris Packing with either of the other two packing houses. Dennis Contris did originally use the vague term of partnership in describing his relationship with Contris Packing and Avco, but the facts did not bear this out. The fact that William Contris did have a 50-percent interest in the plant and real estate of Contris Packing is an indication of common ownership of that plant only. However, even assuming that there was common ownership of all three plants, this would meet only one of the Board's four criteria in establishing a single employer. Since the other three criteria were clearly not met, I find these Respondents did not constitute a single employer. *Genova Express Lines*, 245 NLRB 229 (1979); *El Sol Mexican Foods*, 200 NLRB 804 (1972).

2. Alter ego

In *Crawford Door Sales Co.*, 226 NLRB 1144 (1976), and *Ski Craft Sales Corp.*, 237 NLRB 122 (1978), the Board reiterated that it would find an alter ego status to exist where the enterprises had substantially identical, "management, business purpose, operation, equipment, customs, and supervision, as well as ownership." Clinton Packing can be eliminated immediately as obviously not meeting the alter ego criteria. It is also readily apparent that Contris Packing and Avco are not alter egos, as their relationship only meets a few of the required

¹⁷ In a Master's Report issued in connection with a prior case involving Clinton Packing and the Board, the Special Master found that David Contris' lease of the land from his father was a "bona fide business transaction," and that William had "divested himself of all interest in a right to control the management and operations of the business at Clinton, Missouri." R. Exh. 29 at 168.

benchmarks. It is true that Dennis Contris owns the stock of Contris Packing and also owns Avco in its entirety. Their basic purpose is the same, to sell hog meat to the same type customers. However, their management is different, their operation, equipment, customers, and supervisors are all different. I therefore find that these three Companies are not alter egos of each other.

The General Counsel also contends that Dennis, David, and William Contris are alter egos of each other in the operation of the single integrated business. Since I have concluded that the three corporations were not a single integrated business, the three members of the Contris family could not be the alter egos of such a business. Nor do I find that the evidence will permit David Contris to be found an alter ego for any of the three Respondent corporations so that he could be held individually liable herein, as desired by the General Counsel. However, I do find that Dennis Contris was the alter ego of Contris Packing, and as such would be individually liable for any unfair labor practices found to have been committed by Respondent Contris Packing.

In determining whether to pierce the corporate veil, the courts and the Board have looked beyond organizational form and found certain principal officers to have constituted alter egos of the corporation, and therefore held them individually liable for the unfair labor practices perpetuated by their corporation. *G & M Lath & Plaster Co.*, 252 NLRB 969 (1980); *Carpet City Mechanical Co.*, 244 NLRB 1031 (1979); *Ski Craft Sales Corp.*, supra; *Ogle Protection Service*, 149 NLRB 545 fn. 1 (1964), enfd. in relevant part 375 F.2d 497 (6th Cir. 1967), and the supplemental backpay decision, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). Dennis Contris solely owned the stock and controlled this corporation, being its self-appointed president. He solely made the decision to close the plant down in November 5, and to lay off all the employees. He personally refused to bargain with the Union. He ignored the corporate form, as early in the hearing he stated on the record that he owned a "partnership" in Contris Packing. Later he testified he believed he was the vice president, whereas records showed he was the president. He used Avco stationery on October 21 when he made responses on the charges filed against Contris, and also used Avco stationery on November 10 when he notified the Union that he had closed the plant. Under the facts of this case it is clear that Dennis Contris was completely indifferent to the form of the Company, and I find that Respondent Dennis Contris as the alter ego of Contris Packing would be individually liable for any unfair labor practices perpetrated by Respondent Contris Packing, and subject to any remedial order.

Under the circumstances of this case, I also conclude that it is necessary to find William Contris individually liable as to any backpay order so that a total frustration of the Act may not be perpetrated. While William Contris testified that he owned only half of the real estate at Contris Packing, the record does not bear this out. It was William who placed the bid at the sheriff's sale, and with his son Dennis bought the entire interest of the former owner, plant, equipment, and real estate. Nothing in the record indicates that he ever divested himself of

his one-half interest in the plant and its equipment. Thus, after the closing of the plant in November, Dennis described a conversation he had with his father: "He [William] told me one time in Gadsden, asked me what I thought about getting rid of the building and stuff at Wentzville and wanted to know if I had any figure in mind." When Dennis gave him a figure, his father told him, "Well, we can't lose that kind of money." William Contris did execute a lease with John Washington, a Colorado meatpacker, for the year of January 1, 1981, through December 31, 1981, which defined the property as "all of the building, fixtures, and improvements therein." The lease, Respondent Exhibit 1, executed January 21, 1981, contained an option to renew, and an option to purchase. Although the lease was not effectuated as Washington had water problems with the officials of Wentzville, it showed that William Contris was a co-owner of Contris Packing plant, equipment, and real estate, and that he would share in future revenue from its leasing or sale. It is also important to note that William Contris' plant in Petersburg, Virginia, Diamond Meat Company, received two checks from Contris Packing dated December 10 in the total amount of \$81,439.60, under incredible circumstances as set forth in section III,P below.

D. Interference, Restraint, and Coercion

The consolidated complaint alleges some 55 specific independent violations of Section 8(a)(1) in statements made to employees between late January and July 25 by supervisors of Contris Packing. The General Counsel presented various employees who testified relative to these statements made to them by Plant Manager Newman, Assistant Manager Loyd, and Foreman Wilkins. The allegations attributed to Newman and Loyd were generally denied. Wilkins did not testify, so the statements attributed to him are undenied. Wilkins had left the employment of Contris Packing in July when the plant had been closed down by Newman. Newman testified that he had heard that Wilkins was in jail in Petersburg, Virginia. Respondent argues in its brief that Wilkins had so aligned himself with the interests of the employees that any coercive remarks made by him are not attributable to Contris Packing. Wilkins was an admitted supervisor within the meaning of the Act, and his on-the-spot firing of Richard Morrell for fighting, and his firing of Donald Morrell for refusing to hang hogs, bears this out. Wilkins was also a figure of authority, being 5 feet 10 inches tall, and weighing 260 pounds. As to Respondent's argument that many of Wilkins' remarks were made in social situations, the record also shows that employees went to Newman's apartment on various occasions, where they played cards and drank beer, just as they did at Wilkins' apartment. Wilkins' statements about the Union were not isolated expressions, but were made day after day in tandem with the same type of coercive, threatening statements made by the plant manager himself. Certainly the employees had just cause to believe that the Company authorized his statements, and that they reflected the Company's policy, just as Newman's

statements reflected company policy. *NLRB v. Texas Independent Oil Co.*, 232 F.2d 447, 450 (1956).

The evidence in respect to the 8(a)(1) allegations will be discussed below in the same order as they are pleaded. There were also allegations that four employees were discharged because they engaged in protected concerted activities. The discharge of these four employees will be considered jointly with the allegations regarding the independent violations of Section 8(a)(1).

1. (5A) Rick Hunt testified that in late January or early February, on a Friday, employees were in the plant's front lobby sitting around talking, when Richard Morrell stated to Plant Manager Newman that the employees were going to get a union in the plant. Newman replied that "We won't put up with getting a union in." Another employee then asked, "You're just going to leave it set empty," and Newman responded "Yes, we got bigger plants than this sitting now." Newman denied that he made any such statement. I credit Hunt's testimony and find that Newman threatened to close the plant down if a union was to become the bargaining representative of the employees. It is well settled that the threat of plant closure in the event employees attempt to unionize violates Section 8(a)(1). *Teledyne McCormick Selph*, 246 NLRB 766 (1979), *Elm Hill Meats*, 205 NLRB 285 (1973). It is to be noted that William Contris' plant at Warsaw, North Carolina, was shut down at that time.

2. (5B) Thomas Morrell testified that one day in early March, after work, the employees were in the lobby discussing wages and raises. The subject of unions arose, and Plant Manager Newman stated that he guaranteed that he would close the doors of the plant if the employees tried to organize a union. Newman denied making any such threat. I credit Thomas Morrell's testimony and find that Newman's threat of plant closure violated Section 8(a)(1).

3. (5C) In the first week of March, after work one day, employees were in the plant's lobby discussing wages and raises, when the subject of unions came up. Tom Morrell testified that Newman stated that the employees at Clinton Packing had tried to get a union in that plant, and it was closed down for 2 years. Newman then told the employees that he guaranteed that he would close the doors if the employees sought to organize a union. Newman denied generally making such a statement. I credit Tom Morrell's testimony and find the threat of plant closure violative of the Act. *George C. Shearer Exhibitors Delivery Service*, 246 NLRB 416 (1979).

4. (5D, E) On March 20, Newman had his first major confrontation with the employees of Contris Packing. At the morning break the employees agreed among themselves that they wanted a raise. Following lunch, about 12 or 13 butchers went to the lobby. Newman had been told by the cleanup man that there was trouble upstairs and he left the basement and went to the lobby. Newman admittedly asked what was wrong and employee Daniel Leuthauser acted as the spokesman for the group. Leuthauser replied that they wanted a raise, as they had been promised a \$1 raise by Dennis Contris and David Contris. Newman informed the employees that there would be no raise and that David had nothing to do with Contris Packing. He then told them to go back to work or

he would presume they quit. Three employees, Leuthauser, Donald Morrell, and Denny Menteer, went to a public phone, from which they talked to David Contris in Clinton about the raise they claimed to be due. At David Contris' instructions the employees returned to the plant. Newman then told them that the employees would receive a 25-cent raise, so they should go back to work.

Leuthauser testified that, after Newman told the employees of their quarter raise, the manager pointed to him and said he did not get the raise and was fired. Newman admitted that he told Leuthauser he was going to fire him because: "I thought he was back there stirring up trouble and telling all the butchers lies about people promising a dollar raise just to get them stirred up to cause trouble so I was going to fire him." As the employees left the lobby to go back to work, Richard Morrell heard Newman say that Leuthauser was a "ring-leader and a trouble maker" and would not get his job back. Newman permitted Leuthauser to call David Contris from the manager's office, and at the end of that conversation decided not to fire him, allowing him to return to work.

After Newman's conversation with Leuthauser, Richard Morrell testified that he told the manager that the employees would not have a problem on wages if they had a union. Richard Morrell further testified that Newman informed him that he guaranteed that there would be no union in that plant and that "We'll shut the doors down before they get a union in here." I credit Leuthauser's and Richard Morrell's testimony and find that Newman threatened to discharge him for so doing, called him a ringleader and troublemaker¹⁸ in the presence of other employees, and warned that there would be no union in the plant, and that Respondent would shut the plant down before allowing a union in the plant. These threats are clearly coercive and the Company thereby violated Section 8(a)(1) of the Act. *Tufts Bros., Inc.*, 235 NLRB 808 (1978).

It was noted above that Frank Wilkins did not appear at the hearing to testify, and as a consequence the 8(a)(1) allegations against him are unadmitted. There appearing to be no reason to discredit those employees who testified that these statements were made, I find that they occurred as listed hereafter in each allegation involving Wilkins.

5. (5F) In late March, at Wilkins' apartment, Wilkins told employee Richard Morrell that Leuthauser was a ringleader and that he wanted to fire him. Wilkins also told Morrell that he was going to get rid of those employees who were trying to obtain union representation in the plant. I find that this statement violated Section 8(a)(1) of the Act. *Caron International, Inc.*, 246 NLRB 1120 (1979).

6. (5G) Employee Leuthauser testified that a few days after March 20, the day on which the employees had the

¹⁸ The term "troublemaker" has an established meaning in the lexicon of labor relations as a term applied by employers to individuals who are attempting to convince other employees to engage in union activities. *Coating Products*, 251 NLRB 1271 (1980); *Garner Tool & Die Mfg.*, 198 NLRB 640 (1972).

confrontation with Newman over a raise, he was on the boning floor. At this time Loyd told him that Newman wanted to fire him because he was the ringleader of the whole organization. Loyd denied that he made such a comment. I credit Leuthauser's testimony, and find that Loyd's statement was a thinly veiled threat that Leuthauser was going to be fired because he was the leader of the employees in seeking the wage increase. Such a threat violates Section 8(a)(1) of the Act.

7. (5H) On March 20, employee Rick Hunt was working on the boning floor, talking to Wilkins. When Hunt mentioned unions Wilkins replied that he did not want to hear anything about a union, and that to talk about a union was the quickest way to get fired. I find that this was plainly coercive, and a threat of discharge that violated the Act. *Town & Country Supermarkets*, 244 NLRB 303 (1979).

8. (5I) Employee Dennis Menteer testified that about 1 week after the employees received the pay raise in March, he came into the plant several hours late to work. Newman told him he was fired because he had been a ringleader the week before in getting the other employees to ask for a raise. Menteer testified that he was rehired about 3 to 4 weeks later by Newman. Newman denied making such a statement. I do not credit Menteer's sparse and vague testimony as to this alleged incident, as I believe he has it confused with a similar incident that all agree occurred on June 10, when he was discharged by Newman, and rehired several weeks later. Also, there was no corroborating testimony by any employee that Menteer was called a ringleader by any supervisor, and the record in no way shows he was a leader in the movement seeking the March raise. I have already found that Wilkins and Loyd said Leuthauser was the ringleader in getting the quarter raise. I shall recommend that this allegation of the complaint be dismissed.

9. (5J) In late March Richard Morrell was at Wilkins' apartment talking to the foreman. Richard Morrell described his conversation with Wilkins as follows: "I heard rumors to the effect that you were going to try to get rid of Danny. And he said 'I'll tell you what, I'm going to get rid of everybody that is trying to get a union in and I'm going to get people that want to work.'" I find in agreement with the General Counsel that Respondent's statement was coercive and constitutes a violation of Section 8(a)(1).

10. (5K) Thomas Morrell testified that during the first week of April, on Good Friday, he and other employees were back in the locker room discussing union wages. At this time Newman walked in to use the restroom, and he stated to the employees, "I guarantee you—I don't want to hear no more talk about unions. None of the other plants have unions and we'll close the doors on this one." The manager then told the employees that the plant in Clinton had been closed for 2 years because the employees had tried to organize a union. Newman denied making such a statement. I credit Thomas Morrell's testimony, and find that Newman's threat to close the plant if it was unionized was violative of Section 8(a)(1), as was his statement that the plant at Clinton had

been closed because its employees had engaged in union activity.¹⁹

11. (5L) Employee David Price testified that, in late March or early April, he and other employees were in the plant near Newman's office having a conversation. Price summed it up as follows: "Well, we were talking about G.M. moving in and stuff and how around there it is going to be all union, and Bob Newman said if it turns union he is going to close the plant down." I do not find that the General Counsel has met his burden of proof as to this alleged violation, as Newman's statement is too ambiguous. It is true that the record does show that General Motors was planning to build a new assembly plant in Wentzville at some time in the future. However, Newman's statement could be interpreted that if the General Motors plant became unionized he would close the packing plant down, as he could not compete with the General Motors rate of pay. I recommend dismissing this allegation of the complaint.

