

Garrett Flexible Products, Inc. and Plastic Processors, Inc. and Sharren R. Davis, Cases 25-CA-11450, 25-CA-12174, 25-CA-12822, and 25-CA-12822-2

13 June 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 2 March 1982 Administrative Law Judge Irwin Kaplan issued the attached decision. Respondent Garrett Flexible and the General Counsel filed exceptions and supporting briefs. Respondents Garrett Flexible and Plastic Processors filed reply briefs, and the General Counsel filed an answering 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 briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.²

The judge found that Respondent Garrett Flexible committed numerous violations of Section 8(a)(1) of the Act by interrogating employees, conveying the impression of surveillance, and threatening employees with discharge and plant shutdown if they selected the Union. We agree with all but two of the judge's 8(a)(1) findings.

We find that the conversation between Supervisor Wood and his brother-in-law Gamble at the latter's home in April 1981 did not constitute coercive

interrogation in violation of Section 8(a)(1). The credited evidence shows that Wood, a foreman in the mill room, and Gamble were watching television one evening when Wood asked Gamble if he knew of the upcoming union meeting at the Garrett State Bank and whether he was going to attend. Gamble answered yes. Nothing else was said as Wood and Gamble continued to watch television. Given the familial relationship between Wood and Gamble, and the circumstances in which the conversation occurred, we find that Wood's questions concerning the union meeting were not coercive.³ We also find that, in light of the judge's findings that the employees conducted their union activities openly inside and outside the plant (see fn. 44 of the judge's decision) and did little to conceal their union activity, the General Counsel failed to establish that Supervisor Hunter's "little birdie" comment to employee Sumner unlawfully created an impression of surveillance (see fn. 34 of the judge's decision).⁴

The judge also found, *inter alia*, that Garrett violated Section 8(a)(3) and (1) of the Act by terminating its laid-off employees. We disagree.

The evidence shows that Garrett experienced a substantial drop in customer orders in May 1980. Accordingly, it laid off approximately 30 percent of its work force during June and July 1980. The judge found, and we agree, that Garrett's selection of employees for layoff and subsequent recall did not violate Section 8(a)(3) and (1). In October and November 1980, Garrett mailed termination letters to those employees who were still on layoff. The letters referred to a previously unannounced company policy that employees not recalled within 120 days from layoff are terminated because of lack of work.

In response to questions from Garrett's counsel and the judge during Respondents' case-in-chief, Garrett's General Manager Wetzel testified that he selected the 120-day recall policy because it had been the procedure at his former company, and because he believed the 120-day limitation on recall rights was the practice at other companies as well. The judge found that virtually all of the employees remaining on layoff after 120 days had supported the Union, and that Garrett was aware of their union activities. Rejecting Wetzel's explanation for

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

Since we agree with the judge's finding that Marilyn Ompacher is a supervisor within the meaning of the Act, we find it unnecessary to pass on his further finding that Ompacher was placed in a position which gave employees reasonable cause to believe that she acted on behalf of management, thereby making her an agent of Respondent Garrett.

Since the credited evidence shows that Supervisor Hunter's conversations with employees Anderson and Sumner occurred before Respondent Garrett's "do's and don'ts" meeting, we do not rely on the judge's statement in fn. 35 of his decision concerning the increased likelihood of Hunter offering an opinion about the Union after the "do's and don'ts" meeting.

The correct citation for *Hudson Wire Co.*, cited in fn. 34 of the judge's decision, is 236 NLRB 1263 (1978).

² The judge recommended a broad remedial order. Such an order is warranted only when a respondent is shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employee's fundamental statutory rights. *Hickmott Foods*, 242 NLRB 1357 (1979). Inasmuch as Respondents' unlawful acts are not of such a nature, we shall modify the recommended Order and notice of the judge to provide the narrow cease-and-desist language.

³ In adopting the remainder of the judge's interrogation findings, Chairman Dotson and Member Hunter have considered all of the circumstances surrounding the alleged interrogations discussed in sec. II(B)(2) of the judge's decision and find that the questioning reasonably tended to coerce employees in violation of Sec. 8(a)(1) of the Act. See *Rasmore House*, 269 NLRB 1176 (1984).

⁴ For the reasons stated by the judge, Member Zimmerman would find that Supervisor Hunter's statement to employee Sumner created the impression of surveillance in violation of Sec. 8(a)(1) of the Act.

sending the termination letters, the judge noted Garrett's conduct in violation of Section 8(a)(1) and found that the terminations were based on antiunion considerations.

We find that the General Counsel did not establish that Garrett's decision to terminate its laid-off employees after 120 days in that status was unlawfully motivated. The General Counsel presented extensive evidence concerning Garrett's selection of employees for layoff and recall. The General Counsel did not, however, directly address the termination issue in its case-in-chief except to submit into evidence a copy of the October 1980 termination letter. The only other evidence concerning Wetzel's selection of the 120-day recall rights policy was adduced by Garrett's counsel and the judge when Wetzel testified during Respondent's case-in-chief. As stated above, the judge rejected Wetzel's explanation for sending the termination letters. However, the question of motivation where an unlawful discharge is alleged is not answered by discrediting a respondent's asserted reason for the discharge. Rather, the answer to that question rests upon an evaluation of all the relevant evidence. We have considered the evidence regarding Garrett's decision to terminate the laid-off employees and find that, despite the judge's rejection of Wetzel's reason for selecting a 120-day recall rights policy, the General Counsel has failed to affirmatively show that the terminations were unlawfully motivated.

In so finding, we note that Garrett's layoff and recall practices herein were found not to be violative of Section 8(a)(3). The layoffs were necessitated by legitimate business concerns, and the selection of employees for layoff and recall was based on lawful considerations. We also note that the unlawful conduct relied on by the judge consisted largely of statements by, or attributed to, former owner and General Manager Thurman. Although an agent of Garrett by virtue of his continued status as company president and member of the board of directors, Thurman had no involvement in the managerial decisions concerning the layoff, recall, and termination of employees. Furthermore, Garrett had no particular past practice regarding the recall of employees from layoff prior to Wetzel's taking control of the Company. In view of these findings, and in the absence of other evidence showing that Garrett was motivated by unlawful reasons, we find that the General Counsel failed to prove that Garrett seized on the lawful layoff as a pretext to discharge the laid-off employees in violation of Section 8(a)(3) and (1).⁵ We shall therefore

⁵ In its exceptions, Respondent Garrett contends, inter alia, that the 8(a)(3) allegation concerning the terminations, which was amended to the

dismiss that allegation of the consolidated complaint.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 6:

"6. By coercively interrogating employees about their union activities and the union activities of other employees, and by threatening employees with reprisals including discharge and plant shutdown to dissuade them from engaging in union activities, Respondent Garrett thereby has violated Section 8(a)(1) of the Act."

2. Delete the judge's Conclusions of Law 7, 8, and 9, renumber Conclusion of Law 10 accordingly, insert the following as Conclusion of Law 8, and renumber the subsequent paragraphs:

"8. Respondent Garrett has not selectively laid off employees, refused to recall them, or terminated laid-off employees in violation of Section 8(a)(3) and (1) of the Act."

ORDER

The National Labor Relations Board orders that the Respondent, Garrett Flexible Products, Inc., Garrett, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union activities and the union activities of other employees, and threatening employees with reprisals including discharge and plant shutdown.

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

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

(a) Post at its facilities in Garrett, Indiana, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by Respondent Garrett's authorized representative, shall be posted by Respondent Garrett immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent

consolidated complaint at the opening of the trial, was not within the scope of a timely filed charge nor was the issue fully litigated. In light of our finding that the General Counsel failed to prove that the terminations were unlawfully motivated, we need not reach these issues.

⁶ 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."

Garrett to ensure that the notices are not altered, defaced, or covered by any other material.

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

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT coercively interrogate you about your union activities and the union activities of other employees, or threaten you with reprisals including discharge and plant shutdown.

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

GARRETT FLEXIBLE PRODUCTS, INC.

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge. These consolidated cases were heard in Auburn, Indiana, on June 2, 3, 4, 29, and 30; July 1 and 2; and August 10, 11, and 12, 1981. The charges and amended charges were all filed by Sharren R. Davis (Charging Party) and gave rise to several complaints, amended complaints, orders consolidating cases, and still further amendments to the consolidated cases at the trial.¹

¹ The original charge in Case 25-CA-11450 was filed October 16, 1979. The aforementioned charge gave rise to a settlement agreement which was subsequently withdrawn by notice of withdrawal of settlement agreement and determination to reinstate formal proceedings (G.C. Exh. 1(v)). The complaint and notice of hearing in 25-CA-12174 issued January 10, 1980. An order consolidating cases, complaint, and notice of hearing in Cases 25-CA-12174 and 25-CA-12822 issued on December 9, 1980 amended December 10, 1980. A further order consolidating cases, complaint, and notice of hearing in Cases 25-CA-11450, 25-CA-12174, and 25-CA-12822 issued on December 11, 1980. A still further order consolidating cases, complaint, and notice of hearing in Cases 25-CA-11450, 25-CA-12174, 25-CA-12822, and 25-CA-12822-2 issued on June 15, 1981.

In essence it is alleged that about June 20 and July 11, 1980, Garrett Flexible Products, Inc. (Respondent Garrett) selected 18 employees for layoffs, failed and refused to recall said employees, and finally discharged said employees because of their activities in support of International Molders' and Allied Workers' Union, AFL-CIO (Molders' Union or Union), thereby violating Section 8(a)(3) and (1) of the National Labor Relations Act (the Act).² In this connection it is also alleged that since about September 8, 1980, Respondent Garrett and Plastics Products, Inc. (PPI and collectively Respondent) has comprised a single integrated enterprise within the meaning of Section 2(2) of the Act and that PPI inter alia hired employees from the outside rather than recalling Respondent Garrett's laid-off employees in violation of Section 8(a)(3) of the Act.

