

Douglas & Lomason Company and International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO. Cases 26-CA-13556 and 26-CA-13839

August 26, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On February 27, 1991, Administrative Law Judge Richard H. Beddow, Jr., 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,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Douglas & Lomason Company, Milan, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Additionally, we are satisfied that the Respondent's contentions that the judge was biased are without merit. There is nothing in the record to suggest that his resolutions of credibility, his, rulings, or the inferences he drew were affected by bias or prejudice.

Jack L. Berger, Esq., for the General Counsel.
George K. McPherson, Jr., Esq., *Robert N. Godfrey, Esq.*,
and *Teri P. McClure, Esq.*, of Atlanta, Georgia, for the Respondent.
Mark Allen, Esq., of Memphis, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Milan, Tennessee, on July 30 through August 2, 1990. Subsequent to an extension of the filing date, briefs were filed by all parties. The proceeding is based on charges filed on November 17, 1989, and May 3, 1990,¹ by the International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers, AFL-CIO. The

¹All following dates will be in 1990 unless otherwise indicated.

Regional Director's consolidated complaint, dated June 6, alleges that Respondent Douglas & Lomason Company, of Milan, Tennessee, violated Section 8(a)(1) and (3) of the National Labor Relations Act during the course of a union organizational campaign by threatening to close its plant, creating the impression of surveillance, interrogating employees, requesting employees to surveil on the Union, informing an employee that he was terminated for his union activity, and discharging employee Marion Bledsoe.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the manufacture and sale of seats for automobiles. It annually ships goods valued in excess of \$50,000 from its Milan location to points outside Tennessee and it admits that at all times material is, it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction and Background*

Respondent operates 25 plants in various locations, 3 of which are unionized. Respondent previously had a unionized plant in St. Louis, but closed that plant and moved the operations to Milan. This plant employs over 1000 people and has 3 main subdivisions; the foam department, where foam seat padding is made; the sewing department, where seat covers are made; and the assembly department.

At all times material, James F. Ramsey has been plant manager, Terry Branscum plant superintendent, Gerald Keele production manager, JoAnn Warmath personnel manager, and Charles Elliot, Elena Fly, Theresa Douglas, and Alma Kyle supervisors. Rodney Blackburn was a clock foreman in the foam department and all these individuals are admitted statutory supervisors.

On brief the Employer admits that it became aware of the Union's organizing campaign among its employees in September 1989. Thereafter a number of subsequently discussed incident occurred which are alleged to have interfered with employees' rights. These actions continued over several months and cumulated in the termination of employee Marion Bledsoe on April 30, 1990.

Charles Elliot is a first-shift production line supervisor of over 22 employees consisting of sewing machine operators, "truck girls" and "bundle girls." Phyllis Howard worked in his department as a "bundle girl." On October 4, during a conversation while she was on break in the cafeteria, Elliot told Howard that the Company had a list of 30 employees who supported the Union, and it was the Company's intention to get rid of them. He went on to say that they had ways of getting rid of these employees whereby the employees would not know they were being terminated. Howard testified that up to that time, she had not worn either a union T-shirt or button or otherwise displayed her sympathies toward the Union.

The next day, October 5, Elliot ate lunch with Howard and told her that Cindy Aeshbacher, a sewing machine operator in his department, would not be employed much longer. He said that he had overheard Aeshbacher say "what we needed was a union in that plant," and that they would get rid of her if they had to put her on the hardest job in the plant.

October 17, 1989, Plant Manager Ramsey gave a prepared speech to the employees in which he made it clear that he did not want a union and that he considered the Union's attempt to be similar to the past situation in St. Louis where Respondent closed and moved because of 3 years of "Union Interference." Elliot next approached Howard and told her that if she saw anyone passing out union literature, she should bring it to his attention and let him know who was passing it out. Then, on November 27, 1989, Elliot again spoke with Howard and told her that the Company was concerned because they did not know whether she was against the Union. He then said that if she wanted a job, she had better come in to work wearing a "Vote No" button where everyone could see it.

Previously, in early November Elliot had a meeting with all the employees in his department in which he told them that the Company was losing business because one of Chrysler's plants that Respondent supplied was going out of business because a union had been voted in. He also told the employees that the reason Respondent had moved to Milan in the first place was because its St. Louis plant had voted in a union and in response the Company had closed the plant down. In the same meeting he also said that if this plant voted in a union, the work done at the Milan plant would be shipped to their plant in Mexico. (This initial testimony by Howard was corroborated by employees Beverly Dorset and Cindy Aeshbacher.)