12. (5M) Richard Morrell testified that in late May or early June he was loading barrels off the loading dock onto the rendering truck. Loyd and the truckdriver were talking when Richard Morrell complained that the employees were not making good wages, not even apprentice butcher wages. When Loyd replied that that is the way it was, Richard Morrell then asked Loyd if any attempt had been made at any other plant to secure union representation. The assistant plant manager replied that "they tried that at Clinton a couple of years ago, and they shut it down for 2 years, shut the doors down on it." Morrell knew that Loyd had worked at Clinton Packing before going to work for Contris Packing. On direct examination Loyd denied that in late May or early June he had told Richard Morrell that Clinton Packing had been closed when the employees had tried to get a union. On cross-examination Loyd admitted that in May 1980 he had discussions with Richard Morrell, but he did not remember what the discussions were about. I credit Richard Morrell's testimony and find that the assistant manager's statement was coercive and constituted a violation of Section 8(a)(1). *Teledyne McCormick, Selph*, 246 NLRB 766 (1979).

13. (5N) Employee Michael Dunn testified that, on or about May 30, the employees were in the lobby after work discussing wages. One of the employees stated that they needed a raise, and that if the employees were represented by a union, they could probably get more money. Newman then spoke up saying, "Well, that would be just fine. We'll just shut the plant down." Newman testified that he did not hear, in late May, any employee state, "We will be getting the Union in soon." He also testified that he did not recall telling these employees, "That's just fine, we will just shut it down." I credit Dunne's testimony and find that Newman's re-

¹⁹ Loyd admitted that the three packing plants he had worked for, all owned by members of the Contris family, Clinton Packing, Contris Packing, and Avco, were all nonunion. The record shows that Garfield Packing Company of St. Louis, Missouri, formerly owned by Dennis Contris, was nonunion. The record does not indicate whether other packing plants owned by the Contris family, B & M Meat Company, Tupelo, Mississippi; Diamond Meat Company, Petersburg, Virginia; and Warsaw Packing Company, Warsaw, North Carolina, were union or nonunion.

marks implied that, if the Contris Packing employees were to become represented by a union, the Company, in retaliation, would close the plant. I find that Newman's statement was a threat of reprisal and interfered with the employees' Section 7 rights, and violated Section 8(a)(1).

14. (50) In early June, Rick Hunt was returning from lunch when another employee gave him two metal campaign type buttons that had stick pins on the back. The larger button, General Counsel Exhibit 16a, had printed thereon "Welcome GM." On the smaller button was printed "Vote UAW." (G.C. Exh. 16b.) Hunt "stuck" them on his apron and proceeded into the kill floor. Wilkins walked up to him and without saying anything, removed the UAW button from Hunt's apron and shoved it into the butcher's pocket. Wilkins did not touch the "Welcome GM" button, but he then said, "I don't want to be hearing nothing about no unions. That's the quickest way to leave here." Respondent Contris Packing had no plant rule prohibiting the wearing of insignia, and while finding no harm in Hunt wearing the GM button, it forcefully removed the union button. Wilkins' statement clearly contained a threat of reprisal for the protected activity of wearing a union button, and such coercion violates the Act. *Capitol Records*, 232 NLRB 228 (1977).

E. The June 9 Events

1. Discharge of Rick Hunt, Robert Morrell, and Mark Nolting

The General Counsel alleges that on June 9 Rick Hunt, Robert Morrell, and Mark Nolting were discharged for engaging in protected concerted activities. On June 9 a large number of the employees had been discussing their pay, and their belief that they had been promised another raise, when there was an increase in the number of hogs killed per day. During the lunch period, or right after it, all butchers, some 14 or 15 in number, proceeded to the lobby, which was adjacent to Newman's office. The employees sat down and declared that they would not go back to work without a raise.

Wilkins and Loyd were present and, as Loyd testified, he told the employees that the Company could not afford a raise. At this time Newman walked in and asked Loyd what the problem was, and Loyd informed him that the employees wanted a raise. Newman himself then asked the employees what they wanted, and they all said a raise. At this point, Newman told Foreman Wilkins to get the employees' timecards. After Newman received the timecards he then proceeded to question each employee. Richard Morrell and Nolting testified that Newman told the employees to go back to work or leave the premises. Van Hoose and Mike Dunn testified he said to go back to work or be fired.

Newman testified that after Wilkins got him the timecards he asked each person, "Are you going to work or are you quitting." After this interrogation all employees returned to work except Hunt, Robert Morrell, and Nolting. While the testimony of Hunt, Robert Morrell, and Nolting is somewhat different as to what occurred immediately thereafter in the lobby, it is only necessary to recite the testimony of Newman. Newman testified

that after the other employees returned to the boning area the following conversation with Hunt took place:

I asked him, well, evidently you quit then because you are not going back to work, right? Come on back Friday and pick your check up.

No, he said, I am not quitting and he said, I am not going back to work either. He says, I am just going to sit here.

I said, well, if you quit, you've got to leave the building.

Q. Was there any response to that?

A. He says, if you want me to leave the building, you are going to have to fire me and Robert Morrell sat there and agreed with him.

I said, in other words, you want me to fire you, huh? and he said yes and Morrell shook his head and said yes, Robert Morrell.

Q. So what did you say next?

A. I said O.K., if you want me to fire you, you are both fired and I went in and wrote their checks out.

As to Nolting, Newman testified that he was sitting over by a door, and did not participate in the manager's conversation with Hunt and Robert Morrell. At this point Newman testified as follows:

Q. Did you ever have any conversation with him that day?

A. Yes, he says, where is my check?

I said, I am not giving you any check.

He said, you fired me.

I said, I didn't fire you. You quit. At this time the employees had already been back to work for forty-five minutes. And I told him, if you don't leave the building, I'm going to call the police and you can pick your check up Friday.

He says, I am not leaving so I just went in and called the police.

Q. Did he stay out there in the lobby area?

A. He went out in the back and when the police came, I just had them go back and get him and escort him out of the building.

During Newman's conversation with Nolting, Hunt and Richard Morrell had remained in the lobby. When the police removed Nolting from the building, they also escorted Hunt and Richard Morrell out at the same time. Loyd's testimony substantially corroborated Newman's, and he admitted that Hunt and Richard Morrell both said they wanted a raise and would not go back to work without one.

2. Analysis and conclusions

The General Counsel contends that Hunt, Richard Morrell, and Nolting were engaged in the protected concerted activity of requesting pay raises and were improperly discharged for such legal activity. Respondent, in its brief, argues that Hunt and Richard Morrell voluntarily terminated their employment by asking that they be fired, and that Nolting quit of his own accord.

I find that Hunt and Morrell did not voluntarily terminate their employment and that Nolting did not quit. A quit occurs when an employee, by his own act, terminates his employment. *Firestone Steel Products Co.*, 248 NLRB 549, 552 (1980). *Thermofil, Inc.*, 244 NLRB 1056 (1979).²⁰ The record is clear that none of these three employees voluntarily terminated their employment on June 9, and that the subject of quitting was solely initiated by Newman. It was Newman who posed the question to all the employees as to whether they were going to go back to work or quit, and this threatening sword of Damocles broke the concerted activity of all but these three employees, as 11 or 12 employees returned to work. When Hunt and Richard Morrell insisted on remaining in the lobby because they wanted a raise, it was Newman who told them that they evidently had quit. It was also Newman who told Nolting that he had quit.

When these three employees remained in the lobby they were clearly engaged in the protected concerted activity of seeking a raise, *Robertson Industries*, 216 NLRB 361 (1975). Newman fixed the amount of time that Hunt and Richard Morrell were in the lobby as 45 minutes before the arrival of the police. No claim is made, nor could any be made, that the employees' action constituted an illegal sit down strike. *Masonic & Eastern Star Home*, 206 NLRB 789 (1973); *Crenlo*, 215 NLRB 872 (1974).

Upon the record as a whole, it is found that Respondent Contris Packing on June 9 violated Section 8(a)(1) of the Act by discharging Rick Hunt, Robert Morrell, and Mark Nolting because they engaged in the protected concerted activity of seeking a raise. *Fun Striders, Inc.*, 250 NLRB 520 (1980).

2. (5P) alleges: "On or about June 9, 1980, Foreman Wilkins and Plant Manager Newman told employees that the reason for an employee's discharge was because the employee engaged in protected concerted activities." The General Counsel asserts in his brief that Newman told Richard Morrell, Hunt, and Nolting they were fired because they collectively requested a wage increase. While I have found in the analysis section immediately preceding this paragraph that Newman discharged these three employees because they requested a wage increase, I do not find any evidence that Newman told these employees that the reason they were discharged was because they asked for a raise. Accordingly, I shall recommend that this allegation of the complaint be dismissed.

F. The June 10 Discharge of Dennis Menteer

Menteer testified that on the day following the discharge of the three employees, he came into work and was sharpening his knives, when Wilkins informed him that Newman wanted to see him, telling him, "Boy, you done got yourself fired." When Menteer arrived at the office Loyd was also present. Newman said to him, "Well, somebody told me that you were the ringleader, asking everybody to come up here for a raise." Menteer denied that he was the ringleader, stating that Hunt and

Robert Morrell were. Newman then told Menteer that he could not put up with this, and fired him.

According to Newman, he was working on the books on June 10 when Donald Morrell "stormed into the office." Donald Morrell told Newman that Menteer was in the back calling him a scab and other names, and if Newman did not get him out of there, Donald Morrell was going to stick a knife in him. Newman then called Menteer to the office, told him that he could not stand any more trouble back there, and gave him his check, discharging him.

Donald Morrell, another of the Morrell brothers, denied that he asked Newman to discharge Menteer. He also did not recall Menteer calling him a scab or giving him trouble on the boning floor. He did recall that a few days after Menteer was discharged, Newman told him that "I have already got one ring leader," and then asked him if he wanted the manager to get rid of some more employees.²¹

I credit Menteer's testimony that Newman said he had been told that Menteer was the ringleader in getting the employees to collectively ask for a pay raise on June 9. I further find that Newman then summarily discharged Menteer because he believed that Menteer had been the ringleader. I do not credit Newman's testimony that Donald Morrell wanted Menteer to be fired. Newman did not attempt to get a version of the incident from Menteer, and in fact made absolutely no investigation of the alleged incident at all. It is only reasonable that Newman would have made some kind of investigation to see what the facts were. Newman had, in March, discharged another employee, Leuthauser, because he thought he was a ringleader in presenting the request for a raise on March 20. Now, 3 months later, he had been faced with another confrontation with his employees for a raise, and he followed the same procedure he used in March by discharging the employee he believed to be the cause of his trouble, the ringleader Menteer. The discharge of Menteer because he engaged in protected concerted activities violates Section 8(a)(1) of the Act, and I so find.

1. 5Q recites: "On or about June 10, 1980, Plant Manager Newman told an employee that the reason for that employee's discharge was because the employee engaged in protected concerted activity." I have credited Menteer's testimony above and find that Newman did tell him that he was being fired because he was the ringleader, the one responsible for getting the other employees to come and ask for a raise that day. This statement by the plant manager plainly violated Menteer's Section 7 rights.

2. 5R alleges that during the week of June 10, Newman told an employee that an employee was discharged because the employee engaged in protected concerted activity. Thomas Morrell, one of the four Morrell brothers working in the plant, testified that on June 10 or 11 he asked Newman why Menteer had been fired, and the manager told him because he was a ringleader who

²⁰ Robert's Dictionary of Industrial Relations, Bureau of National Affairs, Revised Edition, defines a quit as "The voluntary termination or resignation from employment, which is initiated by the employee."

²¹ Newman testified that Menteer was not reinstated on July 15 when he rehired Hunt and Robert Morrell. Contris Packing admitted in its answer that he was so rehired.

had provoked the other employees to seek a raise. I credit Thomas Morrell's testimony²² and find that Newman's statement violated Section 8(a)(1) of the Act.

G. More Interference, Restraint, and Coercion

1. Subparagraph S of section 5 of the amended complaint reads as follows: "On several occasions since January 1980, the exact dates and places being unknown to the undersigned, Plant Manager Newman, Assistant Plant Manager Loyd and Foreman Wilkins, threatened employees with the closure of Respondent's plant and with discharge if the employees engaged in protected union activities."

The General Counsel in his brief admits that his witnesses Hunt, Van Hoose, Tom and Robert Morrell were not able to give exact dates, but states that they testified "in a clear and concise manner." It is an understatement to say that the witnesses were unable to give exact dates, as they were really unable to give any date at all from their own memory. Also, while their testimony might be called concise because of its brevity, it was not clear. All four witnesses testified haltingly and without conviction on this allegation, as is illustrated by Hunt's testimony.

Q. [General Counsel] Other than what you have testified to, any time did they, Mr. Loyd, Mr. Newman or Mr. Wilkins indicate to you that they would close the plant down if a union came in? Other than what you testified to?

A. Yes, there has been, but I can't remember anything specifically.

Q. Fine. Did that occur between January and June of 1980?

A. Yes.

Q. Approximately how many times did that occur?

A. Two or three times a week, maybe.

Q. Where were you at those times, do you remember? Where did they occur?

A. Work, on the bone floor, and on the kill floor.

I do not credit the witnesses' testimony on this catch-all allegation, and therefore do not find that the General Counsel has sustained his burden of proof. I would dismiss this allegation.

2. (5T) This allegation of the complaint sets forth that on or about June 18 Foreman Wilkins and Assistant Plant Manager Loyd interrogated an employee about whether that employee gave evidence to an agent of the Board. Donald Morrell testified that on June 17 he gave a statement to Karen Rengstorf, an agent of the Board, who drove a red Camaro.²³ On the next day he came to work and Wilkins and Loyd asked him if he talked to a lady who drove a little red Camaro. Donald Morrell replied that he did not know what they were talking about. I cannot find that this ambiguous question constituted a

violation of the Act, and I shall recommend that this allegation of the complaint be dismissed.

3. (5U) This allegation sets forth that on or about June 18, Wilkins and Loyd interrogated an employee as to whether that employee gave evidence to an agent of the Board. Van Hoose testified that on June 19 he was at Wilkins' apartment, when the following occurred: "He told me that the Company attorney they had at that time, told him that I had gave statements to Karen, and he asked me what I told the lady, and I replied that I just answered her questions."

I credit Van Hoose's uncontradicted testimony and find that Wilkins' interrogation, in the absence of any justification for asking this question, interfered with Van Hoose's Section 7 rights and therefore violates Section 8(a)(1) of the Act. *Maspeth Trucking Service*, 240 NLRB 1225 (1979).