It is alleged that about June 23, 1980, Respondent Garrett further violated Section 8(a)(3) by discharging Jimmy Gamble, a leading union organizer. Further, it is alleged that Respondent Garrett violated Section 8(a)(4) and (1) of the Act by discriminatorily promulgating and enforcing a rule against talking with Sharren Davis and generally imposing less desirable working conditions by, inter alia, changing Davis' working hours.³

Still further, it is alleged that Respondent independently violated Section 8(a)(1) of the Act by engaging in, inter alia, acts of interrogation, surveillance, and threats of reprisals including discharge and plant shutdown.

The Respondent's several answers (amended further at the trial) conceded, inter alia, jurisdictional facts and the supervisory and agency status of certain individuals but denied such status as to other alleged individuals.⁴ Respondent Garrett and Respondent PPI denied that said companies at any time material herein comprised a single employer within the meaning of the Act and both companies further denied that they committed any unfair labor practices. Respondent also contended that a number of the allegations including the single employer allegations are time barred by Section 10(b) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the posttrial briefs,⁵ I find as follows

² The alleged discriminatees are Jim Anderson, Craig Benson, Denise Brown, Tyron Combs, Wilburn Combs, Sharren Davis, Ralph Erhardt, Nyoka Gamble, Janet Halsey, Barry Harden, Peggy Helblig, Dexter Howard, Bernadette Meyer, Connie Newland, Jane Warfield Shibley, Stanley Stone, Esom Sumner, and Barbara Vogts.

³ As will be treated more fully infra, the General Counsel contends that Respondent Garrett changed Davis' hours shortly after the 60-day posting period under the settlement agreement in Case 25-CA-11450 because she filed charges with the Board.

⁴ The parties stipulated, that record reveals, and I find that Jackson Wetzel, Richard Schorey, Charles Wood, Otis Hunter, Andrew Gamble, and Jackson Barnett are statutory supervisors and agents of Respondent within the meaning of the Act. Further, it is now admitted the record supports, and I find, that Edwin Thomas and Charles Taner are now, and have been at all times material herein, supervisors and agents within the meaning of the Act. (See Respondent's Findings of Fact and Conclusions of Law, October 19, 1981).

⁵ Counsel for Respondent Garrett objected to the General Counsel's posttrial brief on the basis that it failed to comport with the judge's instructions to submit "findings of fact" and requested that said posttrial brief be stricken. Further, counsel for Respondent petitioned for leave to

Continued

FINDINGS OF FACT

I. JURISDICTION

Respondent Garrett is an Indiana corporation engaged in the business of designing and manufacturing rubber component parts at two plants located in Garrett, Indiana. During the past 12 months, a representative time frame, Respondent Garrett has derived revenue in excess of \$50,000 directly from points outside the State of Indiana. It is admitted, the record supports, and I find that Respondent Garrett is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Plastic Processors, Inc. (PPI) is an Ohio corporation engaged in the manufacture, sale, and distribution of plastic products. In connection therewith, PPI has, since 1976, maintained a facility in Newberry, Ohio, and since about September 1, 1980, it has maintained under lease from Respondent Garrett a second facility in Garrett, Indiana. During the 12-month period ending April 28, 1981, a representative time frame, PPI has (in connection with the aforementioned business operations) derived revenue in excess of \$50,000 directly from points across state lines. It is admitted, the record supports, and I find that PPI is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (See Respondent's Findings of Fact and Conclusions of Law dated October 19, 1981.)

As noted above, it is alleged and denied that since about September 8, 1981, Respondent Garrett and PPI have constituted a single integrated business enterprise and a single employer within the meaning of the Act. For reasons discussed infra, I find that the record failed to establish the single employer relationship as alleged.

It is admitted, the record supports, and I find that the International Molders' and Allied Workers' Union, AFL-CIO, is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Sequence of Events*

Respondent Garrett's production and maintenance employees were represented by the International Union, United Automobile, Aerospace and Agricultural Workers of America, UAW, Local No. 1392 (UAW), pursuant to a Board-conducted election and certification from October 15, 1968 (G.C. Exh. 2, art. 1, sec. 2), until January 29, 1980, at which time the UAW formally disclaimed interest in representing the bargaining unit (R. Exh. 7). The UAW was unable to obtain a union shop clause at any time notwithstanding, inter alia, a strike in 1973

file a reply brief. First, I find no legally sufficient basis in the circumstances of this case to strike the General Counsel's brief. Further, it is noted that counsel for Respondent has submitted a comprehensive brief meeting all the substantive allegations. Moreover, the Board's Rules and Regulations contain no provision for the filing of reply briefs. Accordingly, the request to strike General Counsel's posttrial brief and leave to file a reply brief are hereby denied.

largely over this provision. By early 1979 only a few employees remained members of the UAW.

In December 1978, Sharren Davis (the Charging Party) began working for Respondent Garrett in the specialty department on the first shift, from 7 a.m. to 3 p.m. In March 1979, Davis' hours were changed so that she started and completed her shift one-half hour later, 7:30 a.m. to 3:30 p.m. Davis testified that she was not pleased with the change in hours leading her to examine certain company material which had been given to her at the time she was hired. According to Davis, she was unaware that the UAW was the bargaining agent until she read the company material in March 1979. Soon after Davis met with Richard Zellers, International representative of the UAW, and obtained union cards from him in an effort to promote membership in the UAW. Davis distributed these union cards at work and also set up a union meeting but the employees showed little or no interest in the UAW as none of the other employees attended the meeting.

In June 1979, Davis learned about a job opening in the large pressroom where, she asserted, only men were permitted to work. Davis testified that she questioned Superintendent Jack Barnett about job bidding and he told her that there was not any such procedure. In September 1979, Davis filed a grievance asking that she be allowed to bid on a higher paying job and that the contractual posting requirements be met. Zellers informed Davis that the grievance had been resolved by the Employer's posting of the bid board.⁶ (R. Exh. 8, p. 2.)

About October 13, 1979, the hours in the specialty department including Davis' were again changed to commence and end one half hour later, from 8 a.m. to 4 p.m. which now conformed with the hours worked by most of Respondent Garrett's employees. A few days later, Davis filed unfair labor practice charges against the Company and the Union in Cases 25-CA-11450 and 25-CB-3923, respectively, alleging in essence that Respondent Garrett practiced sex discrimination with regard to her change in hours, job bidding, and other terms and conditions of employment (G.C. Exh. 1(a))⁷ and against the UAW for nonrepresentation.⁸ The unfair labor practices against the Company culminated in an informal settlement agreement approved by the Regional Director for Region 25 on December 17, 1979. (See G.C. Exhs. 4(a)-(d).) In relevant part Respondent Garrett promised as follows:

WE WILL NOT change the working hours or other terms and conditions of employment of our employees to discourage them from filing grievances or engaging in other union or protected concerted activity.

⁶ The record discloses that there were two openings for press operators in December 1979 and that the Company complied with the posting requirements (R. Exh. 6). Davis did not submit a bid for these positions.

⁷ About the same time, Davis filed similar charges with the Equal Employment Opportunity Commission (EEOC) and the Indiana Civil Rights Commission. These charges were subsequently dismissed for lack of substantiation. (See R. Exhs. 9(a) and 9(b).)

⁸ The charges against the UAW were dismissed on December 20, 1979. (R. Exh. 8.)

WE WILL reinstitute the working hours and conditions of employment for Sharren Davis which she had prior to September 17, 1979. (G.C. Exh. 4(d).)

The aforementioned provisions were stated in the notice which was posted by Respondent Garrett on December 21, 1979, and remained posted for 60 days as required under the terms of the settlement agreement. Further, Davis' hours were restored consistent with the terms of the settlement so that her workday once again commenced at 7:30 a.m. and ended at 3:30 p.m. Within days after Respondent Garrett first posted the 60-day notice, another notice was posted instructing Davis and Kathy Fugate, the two specialty department employees,⁹ that they had to remain in the timeclock area and could not go into their department before 5 minutes to starting time. Further, if either Davis or Fugate were absent or late on any given day, the other had to wait until 8 a.m., at which time other employees reported to work, so that an escort and a replacement for the missing employee could be provided.

On February 26, 1980, Davis arrived at work early and, when Fugate had not reported by 7:25 a.m., Davis elected not to wait and proceeded to go into her department by herself. For doing so, Beverly Thurman issued Davis a written reprimand. (G.C. Exh. 3.) The Company posted a notice a few weeks later announcing that as of March 17, 1980, the starting time in the specialty department would be 8 a.m., making reference therein to the aforementioned Davis' incident whereby she went to her department alone before 8 a.m. (G.C. Exh. 16.) Further, the notice explained that the change in hours was necessary to standardize the starting time as 98 percent of the employees start at 8 a.m. and "We can not have one emp. [sic] in a dept [sic] by herself."¹⁰ (Id.)

On March 28, 1980,¹¹ Ferdinand Thurman, owner, president, and general manager of Respondent Garrett, sold the Company's stock to Wetzel & Brooks, Inc., a corporation owned largely by Jackson Wetzel. Wetzel immediately succeeded Thurman as general manager but under the terms of the transaction, Thurman continued serving as president until September 28.¹² In a letter to

⁹ At the time Davis commenced working for Respondent Garrett there were three full-time employees and one part-time employee in the specialty department. By January 1980, the night shift in the Specialty Department had been eliminated and only Davis and Fugate reported at 7:30 a.m. Beverly Thurman, the wife of then owner Ferdinand Thurman, was also employed in the aforesaid department but she worked part-time from 8 a.m. to 12 noon. As noted previously, Beverly Thurman's supervisory and/or agency status is in dispute. (See fn. 4 supra).

