

**International Filling Company, Inc. and United Food  
& Commercial Workers, District Union 433,  
AFL-CIO & CLC. Case 10-CA-19084**

12 September 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 2 December 1983 Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

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

1. The judge concluded that the Respondent violated Section 8(a)(1) of the Act by the refusal of its president, John Gibbs, to loan money to employee Johnny Hall. In so concluding, the judge relied on his finding that the Respondent had a past practice of making loans to employees. We disagree with the finding of this violation. In so doing, we note

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

<sup>2</sup> We adopt the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by interrogating employee Johnny Hall about his union activities. In so doing, we additionally rely on the fact that, during the same conversation in which the interrogation occurred, the Respondent's president unlawfully threatened that he was going to "get" everybody who was behind the Union. Further, we find it unnecessary to pass on the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by interrogating employee Benton because the finding of such an additional violation would be cumulative and would not materially affect the Order. Chairman Dotson would not find that the Respondent unlawfully interrogated Hall. Hall initiated the conversation with the Respondent's president, Gibbs, and volunteered that he was "a hundred per cent" for the Union. According to the credited testimony, Gibbs then asked Hall what the Union could do for Hall that Gibbs could not. Hall responded by asking what Gibbs could do for Hall that the Union would not. Chairman Dotson finds nothing in this conversation that can be considered unlawful interrogation. Similarly, Chairman Dotson finds no unlawful interrogation in the conversation between Superintendent Thompson and employee Benton.

In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by unlawfully creating an impression of surveillance during Superintendent Thompson's conversation with employee Ulysses Hall, we do not rely on Thompson's reference to the Respondent's knowledge that Johnny Hall, Ulysses' brother, was for the Union. Chairman Dotson would not find that the Respondent created an impression of surveillance either by the innocuous conversation between Thompson and Ulysses Hall or by Gibbs' statement to Ernest Washington, "[W]ell, Ernest, you're top dog now." Because Washington was a known union adherent, Gibbs' statement appears based on common knowledge.

that the record does not establish that the prior loans were made by Gibbs in his corporate capacity and that the loans amounted to terms and conditions of employment rather than personal loans given by Gibbs as an individual. Furthermore, the record demonstrates that Gibbs exercised discretion with respect to loans to employees. In these circumstances, we do not find that the General Counsel has established that Gibbs' refusal to loan money to Hall constituted an unfair labor practice.

2. The judge found that the Respondent violated Section 8(a)(1) of the Act by promising the employees benefits to induce them to vote against the Union. We find merit in the Respondent's exceptions to this finding.

The judge found that about a week before the election Supervisor Thompson told employee Jesse Benton that "he knowed [the employees] had not vote [sic], and . . . if the Company wins, there would be a party afterwards." We note that the statement itself is ambiguous in that it does not clearly indicate that a party would be given by the Respondent itself. In any event, assuming, arguendo, that the statement may be viewed as unambiguous, we would not find that such a statement, without more, constitutes a promise of benefit which reasonably would tend to induce employees to vote against the Union and which would rise to the level of an unfair labor practice.

3. We also disagree with the judge's finding that the Respondent violated Section 8(a)(1) by threatening employee Green that the Respondent would intentionally lose contract bids if the Union won the election. Based on credited testimony, the judge found that shortly before the election Supervisor Thompson told Green that "if [President] Gibbs goes to bid for a contract, he could bid low and not get a contract." When asked by Green "[did] he think that Gibbs would bid low to not get a contract," Thompson answered yes. We find that Thompson's statements are too unclear to constitute a threat. Thus, it is likely that the Respondent would receive contracts if it bid low rather than lose contracts. Accordingly, we find that Thompson's statements do not violate Section 8(a)(1).

4. The judge found that the Respondent's letter of 24 January 1983 to its employees violated Section 8(a)(1) by indicating to them that they would lose benefits if they voted for the Union. The relevant portion of the letter stated:

One important answer should be emphasized. Unions often say that if they get in, employees would be guaranteed what they now receive. This is *not* the truth. The truth is, if the Union should come in, all your present or future ben-

efits are negotiable. Negotiations would start with a *blank sheet of paper*, and each present wage and present benefit would be negotiated. Nothing is automatic. The NLRB and the Courts have said you can lose wages and benefits in collective bargaining.

In finding a violation, the judge concluded that the letter did not indicate to employees that negotiations may result in any improved benefits and that the letter therefore left the employees with the impression that the Respondent would ensure that they lost rather than gained benefits in negotiations. We disagree.