4. Subparagraph 5V recites: "On or about June 23, 1980, Assistant Manager Loyd interrogated an employee as to what that employee told an agent of the National Labor Relations Board." Subparagraph 5W recites that on the same day, Loyd "threatened an employee with unspecified reprisals" for talking to an agent of the Board. In support of these two allegations, Van Hoose testified that a few days after he was at Wilkins' apartment, the following occurred: "Well, out in the lobby, Mr. Loyd asked me about what I had so important to talk to her about. And I told him that I answered the lady's questions. She wanted to talk to me. He also, at that time made a remark that it could be hazardous to my health to be talking to her."

Loyd testified that he possibly talked to Van Hoose and other employees on June 23, but he did not remember anything about the conversation.

I credit Van Hoose's uncontradicted testimony, and find that Loyd's interrogation of Van Hoose constituted an unlawful infringement upon employees' Section 7 rights and thereby violates Section 8(a)(1) of the Act. I also find that Loyd's statement that talking to the lady could be hazardous to Van Hoose's health was an alleged threat. While I do not believe that it was a threat of physical injury, it was a veiled threat that economic harm could befall Van Hoose because of his giving a statement to a Board agent. I find this remark of Loyd to be coercive and a violation of the Act.

6. Subparagraph 5X recites: "Sometime in late June 1980, or early July 1980, the exact date unknown to the undersigned, at Foreman Wilkins' apartment, Foreman Wilkins promised an employee an unspecified sum of money if that employee would drop charges that the employee filed with the National Labor Relations Board." Hunt testified that he was at Wilkins' apartment with Don Morrell on July 1, when Wilkins informed him that if he would drop the charges filed with the NLRB, he would get a raise and his job back. Hunt's uncontradicted testimony is credited and I find that Wilkins' promise of benefit to induce an employee to withdraw charges filed with the Board constituted an unlawful infringement upon employees' Section 7 rights and therefore violates Section 8(a)(1) of the Act.

²² It is to be noted that Thomas Morrell was appointed foreman when the plant reopened on September 22.

²³ Field Examiner Rengstorf had come to the house of Robert Morrell on June 17 to take statements from employees about the charges filed by Nolting on June 12.

7. Subparagraphs 5Y and 5Z will be treated jointly. 5Y recites: "On or about July 14, 1980 owner William Contris threatened employees with harm and other specified reprisals for talking about the Union." Van Hoose testified that on July 14 he and Donald Morrell were sharpening their knives, and as his steel glove was worn out, he asked for a new one. When Loyd informed him that a new glove would cost \$50, Donald Morrell replied that "if this was a Teamster job they would supply their own equipment." Don Morrell spoke up and said that they should get the UAW in there. At this point Loyd said, "Bill Contris doesn't want any more talk about union around here, or they would be biting the dust."

Donald Morrell's testimony about this incident corroborated Van Hoose's testimony in part, but did not mention William Contris:

Me and Mr. Van Hoose was sharpening our knives and Mr. Van Hoose asked Mr. Loyd for a new safety glove and he said it would be \$65. Mr. Van Hoose mentioned something about the teamsters union and I said something about the UAW, and Mr. Loyd said that we would be biting the dust.

Subparagraph 5Z recites: "On or about July 14, 1980 Assistant Manager Loyd told employees not to talk about the Union and promised if they did so nothing adverse would happen to them." In support of this allegation Donald Morrell testified that on July 14, the following occurred:

At 9 o'clock break I went up and told him I would quit because I thought my life was being threatened.

Q. Then what?

A. He said just don't talk about the union and nothing would be said about it.

Loyd testified that he recalled talking to Van Hoose and Don Morrell in mid-July about safety gloves. According to Loyd, Van Hoose told him that he wanted a new safety glove.²⁴ The assistant plant manager replied to him that the Company only provided the first glove, and the employee had to buy the second glove at a price of \$40. Loyd further testified that he did not recall Van Hoose saying that if the employees had a union, they would get gloves for free. Loyd denied that he ever told employees that William Contris did not want any union talk. He did recall that on the same day as the glove incident, Don Morrell told him in a joking manner that he was quitting because his life had been threatened. Don Morrell did not quit and Loyd did not pay further attention to his remark.

William Contris testified that he was in the Wentzville plant in the summer of 1980 on a social visit with his son, and that he engaged in casual conversations with several employees. He denied that he ever discussed unions with the employees. Based on the evidence above, I do not find that William Contris threatened employees

²⁴ A safety glove is a stainless steel mesh glove that covers the two fingers used to hold the meat.

for talking about the Union, and the allegation fails for want of proof.

However, I do credit Van Hoose's and Don Morrell's testimony as to the conversation about the Teamsters and the UAW, and that Loyd made some remark that they would bite the dust if they talked about unions in the plant. I attach no physical threat to Loyd's statement, but I do find in it an implied threat that employees who talked in the plant about unions would be fired. I conclude that this incident constitutes a violation of Section 8(a)(1).

8. Subparagraph 5AA and paragraphs 8A and 8B relate to the same employee and same incident, and will be jointly treated herein. Subparagraph 5AA recites: "On or about July 15, 1980 Plant Manager Newman told an employee that the employee would not be rehired unless that employee withdrew charges that the employee had filed with the Board."²⁵ Paragraph 8A reads: "From on or about July 15, 1980, until on or about July 21, 1980, Respondent refused to rehire employee Charging Party Mark Nolting."

In support of these allegations Nolting testified that he went to the plant on July 15, and asked Newman to have his job back, as "everybody else" had gotten their jobs back.²⁶ Newman replied that he could not give him his job back because he had filed charges with the National Labor Relations Board, but if he dropped the charges the plant manager would give him his job back. Nolting returned to the plant late in the day and talked to William Contris about getting his job back. According to Nolting, William Contris said "no matter what happened I could get my job back the very next day." The plant was closed on the next day, and on the following day Nolting came in to work. Newman told him to leave, and when the plant manager threatened to call the police and have him removed from the plant, he left.

Newman admitted that Nolting came to him in July and he described their conversation as follows: "He says I would like to have my job back and I told him I couldn't give him his job back that he should go see the National Labor Relations Board and go through them and get his job back."

Newman denied that he told Nolting that if he dropped the charges against the Company he could have his job back. When asked if Nolting was ever reinstated, Newman replied, "Not by me, no." Actually Nolting was reinstated on July 21 after coworker Hunt came to his house and informed him that Loyd wanted him to come back to work. William Contris testified that he was in the lobby when an employee said to him, "Hey, how about me coming back to work here." William Contris told him he could come back to work any time as far as he was concerned, "but I ain't got no say-so about it."

I credit Nolting's testimony that Newman told him that he would give him his job back if he would withdraw the charge he had filed with the Board, and find

²⁵ Following Nolting's discharge on June 9, he had filed a charge with the Board on June 12.

²⁶ As admitted by Respondent Contris Packing in its answer, former employees Rick Hunt and Robert Morrell were reinstated on or about July 15.

this to be a violation of Section 8(a)(1). I also find that Respondent by Newman discriminated against Nolting in not hiring him back. Newman had rehired Hunt and Van Hoose, who had been fired on the same day as Nolting. Following the three firings, the only difference in the relationship of the three butchers to Newman was that Nolting had filed a charge with the Board, and Hunt and Van Hoose had not. Newman's retaliation against Nolting in engaging in his right to seek Board assistance constitutes a violation of Section 8(a)(4) of the Act. *D & H Mfg. Co.*, 239 NLRB 393 (1978).

H. Acts of Interference, Restraint, and Coercion by Wilkins in July

It has been noted above that Frank Wilkins did not appear at the hearing, and as a consequence the 8(a)(1) allegations against him are undenied. There appearing to be no reason to discredit those who testified that these statements were made, I find that they occurred as they are listed below. I find that by Supervisor Wilkins making these statements Respondent violated Section 8(a)(1) of the Act.

1. (5BB) Around July 15 at Wilkins' apartment, Wilkins brought up the Union, and told Hunt that he did not want a union at Respondent's plant because the plant would then close down.

2. (5CC) Around July 15, at Wilkins' apartment, Wilkins told Hunt that there was no way the Company would put up with a union, that Respondent would shut it down before it would allow a union into the plant, and that Wilkins did not want to see a union in the plant because he would lose his job like everyone else.

3. (5DD) Around July 15, Wilkins told Hunt that Respondent did not have unions at any of the other plants, and that one time Respondent had a union at one of its other plants for 2 weeks and the plant was closed down.

4. (5EE) Around July 16, while Hunt was at Wilkins' apartment, Wilkins interrogated Hunt by asking if he had gone to the union meeting. Hunt replied that he knew nothing about the meeting.

5. (5FF) Around July 16, while Hunt was at Wilkins' apartment, Wilkins interrogated Hunt by asking if he knew who was responsible for putting the union meeting on, to which Hunt replied that he did not know.

6. (5GG) Around July 16, while Hunt was at Wilkins' apartment, Wilkins created the impression of surveillance by telling him that he thought that it was employees Mike Dunn, Glynn Burton, and Steve Gorman who were responsible for conducting the union meeting.

7. (5HH) Around July 16, while employee Glynn Burton was at Wilkins' apartment, Wilkins interrogated Burton by asking him how was the union meeting, to which Burton replied that he did not know what Wilkins was talking about.

8. (5II) Around July 16, while Burton was at Wilkins' apartment, Wilkins created the impression of surveillance by telling him that he thought Donald Morrell was the instigator for a union, and that he believed that the employees were having union meetings at the house of Don Morrell's parents.

9. (5JJ) Around July 16, while Burton was at Wilkins' apartment, Wilkins solicited grievances from Burton, and

promised to try to remedy those grievances by obtaining hospitalization and a decent wage, if there would be no union.

10. (5KK) Around July 16, on the plant's kill floor, Wilkins created the impression of surveillance by asking Don Morrell who was at the union meeting.

11. (5LL) alleges that on or about July 16, Wilkins solicited an employee's grievances and impliedly promised to remedy those grievances if that employee did not support the Union. I do not find any testimony that would support this allegation and I recommend that it be dismissed.

12. (5MM) Around July 16, on the plant's kill floor, Wilkins promised Don Morrell that if a union did not become the employees' collective-bargaining representative, the employees would be given free gloves, their knives at cost, and free barrels of beer.

13. (5NN) Around July 16, at Wilkins' apartment, Wilkins told employee Terry Lee Turman that the employees should not get involved in unions, they would be no good for the employees, and would cause everybody to lose their jobs.

14. (5OO) Around July 16, at Wilkins' apartment, the foreman solicited Glynn Burton's and other employees' grievances by asking the employees what they wanted from the Company in order to secure their vote against the Union, and promised to remedy their grievances.

15. (5PP) Around July 16, at Wilkins' apartment, Wilkins promised employee Don Morrell that if he could get his brothers to vote against the Union, he would buy three kegs of beer and all the barbecue they could eat.

16. (5QQ) Around July 17, at Wilkins' apartment, when Nolting talked to Wilkins about getting his job back, he was told by the foreman that the only reason he had not been rehired was because he filed charges with the "Labor Relations Board."

17. (5RR) Around July 17, at Wilkins' apartment, Wilkins told Van Hoose that if the Union was selected as the employees collective-bargaining agent, the plant would be closed down.

18. (5SS) Around July 17, at Wilkins' apartment, Wilkins told Van Hoose that he wanted to know who was going to vote for the Union, and asked Van Hoose to find out which employees were going to vote for the Union.

19. (5TT) Around July 17, at Wilkins' apartment, Wilkins told Van Hoose that he wanted to find out which employees were going to vote for the Union so that he could eliminate them before the vote was taken.

20. 5UU alleges that around July 17, at Wilkins' apartment, Wilkins promised Van Hoose that he would get him his job back if he would tell him what he knew about the union meeting that took place July 14. I do not find any testimony that would support this allegation and I recommend that it be dismissed.

21. (5VV) Around July 22, at Wilkins' apartment, Wilkins told Van Hoose that the "union shit" he and Morrell talked about to Loyd on July 14 was the reason he was not being rehired.

22. 5WW alleges that on or about July 23, while driving in Wilkins' car, Wilkins solicited employees' griev-

ances and impliedly promised to remedy those grievances. I do not find any testimony that would support this allegation and I recommend that it be dismissed.

23. Subparagraph 5XX recites: "On or about July 23, 1980, during a telephone conversation, the plant manager, at the Employer's Gadsden, Alabama facility, whose name is unknown to the Regional Director at this time, solicited employees' grievances and impliedly promised to remedy those grievances." In support of this allegation Don Morrell testified that Wilkins asked him and Hunt to come to his apartment so that they could get in touch with Dennis Contris in Alabama and straighten things out. At a pay phone, Wilkins reached George Elrod,²⁷ and then put Don Morrell on the phone. Morrell described the conversation as follows: "He [Elrod] asked me what was going on and I told him that we were cut down to 4 days and he reprimanded me out for no reason. He said that the owners wasn't in, Contris wasn't in, and he would see what he could do about it."

Elrod testified that he received a telephone call from Wentzville in which Wilkins was trying to reach Dennis Contris. Elrod informed Wilkins that Dennis was not there, and he did not know exactly where he was. Wilkins then told Elrod that he had better get hold of him because they had a lot of problems at Wentzville, and Elrod advised he would try. At that point another employee of Wentzville got on the phone, and this employee wanted to talk to Elrod about the problems and grievances the employees had at Wentzville. Elrod told him that he did not have any authority at Wentzville, and he would not get involved as he had enough problems of his own.

I do not find that Elrod solicited employees' grievances or impliedly promised to remedy them. Accordingly, I will recommend that this allegation of the complaint be dismissed.

24. Subparagraph 5YY recites: "On or about July 23, 1980, in a telephone conversation, employees overheard Foreman Wilkins and the plant manager of the Employer's Gadsden, Alabama facility state that there would be no union at the Respondent's Wentzville, Missouri plant." The General Counsel relies on the testimony of employee Steve Gorman. Gorman testified that on July 23, he was sitting outside his apartment playing his guitar. There was a phone booth next to his door, and he saw Don Morrell and Wilkins in the booth talking on the phone. Donald Morrell then came out of the booth, and Wilkins continued talking on the phone. Gorman did not know who Wilkins was talking to, but he thought he was talking to one of the management of the Gadsden plant. Gorman then heard Wilkins say "there won't be any union in there." I find this testimony too ambiguous to meet the preponderance of evidence test and shall recommend that this allegation of the complaint be dismissed.