¹⁰ The General Counsel contends that Respondent Garrett never intended to comply with the terms of the settlement agreement but rather instituted changes in the specialty department only as reprisals for Davis' activities vis-a-vis her grievance, unfair labor practice charges, and attempts to resurrect the UAW. According to the Respondent the changes were predicated on safety considerations, the specialty department being somewhat isolated from other departments and buildings which comprise the complex. For reasons discussed fully infra, I am unpersuaded that the General Counsel has demonstrated by credible evidence that Respondent violated the terms of the settlement agreement.

¹¹ All dates hereinafter refer to 1980 unless otherwise indicated.

¹² It is alleged that Respondent Garrett, by Ferdinand Thurman, engaged in various unfair labor practices before and after March 28, 1980. According to Respondent, with the change in ownership on March 28, Thurman was no longer a supervisor and/or agent of the company.

employees dated April 3, Thurman announced that Jackson Wetzel was the new general manager and that at a later date Wetzel would also assume all of Thurman's duties (G.C. Exh. 8). Thurman promised the employees that his office door would always be open to them and signed off as president. (Id.) Over the next several days Thurman introduced Wetzel as the new general manager at a series of meetings of supervisory and rank-and-file employees. Thurman told the employees that Wetzel had acquired control and was now number one and Thurman was number two and a consultant to the Company. Thurman continued to make almost daily appearances throughout Respondent Garrett's complex although most of his time was spent working in the laboratory as a chemist in tandem with Bonnie Miller, a nonunit laboratory technician.

In early April Davis contacted Gurney Davidson, the International representative for the Molders' Union, and explored with him the mechanics of organizing employees for union representation. Davis began promoting the Union to a number of employees, and some of them expressed a willingness to attend a union meeting. The first union meeting was held on Saturday, April 19, in a room at the Garrett State Bank, approximately 4 blocks from Respondent Garrett's facilities and was attended by approximately 15 employees.¹³ Virtually everyone at this meeting signed a union card and they were collected by Davis and turned over to International Representative Gurney.

On Monday, April 21, and during that entire week Davis, assisted by other employees including James Anderson, Ralph Erhardt, Dexter Howard, Jimmy Gamble, and Esom Sumner, stepped up organizing efforts by distributing union cards at work and visiting employees at their homes. Davis testified that a total of approximately 35 signed union cards were obtained, which she collected and then passed on to Gurney of the Molders' Union.

About April 23, Respondent Garrett received a letter from the Molders' Union (not in evidence) advising it that an organizational campaign was under way. According to Wetzel, he knew nothing of union organizational activity until he received the aforementioned letter. On that same day Wetzel summoned his supervisory staff and using an article entitled, "What to do when the Union Knocks" as a frame of reference delineated the "do's" and "don'ts" in a union election campaign. (R. Exh. 48.) Plant Superintendent Eddie Thomas¹⁴ informed Wetzel at this meeting that employee Charles Legras was threatened with loss of job unless he signed a union card. The next day, Wetzel posted a notice to employees dealing

¹³ Among the employees identified at this meeting were Wilburn Combs, Tyron Combs, Sandy Cooper, Sharren Davis, Ralph Erhardt, Jimmy Gamble, Nyoka Gamble, Bud Sumner, Esom Sumner, Pat Sumner, and Barbara Vogts.

¹⁴ Respondent Garrett's complex is composed of two plants. One plant is located at 1100 South Cowen Street, Auburn, Indiana (hereinafter Cowen Street Plant), and the other in close proximity is situated at 600 East Quincy Street, Auburn, Indiana (hereinafter Quincy Street Plant). Thomas has been at all material times Plant Superintendent at the Quincy Street Plant. The parties have at times referred to Auburn and Garrett interchangeably.

with pressure and coercion to sign union cards and wrote as follows:

[W]e have already been advised that these union organizers . . . in one case, stated that the employee[s] would lose their job[s] if they did not sign this card. **THIS IS A VIOLATION OF YOUR RIGHTS!** If you have been subject to this, you can request the return of your card, or file a complaint with NLRB at the address below. [G.C. Exh. 18.]

According to the General Counsel, Respondent Garrett countered the increased union activity during the week of April 21 by engaging in various acts of surveillance, interrogation, threats of reprisals, including discharge and plant shutdown, and otherwise unlawfully interfered with the Union's organizational efforts. For example, James Anderson and Esom Sumner testified that on April 21 and 22 Supervisor Otis Hunter made various statements to them, individually and jointly, to dissuade them from supporting the Union, including a threat that Ferdinand Thurman would close the doors to the plant before he would allow a union. Further, Anderson and Sumner ascribed to Supervisor Hunter, inter alia, inquiries regarding the union meeting and the passing around of union cards. Sumner testified that Plant Superintendent Thomas also questioned him about passing out union cards and threatened that Thurman would shut down operations before dealing with the Union. According to the testimony of employee Dexter Howard, Supervisor Charles Wood made a similar threat to him that Thurman would not deal with the Union but would shut down the plant first. Employee Jane Shibley (Warfield) testified that Floorperson Marilyn Omspacher (supervisory and/or agency status disputed) tried to dissuade her from supporting the Union, pointing out, inter alia, the impotence of the previous union (UAW) and opined that Thurman would close down the factory rather than deal with the Union.¹⁵

On Saturday, May 3, at the Garrett State Bank, the Molders' Union conducted a second meeting. Esom Sumner and James Anderson testified that just before the meeting started, they spotted Cowen Street Superintendent Jack Barnett in his automobile make two trips around the block while driving slowly. According to the General Counsel, Barnett was attempting to learn the identity of the employees at the meeting and therefore engaging in unlawful surveillance. The record discloses little union activity after the May 3 meeting.¹⁶

Around mid-May, Respondent Garrett began experiencing a business decline. During May and June customer orders fell off approximately 25 to 30 percent. According to Wetzel, the loss of orders was not anticipated; it was not part of the normal business cycle. In early June, Wetzel determined that a 10-percent reduction in

the rank-and-file complement was necessary to meet the economic exigencies. This was to be accomplished by layoffs and the elimination of the maintenance helper and mill helper positions. On June 11, Wetzel prepared a memorandum for Production Coordinator Richard Schorey outlining the procedure to be used in selecting employees for layoffs (G.C. Exhs. 11(b)-(c).)

Wetzel devised a 50-point system for judging employees marked for layoff and instructed Schorey to consider only employees with less than 2 years' service. (Id.) The selection criteria under the rating system were: work performance (quantity and quality), job knowledge, absences for the most recent 6-month period, reprimands and warnings for the most recent 6-month period, and job cooperation and attitude (G.C. Exh. 11(c).) Each of the foregoing factors was assigned 10 points, the higher the better in terms of an employee's chances to be retained.

On Friday, June 20, the first group of employees was laid off.¹⁷ That same day, Jimmy Gamble, an employee with more than 2 years' service, did not report for work and was terminated Monday, June 23.¹⁸ On July 7, Wetzel determined that further layoffs were necessary and instructed Schorey to lay off an additional 20 percent of the hourly employees (G.C. Exh. 11(a)) using the same guidelines as set forth in the June memorandum. On July 11 the second group of employees were laid off.¹⁹

In August 1980, Wetzel became the principal owner of Plastic Processors, Inc. (herein also PPI), an Ohio corporation which maintained its only plant in Newberry, Ohio. On August 12, PPI leased 10,000 square feet of Respondent Garrett's Quincy Street Plant.²⁰ In September PPI opened a second plant at the aforementioned leased premises. In connection therewith, PPI moved some equipment and transferred two employees from the Newberry facility to help set up the new plant. At the same time, PPI hired Denise Brown, an employee who had

¹⁷ The employees laid off were: James Anderson, Barbara Harden, Peggy Helbig, Bernadette Meyer, Stanley Slone, Esom Somner, Barbara Vogts, Jane Warfield, Tyron Combs, Dexter Howard, and Charles LeGras. Combs and Howard were millroom helpers and that position was eliminated. LeGras was the only employee laid off with more than 2 years' service. According to Wetzel, since May, he had been providing "make-work" jobs for LeGras, a general laborer, because the work he had been doing for the previous 6 to 8 months had run out. LeGras is not an alleged discriminatee. The others laid off had received the lowest scores under the rating system. (See G.C. Exh. 13.) Immediately before the layoff Respondent Garrett employed approximately 88 hourly employees. (R. Exh. 54).

¹⁸ On April 17, 1980, Gamble received a final warning because of poor attendance. (R. Exh. 12(a).) As noted previously, Gamble's discharge is alleged independently as a violation of Sec. 8(a)(3).

¹⁹ The employees who were selected and laid off on July 11 are as follows: Denise Brown, Wilburn Combs, Sharren Davis, Nancy Depew, Ralph Erhardt, Kathy Fugate, Janet Halsey, Jerry Huth, Beatrice McPherson, Connie Newland, Richard Newland, Beverly Thurman and Jim Treesh. (G.C. Exh. 13.) It is alleged that the selection process for determining which employees were to be laid off on June 20 and July 11 was discriminatory and in violation of Sec. 8(a)(3). The General Counsel does not dispute that layoffs were necessary due to a business decline.

²⁰ The parties to the lease agreement are Garrett Sales, Inc. (lessor) and PPI (lessee); it was signed by Ferdinand Thurman and Jackson Wetzel as president of lessor and lessee, respectively. (G.C. Exh. 10.)

¹⁵ These, as well as other acts, statements, and conduct by Respondent Garrett's supervisors and/or agents will be discussed infra in a separate section entitled "Section 8(a)(1) Allegations."

¹⁶ On May 7, Davis filed new 8(a)(1) charges in Case 25-CA-12174 alleging that Respondent Garrett since about April 23, interrogated its employees, engaged in surveillance and/or conveyed the impression of surveillance, and threatened discharge and other reprisals if they formed, joined, or assisted a union. (G.C. Exh. 1(c).)

been laid off by Respondent Garrett on July 11. The new PPI plant became operational in October.²¹

By letter dated October 23 Respondent Garrett terminated those of its employees who had been on layoff status since June 20 or 120 days. (G.C. Exh. 23.) The termination letter stated the Company's policy in relevant part as follows:

The Company policy . . . is to consider employees not recalled, within (120) one hundred and twenty days from lay-off date, as terminated due to the lack of work and, therefore, will not be recalled from lay-off.