We find that the letter does not contain any threat that the Respondent on its own would reduce benefits in retaliation for the employees' having chosen a union as their representative. Rather, the letter merely indicates that a union cannot guarantee the retention of all present benefits and that benefits are subject to negotiations. As such, the letter constitutes an accurate reflection of the bargaining process. Accordingly, we find that the 24 January letter does not violate Section 8(a)(1) of the Act.

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3:

"3. By interrogating its employees regarding their union activities, by threatening to 'get' everybody behind the Union, by creating an impression of surveillance of its employees' union activities, by threatening to terminate its employees, and by threatening to go out of business and close the plant because of its employees' union activities, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act."

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Filling Company, Inc., Savannah, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act by interrogating its employees about their union activities, threatening to 'get' everybody behind the Union, creating the impression of surveillance of its employees' union activities, threatening to terminate its employees, and

threatening to go out of business and to close the plant because of its employees' union activities."

2. Substitute the attached notice for that of the administrative law judge.

#### APPENDIX

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

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

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT threaten to "get" everybody behind the Union.

WE WILL NOT create the impression of surveillance of our employees' union activities.

WE WILL NOT threaten to terminate our employees because of their union activities.

WE WILL NOT threaten to go out of business and close our plant because of our employees' union activities.

WE WILL NOT lay off our employees because of their union activities.

WE WILL NOT discharge or refuse to reinstate our employees because of their union activities.

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

WE WILL offer immediate and full reinstatement to Johnny Hall, Ulysses Hall, Ernest Washington, and Samuel Green to the positions they formerly held or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

WE WILL make Johnny Hall, Jerome Robinson, Ulysses Hall, Ernest Washington, and Samuel Green whole for any loss of earnings they may have suffered by reason of our discrimination against them, with interest.

WE WILL expunge from our records any reference to our layoff and subsequent discharge of Johnny Hall, to our discharge of Jerome Robinson, and to our refusal to rehire Johnny Hall, Ulysses Hall, Ernest Washington, and Samuel Green, and WE WILL notify them in writing that this has been done and that the evidence of this unlawful action

will not be used as a basis for future personnel action against them.

INTERNATIONAL FILLING COMPANY,  
INC.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Savannah, Georgia, on August 9 and 10, 1983. The complaint which issued on May 2, 1983, and was amended on July 18, 1983, is based on a charge filed on March 17, and amended on April 4, 1983, and alleges that Respondent engaged in several instances of conduct violative of Section 8(a)(1) by interrogating, creating an impression of surveillance, threatening to close its plant, threatening to discharge its employees, promising its employees a party, threatening loss of benefits, threatening its employees with a layoff and refusal to recall from layoff, and refusing to loan money to its employees because of its employees' union activities; and Section 8(a)(3) by discharging two employees and refusing to recall three others from layoff.

On the entire record and from my observation of the witnesses, and after due consideration of briefs filed by the General Counsel and Respondent, I make the following<sup>1</sup>

FINDINGS OF FACT

A. *Johnny Hall*

Johnny Hall worked for Respondent from March 1982 until he was discharged on January 27, 1983. In October 1982 Hall was transferred from the job of line operator to truckdriver.

Also in October 1982 Johnny Hall contacted the Union and asked for authorization cards in order to sign up Respondent's employees. Subsequently, Hall served on the Union's organizing committee along with employees Ronnie Young, Ernest Washington, and Ulysses Hall. Hall was successful in signing up the employees on the night shift and some of the employees on the day shift.

In December 1982, Hall asked Respondent's President John Gibbs for a \$50 loan. Both Hall and Gibbs testified that, before that incident, Gibbs had frequently loaned money to employees. According to Hall, Gibbs asked Hall into his office where he told Hall "he couldn't loan the fellows any money anymore because some of the

guys out there wanted a union." Gibbs admitted that he refused Hall's request for a \$50 loan. Gibbs testified however, the Union was not mentioned in their conversation.

Shortly after Gibbs' refusal to loan Hall \$50, Hall was told by Plant Manager Bobby Allen that Respondent did not have any work for him that morning. Before requesting a loan from Gibbs, Hall's name appeared on the work sheet to work that morning. Hall questioned how Respondent could have no work when Respondent had "just hired three new people." Allen repeated that he had no work for Hall. Hall then returned to John Gibbs' office where:

John Gibbs told me that I knowed what he was doing, that I was not a fool; he was making me part-time. So at that time John Gibbs also told me that he had gotten a phone call day before, stating that I was behind the Union activity and that we was going to be holding a meeting that Wednesday.