25. (5ZZ) Around July 24, on the boning floor, Wilkins told Don Morrell that he would buy barrels of beer

²⁷ Elrod had become the manager of the Avco plant in Gadsden, Alabama, in March 1980. Prior to that he had been a Federal meat inspector for 12 to 13 years, 3 years of which had been at the Avco Plant. Elrod was a most impressive witness and I credit his testimony.

for all the employees if they voted against the Union in the forthcoming election.

26. Subparagraph 5AAA recites: "On various dates between July 14, 1980 and July 24, 1980, the exact dates being unknown to the Regional Director at this time, Plant Manager Newman, Assistant Plant Manager Loyd and Foreman Wilkins threatened employees with closing of plant if the Union was selected as the employees' exclusive collective bargaining representative."

Between July 14 and July 24, Wilkins told employees Dunn and Burton several times that if the employees continued to try to get a union in the plant the plant would be closed down. In the same time period, Wilkins told employees David Price and Terry Turman several times that they should not get involved in the Union and that they would wind up losing their jobs because of the Union.

27. (5BBB) During the week of July 14, at Wilkins' apartment, Wilkins told employee Don Morrell that if he could get his brothers to vote against the Union he would buy for him three kegs of beer and all the barbecue he could eat.

28. Subparagraph 5CCC recites: "On or about July 25, 1980, Foreman Wilkins created the impression of surveillance of employees' union activity by attending a union meeting." I find no proof that Wilkins attended a union meeting, but I do find that he created the impression of surveillance of the union activity of the plant's employees by questioning employees Burton, Don and Robert Morrell about a union meeting held on the previous night, and inferring in his questioning that they attended the meeting.

I. *The Change in Reprimand Procedure*

The General Counsel contends that Contris Packing changed its reprimand procedure from an informal one to a formal type of reprimand, and thereafter in the period of July 14 to July 28 issued nine²⁸ reprimands as a retaliation against the employees because of their union activity. Respondent Contris Packing contends that its decision to institute a written reprimand procedure was justified by legitimate business reasons, and that it did not interfere with the employees' Section 7 rights.

July 14 is a very significant date in this proceeding, as on that date the employees of the Contris Packing held their first union organizing meeting. The meeting was held at Don Morrell's father's house, and was conducted by representatives of Local 545. During the course of the meeting nine employees signed union authorization cards.²⁹ On July 24, the employees held their second union organizational meeting at Don Morrell's house, and seven employees signed union authorization cards.³⁰ July 28 is also a significant date as this was the last full day worked at the plant before Newman closed it down. It is also to be noted that Nolting's charge of unfair labor

²⁸ Actually eight were issued as G.C. Exhs. 27 and 28 cover the same reprimand to Glynn Burton, one being the original and the other a copy.

²⁹ Donald, Robert, and Thomas Morrell, Greg Bruckerhoff, Glynn Burton, Michael Dunn, Rick Hunt, Steve Jefferson, and David Price.

³⁰ Michael English, Donald French, Stephen Gorman, Dennis Menteer, Mark Nolting, Terry Turman, and John Van Hoose.

practices had been filed on June 12, his amended charge on July 10, Van Hoose's charge on July 15, and the Union's petition for an election on July 15.

Newman testified that about mid-February he drew up plant rules. These rules were then posted at two different locations in the plant, and several times were replaced when torn down by employees. These rules, captioned "Plant Rules and Regulations," are printed on a large sign card, 17 feet long by 22 feet high and contain 12 plant rules, 5 of which pertain to production. (R. Exh. 14.) Loyd testified that to his knowledge no employee broke any of these rules from the time of posting until July 14.

Loyd further testified that in the early months of 1980, the Company used only oral reprimands to employees, and estimated that "several" were issued. He further admitted that, prior to July 14, the Company had issued only one written warning to an employee, and this was on a Contris Packing letterhead dated June 26. This warning was to Donald Morrell for "work habits unfavorable to Company Policy." Then in early July, late June, the Company received some preprinted reprimand forms, and put into effect the new written reprimand system. The only explanation made by any agent of the Company as to why this new warning system was put into place was by Loyd in response to a question by the General Counsel:

Q. Then, it's your testimony that during that period of time, all of a sudden the employees got bad, is that what you are saying?

A. They did.

Q. I see, all of a sudden, pow, they are bad employees.

A. Right.

On July 14, the Company used for the first time one of these sophisticated printed forms, captioned "Employee Warning Record." From that date to and including July 25, eight written warnings were given to employees, as follows:

G.C. EXH.	EMPLOYEE	WARNING DATE	NATURE OF WARNING	REMARKS
20	Glynn Burton	7-14-80	Tardiness	1-1/2 hours late
21	Greg Bruckerhoff	7-14-80	Carelessness	Cutting hand too often.
22	Steve Gorman	7-18-80	Neglect	Leaving meat on bones & bones on floor.
23	Glynn Burton	7-21-80	Carelessness	Does not punch clock right. Late for work 7-14-80.
24	Steven Jefferson	7-21-80	Tardiness	None

G.C. EXH.	EMPLOYEE	WARNING DATE	NATURE OF WARNING	REMARKS
25	Steve Gorman	7-24-80	Substandard work	Leaves large quantities of meat on bones to be thrown away.
26	Donald French	7-25-80	Carelessness	Injury to wrist; not wearing safety equipment.
27	28 Glynn Burton	7-25-80	Substandard work, conduct, dress	No socks; yelled at supervisor. Refused to stay at work station.

It is well established that the use of a warning system as part of a disciplinary procedure is permissible when the procedure is not implemented in response to protected union activities of employees. *Hogue & Knott, Inc.*, 217 NLRB 565 (1975). However, when the warning system is used to discourage union activity it is impermissible. In the instant case, I conclude that the warning system was instituted for that very purpose. Loyd's testimony established that discipline was not a real problem in the plant, as no employee ever broke any of the 12 rules until July 14. Also, only several oral reprimands and one written one had been given since the plant opened, until July. Yet, concurrent with the Union's first organizing meeting on July 14, the Company then proceeded to issue eight formal written warnings in the next 11 days. During this same period, supervisors were interrogating employees about union meetings, and giving them the impression that the meetings were under surveillance. No proper business justification was presented by the Company for the institution of this warning system, and Loyd's statement that all of a sudden their employees became bad employees is preposterous. It is also to be noted that no warnings were issued after the plant reopened on September 22 until it closed. Accordingly, I find that the institution of the warning system and the issuance of the warnings violated Section 8(a)(1) and (3) of the Act. *Old Western Mfg. Co.*, 231 NLRB 193 (1977); *Royal Aluminum Foundry*, 208 NLRB 102 (1974).

J. The Reduction of the Workweek

The General Counsel contends that Contris Packing reduced the workweek of the employees from 5 to 4 days in retaliation for their union activity. Respondent asserts that the workweek was reduced because the price of hogs had substantially increased.

From the opening of the plant in November 1979 the employees had worked a basic 5-day, 40-hour workweek with occasional overtime. Hogs were received on a daily basis from the plant's major supplier, the St. Louis Terminal Stockyard, and slaughtered each day. Newman gave the following explanation of why the plant went from a 5-day week to a 4-day week schedule in, as he put it, mid-July:

We couldn't get the hogs and had to pay too much money for them and the meat dropped way short and things were just getting tough and so I called Denny and told him about the books were showing and stuff and we talked it over and decided to go to 4 days and cut down on the labor costs and stuff because it was high and see if we couldn't just get by paying the bills and stuff and keep running until things got better.

According to Don Morrell, at the end of the workday on July 14, Assistant Manager Loyd told the employees that they would not be working on the following day, "Because we can't get no hogs." On the following day, Thomas Morrell went to the plant to pick up some spare parts for his motorcycle, which he had stored at the plant. He heard Newman talking to someone on the telephone, telling him that he did not want the hogs. When Newman learned they had already been shipped, he told Loyd to go catch the truck on the highway. Thomas Morrell proceeded to ride along with Loyd, when they caught up with the hog truck at the weight scales. Here, Loyd directed the truckdriver to take the hogs back to the market because Contris Packing was not working that day. The plant also worked a 4-day workweek the following week, the last week worked until September 22.

After the plant reopened on September 22 with Loyd as manager, it regularly worked a 5-day week, and there is no evidence that it had any problem securing a sufficient supply of hogs. Tom Morrell's testimony that he and Loyd drove to the scales, where Loyd instructed the truckdriver to take the hogs back to the stock yards, was uncontradicted by Loyd, and is credited. Tom Morrell was appointed plant foreman when the plant reopened, and was working for Respondent Contris when he gave this testimony, further enhancing his credibility.

Respondent correctly cites in its brief in referring to a reduction in work hours, that if the employer has a legitimate business reason for the reduction, the employer's decision to reduce work hours will not violate the Act. In the instant case Respondent presented no legitimate business reason for the cutback that would withstand scrutiny. Loyd gave only one reason on July 14 for not working the next day, and that was that they could not get any hogs. This proved fallacious as, on the next day, a truckload of pigs was on its way to Respondent's plant, and was turned back by the plant manager's order. At the hearing Newman offered an additional reason of having "to pay too much money for them." No business records were offered to support this testimony. One would expect that to bolster such a contention that Respondent would have offered its business records as evidence. However, without explanation, Respondent did not do this. Its failure to do so leads me to believe that its records would not have borne out its claim in this respect.³¹

³¹ A litigant's unexplained failure to offer material evidence warrants the inference that if he adduced the evidence it could not support his position. *Bechtel Corp.*, 141 NLRB 844, 852 (1963).

Respondent cites in its brief in support of its position *Liberty Markets*, 236 NLRB 1486 (1978). However, in that case the company produced records that proved dramatically that its meat sales had gone down, and the Board found the reduction of hours therein to be legal.

Based on the foregoing uncontradicted employees' testimony, Respondent's failure to present records, and with the numerous threats to close the plant being made prior to July 15, I find that the employees were deprived of work on July 15 and 22 because of their suspected union activities, and so as to dissuade them from seeking union representation, and that Respondent thereby violated Section 8(a)(1) and (3) of the Act. *Jorgensen's Inn*, 227 NLRB 1500 (1977).

K. *The Discharge of Steve Gorman*

The General Counsel contends that Gorman was discharged for his union activity, and that his failure to sign a disciplinary form was merely used as a pretext for his discharge. Respondent Contris Packing contends in its brief that he was fired for insubordination. Prior to his employment by Contris, Gorman had worked as a tanner and skinned hides. He went to work for Contris on March 24, and for the next 4 months pulled hog backs in the morning, and skinned hog parts in the afternoon. During this period he was not warned or disciplined about his job performance. Around July 14, 15, and 16, Foreman Wilkins assigned him to removing meat from neck bones, work he had never done before.³² Gorman testified that a few days after being assigned to the neck bones, about every other day Loyd and Wilkins would tell him that his neck bones were not clean enough, or he had let them back up on the table. At that time the plant was slaughtering 90 hogs a day, which meant 180 neck bones had to have their meat cleaned off.

In the week of July 21, employee David Price had been picking Gorman and Wilkins up in his car at the same location on the way to work, as they were neighbors. Price testified credibly that one morning Gorman was not outside waiting to be picked up when Wilkins got in his car. Price then asked Wilkins if he should go get Gorman and Wilkins replied, "Don't worry about him. He won't be working pretty soon."

On the morning of July 24, Gorman worked on the neck bones. Wilkins chided him for not getting them clean enough, and Loyd joined in the criticism. Gorman informed the supervisors that he was not real good on neck bones, but that he was doing the best he could. Later Wilkins told Gorman that Loyd wanted to see him. On going back he saw a preprinted reprimand form on the table. Gorman read it over, and to him it stated that if he left any more excessive meat on the bones that would be grounds for immediate dismissal. Gorman stated that he would not sign it and went to lunch. On returning from lunch, Loyd told him to sign it or he would be fired. Gorman again refused, saying he was going to talk to the Labor Board.

³² As previously stated, the union meeting took place on July 14, and on July 15 Foreman Wilkins told Rich Hunt that he thought Gorman, Dunn, and Burton were employees responsible for putting on the union meeting.

Gorman denied that he had seen General Counsel Exhibit 25 before the hearing, although he admitted that the form was the same he had been shown at work, but that the words contained in it were different. The exhibit is a confusing document as it has two and possibly three different types of handwriting on it. Under the caption "Company Remarks" is hand printed "Employee Leaving Large Quantities of Meat on Bones to be thrown Away After First Warning." In the same section it is checked off that he received an oral warning on July 18, 1980. Under the bottom caption "Action to be taken" is printed "Employee to be Discharged if Grade of Work is not Improved. Discharged 7-24-80, 10 a.m. for arguing with Employer."³³ Gorman also denied having previously seen General Counsel Exhibit 22, which was another preprinted employee warning form. This form had inserted thereon that on July 18 he had been charged with neglect "Leaving Meat on Bones and Bones on Floor," and that this was his first warning. Respondent does not claim that it asked Gorman to sign this form, or that it showed the form to Gorman.

Dennis Contris admitted that the Company had never had a policy that required employees to sign a warning notice or they would be subject to discharge. It is also to be noted that Respondent did not require Greg Bruckerhoff, Steve Jefferson, or Donald French to sign their warnings, as is shown by General Counsel Exhibits 21, 24, and 26.

After Gorman returned home, which was in the same area where Wilkins and Roy Clark lived, he went to visit Roy Clark. Clark lived in the same motel apartment as Wilkins and his room was adjacent to the foreman's room. Gorman received no reply to his knock on Clark's door, but did hear and recognized Wilkins' voice through the walls. While he did not know whom Wilkins was talking to, he did hear him say that he needed to get rid of about five more senior employees until this union thing blows over, that if the seniors were gone, the other employees would not be so "gung ho" about it.

In applying the teaching of *Wright Line*, 251 NLRB 1083 (1980), I find that the General Counsel has established a prima facie case, and that Gorman's union activity was a motivating factor in his discharge. There is no doubt of company knowledge of union activity as Newman admitted that he heard employees discussing a union in mid-July. Respondent's supervisor knew of the union meeting on July 14 and questioned employees about it. The plant manager admittedly knew that the Union had filed a petition for an election on July 15. Respondent's strong union animus is well established as set forth in the threats of plant closure by Loyd and Wilkins as set forth in section III,G and H above. Respondent also regarded Gorman as one of the main organizers of the Union, as it believed he was one of three organizers of the July 14 meeting.