Those employees wishing to return to work at Garrett Flexible products will be considered with other applicants when an opening occurs.

In November, Respondent Garrett, by letter containing the identical message as the October 23 letter, terminated the employees who had been laid off on July 11.²² The laid-off employees, who were recalled or rehired after they had received the termination, letters, returned as new employees.

B. Discussion and Conclusions

The several amended consolidated complaints have given rise to a multitude of disputed allegations which are discussed below seriatim under headings as follows: (1) Disputed supervisory and/or agency allegations,²³ (2) The settlement agreement and related allegations, (3) Section 8(a)(1) Allegations, (4) 8(a)(3) allegations, and (5) The single employer relationship and related allegations.

1. Disputed supervisory and/or agency allegations

a. Ferdinand Thurman

The record discloses that Ferdinand Thurman was owner, president, and general manager of Respondent Garrett until March 28, 1980. It is undisputed that, as such, Thurman was a statutory supervisor and agent. The dispute is over Thurman's alleged supervisory and/or agency status after March 28.

As previously noted, on March 28, Thurman sold the Company to a corporation largely owned by Jackson Wetzel who thereupon succeeded Thurman as general manager. Thurman, however, continued to serve as president until September 28, 1980, and was still a member of the board of directors at the time of trial.

²¹ The record disclosed, inter alia, that PPI hired Janie Richardson on September 30, Bradie Anderson (part-time) on October 6, and Dale Lydy on October 9. (R. Exh. 8.) The General Counsel contends that Respondent Garrett and PPI comprised a single-employer relationship and therefore PPI was obligated to recall Respondent Garrett's laid-off employees before hiring new employees.

²² At the trial, the General Counsel amended the several consolidated complaints to allege that Respondent Garrett, by its termination letters, unlawfully discharged the laid-off employees in violation of Sec. 8(a)(3). The Respondent argues, inter alia, that this allegation is not encompassed by any of the charges and is therefore time-barred by Sec. 10(b).

²³ Many of the allegations turn on the continued supervisory and/or agency status of Ferdinand Thurman after the sale of the business. As such, Thurman's disputed status is treated at the outset.

According to Respondent, under the various legal documents which transferred control and ownership from Thurman to Wetzel on March 28, the former "retained *no actual* authority to deal in any capacity with any employee of Garrett Flexible, except Mr. Wetzel." I find, however, in agreement with the General Counsel that the issue of Thurman's authority turns on whether the employees had just cause to believe that Thurman was acting for and on behalf of management, citing *Machinists Lodge No. 35, v. NLRB*, 311 U.S. 72, 80 (1940); *NLRB v. Ace Comb Co.*, 342 F.2d 841, 844 (8th Cir. 1965).

If, as intended by Respondent Garrett, that on March 28, Thurman was divested of all managerial authority to deal with employees, such change was not adequately communicated to employees. For example, Thurman's letter of April 3 to employees, inter alia, described Wetzel as "a qualified and suitable person to help [him, Thurman] in the *overall management* of Garrett Flexible Products." (Emphasis added, G.C. Exh. 8.) Clearly such statement contemplates collaboration for the immediate future rather than signals the end of Thurman's managerial interest in the Company. In this connection Thurman promised assistance to Wetzel "for many years to come." While Thurman also advised in the letter that "at a later time [Wetzel] will assume all of [Thurman's] total duties," no time certain was specified. Further, Thurman reminded employees that his "office door will always be open."

It is undisputed that over the next several days Thurman introduced Wetzel to employees at a series of meetings as general manager with the number one ranking in the Company and that he, Thurman, was now in the number two position and a consultant to Wetzel. I find, contrary to Respondent, that it is hardly material that possibly one or more of the employees concluded from these meetings that Thurman had been stripped of all managerial interest given the likelihood that as many or more employees probably concluded that Thurman merely dropped a notch in the company's hierarchy. In this regard it is noted that the record is devoid of testimony tending to show that any attempt was made to explain to employees Thurman's role as consultant. Further, the record discloses that not only were employees confused as to the extent of Thurman's interest in the affairs of the Company, but so were supervisors.

Of overriding significance, however, is that Thurman continued to serve as president and in that capacity he was authorized to act on behalf of the Company, particularly with regard to labor relations.²⁴ This Thurman acknowledged on April 29 when he executed certain material as president which had been sent to Respondent Garrett in connection with charges filed by Sharren Davis in Case 25-CA-12096 (See Commerce questionnaire, G.C. Exh. 7). It is also noted that Thurman, a few days earlier,

²⁴ Respondent's reliance on *Joe & Dodie's Tavern*, 254 NLRB 401 (1981), is misplaced. I find that case factually distinguishable noting inter alia that there was no showing that Ross, the former owner, continued to serve as an officer after the sale of the business. Moreover, Ross was no longer active in the "operations of the business" at the time of the union organizational campaign.

er, had participated in the first supervisory meeting which had been called by Wetzel to discuss the Molders' Union's challenge. In these circumstances and based on the entire record, I find that the evidence clearly establishes that Ferdinand Thurman at all times material herein was an agent of Respondent Garrett within the meaning of the Act.²⁵

b. *Beverly Thurman*

Beverly Thurman (Beverly) is the wife of Ferdinand Thurman. She worked every day in the specialty department part time from 8 a.m. to 12 noon. In her capacity as disputed supervisor or group leader she assigned the work to Kathy Fugate and Sharren Davis. No one else was employed in the specialty department during the time encompassed by allegations involving Beverly.

While it is unclear to what extent Beverly exercised independent judgment when assigning work to Fugate and Davis, the record discloses that she otherwise responsibly directed employees. For example, the record reveals that on February 26 Beverly ordered Davis to leave the department because it was not yet starting time and issued Davis a written reprimand (G.C. Exh. 3). I reject Respondent's assertion that Beverly had no authority to issue warning notices or reprimands without prior approval from her supervisor as not supported by credible evidence. It is noted, inter alia, that Beverly did not testify and there was no showing that such constraint was ever communicated to employees.

The record also discloses that Beverly authorized time off for Fugate and Davis. Thus Fugate testified that if she had to leave work early, or was unable to come in, she would call Beverly for permission to be excused from work. Davis testified similarly.

On the basis of the entire record and noting that Beverly exercised independent judgment, inter alia, with regard to disciplinary warnings and time off, I find that Beverly Thurman, at all times material herein, was a supervisor and/or agent within the meaning of the Act.

c. *Marilyn Omspacher*

Marilyn Omspacher and Alice Wilmot²⁶ were variously referred to as "floor ladies," "lead ladies," "group leaders and supervisors" and both worked in the finishing department which in June 1980 consisted of approximately 15 employees. The department was essentially divided into two segments: one dealing with hand trimming operations led by Omspacher, the other involving buffing operations and led by Wilmot.

Omspacher testified that in making assignments she considered, inter alia, the various skills of the employees and their abilities to perform as required. The credited testimony of other employees discloses, inter alia, that Omspacher was introduced to them as supervisor (as was Wilmot), authorized time off, and issued written disciplinary warnings (G.C. Exhs. 21, 38, 39, and 40). Further,

²⁵ With regard to Thurman's alleged supervisory status, the record is unclear and incomplete. However, having found that the statements, acts, and conduct of Thurman are those of Respondent Garrett's on an agency basis, I find that it is unnecessary to meet the supervisory allegation.

²⁶ None of the allegations identify or pertain to Wilmot.

the record discloses that Omspacher and Wilmot helped Richard Schorey evaluate employees for purposes of the June layoff.

While Omspacher denied that she was ever referred to as "supervisor" and insisted that, with minor exceptions, she could not grant time off without prior approval from her superiors, and that she only issued disciplinary warnings when so instructed by her superiors, I found her testimony inconsistent, evasive, unresponsive, implausible, and unreliable. For example, at one point Omspacher asserted that employees had never phoned her or Wilmot with regard to absences nor did they expect such calls. She later admitted, however, that Schorey had posted a notice on the bulletin board instructing the employees in the finishing department to call either her (Omspacher) or Wilmot on the morning that they were going to be late or absent.

While the record discloses factors for, and others militating against, a finding of supervisory status,²⁷ I find, on balance, that the credited testimony establishes that Omspacher exercised independent judgment in carrying out her overall responsibilities in dealing with employees and as such was a supervisor within the meaning of the Act.

Having credited testimony that Omspacher had been introduced to employees as their supervisor and noting, inter alia, that she assigned work, granted time off, and issued written disciplinary warnings, I find that she was strategically placed by Respondent Garrett so that employees had reasonable cause to believe that the statements, acts, and conduct of Omspacher emanated from management.²⁸ As testified by Respondent Garrett's witness Virginia Desmoreaux, the reason she questioned Omspacher about reprisals for supporting the Union was because she was the group leader and "if anybody knew, she would."

In sum, I find that Marilyn Omspacher is also an agent of Respondent Garrett as alleged.

2. The settlement agreement and related allegations

The settlement agreement between Respondent Garrett and Sharren Davis was approved by the Board's Regional Director in Indianapolis on December 17, 1979 (G.C. Exhs. 4(a)-(d)). In accordance with the terms of the settlement agreement, Respondent Garrett restored Davis' hours to what they were prior to the charges in

²⁷ For example, the record is devoid of any evidence tending to show that Omspacher ever discharged or recommended the discharge of an employee. On the other hand, it appears that employees believed that Omspacher possessed such authority. Thus Omspacher testified that Kathy Fugate told her, "I hear that you've said that you're going to fire your girls if they started a union." Significantly Omspacher merely denied the truth of the statement rather than disabuse Fugate regarding her authority to discharge anyone.