At that time I told John Gibbs that I was—I was for the Union. I was for it a hundred per cent.

I was for it a hundred per cent, the Union, and during that time, John Gibbs asked me what the Union could do for me that he couldn't do for me. So I asked him what he could do for me that the Union wouldn't. So he couldn't explain anything to me what he could do for us.

So during that time I told John Gibbs I was behind the Union organizing, and he told me eventually he was going to get everybody who was behind it.

Gibbs admitted that Johnny Hall told him he was doing everything he could to organize the Union. Gibbs denied other portions of Hall's testimony regarding that particular conversation.

Gibbs admitted that Johnny Hall told him he was doing everything he could to organize the Union. Gibbs denied other portions of Hall's testimony regarding that particular conversation.

Gibbs admitted that, after working Johnny Hall during the November and December 1982 layoff, he did lay off Hall for about a week. Gibbs also admitted hiring three employees around the time he laid off Hall, but according to Gibbs, those three had worked for him previously and, whereas Hall was a truckdriver, the three were needed for other jobs.

About 3 work days before he was discharged on January 27, 1983, Johnny Hall was assigned for the first time to take delivery of oil from railroad tank cars at the Dillard Rail Yard. Both Hall and driver Ronnie Young testified that the only training Hall received was oral instructions by Young on how the hose should be coupled between the railroad tank cars and Hall's tanker truck.

The established procedure required Hall to weigh his empty truck enroute to the Dillard Yard at the State's Farmers Market; fill in his truck from specified rail tankers at the Dillard Rail Yard; and reweigh the truck enroute back to Respondent's plant where Hall would leave the filled truck tank and pick up another empty tank to repeat the above procedure.

<sup>1</sup> The commerce facts and conclusions are not at issue. Respondent admits that it is a Georgia corporation with facilities located at Savannah, Georgia, where it is engaged in the sale of edible oil, and, during the past calendar year, the representative period, it sold and shipped goods valued in excess of \$50,000 directly from its Savannah, Georgia facility to customers located outside the State of Georgia. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. The complaint also alleges and Respondent's answer that it had no knowledge that the Charging Party (Union) is a labor organization within the meaning of Sec. 2(5) of the Act. The entire record including references to the Union's organizing campaign and the representation case proceedings, which included an election on February 4, 1983, convinced me, and I find, that the Charging Party is a labor organization within the meaning of Sec. 2(5) of the Act.

On the evening of January 25, Hall encountered some difficulty in uncoupling from a rail car. He called his supervisor, Night Superintendent George Thompson. Thompson came to the Dillard Rail Yard on two occasions that night. On his first trip, according to Thompson, he watched as Hall looked down into the rail car number NATX-23583 with Hall's flashlight and declared that rail car empty. Thompson logged car number "NATX-23583 was reported empty at 9:45 p.m. 1/25/83." According to Thompson's testimony, he personally checked car number GATX-66921 while at the Dillard Rail Yard with Hall at 3:30 a.m. on January 26, 1983. Thompson used Hall's flashlight to look down into rail tank car number GATX-66921. He subsequently logged "GATX-66921 reported empty 3:30 a.m. 1/26/83."

John Gibbs testified that he was off work as usual during the evening of January 25 and that Night Superintendent George Thompson was in charge. When Gibbs came in to work the next morning he examined documents from the night shift which included weight tickets. Gibbs testified that he noticed what appeared to be a shortage between the oil that should have been shipped in the railroad tankers and the oil picked up by Hall in Respondent's tanker truck on the night of January 25.

On discovering that his documents reflected an oil shortage, Gibbs called the railroad company and ascertained that the railroad tankers had not left Savannah. Gibbs, along with Bobby Allen and Kenny Pierce,<sup>2</sup> then went to the railroad and physically checked the railroad tanker cars that had been released to the railroad.<sup>3</sup> Gibbs testified that they discovered that railroad tanker number GATX-66921 was not empty. He then elected to pay the railroad \$200 to respot car number GATX-66921 in order to permit Respondent to remove the remaining oil.<sup>4</sup> Gibbs then instructed Bobby Allen to terminate Johnny Hall.

After the discharge, Gibbs called the employees together and told them that although he was aware of Hall's union activities, the union activities had nothing to do with Hall's discharge. Gibbs looked at Ernest Washington and said, "Well, Ernest you're top dog now." Gibbs admitted that he made the comment to Washington because he had heard what Washington was then claiming to be the top dog when it came to union activities.