Gorman had been a satisfactory employee for months prior to that union meeting, and had never been warned or disciplined about his work performance. Concurrent

with the first union meeting, he was suddenly taken off the job he had been doing satisfactorily for months, and given the difficult job of cleaning the meat off of 180 neck bones a day. Wilkins and Loyd commenced to harass Gorman on almost a daily basis in his first week on neck bones, finding that he was not cleaning enough meat off the bones, or, if he boned off enough meat, his production was too low. On Friday of the first week on neck bones, Loyd prepared a warning, dated July 18, stating that he was leaving too much meat on the bones. Then in the week of July 21, when Gorman failed to be waiting to be picked up for work, Wilkins prophesied that Gorman would not be working for Respondent in a short period of time. On July 24, Loyd prepared a second warning criticizing his work, and under the last caption "Action to be Taken" showed its anticipation to discharge Gorman by inserting "Employee to be Discharged if Grade of work is not Improved." However, Respondent did not wait to issue Gorman another warning about his work so that he could be discharged on the original ground, but grasped the incident of Gorman refusing to sign the warning as a suitable grounds for discharge. Thus, Wilkins' prophecy that Gorman would not be working for Respondent much longer was fulfilled.

I turn now to the reasons offered by Respondent to rebut the General Counsel's cases. Loyd testified that, when he asked Gorman to sign the warning, Gorman started yelling, "cussing," and refused to sign it. It was lunch breaktime, and Gorman took his lunch period. During this time, Loyd made a decision about Gorman's employment: "I decided I didn't need him. Because he told me what to do, I couldn't tell him what to do. So I felt it was better we didn't have him around." When Gorman returned from lunch, Loyd then discharged him. Loyd flatly denied that he said to Gorman when he handed him the reprimand, "Sign this or you'll be fired." At some point after Gorman was discharged, there was entered on the warning, General Counsel Exhibit 25, that the reason for his discharge was "For Arguing with Employer."

I credit Gorman's testimony and find that he was discharged because he refused to sign the warning. Respondent in its brief states that Gorman was fired for insubordination,³⁴ which plainly covers Gorman's refusal to sign the warning. I further find that Respondent has not rebutted the General Counsel's prima facie case by showing that Gorman would have been discharged for arguing with the Employer as set forth in the warning, or for insubordination as stated in Respondent's brief. The Company was obviously building a case to justify the dismissal of Gorman. The number of days he spent on the neck bones was very brief, and there is nothing in the record to show that he had a sufficient chance to prove his ability to handle the neck bones. Even if Loyd was convinced he could not learn to handle neck bones, it would seem that the Company would have put this experienced skinner back pulling backs and skinning hog parts, work which he had done for 4 months without any criticism. Respondent makes much of the fact that

³³ In the middle section is a statement written by the office secretary, as to Gorman's refusal to sign. This was obviously written after Gorman was discharged, and it therefore could not have been on the reprimand form shown to Gorman by Loyd.

³⁴ Insubordination is one of the grounds specifically set forth in Respondent's rules as a sufficient reason for discharge.

Gorman "started yelling and cussing" when he was told to sign the warning, and that an employer need not tolerate such disrespect. Certainly loud noises were part and parcel of the operation of this slaughter house from the time the squealing pigs were unloaded from their trucks into the plant's pens. Strong profanity was also a common trait, as the plant manager illustrated by the name he called employee Rick Hunt on the evening of July 28, in an incident which will be discussed infra.³⁵

Unquestionably Respondent had the right to discharge Gorman for any reason or no reason, except it may not discharge him for engaging in union activity. But, when the asserted reason is not reasonable as I have so found herein, then that fact is evidence that the true motive for discharge is an unlawful one which Respondent seeks to disguise. See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d (9th Cir. 1966); *First National Bank of Pueblo*, 240 NLRB 184 (1979).

Finding that the alleged reason for Gorman's discharge was false, I infer that the true motive for his termination was because he was viewed by Respondent as one of the leading proponents for unionism and Respondent sought to rid itself of this union supporter. The allegations of Respondent that there was cause to discharge him are just too unpersuasive in this factual context to believe. Accordingly, I conclude that Respondent, by discharging Gorman on July 24, violated Section 8(a)(3) of the Act. *Heartland Food Warehouse*, 256 NLRB 940 (1981).

L. The Election Process

On July 15, the day following the meeting of the employees at Don Morrell's house, the Union filed a petition for an election. At that meeting nine employees had signed union authorization cards, and on July 24 eight more employees signed cards at a second meeting. On July 25, at the Wentzville plant, Respondent, by Newman, together with the Union entered into a Stipulation for a Consent Election to be held on August 15. The parties agreed to the following appropriate collective-bargaining unit: All production and maintenance employees employed by the Employer at its 701 Pierce Boulevard, Wentzville, Missouri facility, excluding all office clerical and professional employees, guards and supervisors as defined in the Act.

On July 29 Respondent closed its Wentzville plant. By certified letter, dated July 30, Local 545 wrote to Respondent to the attention of Newman requesting recognition and bargaining. (G.C. Exh. 42.) Loyd signed the postal receipt for the letter on July 31. Dennis Contris stipulated that the letter had been received and that no response was made by Contris Packing.

On July 31, the Union filed its charge in Case 14-CA-14065. By telegram dated August 5, the Regional Director notified all parties that the scheduled election was postponed indefinitely pending investigation and disposition of the Union's unfair labor practice charge. No election was ever held.

³⁵ See Tr.

M. The Events of July 29

The General Counsel contends that the plant was closed on July 29 to discourage union activities and to avoid the scheduled election.

1. The discharge of Rick Hunt

Hunt had been recalled to work at Contris on July 14 by Newman, and continued to work until July 29. According to Hunt, he came into work on that date and, not finding his timecard in its rack, he went to see Newman. Newman then told him that he was fired for slashing the tires on Newman's car. Hunt denied that he had slashed his tires. Newman gave him his paychecks, and he was discharged. Hunt admitted that later that day he asked Newman to step outside, but denied that he threatened him.

Newman testified that on the evening of July 28 he went to bed in his second floor apartment, which was located in a multiunit group in the town of O'Fallon.³⁶ His wife woke him up, telling him that someone was letting the air out of the tires of his car out on the parking lot. Newman grabbed his gun, which he kept under his bed, and ran to the window and looked out on the well lit parking lot. He saw both his car, a Chevrolet, and his wife's car, a Chrysler Cordova, which were parked right below his window. He saw a man bent over one of the Chrysler's tires, "getting ready to puncture it," whom he recognized to be Rick Hunt, who had long, blondish hair. He also saw a second man on the other side of the car whom he could not recognize. He then saw that four tires on his own car were already flat. Newman then yelled an obscenity at Hunt, at which point Hunt turned around, looked directly at Newman, and then the two men "took off running." Newman then ran out to the parking lot to find all four of the tires on his Chevrolet flat, as well as two tires on his wife's Chrysler.

Mrs. Newman testified that as she was preparing to go to bed she heard loud hissing noises which caused her to awaken her husband. They both went to the window where she saw two men standing by their cars, and that the car tires were being slashed. When her husband yelled out, she saw Rick Hunt stand up. She recognized Hunt because he had been at their apartment several times playing cards and drinking beer with her husband. She telephoned the O'Fallon police, who came out almost immediately. She saw the six flat tires that night, and also the next morning when snapshots were taken of these tires. (R. Exhs. 13a, b, c, and d.)

The investigating officers made out a formal "Incident Report" that evening from information supplied by Mrs. Newman. (R. Exh. 16.) This report shows that the incident was reported at 10:58 p.m., having occurred at 10:55 p.m., and that the police arrived at 11:03 p.m. Rick Hunt was named as the person wanted. Under the heading of property damage the police listed six tires, with a total estimated value of \$570. The next day criminal charges were filed against Hunt. As the Newmans

³⁶ O'Fallon is 7 miles east of Wentzville. Rand McNally Road Atlas, 1980 Ed.

moved from O'Fallon shortly after the charges were filed, Hunt was never tried.

On the following morning Newman went to the plant, arriving at 6:30 a.m. He testified that he had decided to quit the night before when his tires had been slashed. A few employees had arrived by this time, and Newman told them he was closing the plant and if any wanted to work to finish boning out the hogs they could, but no one had to do so, as they could just wait for their checks. When Hunt came into the plant Newman handed him his check and fired him for slitting his tires. Hunt denied that he had done so. Around 1 p.m. the plant was closed and Newman was gathering up his personal property. Hunt and Don Morrell came into the plant and invited him outside to fight, where there were also three or four additional employees. Newman called the police, and after Hunt and Morrell left he canceled his request for police officers. Newman left the plant about 4 p.m. in Loyd's car. On July 30 the following day, Newman returned to the plant and picked up his remaining personal items, and left for his hometown in Lima, Ohio.

In applying the principles of *Wright Line*, supra, I do not find that the General Counsel has sustained his burden of establishing a prima facie case that Hunt's union activities motivated Respondent's decision to discharge him. The record does not indicate that Hunt was a union activist, or that he was ever so designated by any of Respondent's supervisors. As previously set forth, Wilkins had stated that Gorman, Dunn, and Burton were responsible for putting the union meeting on on July 14, but he had not named Hunt. The only indication of union activity by Hunt was signing an authorization card on July 14, a routine act performed by eight other employees, on the same evening.

Assuming arguendo that a prima facie case had been shown, I would nevertheless find that Respondent had met its burden of showing that it would have discharged Hunt, even absent the protected conduct. Mrs. Newman was an impressive witness, testifying in an honest, calm, and direct manner. I fully credit her testimony. She clearly saw Hunt out on the well lit parking lot that night, slashing her car's tires. She saw him run away when his name was called out by her husband. She called the police and the police prepared their official report setting forth that there were six damaged tires. What feud between Newman and Hunt caused Hunt to do this destructive act is not revealed in the record. But he did slash the tires, and Respondent had the right to discharge him for such a wanton act of vandalism. Accordingly, I shall recommend that this allegation of the complaint be dismissed.

2. The layoff of Don Morrell

The complaint in paragraph 7E reads that "On or about July 29, 1980, Respondent laid off and/or discharged employees Don Morrell and Rick Hunt." While this would seem to indicate some linkage between the discharge or layoff of these two employees, I do not find any such linkage. I do find that there was a relationship between the layoff of Don Morrell and the balance of the plant employees on July 29, and this mass layoff will

be reviewed at length infra. As to Morrell's layoff, a few facts will suffice.

Morrell testified that on the morning of July 29, about 6:40 a.m., he called the plant as he was not feeling well. He described his conversation with Newman as follows: "I called in. He said, 'Do not worry about it because you ain't got a job no more,' and I went up there to see what was happening. He said I was laid off."

Don Morrell admitted hearing Newman fire Hunt because he felt that Hunt had slashed his tires the night before. There was much confusion and uncertainty as to what was going on in the plant, and several employees went to Newman and asked why the plant was closing down. Newman told Romel Wyatt that it was because "money problems," told Thomas Morrell it was because "they were losing too much money," and told Michael Dunn it was because they were going broke. The record is clear that Newman did close the plant at noon, after allowing the employees who so desired to bone out the hogs that were on hand, and laid off all of its butcher employees.³⁷

3. The temporary closing of the plant

The General Counsel contends that Respondent closed the plant on July 29 so as to discourage union activities and avoid the election then scheduled for August 15. Respondent in its brief contends that the plant was closed down for legitimate business reasons in that Newman was harassed and decided to quit and to shut down the plant. Respondent in its brief also argues that the plant had to be closed down anyway, as it would have been closed down by the United States Department of Agriculture (USDA) inspectors.

Almost from the time Newman became the plant manager in January, he expressed strongly Respondent's total dislike for unions, and threatened that the Company would not put up with a union representing its employees, but would close the plant down before it would allow that to happen. In March, April, and May he once more drummed home to the employees that the Company would close the plant down rather than have a union representing its employees. Wilkins also, time after time, repeated this theme to the employees, and on the morning of the day that the plant was closed told Menteer that the plant was being closed because of the employees' union activities. On July 14, Respondent sent a signal to its employees of the economic power it held over them by cutting their hours from 40 to 32 per week. Then, on July 29, faced with several unfair labor practice charges, and a Board-conducted election only

³⁷ The employees laid off were:

Greg Bruckerhoff	Mark Nolting
Dennis Menteer	Donald French
Glynn Burton	David Price
Donald Morrell	Steve Jefferson
Roy Clark	Terry Turman
Robert Morrell	Allen Koehler
Mike Dunn	Albert Vehige
Tom Morrell	Romel Wyatt
Michael English	

several weeks away, Newman carried out his threats, and closed the plant down.

The only reason Newman gave to the employees for the shutdown was because the Company was losing too much money and going broke. This reason was never offered by Respondent in its brief, and was obviously a subterfuge concocted on the spot by Newman. Moreover, when the plant reopened on September 22, there was no evidence or even a claim that the Company's financial structure had been strengthened in any manner. According to Newman's own testimony, he shut the plant down for only one reason, and that was because he was angry because employees slit his tires and were harassing him. He flatly denied that any problems he was having with the city of Wentzville about water bothered him at this time or influenced his decision to quit. He also made this decision to quit on the evening of July 28, and when he went into work on the morning of July 29, his mind was already made up.

Thus, there was no prior warning to the employees that the plant would be closed down, and it was closed down in a most abrupt manner. Newman was a very rugged individual, who not only kept a gun in his apartment, but availed himself of it when suspicious noises occurred outside his window. I find it incredible that Newman was so intimidated by the slashing of his tires, so as to allow this incident to cause him to flee Wentzville. It is particularly to be noted that Newman did not testify as to any conversation with Dennis Contris about such a major decision as closing the plant down. Yet, Newman admitted that he called Dennis Contris in mid-July to discuss a much less important matter. This earlier conversation concerned the changing of the workweek from 5 to 4 days, a matter of far less importance than closing the plant down.

Accordingly, I find that the General Counsel has made a prima facie showing that Respondent's fear that the employees would choose a union to be their collective-bargaining representative was a motivating factor in its decision to close the plant.

I now turn to the reasons offered by Respondent to rebut the General Counsel's case, in accordance with *Wright Line*, supra. When Dennis Contris made his response to the unfair labor practice charges by his letter dated October 21 (G.C. Exh. 1(U)), he stated very succinctly why the plant had been closed down: "Due to Mr. Newman's resignation as plant manager, we were forced to close the facility." Then less than 1 month later, when Dennis Contris first testified in the case, he apparently realized the weakness of this reason, as Bruce Loyd, the assistant plant manager, was available to continue the running of the plant. This time the president augmented his original reason by testifying: "The reason was we did lose our manager and Bruce was not capable of managing the place correctly. He didn't have the ability, the experience and as our losses went on we decided to close it down."

That Dennis Contris thought Loyd did have the ability to manage the plant was proven when the plant was reopened on September 22 with Loyd as the plant manager. During the period the plant was closed, Loyd per-

formed some maintenance work in the plant but received no additional training in plant management.