²⁸ According to Respondent in its brief, on each instance that Omspacher issued a warning slip, it was only after she had been specifically directed to do so by management. Further, Respondent contends that Omspacher merely acted as a conduit for the management decisions concerning absences. While I have found, contrary to Respondent, that Omspacher has exercised independent judgment in these areas, it should also be noted that her accessibility to management, even as stated by Respondent, lends credibility to her statements as emanating from management. See *Our-Way, Inc.*, 238 NLRB 209, 213 (1978).

Case 25-CA-11450, to wit, 7:30 a.m. to 3:30 p.m. and posted the appropriate 60-day notice.

On April 17, Davis filed charges in Case 25-CA-12096 (G.C. Exh. 6) alleging noncompliance with the terms of the settlement agreement but withdrew said charges 1 month later. On December 11, the Regional Director withdrew his approval of the settlement agreement and issued a complaint in Case 25-CA-11450 (G.C. Exhs. 1(v) and (t)).²⁹

According to the General Counsel, Respondent Garrett continued to discriminate against Davis in violation of Section 8(a)(3) and (4), and only superficially complied with the terms of the settlement agreement. In this regard the General Counsel noted that on December 22, 1979, a day after the 60-day notice was first posted, Respondent Garrett posted another notice informing employees in the specialty department that they were restricted to the clock area until 5 minutes before starting time. Further, no one was permitted to go into the specialty department alone before 8 a.m. The General Counsel contends that such changes, as well as a warning slip given to Davis on February 26 for violating the new rule about entering her department alone, establish that the settlement agreement was breached. Moreover, as Davis' hours in March were again changed to commence and end 8 a.m. to 4 p.m. respectively, the General Counsel contends that Respondent Garrett's postsettlement conduct revealed that it never had any intention of complying with the terms of the agreement.

According to Respondent Garrett, the aforementioned changes were instituted because of its concern for the protection and safety of the few employees then employed in the specialty department, and because it wanted to further standardize the starting time as 98 percent of the employees began work at 8 a.m.

The record discloses that by January 1980 the night shift in the specialty department had been eliminated and only two full-time employees (Davis and Fugate) worked on the day shift. As all but a few employees commenced working at 8 a.m., and those few were not visible from the specialty department area, I am not persuaded in the circumstances of this case that the changes were so unreasonable or that the reasons advanced so implausible to warrant an inference of unlawful motivation. In this connection it is noted that when Davis' hours were first changed in March 1979, she had not yet been engaged in any protected concerted activity. Further, the record is devoid of any probative or credible evidence tending to show that Davis lost wages or otherwise suffered financially as a result of any of the disputed changes. Moreover, it is noted that all changes, including the new 8 a.m. starting time, applied equally to Fugate, the only other regular full-time employee in the specialty department.³⁰

²⁹ I find Respondent Garrett's reliance on Sec. 10(b) of the Act to preclude any attack on compliance with the terms of the settlement agreement misplaced. Sec. 10(b) bars the issuance of a complaint on a charge filed more than 6 months after the event. The underlying charges in Case 22-CA-11450 were timely filed.

³⁰ Respondent Garrett's attorney Derald Kruse testified credibly and without contravention that before the starting time was again changed in March to begin at 8 a.m., he contacted the compliance officer at the

I am also unpersuaded the Respondent Garrett was unlawfully motivated in issuing a warning slip to Davis on February 26. Davis was aware of the new rule that restricted anyone from entering the specialty department alone and, although Fugate had not yet arrived on the day in question, she and Davis elected to ignore the rule.³¹ In such circumstances I cannot find that a warning slip was unwarranted or that it was issued because Davis had previously engaged in protected concerted activity.

In sum, I find that the record is insufficient to establish that Respondent Garrett breached the terms of the settlement agreement. Accordingly, the settlement agreement is not set aside and the presettlement conduct allegations shall be dismissed.³² As I have previously determined that the evidence was insufficient to establish unlawful motivation vis-a-vis Respondent Garrett's postsettlement conduct, I shall also dismiss these allegations.³³

3. The 8(a)(1) allegations

The record disclosed that the Molders' Union began organizing Respondent Garrett's employees in April 1980. The first union meeting was held on April 19. Davis testified that a day earlier Supervisor Wood of the specialty department told her that he was "very upset that he was not invited to our Union meeting and he wanted to know why I didn't invite him." According to the testimony of alleged discriminatee James Gamble, one night in April, Wood (Gamble's brother-in-law) visited him at home and, while they were watching television, Wood asked Gamble if he knew about the union meeting and was he going to attend. Former employee Tyron Combs testified that sometime between April 25 and 27 Wood asked him whether he had signed a union card.

Wood did not specifically deny the questions ascribed to him by Davis and Combs although at one point he denied generally any conversation with employees dealing with the Union. With regard to Gamble, Wood testified that the only time the subject of union cards was mentioned occurred sometime in the spring, when he told Erhardt not to bother Gamble while the latter was working. Wood testified that on that occasion he observed Ralph Erhardt approach Gamble in the mailroom

Board's Regional Office in Indianapolis who told him that the hours could be changed for business reasons.

³¹ I do not credit Davis' unsubstantiated account whereby she assertedly disregarded the rule in reliance on information she received from an OSHA employee in Indianapolis.

³² See *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978).

³³ In finding that these allegations lacked merit, I considered, inter alia, Respondent Garrett's presettlement conduct for purposes of animus. See *Steves Sash & Door Co.*, 164 NLRB 468 (1967). While it is alleged that on or about October 10, 1979, Thurman promulgated a rule to the effect that employees were not to talk to Davis, I find this allegation unsupported by credible evidence. Rather, the record disclosed, inter alia, that Respondent Garrett had a longstanding rule (as conceded by Davis) barring employees from one department talking to employees in another department while those employees were working. Further, the credited testimony discloses that whatever restrictions were placed on Davis were also placed on Fugate, the only other regular full-time employee in the specialty department.

while the latter was working and asked for union cards to hand out to employees in the machine shop.

I credit the General Counsel's witnesses over Wood. Wood, by his own account, had learned of the then upcoming union meeting from Mrs. Thurman who also asked him whether he knew who was going to attend. As such, Wood's testimony tends to buttress the testimony of Davis and Gamble insofar as the timing of the alleged interrogation. Further, in assessing Wood's overall credibility, I find it highly unlikely, as testified by Wood, that he never discussed the Union with other supervisors, particularly as he noted elsewhere that "people were always talking about the union."

According to Respondent Garrett, even if Wood asked the disputed questions as testified by Davis, Combs, and Gamble, these allegations should be dismissed because they comprise "at most a mere technical or de minimis violations." I cannot concur. In the circumstances of this case, noting an absence of evidence tending to show that the interrogation was advanced for legitimate purpose, and that adequate assurances against reprisals had not been provided, I find that such interrogation is inherently coercive and violative of Section 8(a)(1) of the Act. See *Jim Bradley's Country House*, 223 NLRB 1163, 1166 (1976).

In addition to the foregoing findings, the credited testimony discloses a number of other instances of unlawful interrogation as well as other acts and conduct violative of Section 8(a)(1).

Thus, Jim Anderson and Esom Sumner testified that, over several conversations on April 21 and 22, Supervisor Otis Hunter questioned them about the Union and made threats to dissuade them from supporting the Union. As testified by Anderson, Hunter asked him what he knew about the Union, if he knew who was passing out union cards, and whether he was planning on joining the Union. Further, Hunter warned Anderson that Supervisor Thomas would make it rough on the employees and that "Ferdinand Thurman would close the doors down . . . before we did get a union in."

Esom Sumner testified credibly that Hunter told him that he knew that he, Sumner, was passing out union cards because "a little birdie had told him,"³⁴ cautioning Sumner that he would be hurting himself. Hunter also warned Sumner that Thurman would close the plant should the employees become unionized.³⁵ This same

³⁴ I find Hunter's reference to "a little birdie" is tantamount to stating that he had a "direct pipeline" to Sumner's union activities, thereby conveying impression of surveillance as alleged. See *Hudson Wire Co.*, 230 NLRB 1263, 1265 (1978).

³⁵ While Hunter conceded the subject of the Union came up in a meeting between Anderson, Sumner, and himself, he asserted that they initiated the discussion and that they inquired of him what Thurman would do if the employees became unionized. According to Hunter, "being a friendly foreman," he talks to everybody but, when the subject of the union came up, he told them that "I d[on't] want to talk about anything that ha[s] to do with the Union." As this conversation according to Hunter occurred after Wetzel's "do's" and "don'ts" meeting, I find it unlikely that Hunter refused to offer at least an opinion. In any event, on the basis of demeanor and as Hunter was otherwise evasive, I did not find him to be a credible witness.

threat about Thurman shutting down the plant was conveyed to Sumner by Superintendent Thomas on April 22. On that occasion Thomas directed Sumner to follow him into the laboratory, closed both doors, and proceeded to question him privately about passing out union cards. According to Sumner, Thomas told him that he had treated him fairly, reminding Sumner of the "four hours overtime a week," without a union.

According to Thomas, he questioned Sumner because Charles LeGras, another employee, had complained that Sumner had given him a union card while LeGras was supposed to be working and told him to sign or he would lose his job. Thomas testified that he told Sumner not to pass out cards while he was supposed to be working and took issue with him with regard to whether employees faced discharge for failing to sign union cards. Thomas also maintained that this was a chance meeting in the lunchroom and not in the lab as testified by Sumner.