### Findings

My credibility findings favor the General Counsel<sup>5</sup> to Johnny Hall's discharge. Additionally, the record dem-

<sup>2</sup> Allen was plant manager on January 25, 1983. Pierce subsequently replaced Allen in the plant manager's position.

<sup>3</sup> The truckers notify their superintendent when a rail car is empty. The superintendent then notifies the railroad that Respondent is releasing the rail tanker back to the railroad. From that notice the rail tanker car is subject to being removed by the railroad.

<sup>4</sup> A subsequent weight ticket was introduced which reflected that 6420 pounds of oil was then removed from tanker number GATX-66921.

<sup>5</sup> On the basis of my observation of his demeanor, I do not credit the testimony of Respondent President John Gibbs in areas where his testimony conflicts with credited evidence. Gibbs was oftentimes flippant and argumentative when questioned under cross-examination. Additionally, I note that Gibbs' testimony was inconsistent and, to some extent, conflict-

ed with other testimony offered by Respondent. For example, Gibbs fluctuated in his response as to whether he consulted Superintendent George Thompson before discharging Johnny Hall. At various points, he testified that he did and that he did not consult Thompson. Thompson, on the other hand, testified without equivocation that Gibbs did not consult with him about Hall's discharge.

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(1) John Gibbs admitted that he was told by Johnny Hall that Hall was fully supporting the Union;

(2) Hall was laid off at a time proximate to Respondent's knowledge of his union activities, and he was discharged shortly after Respondent admittedly learned of Hall's strong pronoun position;<sup>6</sup>

(3) Hall was laid off on December 20, 1982 despite Respondent's hiring three other employees;

(4) John Gibbs acted hastily in discharging Hall without checking the facts out with the only supervisor present when Hall allegedly committed negligence by leaving oil in a railroad tanker car;

(5) Gibbs supported Hall's discharge by using records in a manner which he knew to be inaccurate; and

(6) The evidence proves that Johnny Hall was not at fault in the failure to fully drain railroad car number GATX-66921.

In regards to item 1, 2, and 3 above, John Gibbs admitted that Johnny Hall told him that he was behind the Union.

Johnny Hall testified<sup>7</sup> that he was laid off on December 20, 1982. Before that date, Hall was not laid off during November and December 1982, when Respondent went through a general layoff. On December 20, 1982, Gibbs told Hall that he was not loaning him \$50 because "some of the guys out here wanted a union." Later that morning, when Hall questioned Gibbs as to why he was being laid off, Gibbs told Hall that he received a phone call that Hall was behind the Union. At that point Hall admitted his 100-percent involvement with the Union. Subsequently, in that conversation, Gibbs told Hall that "eventually he was going to get everybody (that was behind the Union.)"

Up until December 20, Hall was one of the few employees retained during layoffs even though he worked out of his job classification. Hall, a truckdriver, worked in maintenance during the November-December 1982 layoffs.

Despite Gibbs admission that Hall worked in maintenance during those November-December layoffs, he tried to justify Hall's December 20 layoff by stating that "Hall was a truckdriver and (the three employees hired at that time) were doing other work."

<sup>6</sup> As shown below, Hall told Gibbs that he supported the Union on December 20, 1982. Hall was laid off on December 20, 1982, and subsequently discharged on January 27, 1983.

<sup>7</sup> I credit Hall's testimony as shown below. I observed Hall's demeanor. He impressed me as a candid witness.

The above evidence demonstrates Hall was laid off for 1 week around December 20, 1982, because of his union activity in violation of Section 8(a)(3). Gibbs also engaged in activities violative of the Act by refusing to loan Hall \$50 in accord with his past practices because of Hall's union activities. By Gibbs interrogating Hall about the union activities and threatening to get everybody behind the Union, Respondent violated Section 8(a)(1) of the Act.

As to item 4 above, John Gibbs immediately discharged Johnny Hall upon discovering oil in rail tanker GATX-66921 without determining that Hall was at fault. George Thompson, night superintendent, testified that Gibbs did not talk to him before firing Hall. Only Thompson of Respondent's supervisors was in a position to know if Hall was at fault by leaving oil in the rail tanker on the night of January 25.

In regard to item 5, Gibbs testified that before discharging Hall, he concluded that rail tanker GATX-66921 was actually released at 9:45 p.m. on January 25, and tanker car number NATX-23583 was released at 3:30 a.m. on January 26. In order to reach that conclusion, Gibbs had to ignore the supervisor's log prepared by George Thompson which Gibbs admittedly examined before firing Hall. The supervisor's log reflects the converse of Gibbs' conclusion (i.e. GATX-66291 was released at 3:30 a.m. and NATX-23583 was released at 9:45 p.m.).