As to the losses casually testified to by Dennis Contris in November, no financial records were produced to substantiate this allegation. One would expect that to bolster such a contention, Respondent would have offered its business records in evidence. However, without explanation, Respondent did not do this. Its failure to do so leads one to believe that its records would not have borne out its claim in this respect.³⁸

On April 3, 1981, at the reopened hearing, Dennis Contris, for the first time, contended that the plant remained closed so that Loyd could perform some repairs that had been listed by inspectors of the USDA. Loyd produced three documents to support this contention, and they leave much to be desired in the matter of sequence and clarity. (R. Exh. 17.) The first page is a typed inneroffice memorandum on stationery of the USDA dated June 30, 1980. It lists "items which need attention," such as loose paint, condensation, and rust on equipment. The third page is handwritten without identification and is dated July 23, 1980. It seems to repeat most of the defects set forth in the June 30 memorandum. The most impressive document of the three is a USDA printed form captioned "Voluntary Suspension or Withdrawal of Service." This typed form is dated August 8, 1980, and states that it is a voluntary suspension. It further has typed in appropriate boxes that the suspension was requested in the Company's communication of July 30, and that the suspension commenced on July 30.

Respondent contends in its brief that "if Newman had not quit and closed the plant, it would have been closed by the USDA inspectors until brought into compliance with their orders." I do not find any support for this theory. Loyd admitted that a number of things that the inspectors complained about in June were things they had continually complained about from the time the plant opened. There is no document to show that the plant would have been required to close down in order to make these repairs, nor did Respondent's witnesses so testify. In fact the USDA notice of August 8 plainly shows that Contris Packing requested the suspension on July 30, the day after Newman had closed the plant.

Dennis Contris was in no hurry to get the plant back in operation as he had Loyd alone perform this maintenance work. Loyd was equally in no hurry, as he took time off to go on a honeymoon in August and took a week off in September before reopening. Again the employees could see the economic power that the Company held over their right to earn a living.

I therefore find that Respondent has not met its burden of establishing that the plant would have been temporarily shut down even in the absence of any union or protected concerted activity. From the time of the abrupt shutdown the Respondent kept expanding its reasons justifying its actions. From the original plain reason that the plant was shut down because Newman's tires were slashed was added that it had no manager, that it

³⁸ *Bechtel Corp.*, supra.

was losing money, and it needed to perform some USDA ordered repairs.

Finding that the alleged reasons for the shutdown were false, I infer that the true motive was because the employees were seeking union representation. Accordingly, I conclude that Respondent, by closing the plant down from July 29 to September 22, violated Section 8(a)(3) and (1) of the Act.

N. The Nonrecall of Greg Bruckerhoff, Terry Truman, and Romel Wyatt³⁹

In the week preceding September 22, Loyd sent the approximately 12 most senior employees certified letters, recalling them to work. Bruckerhoff, Truman, and Wyatt were junior employees, and were not notified of the reopening, and were not recalled. The plant reopened on September 22 with Loyd as plant manager and sole supervisor, as Wilkins did not return. As previously stated, Thomas Morrell was appointed foreman. In addition to running the plant, Loyd also purchased the hogs and sold the meat. He now had a secretary to do office work, who had been hired originally in July.

Bruckerhoff testified without contradiction that after the July 29 shutdown he looked for other work and, finding none, returned to high school in the fall. He also stated that he would not have gone back to school if he had been called back. While Truman received no letter of recall he did come to the plant one day seeking employment. Loyd advised him that he did not have a place for him but to come back later. Truman did not return. Romel Wyatt was also not recalled, and Loyd said it was because he had another job.

The General Counsel contends that Respondent violated the Act not only by laying them off, but also by not recalling these employees. Respondent argues that all employees were called back by seniority and that there is no evidence Respondent discriminated against these employees. I agree with Respondent that there is no evidence of discrimination against these employees as to their recall. The evidence is clear that Loyd called employees back by seniority, and as a matter of fact rehired Rick Hunt and Don Morrell. The General Counsel offers no evidence that these three employees were singled out, and punished for some union activities. While I have previously found that their layoff on July 29 was a violation of the Act, I do not find that the failure to recall these three employees constitutes an additional violation. I shall recommend that this allegation of the complaint be dismissed.

O. The Final Plant Closing on November 5

Following the reopening of the plant on September 22, its 12 butchers were killing about 35 hogs a day. The killing of hogs and shipping of meat rose steadily so that in the week of October 27-31, the last week worked at the plant, there were 18 butchers on the payroll, with a daily kill of about 70 hogs. As shown on the payroll for

³⁹ Steve Jefferson was also listed in the complaint as one of the employees not recalled. The General Counsel states in his brief that since Jefferson lost no pay, and was offered reinstatement which he declined, no individual remedy is sought for him.

that week, 17 of the 18 butchers worked more than 40 hours. (G.C. Exh. 47.)

On October 6, the Regional Office rescheduled the hearing to November 3. In the latter part of October, Dennis Contris authorized Loyd to discuss with the employees how much money they wanted to settle their cases on file with the Board.⁴⁰ Loyd then discussed settlement with Nolting, Van Hoose, Menteer, Robert Morrell, and Hunt, and they arrived at an agreement on a proposed settlement. The agreement was typed at the plant, and given to Nolting to present to the Regional Office. It was disapproved by the Regional Director.

At the time of Loyd's discussion of settlement with the employees, there was additional conversation which Nolting described as follows: "Bruce Loyd replied to me that we would go to court and all, and due to the charges of the National Labor Relations Board, the plant would probably have to close down, the owners would probably have to close the plant down."

Van Hoose and Don Morrell substantially corroborated Nolting's testimony and added that Loyd said, if the charges were not dropped, and the fines were too large, the plant would be closed down.

Loyd admitted that there was such a conversation, and was asked "did you ever tell any of the employees that if the case didn't settle, and that if you had to go to court, the plant would close down?" To this he answered "Yes." He was then asked why he told them that and he replied, "There wouldn't be anyone there to run it while we were in court, or no employees to work in it." There is no claim by Respondent that Loyd communicated this reason to the employees. Therefore, all they knew was the manager's stark language, that if the case did not settle, the Company would close the plant down.

Although the complaint did not allege this threat as a violation of Section 8(a)(1), this issue was fully litigated at the hearing. Also it is closely related to violations alleged in the complaint. Accordingly, I conclude that Loyd's statement violates Section 8(a)(1) of the Act by threatening to close the plant if the case was not settled.

As previously stated the hearing commenced on November 3 and ended on the morning of November 5, with Dennis Contris representing Contris Packing throughout these 3 days of hearing.⁴¹ All employees attended the hearing except three. At the end of the hearing Brian Farley⁴² talked to several employees of Contris Packing about helping to load some bins on a truck at the Wentzville plant, that were to be taken to Gadsden, as the plant was going to be closed. Dennis Contris and Farley proceeded to Wentzville where a number of employees showed up to get their final paychecks. Van Hoose and some other employees then helped Farley to load the bins on the truck.

⁴⁰ As previously noted Contris Packing's original attorney had withdrawn his appearance on October 2 at the instruction of William Contris.

⁴¹ After attorney Birnbaum withdrew his appearance on October 2, the General Counsel on October 8, 16, and 20, by telephone, letter, and telegram notified Dennis Contris of his right to be represented by an attorney and pleaded with him to do so, all to no avail.

⁴² Farley was a personal friend of Dennis Contris from Alabama, who traveled with him at various times, and had been in the Wentzville plant when it first opened.

Subparagraph A of 5 in the complaint in Case 14-CA-14418 recites: "On or about November 5, 1980, on two separate occasions, Respondent Dennis Contris told an employee that the Wentzville, Missouri plant was being closed in order to avoid having to bargain with the Union." To support this allegation, the General Counsel relies on the testimony of Van Hoose and Nolting. Van Hoose testified that after arriving at the plant he asked Dennis Contris what was going to happen, and Dennis told him that the city was going to close him down because of problems with sewerage and the water treatment plant. Van Hoose then told Dennis Contris he thought that was a bunch of bull, and related the following conversation:

He asked me if I knew—he said, "You know why we cannot open this plant, don't you?" and I said, "Yeah, probably because the union will come in." And, then he stated that if a union got in the plant, they would have to be in all of them.

Dennis Contris recalled that after he told Van Hoose and the other employees that he was closing the plant because of his problems with the Wentzville sewerage department, Van Hoose replied that that was bullshit, that "It was because of the Union."

Nolting testified that Dennis Contris also said that the Union was already in the plant, and there was no way he could get around it, and if he opened the plant up, he would be in trouble because he had not bargained with the Union. Dennis Contris closed out the day by drinking the two fifths of whiskey that he had purchased, and flew back to Alabama on, he thought, the next day.

I credit Van Hoose's and Nolting's testimony and find that Dennis Contris' statements implied that the plant was being closed so as to avoid bargaining with the Union. I therefore conclude that his statements violated Section 8(a)(1).

1. Contris Packing's reasons for closing

The General Counsel contends that Respondent closed the plant because it knew it would have to deal with the Union if it remained open, and also because it wished to retaliate against the employees who had filed unfair labor practice charges.⁴³ Applying *Wright Line*, I find that the General Counsel has established a prima facie case. Respondents Contris Packing and Dennis Contris had a long-established union animus as is shown by numerous independent violations of Section 8(a)(1). It had reduced the workweek on July 15 and had temporarily closed the plant down on July 29 because the employees were seeking union representation. Then, on November 5, Dennis Contris realized that if the plant remained open, he undoubtedly would be required to bargain with the Union. This, he was resolved, was something he was not going to do, so, on the spot, he made the decision to close the plant.

⁴³ Par. 7 of the complaint in Case 14-CA-14418 alleges that Respondent also closed the plant because its employees testified in a Board hearing. This position was not presented by the General Counsel in his brief, and I find no evidence to support such a violation of Sec. 8(a)(4).

We now turn to Respondent's rebuttal that Contris Packing would have been permanently closed "even in the absence of the protected conduct." Respondent Dennis Contris at various times set forth a variety of reasons as to why the plant was permanently closed. These reasons will be examined in the sequence in which they were given.

Dennis Contris testified that on the day of closing, out at the plant, he was talking to several employees about the just concluded case. When asked if he gave them any reason for closing the plant, he replied as follows:

Q. What did you tell them?

A. I said thanks to your city of Wentzville, the sewerage department. I said "You have got them to thank for it."

On November 10, 5 days later, Dennis Contris wrote to Local 545 in St. Louis, notifying the Union that the plant had been permanently closed on November 5, and he then cited three different reasons therefor: "The reasons for closing are lack of management, harassment by employees, and loss of money."

On April 3, 1981, while testifying on the last day of the hearing, Dennis Contris gave different reasons for closing the plant. This time he asserted that the main reason was because of the problem of bad checks he had and the bad reputation they would cause him, the problems he had with the city of Wentzville, and a lack of money. When asked if his decision "was created by the charges brought by the employees to the National Labor Relations Board," Dennis Contris responded: "I would say that had some influence on it as far as that goes, but not near as much as the problems we had with the city."

As to the original and sole reason Dennis Contris had offered to the employees, the sewage problem with the city of Wentzville, there is no question but that the packing plant did have sewage problems, as well as some other problems with the city. However, these problems commenced in March when Water and Sewer Superintendent Walkerhorst traced a red tint in the city's sewer system to the Contris plant. In April, five complaints were issued against Plant Manager Newman by the city, failure to maintain healthy conditions, having annoying noise come from within the business, having animal matter thrown upon a public street, having filth from dead animals on premises, and discharging blood into public sewer system exceeding BOD limits.

Newman took several measures to cure these problems, including the installation of a large tank in the basement of the plant so as to catch blood, not allowing truckloads of hogs to sit out in the parking lot all night, and closing the plant doors when butchering. Although these complaints were scheduled to be heard on April 11 in Wentzville, no hearing was held as Newman's attorney filed various legal papers, and the cases were continued.

After the plant reopened in September three summons were issued to Loyd in September: exceeding waste material for city sewage, failure to obtain a business li-

cense,⁴⁴ and violating a zoning law by operating a slaughterhouse in the central business district. The cases were scheduled for October 10, but were continued to subsequent dates. In October, two more complaints were issued to Loyd for allowing waste to enter the city sewer in amounts that exceeded waste limits.

However, the record discloses that Dennis Contris well knew of this sewage problem when in September he decided to reopen the plant. He testified that he knew about it "all along" but did not realize it was so severe until "later," without specifying what he meant by later. I do not credit Dennis Contris' contention that he closed the plant down because of the sewage problems with the city. He had attorney Birnbaum for months defending the charges against the plant manager, and after Birnbaum was dismissed, he had another local attorney, Jack Gallego trying to work out a consent judgment with the city's attorney that would allow the plant to operate. (G.C. Exhs. 8A, B, and C.) While Contris Packing did have sewage problems with the city, they were not treated by Dennis Contris as insurmountable, and he operated the plant for 6 months after receiving the original complaints. It is also highly significant that, in his letter to Local 545 when he gave his reasons for closing, he never mentioned any problems with the city as one of the reasons for closing the plant.

As to the three reasons Dennis Contris asserted in his letter of November 10, little time need be spent on the first two reasons, lack of management and harassment by employees. There is nothing on the record to indicate that Dennis Contris was dissatisfied with Loyd's performance of his duties as plant manager. Contris knew Loyd's capabilities in September and consciously appointed him the plant manager. As to harassment, Dennis Contris testified that he had no evidence that employees had been harassing Loyd and, in fact, denied that one of the reasons for closing the plant was because Loyd and the employees were not getting along. His third reason, loss of money, is simply not supported by the record. Again, Respondent produced no records to support this contention, and again I draw the inference that since no records were produced, they would not have supported Respondent's assertion. Also, in October Contris Packing sold \$288,736 worth of meat which was more meat than it had sold in any previous month since it had originally opened for business.⁴⁵ In addition, the number of butchers had increased by 33-1/3 percent in the 6 weeks the plant had been opened, and all but one of these employees worked overtime in the week just prior to the closing of the plant.

The third set of reasons given by Dennis for closing the plant also do not stand scrutiny. In this trio of reasons, Dennis Contris asserted that his main reason for closing was because of the problem with bad checks and the bad reputation they would cause him. In October,

⁴⁴ While the plant had been closed the city had passed an ordinance requiring that a license be obtained prior to the operation of certain businesses, including slaughter houses. This ordinance was clearly aimed at Contris Packing.

⁴⁵ Respondent's brief contains charts of the various sales made by the three Respondent Companies. These charts were compiled from ledger sheets containing the sales of the Companies. Jt. Exh. 1 contains a record of Contris Packing's sales.