In late October, First-Shift Sewing Line Supervisor Elene Fly called the employees from her four lines together and said that they were supposed to get some work from Chrysler A Body, but that Chrysler's Jefferson L Body plant was going out because it had a lot of friction between union and management and they closed the plant because of such friction.

In November, Fly had a conversation with employee Rebecca Mosby at her sewing machine, 1 day after Mosby had been at a union meeting. Mosby testified that Fly asked if she had attended any of the union meetings and who was present. When Mosby told her she had, but that she was not familiar with all who were present. Fly asked her how many were there. Mosby was wearing an IUE button at the time Fly talked to her. Fly, however, said that Mosby volunteered the information after Fly had returned to the line from a meeting "upstairs." Mosby asked her if it was a meeting about the Union and when Fly told Mosby it was, Mosby then allegedly said she had gone to a union meeting last night and that Fly would never guess who was there and continued to tell her.

In early November, 3-year employee Rebecca Mosby was told by Supervisor Fly that Plant Manager Ramsey wanted to see her in his office. When they were alone Ramsey asked her if she attended a union meeting and when she said "yes," he asked her how many employees were present. He asked her not to repeat this to anyone else because it was against the law and he could go to jail for speaking up against the Union. He showed her newspaper clippings on

what the Union could do as far as causing strikes at a plant, and asked her who was present at the meeting and she told him that 2-3 former supervisors were there and 9-10 employees. Ramsey then asked her to attend "some more" meetings and she left and returned to her sewing machine.

Ramsey, however, claims that Mosby came in and volunteered to go to union meetings and to let him know what was going on and that he told her he could not ask her to go, that it is against the law and he could not do that. He said he could go to jail or something bad could happen to him if he asked her to do that. He said, however, that if you go on your own, that is up to you, but he could not ask her to do that. He asserted that Mosby came back and reported to him that there was nothing to worry about out there in the plant, there is no union coming in here, it is just a bunch of baloney.

Fly supervised 33 first-shift employees on 4 sewing lines that were visible from her desk. On November 27, about 11 a.m. Respondent made some "Just Say No To Unions" buttons available to employees. Fly held up one of the buttons and asked the girls if they wanted to go upstairs and get their buttons. About 10 or 11 employees from the 4 lines went upstairs to the cafeteria and got a button. When they returned Fly checked to see who had buttons on and who did not. Susan Moore testified that Fly came to her and said that she had not gone upstairs and gotten her button. Moore responded that she didn't wear buttons and asked if Moore had ever seen her wear one. Fly admitted that the employees were allowed to go up to the cafeteria to get the "Just Say No! To Unions" buttons while they were on the clock but claims she did not see how many left to get buttons.

Clock Foreman Theresa Douglas held a meeting with employees in the cafeteria in October or November. Production Manager Simpson was present. In response to a question about the Union, Douglas said that every place she had worked that had a union had closed and she admitted that she told them that the plants she worked closed because the Union came in. When a question was asked if Lomason, the president of the Respondent, had said that the plant would close if the Union got in, Simpson replied that Lomason had not said that.

Supervisor Alma Kyle of "A Body" had a meeting of five of her employees on November 6. She discussed the Union and spoke about the Jefferson City plant being unionized and said the "L Body" was going to close down because the Jefferson plant did not want to take another union contract. In response to a question about the reason the plant was closing down, Kyle said "yes, that a company could do that if they didn't want to take another contract they didn't have to" and added that the difference between Jefferson City and Respondent was that Jefferson City was union organized.

Kathy Jo Callis was a sewing machine operator and "bundle girl" on the second shift. In late October 1989, Callis was approached by Second-Shift Plant Superintendent Terry Branscum who asked if she was for the Union. When she said no, he asked her if she would attend the union meetings because they needed someone in there to see what was going on. Branscum also told Callis not to mention this to anyone, even other supervisors. Callis did nothing at that time as she thereafter was laid off for a production slowdown. On December 12, Callis got a phone call at home from Branscum. He told her that he wanted her to come in to work the next

day and to then leave and go to a union meeting at 7 p.m. She agreed and went to the plant the next day. She went to Plant Manager Ramsey's office and told him that Branscum had told her to come to work on December 14 and to leave work at 7 p.m. to attend the union meeting but that she didn't think it was fair that she had to clock in and go to work and mess up her unemployment, if all they wanted her to do was to go to a union meeting. Ramsey agreed that all they wanted her to do was to go to the union meeting and that there was no need for her to clock in. She went to the meeting, returned to the plant around 9 p.m. and met Branscum in his office. He asked what went on at the meeting and she told him there was nothing to worry about and identified two people she recognized at the meeting. Branscum stopped her and phoned Ramsey and told him the two names. Callis told him that most of the people at the meeting were from another industry also located in Milan. Branscum called Ramsey again and told him he might want to call that company and let them know there were a lot of people there supporting the Union.