Moreover, the record reveals other discrepancies in Gibbs' alleged investigation on January 26, 1983. Gibbs testified that by adding the weigh tickets on rail tanker GATX-66921, he was able to ascertain a shortage. By adding the total of the three weigh tickets showing car GATX-66921, only 147,940 pounds is reflected as opposed to the 152,670 pounds which is normally contained in the rail tanker. However, Gibbs' testimony overlooked that the sum of the tickets on NATX-23583 would have also revealed a shortage. Those tickets total 148,520 pounds.

In fact, the record reveals that Gibbs was aware that the above procedure may not reflect an accurate check into the presence or absence of any shortage from a particular rail tanker car. Testimony revealed that oftentimes a railcar will be emptied before a truck tanker is topped off. In those instances where other rail tankers remained that were not empty, the coupling will be transferred to one of the other railcars in order to finish topping out the truck tanker. That situation occurred on at least one occasion on the evening of January 25 when, before 9:53 p.m., Johnny Hall finished draining railcar number NATX-23583, removed the coupling, recoupled on railcar GATX-6692, and topped out his truck tanker from GATX-66921. Nevertheless, the weigh ticket reflected only rail tanker GATX-66921 even though some, perhaps most, of the oil on that particular run came from rail tanker NATX-23583. Gibbs, who obviously knew of the above practice, misrepresented the system for checking weigh tickets by its testimony.

In addition to demonstrating that Gibbs was forced to fabricate a basis for Hall's discharge, the above factors, especially the discrepancies between Gibbs' testimony and the supervisor's log, emphasized the importance of

discussing the shortage with Night Superintendent George Thompson. Nevertheless, as shown above, Gibbs ignored Thompson and hastily discharged Johnny Hall.

Lastly, in regard to item 6, the record shows that Johnny Hall was not at fault in the failure to empty railcar GATX-66921.

A careful analysis of the record evidence reveals that when Johnny Hall weighed his empty truck at 7:47 p.m. on January 25, he had made at least two loads from railcar NATX-23583 of 50,060 each. As mentioned above, the documents do not reveal whether the ticket number 57297 (G.C. Exh. 11(M)), which indicates oil from car GATX-66921 in the amount of 49,880 pounds, included some oil from car NATX-23683. Regardless, the testimony of both Johnny Hall and Superintendent George Thompson reveals that Hall called Thompson for assistance in uncoupling from car NATX-23583 and coupling car GATX-66921. When Thompson arrived at the Dillard Rail Yard, Hall had successfully switched the coupling. In the presence of Thompson, who testified that he noted the numbers from the railcars after those numbers were illuminated by a flashlight, Hall examined railcar NATX-23583 and declared it empty. Thompson noted in his supervisor's log:

Car #NATX-23583 reported empty 9:45 p.m. 1-25-83.

Weight ticket number 57305 (G.C. Exh. 11(b)) shows that Hall weighed out at 9:53 p.m. with a load from railcar number GATX-66921 containing 47,740 of oil.

Subsequently, George Thompson returned to assist Hall again on the night of January 25 at the Dillard Yard, and it was Thompson, not Hall, that finally looked down into railcar GATX-66921 around 3:30 a.m. and declared it empty. Railcar GATX-66921 was the car found to contain oil on January 26. Therefore, if an error was made, it was not Hall's but his supervisor, George Thompson.

On the basis of the record evidence, it is apparent that Johnny Hall was discharged on January 27 because of his involvement with the Union. After Respondent hastily discharged Hall without fully investigating his culpability, it attempted to fabricate a case supporting its actions.

Additionally, as shown, above, by identifying Ernest Washington as top dog in the Union after Hall's discharge, John Gibbs held out to all employees that he was fully aware of the scope of their union activities. I agree with the General Counsel that Gibbs' comments created an impression of surveillance of the employees' union activities in violation of Section 8(a)(1).

#### *B. Jerome Robinson*

After Johnny Hall contacted the Union in October, Respondent learned of his and other employees' union activities in December 1982. On December 8, 1982, the Union demanded recognition from Respondent. On December 20, Hall admitted to John Gibbs that he was 100 percent behind the Union.

Around December 20, 1982, John Gibbs asked Jerome Robinson about the Union. According to Robinson, he

had called Gibbs and requested to be off the next day to go down to the unemployment office:

Mr. Gibbs said to me, are you are going to do me that way, and I said to him, what way. Then he said that Johnny Hall came at his face and told him about the Union activity.