Contris Packing did have several checks returned by, Robert W. Landrum, its purchaser of hogs at the St. Louis stockyards. These Contris Packing checks had not been honored by Contris Packing's bank because of insufficient funds. When this occurred the first time, Landrum, who had known Dennis for 10 years, called him about it and was told that he would straighten it out, and it was. Then, it occurred two or three more times and Landrum called Dennis, informing him that he would no longer buy for Contris Packing.⁴⁶ When the first check was not honored, Dennis Contris telephoned Loyd, who told him he thought he had money in the mail from their customers, that would make sufficient funds in the Company's bank account, so as to cover the checks mailed to Landrum. Dennis Contris testified that he never had an Avco check bounce, as his credit was excellent at that company.

While it is understandable that Dennis Contris was irked by the bad checks, and wanted a good reputation, he never did say that these bad checks would prevent Contris Packing from buying hogs from dealers other than Landrum. It would be incredible to believe that there were not other dealers at the St. Louis stockyard who would sell hogs to Contris Packing. Perhaps stricter rules of payment and credit would have to have been worked out, but nothing in the record shows that Contris would not have been able to buy hogs from different dealers.

His second reason, problems with the city of Wentzville, has been previously discussed and needs no further discussion. The last reason he asserted on the stand, lack of money, was just a bald assertion, and was not explained as to what he meant. Respondent's counsel, in questioning Loyd about the delinquent checks, did put into evidence a form issued by the Company's bank. (R. Exh. 18B.) This form, dated October 27, the first day of the last week worked, states that the Company had an "Average Balance Prior Analysis Cycle" of \$108,103, no mean sum of money by any standard. But again we have the failure of Respondent Contris to produce any financial records to support his statement. The Company did have financial records, not only in the plant, but also out of it, as it used a professional accounting firm in Wentzville to do its accounting. This firm used to send statements on a regular basis to Dennis Contris, yet none of these statements were submitted by Contris Packing to support its alleged claim of lack of money.

From all of the above, I conclude that the various and shifting grounds cited by Respondent Contris were pretextual and that Respondent in fact closed the plant because it did not want to deal with the Union as the collective-bargaining representative of its employees.

As to the General Counsel's claim that Respondent also closed the plant in retaliation against the employees who had filed unfair labor practice charges, I find that Dennis Contris gave direct testimony to this effect, and that such testimony established a violation of Section

⁴⁶ Landrum testified that as a dealer he buys three to four hundred thousand dollars worth of livestock a day, and under Federal law, he has to pay the commission for the livestock within 24 hours, and he could not wait for his money.

8(a)(4). He testified that he made the decision to close Contris Packing right in the Board courtroom on November 5. His attorney then asked him:

Q. Now, sitting in this courtroom and making that decision, how much of that decision was created by the charges brought by the employees to the National Labor Relations Board?

A. I would say that had some influence on it as far as that goes, but not near as much as the problems we had with the city.

P. The Last Days of the Plant

After the plant closed on November 5, Loyd remained on the premises to wind up its affairs. He drained the refrigeration system, collected money from customers, and paid bills. On December 10, Loyd issued a check to Clinton Packing for "meat" in the amount of \$49,437.50. On the same date he issued two checks to Diamond Meat for "meat" in the amounts of \$36,637.60 and \$44,712. The balance shown on the checkbook after the issuance of the three checks was \$75,088.76. Loyd testified that in September he found three invoices for meat stuck in the back of a drawer from these two companies, and, as he did not have the money to pay these bills, he held on to them. He thought that the meat had been bought in May and June, but had never seen any bills for the meat, except the three stuck in the back of the drawer. He thought Clinton Packing had billed the Company in May or June, and Newman told him that he was not going to pay it. He also thought that Clinton Packing had dunned the Company in writing in August, and had called him in September or October. As to the Diamond Meat invoices, to his knowledge the Company was never dunned by Diamond for payment by either mail or phone call. He testified that he knew David Contris owned Clinton Packing, but he did not know who owned Diamond Meat. He further admitted that he was surprised when he found the Diamond invoices in the back of a drawer. No record of any kind was offered by any Respondent to justify the payment of this money to Diamond Meat Company. As far as the record shows, it was an unjustified transfer of money, so as to deplete Contris Packing's funds, and make such money unavailable to creditors.

Sometime in the latter part of December, the Wentzville plant was totally closed, and Loyd sought other employment. He was referred by David Contris to a plant in Nebraska, but upon visiting it, did not find it acceptable. He then contacted George Elrod, the plant manager at Avco, and on January 3, 1981, commenced working in the Avco plant in Gadsden.

IV. THE BARGAINING ORDER

The General Counsel, relying on the *Gissel* case⁴⁷ contends that a bargaining order should issue under the principles enunciated therein. In *Gissel*, the Supreme Court recognized two categories of unfair labor practices committed by an employer in which a bargaining order would be an appropriate remedy, rather than having an

election. The first category involved "outrageous and pervasive" conduct by the employer, and the second "less pervasive" unfair labor practices.

There is no question as to the unit description, as the unit alleged in the complaint as the appropriate unit was so admitted by Respondent Contris Packing. Accordingly, I find this unit appropriate for the purposes of collective bargaining:

All production and maintenance employees employed by the Employer at its 701 Pierce Boulevard, Wentzville, Missouri, facility, excluding all office clerical and professional employees, guards and supervisors as defined in the Act.

Respondent Contris Packing also admitted that Local 545 had a majority of signed authorization cards from the employees since July 24. In addition, the General Counsel proved that Local 545 represented more than a majority of the employees, as it had 17 signed cards from the 20 employees. I therefore conclude that as of July 24, 1980, Local 545 was designated as the exclusive collective-bargaining agent by 17 of 20 of Respondent's production and maintenance employees, and was therefore the majority representative of Respondent Contris Packing's employees employed in that unit.

I also find that the General Counsel is entitled to a *Gissel* remedy, as the Employer's conduct was outrageous and pervasive. Prior to July 24 and subsequent to that date, Respondent Contris Packing amply demonstrated its union animus by making numerous threats to close the plant and cease operations, interrogating employees about union meetings and activities, creating the impression of surveillance, soliciting grievances, promising employees free gloves, free beer, free barbecue, threatening discharge, changing its reprimand procedure, placing in effect a warning system, and issuing warnings to discourage union activity, reducing the number of days worked per week, discharging Steve Gorman, and temporarily closing the plant on July 29. Such extreme actions by Respondent clearly would have a tendency to undermine the Union's majority and impede the election process, and require that a bargaining order should be issued.

As to the date on which the duty to recognize the Union should be effective, I find that this duty arose on July 24, the date on which the Union had a majority of valid authorization cards, in a period in which Respondent was committing unfair labor practices. *Anchorage Times Publishing Co.*, 237 NLRB 544 (1978); *Daybreak Lodge Nursing & Convalescent Home*, 230 NLRB 800 (1977), enfd. 585 F.2d 79 (3d Cir. 1978).

The record is also clear that the Union by certified mail, on July 30, requested Respondent Contris Packing to bargain with it concerning wages and working conditions. In addition, the Union also requested that Respondent negotiate on the effects of the Company's decision to discontinue operations. The record is equally clear that the Company received this letter, and, as stipulated, it did not reply to the Union's letter. This total failure to respond to the employees' bargaining representative constitutes a violation of its duty to bargain

⁴⁷ *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

with the representative of its employees under Section 8(a)(5) and (1) of the Act, and I so find.

A. *The Decision to Close the Plant*

The General Counsel admits that under the holdings of *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263 (1965), an employer can go out of business for any reason, including its desire not to deal with a union, without committing an unfair labor practice. However, the General Counsel also points to an exception carved out by the Supreme Court in that case, and that is that the plant closing could not be "motivated by a purpose to chill unionism" in other plants of the employer. The General Counsel then goes on to aver that one of Respondent's motives for closing the Wentzville plant was to chill unionism in the other plants of the Respondents. Since I have found that Respondent Contris Packing had only one plant, the Wentzville plant, it follows that it could not have had a motive to chill unionism at the other plants named as Respondents herein, Clinton Packing or Avco.

Next, we look at Dennis Contris as a respondent to see where he fits as to the teachings of *Darlington*, supra, in relation to Avco, which Dennis admitted he owned completely. Assuming, arguendo, that the closing of the Wentzville plant was only a partial closing of Dennis Contris' plants, the Supreme Court stated (380 U.S. at 275):

A partial closing is an unfair labor practice under § 8(a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing would likely have that effect.

There being no direct evidence that it was Dennis Contris' purpose to chill unionism at Avco, the General Counsel's case rests on inferences that can be drawn from the evidence.

The Board stated in *Bruce Duncan Co.*, 233 NLRB 1243 (1977):

[I]n determining whether or not the proscribed "chilling" motivation and its reasonably foreseeable effect can be inferred considers the presence or absence of several factors including *inter alia*, contemporaneous union activity at the employer's remaining facilities, geographic proximity of the employer's facilities to the closed operation, the likelihood that employees will learn of the circumstances surrounding the employer's unlawful conduct through employee interchange or contact, and, of course, representations made by the employer's officials and supervisors to the other employees.

There is, of course, no record of any union activity at the Avco Plant, contemporaneous or otherwise, and it is far removed from Wentzville, being 700 miles away. The General Counsel points to a single factor as meeting the test, that is, that Loyd went to work for Avco, and therefore had contact with Avco employees. However, there is no evidence that Loyd discussed the closing of the Wentzville plant with any Avco employees, and this

is too thin a reed on which the General Counsel may rely. In view of these findings, I find no evidence that would support the inference that Respondent Dennis Contris, in closing the Wentzville plant, was motivated by a desire to disparage the union interests of his other employees, or that Dennis Contris could have reasonably foreseen such an effect especially since there is no evidence of any such interest or activity. Accordingly, I do not find that Respondent Contris Packing or Respondent Dennis Contris violated Section 8(a)(3) of the Act by closing the plant on November 5, and I shall recommend that this allegation of the complaint be dismissed.⁴⁸

B. *The Violation of Section 8(a)(5)*

1. The failure to notify of the closure

There remains for consideration the question as to whether Respondent Contris Packing violated Section 8(a)(5) by failing to notify Local 545 of its decision to close the plant, and afford the Union the opportunity to bargain concerning the effects of closing the Wentzville plant. Respondent Company knew that the Union had requested it to bargain by a letter dated July 30, which, although admittedly received, it never bothered to answer. Also, the record is clear that neither Contris Packing nor Dennis Contris gave advance notice to the Union of Dennis Contris' decision to close the plant on November 5.⁴⁹ It was not until November 10 that Dennis Contris forwarded a letter to the Union informing it that the plant had been closed. When Dennis Contris addressed and sent the letter to Local 545, its contents plainly showed that Respondent knew and recognized the fact that Local 545 was the collective-bargaining representative of its employees. It is well settled that an employer has an obligation under Section 8(a)(5) of the Act to notify the bargaining agent that the plant closure will take place. *J-B Enterprises, Inc.*, 237 NLRB 383 (1978). Accordingly, I find that Respondents Contris Packing and Dennis Contris violated Section 8(a)(1) and (5) of the Act by their failure to give timely notice to the Union that it had decided to go out of business.

⁴⁸ The General Counsel's other contention that Contris Packing had not gone out of business on November 5 because Loyd had written some company checks in December is without merit. For all intents and purposes the plant was shut down on that date when all employees were laid off; the plant no longer bought hogs, processed them, or sold their meat to customers. The ministerial duties performed by Loyd to shut the plant down were certainly not the realistic operation of a slaughterhouse. *Victor Patino & Nydia Patino*, 241 NLRB 774 (1979).

⁴⁹ Respondent Contris Packing states in its brief that "Dennis Contris advised counsel for the Union of his decision orally on the day it was made, November 5, 1980." No such testimony is contained in the record of November 5. Dennis Contris did testify on April 3, 1981, that he approached the bench and told the judge "and the other lawyers who were standing there that he was going to close the plant." Assuming, arguendo, that Dennis Contris made such an off-the-record statement, this does not mean that the Union's attorney was one of the other lawyers standing there, or that he heard Dennis Contris' statement. I do not find that the Union was notified of the plant closing on November 5. Even if Dennis Contris had notified the Union's attorney on November 5 that it was closing the plant that day, this could not be called timely notice, but would have only been the presentation of a fait accompli, which would preclude the Union from doing any bargaining to protect the rights of employees prior to the closing.

2. The failure to bargain concerning the effects of closing

The complaint also alleges that Respondents Contris Packing and Dennis Contris violated the Act by failing to bargain with the Union with respect to the effects of the closing, and that it failed to meet at reasonable times and reasonable places with the Union. These Respondents do not deny that they had a duty to bargain over the effects of the closing of the plant, but assert the defense that they have fulfilled completely their duty to so bargain.

On November 13, the Union received Dennis Contris' letter of November 10, and promptly wrote to him that day requesting a meeting to negotiate concerning the decision to close the plant and its adverse effect on the employees. The Union described the need for a meeting as an urgent matter. Dennis Contris responded, using Avco stationery, by a letter dated November 19, for Contris Packing, stating that his "schedule" dictated that he could not meet until after the first of the year. He concluded the letter by stating he would advise the Union as to "my availability after the first of the year."

On January 8, 1981, the Union, not having heard from Dennis Contris, wrote a followup letter demanding that Contris Packing and Dennis Contris meet and bargain over the decision to close the Wentzville plant, and the effect of the closing. (G.C. Exh. 52.)

For the first time in the correspondence between the parties, the name of attorney John Noble appeared, as the Union's letter showed that a copy of its January 8, 1981 letter had been sent to Noble at his Findlay, Ohio, office. Noble testified that he was hired by Dennis Contris in about the week of November 17 to write a brief for the case heard November 3, 4, and 5. At some point between that date and January 8, 1981, he commenced representing Contris Packing, Dennis Contris, and Avco in the cases herein.⁵⁰

On January 26 and 27, 1981, attorney Noble contacted the Union's attorney, James Singer, by telephone, and the parties agreed to meet on January 29 at attorney Singer's office in St. Louis, Missouri. The parties did meet about 1 p.m. with attorneys Noble and Thomas M. Seeger of Cleveland, representing Contris Packing, Avco, and Dennis Contris, who was also present. Attorney Singer informed Respondents that the Union was demanding recognition. Noble, who was the chief spokesman for Respondents, responded that the Company would not recognize the Union, stating that he had reviewed the transcripts of the November hearing and he doubted whether the Union represented a majority of the employees. He first advised that the Company was there to discuss severance pay, and that it did recognize the Union for the discussion of severance pay. He then took the position that the Company wanted to settle everything, including the withdrawal of the unfair labor practice charges, and this position was maintained by Respondents' attorneys throughout the 3-hour conference.

⁵⁰ As previously stated, the complaint in Case 14-CA-14418 alleging a single employer and alter egos was issued December 16, and may well have precipitated Noble's retention to represent Contris Packing, Dennis Contris, and Avco in all cases.