Branscum then attempted to pursue a personal relationship with Callis. She rebuffed his advances and thereafter he gave her \$5 for gas money. Callis was recalled from layoff in January 1990 and in late February, Branscum called her aside and told her that he wanted her to attend a union meeting and to leave at 7 p.m. He said it was going to be a big one and he wanted her there to see what was going on. She agreed to go and then told her Line Supervisor Georgia Bell that she was not going to clock out, explaining that they wanted her to spy on another union meeting and that they were still going to pay her. Bell said she did not know what to do with Callis' time but came back and said she had found out from Production Manager Gerald Keele how to carry Callis' time indirect, that he was going to need her in the warehouse.

Callis attended the meeting and returned between 9 and 9:30 p.m., when she met with Production Manager Keele. She told him that she didn't think she should take her union button off because the place needed a union. Keele asked her why and she made a revelation of her involvement in sexual relationships with Second-Shift Plant Manager Branscum and Day-Shift Plant Manager Ramsey. Keele called Branscum to his office and matters pertaining to job-related sexual harassment by Managers Branscum and Ramsey were discussed. Branscum asked to speak privately with her and apologized for all that had happened and said he was sorry he has asked her to spy on union meetings.

The sexual harassment matter is the subject of a pending suit before the EEOC. Branscum's testimony confirms certain aspects of the facts noted above but asserts that Callis approached him and volunteered to go to the union meeting and that she was upset because she had been bumped for seniority reasons to a job assignment that paid \$.30 less an hour. He deny they talked about any accusation of sexual harassment.

Marion Bledsoe was an employee between February 1989 and April 30, 1990, when he was terminated, allegedly for fighting on company property on April 27. As pertinent, Bledsoe worked with 16 other employees on or adjacent to the foam line on the second shift under Supervisor Rodney Blackburn. Shortly after being hired he had surgery on his

arm after suffering an on-the-job injury. As a result of that injury he wore a brace on his left arm while he worked.

Bledsoe was actively involved in the union organizing campaign. He made house calls, handed out union materials at work on breaks, and wore union shirts and buttons every day during the campaign. On one occasion Manager Ramsey spoke with him about a union meeting and Bledsoe said he had attended and signed a card. Except for one other employee, Donna Birdwell, none of the other second-shift foam line employees were union supporters.

During April Bledsoe's job on the automatic foam line entailed spraying wax on the molds used to form the foam seat pads and to place a 42-inch metal rod into certain types of molds.

Bledsoe described a series of three incident which occurred during the last week of April, prior to his discharge. On Monday, April 23, he said he was the apparent target of a thrown squeeze bottle of cleaning alcohol (used by the foam technician) which hit another employee after Bledsoe saw it coming. He accused foam technician Robert Dale White of throwing it, however, no one else acknowledges that any such incident occurred, including Gary Whitwell, the person allegedly hit.

On April 24, Bledsoe alleges that another foam line employee approached him and pulled what appeared to be a knife, threatened to cut him, and then walk away. Bledsoe also said he turned and saw Managers Branscum and Keele and Supervisor Blackburn at the end of the line laughing and apparently looking in his direction. Bledsoe said that he made a complaint to Blackburn, who smiled and said he would look into it but made no further response. The alleged assailant denies any such occurrence and Blackburn denies that Bledsoe ever complaint to him about these incidents.

The next incident occurred on Wednesday when some substance suddenly went into the fan at Bledsoe's work station, causing a significant cloud of dust that got into his eyes and caused a burning eye irritation which required him to leave the line and to subsequently obtain first aid treatment that day and medical attention at a hospital the following day. Bledsoe accuses White of throwing a chemical dust into the fan and reported it to Blackburn. Blackburn spoke with White after which White angrily accosted Bledsoe. After initially declining Blackburn's suggestion that the incident be reported as an accident, Bledsoe signed a blank report form on Thursday for office personnel and he then was taken to the hospital. On his return he was told to go home, that his time would be carried and that Blackburn would punch out for him. White and several other employees confirmed that the dust incident occurred, but White denied that he caused it or that he had any discussion about it with Bledsoe and asserted that he didn't see it start as he had gone to the bathroom.

Bledsoe testified that on Friday, April 27, White called him a "cry baby" and some other things and then said that "someone was going to get their ass whipped tonight." After supper break some one else on the line made a similar comment. Then, during the course of the evening, a number of verbal exchanges occurred between Bledsoe and Virgil Kimmons and, as recalled by Ronnie Jones, the tenor of exchange became increasingly hostile and Kimmons told Bledsoe that he'd better shut up, he wasn't playing.