And I said to him, I said, I wouldn't join the Union; all I wanted was some insurance. And then he told me that insurance was \$100 a person a week.

He kept saying, are you going to do me that way. And he went on to say he knew Johnny Hall was behind the Union, that Johnny Hall came to his face and told him.

Also in December, Plant Manager Bobby Allen and Night Superintendent George Thompson met and discussed the Union with day-shift employees in the lunchroom. One employee, William "Pee Wee" Brinkley, spoke against the Union. According to Robinson, Brinkley stated "that all the Union wanted was your money and they ain't nothing but mafia and all such as that." Bobby Allen mentioned that the Union couldn't save the employees' jobs.

On January 27, 1983, Respondent discharged Johnny Hall. On February 4 the Regional Office conducted an election among Respondent's employees. The Union prevailed, 15 yes votes to 3 no votes with 8 challenges.

Despite the fact that Jerome Robinson was acknowledged to be a valuable employee, he was discharged on February 10, 1983.

Robinson's job involved "putting cans on the conveyor." During the day of February 10, Robinson had a dispute with William "Pee Wee" Brinkley. Brinkley, who was driving a forklift, asked Robinson where to place two pallets of cans preparatory to Robinson placing the cans on the conveyor. Brinkley placed those pallets but, as Robinson placed those cans on the conveyor, Brinkley arrived with another pallet and asked Robinson where they should be placed. When Robinson continued to state that the pallets should be placed in front of the conveyor, Brinkley objected to the point of leaving his forklift to fight Robinson. At that point, Plant Manager Bobby Allen arrived and told Robinson "no fighting." Robinson objected that he was not fighting, and Allen told him to hit the door. Brinkley was directed to return to work.

Both Jerome Robinson and William Brinkley testified that Superintendent George Thompson was present during their altercation. George Thompson testified that he did not know why Robinson was fired. Thompson testified that he was not close enough to actually hear what was said during the exchange between Brinkley and Robinson.

According to William Brinkley, Robinson used profanity during their dispute. Brinkley's testimony conflicts with that of George Thompson. According to Brinkley, George Thompson came up to Robinson "got vulgar with him also." As shown above, Thompson testified that he was not close enough to hear what was being said by Robinson. However, in most respects, Brinkley's testimony is in substantial agreement with that of Jerome

Robinson. Brinkley testified that Plant Manager Bobby Allen did tell him to leave and he returned to his job.

Bobby Allen, who is no longer employed by Respondent, did not testify.

Jerome Robinson was subsequently reinstated by Respondent.

#### Findings

Jerome Robinson signed a union authorization card in November 1982. He also attended union meetings. As shown above, he was interrogated about the Union by Respondent's president around December 20, 1982.

The General Counsel offered evidence that similar incidents to those involving Robinson and Brinkley had occurred without either employee being discharged. Ernest Washington was called into the office by Bobby Allen after he almost fought with employee Matthew Dillard. When Allen started "chewing" Washington, Washington told Allen that he did not have to take this "shit" from him. Subsequently, Allen permitted Washington to explain his position in the argument, and Washington was sent back to work. Johnny Hall testified about another incident at work when one employee chased another with a knife. Neither employee was discharged, however.

Additionally, it was admitted by Respondent that Jerome Robinson was an excellent worker. Superintendent George Thompson testified that Robinson was a good worker, he worked fast, and several other employees could not maintain Robinson's pace.

In view of the timing of Robinson's discharge, coming 6 days after the Union's successful election; Robinson's union activities and his role in the interrogation by President John Gibbs; the disparity in the way Respondent treated him, as opposed to other employees who had engaged in arguments, and especially William Brinkley, who was involved with Robinson, but was a vocal opponent of the Union; John Gibbs' threat to Johnny Hall to eventually get rid of all union supporters; the excellent work record of Jerome Robinson; and the total absence of any explanation from Respondent as to why Robinson was discharged, I am convinced and find that Robinson was fired in violation of Section 8(a)(1) and (3) of the Act.

#### *C. The Refusal to Recall Ernest Washington, Samuel Green, and Ulysses Hall*

Following the election on February 4, 1983, Respondent laid off a number of employees including Ernest Washington, Samuel Green, and Ulysses Hall. All three worked on Respondent's night shift. All three were identified with the Union's campaign and none have been recalled. Kenny Pierce, who followed Bobby Allen as plant manager, admitted that he has never tried to recall Ernest Washington to work even though he has recalled others from layoff and has even hired some new employees. Pierce testified that he has telephoned Samuel Green and Ulysses Hall to recall them to work, but he has never been successful in speaking to either Green or Hall. Pierce admitted that he has never left word for Green or Hall to return his telephone call. However, the

General Counsel offered testimony that in the past, Respondent oftentimes left word for employees to call. Additionally, Pierce did not send other employees to contact either Washington, Hall, or Green even though he did that with other employees including new hires that have not previously worked for Respondent.