The Union demanded that the plant be reopened, all employees recalled, and that the Company bargain on a collective-bargaining agreement. Dennis Contris stated that he would not reopen the plant because of the competition with the Garfield Packing Company. Attorney Seeger stated that the plant was permanently closed for economic reasons, as it was losing money. At the end of the meeting the Company did submit an informal, handwritten proposal with a heading that read as follows:

OFFER OF CONTRIS PACKING CO.

Jan. 29, 1981

Re: Effects of Plant Closure

Offer of Severance Compensation to employees who had a date of hire 6 months prior to Nov. 5, 1980, based on their then hourly rate x 40 x 2 (weeks).

Listed were 14 names, and at the bottom was written: "Conditioned on approval withdrawal on all pending unfair labor practices by Regional Director of Region 14, NLRB." (R. Exh. 24.) The Union rejected this proposal, and Respondents then asked the Union to submit two counterproposals: one to resolve outstanding issues including the unfair labor practice charges, and the second proposal, to cover severance pay, but not tied to the withdrawal of the unfair labor practice charges.

On the following day, by letter dated January 30, attorney Singer responded to Respondents' dual request. The Union offered to settle the unfair labor practice charges on the terms that the Company reinstate the employees, pay their backpay, reopen the Wentzville plant, and recognize and bargain with the Union. As to the severance pay proposal only, the Union proposed that all employees on the payroll on the day of closing would be entitled to 4 weeks severance pay, except that employees with a year or more of seniority receive 8 weeks severance pay.

On March 3, 1981, attorneys Noble and Seeger responded to the Union's proposals by rejecting its request that it reopen the Wentzville plant, stating again that it had leased the plant. It then offered to agree that in the event Respondent ever did reopen the Wentzville plant it would offer employment to those persons who had been employees on November 5. It increased the offer of severance payments to 3 weeks pay, still contingent upon the withdrawal of all unfair labor practice charges. (R. Exh. 27.)⁵¹

On March 12, 1981, in a brief letter, union attorney Singer rejected the Company's offer to settle the unfair labor practice charges as set forth in the Company's March 3 letter. There was no further correspondence or meeting of the parties.

While Respondent argues that it has met its admitted duty to bargain with the Union about the effects of the closing, I do not find that it has so lawfully bargained with the Union. The test of good faith in collective bar-

⁵¹ The company attorney sent another letter, also dated March 3, 1981, to the union attorney, but this letter merely enclosed a copy of the written proposal made by the Company at the January 29 meeting. R. Exh. 26.

gaining is whether a party to the negotiations conducted itself during the entire negotiations so as to promote rather than to defeat an agreement. *NLRB v. Reed & Prince Mfg. Co.*, 205 F.2d 131 (1st Cir. 1953).

In applying this basic test to Respondents' bargaining with the Union, it is obvious that Respondents operated so as to defeat an agreement. The Union acted promptly when it received Dennis Contris' letter of November 10 notifying it of the closing of the plant, by immediately writing to him and telling him that it was urgent that they meet, and negotiate on the plant closing and the effects of such closing. Yet, Dennis Contris replied that he could not meet until after the first of the year, some 7 weeks later, without giving any reason for the delay.

It must be remembered that, at this time, the only Respondent was the corporation, Contris Packing Co., Inc., and that the Union's petition for an election was with this corporation, and that its authorization cards ran as to this corporation. It was then the duty of corporation Contris Packing Co., Inc. to bargain with the Union, and it was the corporation's duty to furnish representatives to, as stated in Section 8(d) of the Act, "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Respondent states in its brief that Dennis Contris was in Mexico in December for treatment for an arthritic back condition. However, this was not communicated in any way to the Union, nor could it be a defense, as it was the corporation's duty to supply a representative. *Woody Pontiac Sales*, 174 NLRB 507 (1969).

It is also to be noted that Contris Packing did not hire an attorney at this time to represent it in collective bargaining with the Union, but merely hired an attorney to write a brief for the hearing that had terminated on November 5. Yet the corporation president, Dennis Contris, knew full well that the Union had requested it to bargain as to the plant closing and its effects.

Thus it was not until January 29 that the parties met for the first time, a period of 11 weeks since the Union asked for urgent bargaining. Then, at this meeting Respondents Contris Packing and Dennis Contris' representatives sparred with the Union, refusing flatly to recognize it as the collective-bargaining representative of its employees. Also, it is obvious that the Company only wanted to bargain about one single issue, severance pay, coupled with the withdrawal of all unfair labor practices charges at Region 14.

On the day following the brief 3-hour meeting, the Union forwarded to the Company's attorney a counterproposal. Yet the Company did not reply until over a month later, on March 3. This letter by the company attorney was negative to all union proposals and, like the meeting, only substantively addressed the issue of severance pay with the dropping of the charges on file with the Board.

Thus, 4 months after the Company had closed the plant without notice to the Union, it had met with the Union only one time for 3 hours of negotiations, and had written one letter of any significance concerning the negotiations. It had accomplished its purpose of closing the plant without notice to the Union, its employees were

long out of work, and it had dissipated the Union's bargaining strength.

In light of Respondent's closing the plant without notice to the Union, its procrastination in meeting with the Union, its refusal to recognize the Union at the one meeting, its delay in replying to the Union's counterproposal, it is now found and concluded that Respondents Contris Packing Co., Inc., and Dennis Contris' entire course of action, commencing on November 5, was lacking in good faith to bargain about the effects of the closing of the plant. By such conduct Respondents Contris Packing and Dennis Contris further violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondents Contris Packing Co., Inc., Clinton Packing Co., Inc., and Avco Meat Co., Inc., and Dennis Contris alter ego of Contris Packing Co., Inc., as an individual, were, and at all times material herein have been, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 545, United Food and Commercial Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent Contris Packing Co., Inc. at its Wentzville, Missouri facility, excluding all office clerical and professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 24, 1980, Local 545 United Food and Commercial Workers, AFL-CIO, has been the exclusive collective-bargaining representative of all employees employed in the unit found appropriate, above, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. On July 30, the Union requested, and at all times since has continued to request, that Contris Packing Co., Inc. recognize and bargain with it as the duly designated collective-bargaining representative of the employees in the aforesaid appropriate unit.

6. By refusing on July 31, 1980, and at all times thereafter, to recognize and bargain with the Union as the collective-bargaining representative of the employees in the aforesaid unit, Contris Packing Co., Inc. engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(5) and (1) of the Act.

7. By failing and refusing to notify the Union that it was closing its Wentzville plant on November 5, and by failing and refusing to bargain with the said bargaining agent over the effects upon employees of closing the Wentzville plant, Contris Packing Co., Inc. and Dennis Contris (its alter ego), violated Section 8(a)(5) of the Act.

8. By the acts and conduct set forth in Conclusions of Law 6 and 7, above; by threatening to close the plant down, by threatening employees with dismissal for engaging in protected concerted activity of seeking wage increases, by telling an employee that employees who engaged in such protected concerted activities were trou-

blemakers, and that the Company would discharge employees who engaged in protected concerted activities; by threatening employees with dismissal for engaging in union activities; by threatening employees with reprisals for engaging in protected union activities; by threatening an employee with reprisals for wearing a union button; by telling an employee that another employee was discharged because said employee engaged in protected concerted activity; by interrogating an employee as to what he told an agent of the Board; by threatening an employee with reprisals for talking to an agent of the Board; by promising an employee a raise if the employee would withdraw the charges he had filed with the Board; by telling employees not to talk about unions and threatening discharge if they did so; by telling an employee he would be rehired if he withdrew the charge he had filed with the Board; by interrogating employees about union meetings; by creating the impression of surveillance of employees' union activities; by soliciting grievances; by promising employees free beer, free barbecue, and gloves at cost, if they would vote against the Union; by telling an employee he had not been rehired because he filed charges with the Board; by telling an employee that if the employees selected the Union as its collective-bargaining agent, the plant would be closed down; by interrogating an employee about who the union leaders were and which employees were going to vote for the Union; by telling an employee he was not rehired because the employee talked about the Union; by telling an employee that the plant was being closed in order to avoid having to bargain with the Union, Respondent Contris Packing Co., Inc. has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

9. By discharging Rick Hunt, Robert Morrell, and Mark Nolting on June 9, and Dennis Menteer on June 10, because of their protected concerted activities, Respondent Contris Packing Co., Inc. has violated Section 8(a)(1) of the Act.

10. By instituting a formal type of warning system and the issuance of written warnings to Glynn Burton, Greg Bruckerhoff, Steve Gorman, Steven Jefferson, and Donald French to discourage union activity, Respondent Contris Packing Co., Inc. has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

11. By reducing the workweeks from 5 to 4 days for the period of July 15-29, so as to dissuade employees from seeking union representation, Respondent Contris Packing Co., Inc. has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

12. By discharging Steve Gorman on July 24, 1980, because of his support for the Union, Respondent Contris Packing Co., Inc. has violated Section 8(a)(3) and (1) of the Act.

13. By closing the plant down from July 29 to September 22, 1980, and laying off Greg Bruckerhoff, Glynn Burton, Roy Clark, Mike Dunn, Michael English, Donald French, Steve Jefferson, Allen Koehler, Dennis Menteer, Donald Morrell, Robert Morrell, Tom Morrell, Mark Nolting, David Price, Terry Turman, Albert

Vehige, and Romel Wyatt because the employees were seeking union representation, Respondent Contris Packing Co., Inc. has violated Section 8(a)(3) and (1) of the Act.

14. By refusing to rehire Mark Nolting from July 15 to July 21, because he had filed a charge with the Board, Respondent Contris Packing Co., Inc. has violated Section 8(a)(4) of the Act.

15. By discharging on November 5, 1980, the day of the final plant closing, Mark Dierker, Mike Dunn, Michael English, Rick Hunt, Allen Koehler, Don Leuthauser, Dennis Lindsey, Dennis Menteer, Gary Menteer, Donald Morrell, Richard Morrell, Tom Morrell, Mark Nolting, David Price, Steve Van Hoose, and Albert Vehige because Respondent Contris Packing Co., Inc. wanted to avoid having to bargain collectively and in good faith with the Union as the exclusive bargaining representative of the employees in the unit set forth above, Respondent Contris Packing Co., Inc. has violated Section 8(3) and (1) of the Act.

16. Respondent Contris Packing Co., Inc.'s unfair labor practices were outrageous and pervasive, so that these practices cannot be corrected by conventional remedies, and they make a fair election impossible. Accordingly, it is appropriate and necessary that Respondent Contris Packing Co., Inc. be ordered to bargain with the Union as of July 24, 1980, at which time the Union had a majority of valid authorization cards, in a period in which Respondent was committing unfair labor practices.

17. Respondents Contris Packing Co., Inc., Clinton Packing Co., Inc., and Avco Meat Co., Inc. do not constitute a single integrated business enterprise and are not a single employer within the meaning of the Act, and Respondents David Contris and William Contris are not alter egos of Clinton Packing Co., Inc. and Avco Meat Co., Inc.

REMEDY

Having found that Respondent Contris Packing Co., Inc. (hereafter Respondent), with its alter ego Dennis Contris, has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act. I also find it necessary that Respondent William Contris be also held personally liable for payment of backpay, jointly with Contris Packing Co., Inc. and Dennis Contris, because of his half ownership of the Wentzville plant equipment and real estate, and because of the payment of \$81,349.60 to his company, Diamond Meat Company, in December 10, 1980, by Loyd from Contris Packing Co., Inc. funds. As the unfair labor practices committed by Respondent Contris Packing Co., Inc. were repeated and flagrant and of the type that goes to the very heart of the Act, I shall recommend a broad order requiring Respondent to cease and desist therefrom, and to cease and desist from infringing in any other manner upon the rights of employees guaranteed by Section 7 of the Act.

1. Respondent having unlawfully discharged Rick Hunt, Robert Morrell, Mark Nolting, and Dennis Men-

teer, and although they were rehired I find it necessary to order Respondent to make them whole for lost earnings and other benefits for the weeks that intervened from their discharges to the dates of their rehiring, computed on a quarterly basis from date of discharge to date of reinstatement, less any net interim earnings, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

2. Respondent, having unlawfully issued written warnings to the employees set forth in paragraph 10 of Conclusions of Law, shall expunge these written warnings from its files of these employees.

3. Respondent having unlawfully reduced the work-week from 5 to 4 days for the last 2 weeks in July 1980, it is ordered to pay the employees who were on its payroll during those 2 weeks their regular pay for the 2 days they were deprived of, with interest to be computed as in Remedy paragraph 1 above.

4. Respondent having discriminatorily discharged Steve Gorman, I find it necessary to order it to make him whole for any loss of pay suffered by reason of the discrimination against him by paying to him a sum of money equal to the amount he would normally have earned as wages from July 24, 1980, until such time as he secured, or secures, substantially equivalent employment with other employers computed as set forth in paragraph 1 of this Remedy. In the event that Respondent reopens the plant, Gorman will be entitled to the same reinstatement rights as set forth in paragraph 7 of this Remedy.

5. Respondent, having discriminatorily laid off the employees listed in paragraph 13 of Conclusions of Law, shall make whole these employees for any loss of pay and benefits suffered by reason of the discrimination against them by paying to each of them a sum of money equal to the amount he would normally have earned as wages from July 29, 1980, until their rehire on September

22, 1980, computed in accordance with the Board's usual formula as set forth in paragraph 1 of this Remedy.

6. Respondent having unlawfully refused to rehire Mark Nolting from July 15 to July 22, I find it necessary to order Respondent to make Nolting whole for any loss of pay during this period, computed in accordance with the formula set forth in paragraph 1 of this Remedy.

7. Respondent having unlawfully terminated all employees on the payroll at the time of the closing of the Wentzville plant, as named in Conclusions of Law paragraph 15 above, I find it necessary to order Respondent to make them whole for any loss of pay and other benefits suffered by reason of the discharge, by paying to each of them a sum of money equal to the amount he would normally have earned as wages from November 5, 1980, until such time as each secures, or did secure, substantially equivalent employment with other employers, less any net interim earnings computed in accordance with the Board's usual formula set forth in paragraph 1 of this Remedy.⁵²

In the event that Respondent reopens the Wentzville plant, I will order that Respondent offer each of the aforesaid terminated employees reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

Respondent having unlawfully failed to notify the Union that it was closing the plant, and by failing to bargain with the Union over the effects of the plant closure on its employees, I find it necessary to require that Respondent recognize and bargain collectively with the Union, at the Union's request, including bargaining concerning the decision, and the effects of the plant closure on the Wentzville employees.

[Recommended Order omitted from publication.]

⁵² The order of payment set forth above is patterned after the order of payment contained in *Great Chinese American Sewing Co.*, 227 NLRB 1670 (1977), *enfd.* 578 F.2d 251 (9th Cir. 1978).