I found the overall testimony of both Thomas and Sumner to be vague, unsure, implausible, and that both exhibited poor recall. With regard to Thomas, this was particularly evident in describing the circumstances of his meeting with Sumner. Thus Thomas testified that he was not "really concerned" that Sumner was passing out union cards and "just bumped into him," on the occasion in question. I find Thomas' account of a chance meeting highly unlikely, particularly as he admitted taking the trouble to remind Sumner that he had always treated him fairly. On the other hand, I was not overly impressed with Sumner as a witness, it appearing that he has a tendency to embellish or exaggerate. For example, the record does not substantiate Sumner with regard to overtime pay. As Respondent Garrett points out, if Sumner had been paid 4 hours of overtime a week, one would expect it to be reflected on his timecards (R. Exh. 50) or otherwise documented. On balance, however, I credit Sumner over Thomas but only insofar as Thomas' threat or warning that Thurman would close down the plant before the Union got in, thereby violating Section 8(a)(1).³⁶

Ralph Erhardt, Craig Benson, and Sharren Davis testified credibly that about April 24 Ferdinand Thurman interrogated them about their activities, relative to union authorization cards. With regard to Erhardt, Thurman signaled him to come over to the timeclock area where

³⁶ I find in favor of Sumner with regard to this allegation noting, inter alia, that other supervisors had made similar threats or warnings and because Thurman harbored profound opposition to the Union, independently engaged in unfair labor practices as described below. I am unpersuaded however that Thomas threatened to hit Anderson with a steel ball in reprisal for the latter's union activities, as contended. Rather, the record discloses and I find that Thomas was upset with Anderson because the latter did not report for work the previous day. On the other hand it is undisputed that Anderson complained to General Manager Wetzel that Thomas threatened to hit him with the steel ball. Anderson testified credibly that, during his meeting with Wetzel, the latter asked him what he knew of union activities. I found Wetzel less than forthright as a witness and reject his denial of an alleged interrogation. For example, Wetzel asserted that he first learned about any union activity when he received the Union's letter on April 23 or 24. As a number of supervisors knew of the union meeting on April 19, I find it highly unlikely that this information was not passed on to Wetzel earlier.

Thurman drew Erhardt's attention to a notice from General Manager Wetzel. The notice pointed out, inter alia, that if employees were coerced into signing union cards they could request that those cards be returned or they could go to the National Labor Relations Board (G.C. Exh. 18). Thurman then asked Erhardt whether he signed a card; whether he passed out union cards; and whether he had seen anyone distribute union cards. Later that day, Thurman questioned Benson in much the same way as he had Erhardt. Further, in an effort to dissuade Benson from supporting the Union, Thurman boasted that only he and not the Union could "guarantee" him a 40-hour workweek. The same day the notice was posted, Thurman also confronted Davis about union cards. On that occasion, Thurman pulled out a union card from his shirt pocket and asked Davis if she wanted him to sign it. Thurman also asked Davis if she was passing out union cards. I find that Thurman, by such statements, acts, and conduct, unlawfully interrogated employees in violation of Section 8(a)(1) as alleged.³⁷ See *Jim Country House*, supra.

The General Counsel adduced still further credited testimony that Respondent Garrett, by Marilyn Omspacher, unlawfully interrogated employees, warning them that they faced discharge and that Thurman would close the "factory" before allowing the employees to become unionized. I do not, however, credit Dexter Howard's version ascribing to Supervisor Wood a still further threat of a plant shutdown. It is noted that this threat was missing from Howard's affidavit (R. Exh. 10) and he was otherwise an unimpressive witness.

Peggy Helblig testified credibly that, about April 25, Omspacher approached her at her work station (finishing table) and asked her whether she had attended the union meeting or signed a union card and whether she knew of anyone else who signed a union card. Omspacher explained that Thurman "hate[d] unions" and that an employee faced discharge if Thurman found out that the employee signed a union card. Helblig testified credibly that she overheard Omspacher make similar statements to other employees a few days later at the same work station.³⁸

In sum, I find that the statements, acts, and conduct of Respondent Garrett by its supervisors and/or agents violated Section 8(a)(1) of the Act by coercively interrogating employees about their union activities and the union activities of other employees; conveying to employees

that their union activities are under surveillance;³⁹ and threatening employees with reprisals including discharge and plant shutdown to dissuade them from supporting the Union.

4. The 8(a)(3) allegations

a. Layoffs; selection process

The record disclosed that around mid-May 1980, less than 2 months after Wetzel had acquired ownership and control of Respondent Garrett, customer orders dropped from 25 to 30 percent which was not part of the normal business cycle nor anticipated. As a result of this business reversal, approximately 30 percent of the rank-and-file employees were laid off during the months of June and July. As described more fully previously, Wetzel considered only employees with less than 2 years of service and, for them, he devised a 50-point plan, covering five categories to evaluate their overall production, laying off those employees who scored the least number of points.

Counsel for the General Counsel does not dispute that Respondent Garrett incurred significant business losses or that layoffs were necessary. Rather, he contends that Respondent Garrett considered the union activities of the alleged discriminatees as the basis for selecting them for layoffs rather than other employees. The General Counsel relies principally on the large number of union supporters who were laid off and some conflicting testimony from Wetzel, Schorey (currently manufacturing manager), and Plant Superintendents Thomas and Barnett with regard to their respective roles and participation in the selection process.

The record discloses that in June, shortly before the layoffs, Respondent Garrett employed approximately 88 production and maintenance employees. (R. Exh. 54.) According to Wetzel, for reasons of equity, stability, and production potential, he elected to protect his senior employees. Thus only employees with less than 2 years of service were candidates for layoff. There were 38 employees in this group, 27 of whom were laid off in June and July under Wetzel's evaluation system. Employees were rated by department in terms of overall production, those scoring the fewest points were laid off first. (R. Exh. 55.)

While the record discloses that 18 of the 27 employees who were laid off had exhibited some support for the Union, it also reveals that the vast majority of union supporters were junior employees.⁴⁰ Thus had Wetzel main-

³⁷ Thurman admitted the aforementioned conversations with Erhardt and Davis, although he denied asking them whether they had distributed union cards. He does not recall any such conversation with Benson. On the basis of Thurman's demeanor and his testimony in its entirety, I find him to be an unreliable witness. He was unresponsive, evasive, vague, and exhibited poor recall. Thurman's dismissal of his exchange with Davis as a "joking conversation" does not inspire confidence that his explanations are reliable. Elsewhere, Thurman denied that he was still a director of Respondent Garrett only to acknowledge a moment later that he continues to be on the board of directors. In short, I reject Thurman's testimony where not otherwise credited.

³⁸ In rejecting Omspacher's denials, it is noted for reasons stated previously that I have found Omspacher to be an unreliable witness. While Virginia Desmoreaux and Susan Wells, both of whom work regularly at the same finishing table, denied that they heard Omspacher's disputed remarks, other employees, Bernadette Meyers and Jane Shibley, corroborated the essence of Helblig's testimony.

³⁹ I find the record insufficient to establish the allegation of actual surveillance. The General Counsel adduced testimony placing Superintendent Jack Barnett in his automobile driving slowly around the Garrett State Bank on Saturday morning, May 3, shortly before a union meeting. Barnett testified credibly that he was at the newstand or the bait shop in the vicinity of the bank every day. In this connection it is noted that the plant, which was in operation on that day, is situated not too distant from the bank. In these circumstances, and noting that Barnett was not otherwise charged with engaging in unlawful conduct, I am unpersuaded that he was engaging in surveillance as alleged. Accordingly, I shall recommend that this allegation be dismissed. See *Continental Kitchen Corp.*, 246 NLRB 611, 612 (1979).

⁴⁰ Of the 11 junior employees who were selectively retained, at least 5 of them (William Benson, Randy Brown, Virginia Desmoreaux, Gill

Continued

tained strict seniority, a majority of the employees laid off would still have been union supporters.

A department-by-department analysis also fails to support the General Counsel's contention that employees were selected for layoff on the basis of their union activities. For example, it is noted that on July 11 all three individuals in the specialty department were laid off although two of them (Fugate and Thurman) openly opposed the Union.⁴¹ On the other hand, all three pressmen in the Quincy Street Plant had signed union cards but only one was retained. As noted by counsel for Respondent Garrett, "It is difficult to understand how the selection of one union adherent over another [union adherent] . . . results in discrimination against union adherents." With regard to the millroom helpers' position, that classification was eliminated resulting in the layoffs of Dexter Howard and Tyron Combs, both union supporters. On the other hand, Respondent Garrett at the same time eliminated one of the two general laborers' positions resulting in the layoff of Charles LeGras, who opposed the Union and complained to management that another employee was pressuring him to sign a union card.

The record discloses that between July 21 and October 6 approximately eight employees were recalled under the same employee evaluation system which controlled the layoffs. (G.C. Exh. 43; R. Exh. 55.) This group included antiunion employees Kathy Fugate and Beverly Thurman and also prounion employees Wilburn Combs and Janet Halsey.

While not free of suspicions, I find on the total state of this record, noting particularly that employees were laid off for legitimate business reasons, and that the employees who were retained were generally the most senior (employees with 2 or more years of service), that the General Counsel has failed to establish by a preponderance of the credible evidence that Respondent Garrett laid off employees on June 20 and July 11 on the basis of their union activities. Accordingly, I shall recommend that this allegation be dismissed.

(b) Terminations

The employees who were laid off and not recalled after 120 days received termination letters in late October and November 1980 from Wetzel, which notified them in pertinent part as follows:

The Company policy . . . is to consider employees not recalled, within (120) one hundred and twenty days from lay-off date, as terminated due to

Gibson, and Eli Sumner), had either taken or signed a union card. Another employee retained was Eva Schorey, wife of then Production Coordinator Richard Schorey. The latter Schorey was deeply involved in assisting Wetzel evaluate employees for layoff. Bea McPhereson, who escaped the layoff of June 20, is Eva Schorey's sister-in-law. Testimony was adduced tending to show that Supervisor Omspacher and Desmorceaux are good friends. Omspacher was also involved in evaluating employees under Wetzel's selection system. In these circumstances, it is just as likely that selection turned on friendship or nepotism as were the reasons advanced by the General Counsel.