Ernest Washington was the employee identified as the new top dog in the Union by John Gibbs following the discharge of Johnny Hall.

Ulysess Hall is the brother of union instigator Johnny Hall.

Samuel Green served as union observer during the February 4 election. He was laid off that same day and has not been recalled.

The General Counsel elected not to allege that the layoffs were violative. However, it was alleged that the layoffs were violative. However, it was alleged that the refusal to recall Green, Hall, and Washington violated Section 8(a)(1)(3).

#### Findings

Ulysses Hall worked as a stacker and packer before his layoff. Superintendent George Thompson admitted that "Ulysses Hall can pack." According to Hall George Thompson talked to him about the Union a week before the February 4 election and layoff. Hall testified:

He told me that he knowed my brother was for the Union and he thought I was for it too, and he said he knowed that I was going to vote yes.

As indicated above, Ulysses Hall is the borther of alleged discriminate Johnny Hall.

On February 4, after the election, Ulysses Hall was informed that he no longer worked for Respondent. When he called George Thompson about that information, Thompson "told me that I know that John Gibbs was not going to let us work anymore because he did not want the Union in this plant."

George Thompson denied the above conversation. In consideration of Thompson's and Ulysses Hall's demeanor, and the record as a whole, I am convinced and find that Hall's testimony was more accurate. Other employees, as shown below, heard similar statements by Thompson. Thompson and John Gibbs demonstrated a strong desire to defeat the Union. I find that Thompson's statements to Hall are evidence of threats to terminate employees and create an impression of surveillance in violation of Section 8(a)(1).

Samuel Green worked as a box stacker. He had worked for Respondent since September 1982.<sup>8</sup> Green also worked on the line on occasion. Green served as union observer on February 4, the day of his layoff. He has not been recalled.

On two occasions shortly before the election and layoffs, Green talked to George Thompson about the Union. Employees Ernest Washington and Randy Benton were present during the first conversation when Thompson told the employees that if they voted the

Union in, the company would go out of business. Randy Benton was also present at the second conversation when Thompson:

... said if Gibson goes to bid for a contract, he could bid low and not get a contract. And I asked him do he think that Gibbs would bid low to not get a contract, and he said yes.

Thompson admitted talking to Green about contracts:

... I had a conversation with Mr. Green in reference to in case we did get a Union in, that Mr. Gibbs might lose a lot of business because he had to cover the overhead and what not of the Union, but if he bid low, he'd most likely get all the bids and be going in the hole too.

Thompson denied telling Green the Company would close if the Union came in.

In view of my other findings regarding Thompson and, in view of Thompson's testimony, I find that Green was truthful. Green's testimony regarding the contract bids was substantially admitted by Thompson. I find that Thompson's comments to Green constitute a threat to close and a threat that contracts would be lost if the Union was voted in, in violation of Section 8(a)(1).

Ernest Washington worked for Respondent from February 1982 as a packer and a machine operator. George Thompson testified that Ernest Washington was one of his better packers. Washington has never had been recalled after his February 4, layoff. As shown above, Washington was identified by John Gibbs as the Union's top dog after Johnny Hall was fired.

Washington testified that he was present during the week before the election when George Thompson told Samuel Green that Gibbs would close the plant if the Union was voted in.

In view of the close connection between Washington, Green, Ulysses Hall, and the Union; Respondent's demonstrated union animus; the threats to employees made by Gibbs and Thompson; the absence of any business justification for Respondent's failure to recall Green, Washington, and Hall while others were recalled and new employees hired; Respondent's obviously weak efforts to reach Hall and Green;<sup>9</sup> and the absence of any effort to reach Washington; and the good work records of those employees, I am convinced, and I find, that Respondent denied each reinstatement in violation of Section 8(a)(1) and (3).

#### D. Other 8(a)(1) Allegations

Employee Jesse Benton testified that he had a conversation with George Thompson about a week before the election:

<sup>8</sup> At the time of the hearing, Respondent had been in operation for 2 years.

<sup>9</sup> Pierce testified that he did not leave word for Hall or Green to return his calls because he needed employees immediately. It is not disputed that, on occasion, Pierce knew of the need for employees a day before the employee was needed. Also, he admitted sending employees to find help, including new employees.