⁴¹ According to the General Counsel, of the 14 employees laid off on July 11, seven of them supported the union. This is hardly a basis for supporting an inference of unlawful motivation.

the lack of work and, therefore, will not be recalled from lay-off.

Those employees wishing to return to work at Garrett Flexible Products may file a new application for employment, which will be considered with other applicants when an opening occurs. [G.C. Exh. 23.]

While the termination letter refers to "company policy," the record discloses that this was a new policy which had not been communicated to employees prior thereto. Wetzel's unsubstantiated explanation that he sent these termination letters because "[t]hey had followed that at another company. I used the same procedure, the same type," does not stand scrutiny and is rejected. First, it is noted that Wetzel was vague and unsure regarding his previous experience with using a 120-day deadline. When asked to name the company where this procedure was used, Wetzel responded, "I believe it was Fixtures [manufacturing corporation] in Kansas City." According to Wetzel's uncorroborated testimony that while employees were never laid off at Fixtures, the company's 120-day rule was in printed form and understood. In rejecting this testimony it is noted, *inter alia*, that Wetzel acknowledged that he did not have any document reflecting the rule or policy nor had Respondent Garrett requested leave for time to secure a copy of the disputed rule which Wetzel had asserted was in writing.⁴²

Virtually all of the laid-off employees who received the termination letters had exhibited support for the Union⁴³ and their union activities were well known to management.⁴⁴ Noting, *inter alia*, that Respondent Garrett (for reasons discussed previously) has threatened employees with discharge and plant shutdown, coercively interrogated employees, and has otherwise interfered with the rights of employees to engage in union activities, and as I have rejected its assigned reason for terminating the laid-off employees, I find that its action was predicated on antiunion considerations. Accordingly, I find that Respondent Garrett terminated the laid-off employees in violation of Section 8(a)(3) and (1) as alleged.⁴⁵

⁴² It is noted that Stan Sneary, a press operator and new employee, was hired on October 13, well within the 120-day period, while other press operators were still on layoff. (G.C. Exh. 43.) I am unpersuaded that this was merely a mistake, as explained by Wetzel, particularly as Sneary later quit and was replaced by another new employee.

⁴³ The other employees who were laid off in June or July had either been recalled or their jobs were eliminated.

⁴⁴ Roughly half of the work force are employees related to each other and to members of management. (G.C. Exh. 44.) Thus at times the trial resembled the Civil War in an economic setting: spouse testifying against spouse, brother against brother. The employees did little to conceal their widespread union activities both inside and outside of the plant. As Supervisor Wood observed, "people were always talking about the Union." In these circumstances it is inescapable that Respondent Garrett had knowledge of the union supporters.

⁴⁵ Respondent Garrett's assertion that the allegation pertaining to terminations is time-barred by Sec. 10(b) of the Act is without merit and is rejected. The record reveals that the original and amended charges in Case 25-CA-12822 were filed on October 27 and December 8, 1980, respectively, and alleged in essence, *inter alia*, that since about June 20, 1980, Respondent Garrett selected 18 named employees for layoffs because they had engaged in union activities. (G.C. Exhs. 1(k) and (m).) On

Continued

(c) *Jimmy Gamble*

The first group of employees to be laid off were notified on June 20. As Jimmy Gamble was one of the more senior employees, he was not included in the first group of layoffs nor was he a likely candidate in the near future. Gamble, however, failed to report for work on June 20 and on Monday, June 23, was discharged for missing too much work. The General Counsel contends that Respondent Garrett seized on Gamble's absence as a pretext to rid itself of one of the more active union supporters. On the state of this record, I cannot concur.

The record disclosed that Gamble had a checkered employment history with Respondent Garrett. He first began working for the Company in 1972. At some unspecified time during Gamble's early years with the Company, he was arrested (for reasons not relevant herein) and his employment terminated. Gamble's departure was brief; the Company reemployed him 3 months later. In January 1978, Gamble quit his job over a dispute involving the size of a wage increase. He resumed his career with the Company in April 1978 and worked without interruption until his discharge on June 23.

It is undisputed that Gamble was a good worker. However, Respondent Garrett contends, the record supports, and I find, that Gamble long had absentee problems. Thus, former Plant Superintendent James Ray testified that the Company rehired Gamble in 1979 under certain conditions including that he "work his full forty hours a week and have low absentee record." (See R. Exh. 14.) Gamble acknowledged that then owner Ferdinand Thurman cautioned him at the time he was rehired that he was expected at work everyday.

The record disclosed that Gamble's absentee record remained poor as evidenced by three written warnings. (R. Exhs. 12A-12C.) Gamble received a final warning on April 17, 1980, which reads as follows:

Missing Too much work. No Excuse. Has been warned before.
FINAL WARNING.

Gamble received the aforementioned final warning 2 days before the Union held its first meeting. The only record testimony connecting Gamble to the Union prior to the meeting came from Gamble who testified that Wood (his immediate supervisor and brother-in-law) asked him during one unspecified evening, while they were watching television, whether he was going to the union meeting and he answered affirmatively but nothing else was said. As such, the record falls far short of establishing any nexus between Gamble's union activities and the final warning he received on April 17.

While the record reveals that Gamble had absented himself on a few occasions after he was given a final

June 2, 1981, at the opening of the instant trial, counsel for the General Counsel amended Case 25-CA-12822 to allege that the laid-off employees were later terminated in violation of Sec. 8(a)(3). As the original and amended charges were filed well within the 10(b) period, and as the alleged discriminatory terminations flowed from the layoffs, and were related thereto, I find that the later amendment was also encompassed therein and timely made. I further find that the alleged discriminatory terminations were fully litigated.

warning without suffering any apparent discipline, on one occasion he went to a funeral and on another his wife was ill.⁴⁶ (R. Exh. 52, absentee reports 5-2-80, 6-17-80). In any event, the Company was not compelled to discharge Gamble at the first opportunity. See *Gorman Machine Corp.*, 257 NLRB 51 (1981).

Of greater significance is that Gamble admittedly was warned about his unacceptable absentee record before the advent of the Union and his attendance did not improve. Further, the record disclosed that Respondent Garrett terminated four employees in 1979 and two others in 1980 for excessive absenteeism. (R. Exhs. 66-71). In any event, the General Counsel failed to demonstrate that Gamble was treated disparately. The General Counsel's contention that the burden is on the Respondent to refute the proposition that other employees were absent from work as often as Gamble without suffering discharge is misplaced. Cf. *Wright Line*, 251 NLRB 1083, 1090 (1980).

As noted above, Gamble did not report for work on June 20. The Company has a longstanding rule that an employee who will not be at work must call before the start of the shift. On June 20, Gamble's shift commenced at 7 a.m. The Company was not notified until Gamble's wife called at 9:25 a.m. to advise that her husband had a "splitting headache." (R. Exh. 52, absentee report 6-20-80). Wood's superior, Superintendent Barnett, recommended to Wetzel that Gamble be discharged and Wetzel agreed. Barnett had signed previous warnings which were issued to Gamble including the one marked "FINAL WARNING."

Gamble's union activities appear to have been confined to the union meeting of April 19 and the passing out of union cards the following week. In any event, the record does not disclose any union activity on his part after the week of April 21, approximately 2 months before his discharge.

On the basis of all of the foregoing and the entire record, noting particularly that Gamble was warned that his attendance was unacceptable and that he thereafter received a final warning and that the record does not establish that said action was causally related to union activity, I find that the General Counsel has not established by a preponderance of the credible evidence that Respondent Garrett violated Section 8(a)(3) when it discharged Gamble for not working on June 20. Accordingly, I shall recommend that this allegation be dismissed.

5. The single employer relationship and related allegations

The General Counsel contends that since about September 8, 1980, Respondent Garrett and PPI has become a single integrated business and constituted a single employer within the meaning of the Act. As such (the Gen-

⁴⁶ Respondent also points out "[h]aving his brother-in-law [Wood] as his immediate supervisor, gave Mr. Gamble some latitude." In this regard, the record discloses that Gamble was rehired largely in 1978 at the urging of Wood. Further, Wood on occasion made special arrangements to ensure Gamble's presence at work, sometimes leaving work himself or sending another driver to pick up and escort Gamble to the plant.

eral Counsel contends) PPI was obligated to recall Respondent Garrett's laid-off employees before hiring new employees and, by failing and refusing to do so, PPI thereby violated Section 8(a)(3) of the Act.⁴⁷

As noted previously, in late March 1980, Jackson Wetzel had become the principal owner and general manager of Respondent Garrett and, in September, also its president. In March 1980 Wetzel also shared ownership of another company (PPI) with Thomas Herrick on a "fifty-fifty" basis. In August 1980 Wetzel purchased Herrick's interest and emerged as the principal owner and president of PPI.

PPI is an Ohio corporation, organized in 1976 (R. Exh. 25), and is and has been at all times material herein engaged in the manufacture, sale, and distribution of plastic products. Prior to September 1980, PPI's operations were confined to a single facility located in Newberry, Ohio. In August 1980, about the same time Wetzel became principal owner of PPI, he also leased (on behalf of PPI) 10,000 square feet of Respondent Garrett's Quincy Street plant.⁴⁸

In September the leased space was converted into a second plant for PPI. In this connection, PPI commissioned Respondent Garrett's maintenance employees to install, inter alia, water lines, electrical units, and some of the machinery and equipment which had been moved from the Newberry facility. Additionally, on September 22, PPI permanently transferred Peter and Diane Mankevich (husband and wife) from its Newberry Plant and hired Denise Brown (on layoff status from Respondent Garrett) to help set up and commence operations at the new location. The Newberry facility continued to operate much as it had before PPI had acquired its second plant.⁴⁹ On September 30 PPI hired Janie Richardson, a new employee, to work at the Quincy Street facility. The new plant became operational about October 1. Initially, Jackson Wetzel provided all the direct immediate supervision at the new location. In November Wetzel's son, James, became plant superintendent and assumed the senior Wetzel's supervisory functions for PPI in Garrett. Plant Manager Bill Spencer supervised PPI's employees in Newberry.

PPI and Respondent Garrett coexisted at the Quincy Street complex in separate areas. Respondent Garrett's employees generally came to work through a separate entrance and worked under the separate and immediate supervision of Plant Superintendent Thomas and Super-

visor Hunter. Further, the employees of both companies worked on different products with different machinery and equipment. The record is devoid of evidence tending to show any direct immediate cross-supervision for the two companies.

In determining whether separate corporate entities constitute a single employer under the Act, some of the principal factors long considered relevant by the Board are: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership. See *Sakrete of Northern California*, 137 NLRB 1220, 1222 (1962), affd. 332 F.2d 902 (9th Cir. 1964), cert. denied 380 U.S. 255 (1965); *H. S. Brooks Electric, Inc.*, 233 NLRB 889, 893 (1977).

In the case at bar (as noted above) the two entities involved coexist at the same location and share a number of plant facilities. Thus, employees of both companies share restroom facilities, emergency medical services, a common breakroom, and punch the same timeclock. In addition, PPI has from time to time utilized Respondent Garrett's maintenance staff, particularly during the early months of its operations, although generally it maintains its own machinery and equipment. Further, testimony was adduced showing that for about a 2-week period in March 1981 three of PPI's employees performed work for Respondent Garrett.⁵⁰ The record also disclosed that on a few occasions (usually for a day at a time) several PPI employees have used Respondent Garrett's machine shop while still working for PPI.⁵¹ Still further (as noted above), and what appears to be the strongest common denominator, is that Jackson Wetzel is the principal owner and serves as president of both companies.

While the aforementioned factors clearly demonstrate that the two concerns are closely allied, to conclude additionally that combined they may be viewed as a single integrated enterprise "would be an exaggeration." See *Milo Express, Inc.*, 212 NLRB 313, 314 (1974). Rather, the record disclosed a plethora of other factors which tend to persuade me that the single employer allegation is without merit.

Thus the record discloses that PPI manufactures plastics, whereas Respondent Garrett produces finished rubber products. Both companies rely principally on different machinery and equipment (PPI's is mostly automated or semiautomated) and do not produce for each other nor do they share common customers. The companies maintain separate books and records, including separate payrolls and timecards, and they file separate tax statements. With regard to employee interchange, the record discloses that it occurs rarely and, on those infrequent occasions, only for short periods of time and with-

⁴⁷ It is undisputed that the underlying charges, insofar as they are directed against Respondent Garrett, were timely filed. For reasons discussed previously, I have determined that Respondent Garrett did not violate the Act by selectively laying off and recalling employees. The underlying charges against PPI were first filed on April 28, 1981, in Case 25-CA-12822-2 (G.C. Exh. 1 (gg)) more than 6 months after the alleged unfair labor practices had taken place (September 8, 1980). The General Counsel concedes and I find that the allegations against PPI may be entertained only on the basis that PPI and Respondent Garrett are found herein to constitute a single employer within the meaning of the Act. (See G.C. Exh. 1(ss), par. 2; Tr. 34.)

⁴⁸ The lease was executed between Ferdinand Thurman and Wetzel on behalf of the lessor and lessee, respectively. See fn. 20, supra.

⁴⁹ The size of the employee complement at the Newberry plant varies with the season from a high of 30 employees during the fall month to a low of 8 to 10 employees around June. At the time of trial PPI employed approximately eight employees in Newberry and seven in Garrett.

⁵⁰ As testified by Carol Howard, she was told by Jimmy Wetzel in March 1981 that because "work was low" and, rather than lay her off, she would be transferred temporarily to the Cowen Street Plant. However, it is also noted that when Howard complained to Personnel about not receiving the higher hourly rate paid to Respondent Garrett's employees, she was told that she was employed by a different company.

⁵¹ Connie Newland testified that she was required to record on a work sheet the number of hours she spent in the machine shop. Jackson Wetzel testified that Respondent Garrett charged PPI for the use of these machines.

out any change in their hourly rate.⁵² This is particularly significant, noting that the record discloses that the hourly wage rate for PPI is substantially less than the rate paid by Respondent Garrett. The fringe benefits are also different. PPI employees have a profit-sharing plan, whereas Respondent Garrett's employees are covered by an IRA pension plan. Further, the companies maintain different provisions in their medical insurance coverages and have different vacation schedules. Although both companies provide the same number of paid holidays, the record discloses that Respondent Garrett shuts down annually for 2 weeks (in 1980 over July 4) while PPI remained open.

While it is noted that Wetzel is the principal owner and president for both concerns, it is also noted that the other offices and stockholders are different. (R. Exhs. 26 and 27.) Of greater significance, as all of the foregoing plainly reveals, is that these companies maintain separate labor relations for their respective employees under separate immediate supervision. As the Board observed in *Milo*,⁵³

We do not view the evidence of common ownership and President Milos' participation in the labor relations of Milo Express as warranting a finding that Milo Express and Keystone constitute a single enterprise. The day-to-day operations of Milo Express were in the hands of Manager Doman. Despite common ownership, the two businesses were not interdependent.

In sum, I find on the total state of the record that the General Counsel has failed to demonstrate by a preponderance of the credible evidence that Respondent Garrett and PPI at any time material herein constituted a single employer within the meaning of the Act.

Accordingly, I shall recommend dismissal of all allegations against PPI as they admittedly relate to events which occurred more than 6 months prior to the filing of charges against that company and are, therefore, time-barred by Section 10(b) of the Act.⁵⁴

CONCLUSIONS OF LAW

1. Garrett Flexible Products, Inc. (herein Respondent Garrett), is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. Respondent Garrett and PPI have not at any time material herein constituted a single employer within the meaning of the Act.

4. The International Molders' and Allied Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

⁵² The General Counsel's witness Carol Howard testified that she was unaware of any instance where employees of one company were transferred or covered for employees of the other company.

⁵³ *Milo Express, Inc.*, 212 NLRB at 314.

⁵⁴ See fn. 47, supra.

5. Respondent Garrett has not at any time material herein violated the terms of the settlement agreement in Case 25-CA-11450.

6. By coercively interrogating employees about their union activities and the union activities of other employees, by conveying the impression to employees that their union activities are under surveillance, and by threatening employees with reprisals, including discharge and plant shutdown, to dissuade them from engaging in union activities, Respondent Garrett thereby has violated Section 8(a)(1) of the Act.

7. By terminating employees on layoff status because of their union activities, Respondent Garrett has thereby violated Section 8(a)(3) and (1) of the Act.

8. By rehiring laid-off employees as new employees because of their union activities, Respondent Garrett has violated Section 8(a)(3) and (1) of the Act.

9. Except as noted hereinabove in paragraphs 7 and 8, Respondent Garrett has not otherwise selectively laid off employees or refused to recall them in violation of Section 8(a)(3) and (1) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. The General Counsel has not established by a preponderance of the credible evidence that Respondent Garrett violated Section 8(a)(4) of the Act.

12. The General Counsel has not established by a preponderance of the credible evidence that Respondent Garrett discharged Jimmy Gamble in violation of Section 8(a)(3) of the Act.

13. Other than as set forth above, Respondent Garrett has not violated the Act as alleged.

THE REMEDY

Having found that Respondent Garrett has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that in October and November 1980 Respondent Garrett unlawfully terminated certain employees, and having additionally found that it thereafter rehired some of them but only as new employees in violation of Section 8(a)(3) of the Act, I shall recommend that Respondent Garrett make all such discriminatees whole by restoring them to where they would have been absent the discrimination.⁵⁵ Thus, Respondent Garrett shall

⁵⁵ The employees (discriminatees) unlawfully terminated are: Jim Anderson, Craig Benson, Denise Brown, Sharren Davis, Ralph Erhardt, Nyoka Gamble, Barry Harden, Peggy Helblig, Bernadette Meyer, Connie Newland, Jane Warfield Shabler, Stanley Stone, Esom Sumner, and Barbara Vogts. Of these, it is noted that Craig Benson, Ralph Erhardt, Nyoka Gamble, and Esom Sumner were rehired by Respondent Garrett as new employees and that Denise Brown and Connie Newland were hired as new employees by PPI. (See R. Exh. 55.) The layoffs were converted into violations of Sec. 8(a)(3) in October and November 1980 when the termination letters were sent. Those employees laid off and recalled by Respondent Garrett prior thereto are not found herein to be discriminatees. Additionally, as I have found that Respondent Garrett has lawfully eliminated the millroom helpers position in the Cowen Street Plant, Tyron Combs and Dexter Howard, both millroom helpers, are not discriminatees.

offer immediate and full reinstatement to all discriminatees to their former jobs, or if those jobs no longer exist, to substantially equivalent positions except where said positions have been lawfully eliminated or have been left unfilled for legitimate business reasons. Further, Respondent Garrett shall offer immediate and full reinstatement to all discriminatees who have been replaced, discharging, if necessary, any replacements hired after the date of their discharge. Still further, Respondent Garrett shall make the aforementioned discriminatees, who have been rehired as new employees, whole by restoring them to their former positions without prejudice to their seniority or any other rights and privileges previously enjoyed, and by paying them for any loss of earnings which they may have suffered by virtue of the discrimination against

them with interest in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Given the large number of employees unlawfully terminated and having found that Respondent Garrett, inter alia, repeatedly threatened employees with discharge and plant shutdown, I find that it has, by such conduct, demonstrated a general disregard for the employees' fundamental statutory rights thereby justifying broad "in any other manner" injunctive language in the Order. See *Hickmott Foods*, 242 NLRB 1357 (1979); *Continental Kitchen Corp.*, 246 NLRB 611 (1979).

[Recommended Order omitted from publication.]