He asked me did I know anything about the Union, and I told him no. So he told me that he was in the Union, that the Union wasn't so great, and he asked me what do I think the Union will give me. So I told him, well, the wages, insurance, vacation. And he told me that he knowed they had not vote, and he told me if the Company wins, there would be a party afterwards.

The above testimony, which I credit, in consideration of Benton's good demeanor and the entire record, includes interrogation and the promise of benefits to induce employees to vote against the Union in violation of Section 8(a)(1).

On January 24, 1983, Respondent sent a letter to all employees which contained the following:

One important answer should be emphasized. Unions often say that if they get in, employees would be guaranteed what they now receive. This is *not* the truth. The truth is, if the Union should come in, all your present or future benefits are negotiable. Negotiations would start with a *blank sheet of paper*, and each present wage and present benefit would be negotiated. Nothing is automatic. The NLRB and the Courts have said you can lose wages and benefits in collective bargaining.

There is no indication in the above comments that negotiations may result in any improved benefits and employees are left with the impression that the employer would see that employees lost rather than gained in negotiations (see *Belcher Towing Co.*, 265 NLRB 1258 (1982); *Zero Corp.*, 262 NLRB 495 (1982); *Clements Wire Co.*, 257 NLRB 206 (1981).)

#### CONCLUSIONS OF LAW

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

2. United Food & Commercial Workers, District Union 433, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to loan its employee \$50, by interrogating its employees regarding their union activities, by threatening to get everybody behind the Union, by creating an impression of surveillance of its employees' union activities, by threatening to terminate its employees, and by threatening to go out of business and close the plant because of its employees' union activities, by threatening that Respondent would lose contracts because of the Union, by promising benefits by giving employees a party if they defeated the Union, and by threatening employees of Respondent that it would bargain from a blank sheet of paper, and that employees could lose wages and benefits if the employees selected the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By laying off, discharging, and refusing to reinstate Johnny Hall, discharging Jerome Robinson, and refusing to reinstate, following layoff, Ulysses Hall, Ernest Washington, Samuel Green, Respondent has engaged in unfair

labor practices within the meaning of Section 8(a)(1) of the Act.

#### REMEDY

Having found that Respondent has engaged in unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As I have found that Respondent unlawfully laid off Johnny Hall, discharged employees Johnny Hall and Jerome Robinson,<sup>10</sup> and refused to reinstate Johnny Hall, Ulysses Hall, Ernest Washington, Samuel Green, I shall recommend that Respondent be ordered to offer Johnny Hall, Ulysses Hall, Ernest Washington, and Samuel Green immediate and full reinstatement to the jobs they formerly held with Respondent, or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges. I shall further recommend that Respondent be ordered to make whole Johnny Hall, Jerome Robinson, Ulysses Hall, Ernest Washington, and Samuel Green for any loss of earnings they may have suffered as a result of the discrimination against them. Backpay shall be computed with interest as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 650 (1977).<sup>11</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

#### ORDER

Respondent, International Filling Company, Inc., Savannah, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act by refusing to loan its employees money in accord with its past practices because of their union activities, interrogating its employees about their union activities, threatening to get everybody behind the Union, creating the impression of surveillance of its employees' union activities, threatening to terminate its employees, and threatening to go out of business and to close the plant, because of the Union, threatening that Respondent would lose contracts because of the cost of the Union, promising benefits by giving employees a party if they defeated the Union, and threatening employees of Respondent that it would bargain from a blank sheet of paper and they could lose wages and benefits if they selected the Union.

(b) Laying off, discharging and refusing to reinstate its employees because of their union activities.

<sup>10</sup> The evidence indicated that Jerome Robinson has been reinstated.

<sup>11</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

<sup>12</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

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

(a) Offer immediate and full reinstatement to Johnny Hall, Ulysses Hall, Ernest Washington, and Samuel Green to the positions they formerly held, or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority and all other rights and privileges.

(b) Make Johnny Hall, Jerome Robinson, Ulysses Hall, Ernest Washington, and Samuel Green whole for any loss of pay they may have suffered as a result of the discrimination against them in the manner set forth in the section of this decision entitled "Remedy."

(c) Expunge from their files any references to layoff, discharge or refusal to reinstate Johnny Hall, Jerome Robinson, Ulysses Hall, Ernest Washington, and Samuel Green, and notify each in writing that this has been done, and that the evidence of its unlawful action will not be used as a basis for future personnel action against them.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all pay-

roll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Savannah, Georgia, facility copies of the attached notice marked "Appendix."<sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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<sup>13</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."