Kimmons, who was hanging wire on the foam line about 10:30, shouted to Bledsoe from the end of the line that he had left two sticks out of the molds and said that if he left another stick out, he would "kick his ass." In fact, he said, "I'll do it right now." Kimmons left his work station and ran down toward Bledsoe and brushed past Jones, who was between then on the line, came to the area of Bledsoe's work station and began throwing punches. Bledsoe backed up and raised his arms (his brace was on one arm) and a leg in an attempt to ward off Kimmons. Kimmons grabbed Bledsoe's foot and flipped him backwards into a worktable. Employee P. J. Gonzales then grabbed Kimmons and restrained him. When Bledsoe got up he looked around and he saw people laughing and saw Blackburn, Branscum, and Keele watching. Branscum called Bledsoe to his office and asked Bledsoe what happened. Bledsoe replied he didn't need to be told he'd already seen what happened. Branscum told Bledsoe to sit down and to shut his mouth and not to talk unless talked to and said that Blackburn and Keele would take everybody else into another office and get statements from them on what happened. No statement was taken from Bledsoe but he told Branscum he was not fighting and that he was assaulted at his work station while he was doing his job.

About 11 p.m., Bledsoe was told he was suspended and to report to Ramsey's office at 3:30 p.m., on Monday. When Bledsoe told Branscum that he had an arm injury Branscum said it was just a scratch to go on home. When Bledsoe got home, his arm was bleeding from a cut and his elbow was swollen. He called the plant and spoke with Manager Keele and received approval to go to a nearby hospital.

On Monday, April 30, 1990, Bledsoe met with Ramsey, Branscum, and JoAnne Warmath in Ramsey's office. Bledsoe asked where were the people that had done this to him. Ramsey said he was not concerned with them as he was only concerned with Bledsoe and told Bledsoe he was terminated for fighting. Personnel Manager Warmath testified that they keep Bledsoe waiting about 20 minutes because they were waiting for Kimmons (who did not show up but who was terminated 2 days later by certified mail), and that Ramsey told Bledsoe they had gotten statements and determined that both employees were fighting and were to be terminated. She also said that Bledsoe then mentioned chemical dust in his eye and asked what would be done about that and Ramsey said he wasn't really concerned about that right now. Branscum's recollection of how this meeting occurred was essentially the same as Warmath except that he recalled Bledsoe also mentioned the alcohol bottle incident. Neither one mentioned anything about Ramsey asking to hear Bledsoe's side of the story, an assertion made in Ramsey's own testimony about the termination.

After Ramsey said he was terminated for fighting Bledsoe protested that he was not fighting, he was in his work area when it happened, that he was assaulted, and that he was the only one hurt. Ramsey said the meeting was over and "you're fired." Ramsey told Warmath to get Bledsoe's time-card and I.D. badge. As Bledsoe was walking out, Ramsey assertedly made an aside that he could take his union shirt and union button and maybe they would trade them for a cup of coffee at Shoney's.

That evening, Bledsoe, who is a former Marine, went to the Am-Vet Club in Trenton, Tennessee, where he saw Supervisor Rodney Blackburn along with employees Alan

Baumgardner, Kenny Lee, and Virgil Kimmons approach the club. They were not veterans or members and were denied entrance to the club by the bartender. They then proceeded to vandalize Bledsoe's truck which was parked outside near the entrance. They thereafter were arrested by a sheriff's deputy and charged with the vandalism. Prior to the time of the hearing, Kimmons, Blackburn, and Lee all pled guilty to the vandalism and were sentenced to an 11-month, 29-day sentence (suspended) and ordered to pay restitution in the amount of \$750 for the damage done to the truck. At the time of the hearing, the charge against Baumgardner was still pending. None of these employees were disciplined by Respondent for anything connected with the vandalism of Bledsoe's truck.

III. DISCUSSION

The issues in this case arose from events which occurred contemporaneously with a union organizational drive at Respondent's facility and concluded with the discharge of 1 employee who was the single union activist among 16 employees on the second-shift foam line.

A. *The Termination of Marion Bledsoe*

In a discharge case, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employee's union or other protected concerted activity was a motivating factor in the employer's decision to terminate the employee. Here, the record shows that Bledsoe was a known union supporter and, except for one other person who had shown some sympathy for the Union, was the only person on his production line shift who actively promoted and spoke out for the Union. As otherwise discussed here, the Company's plant manager gave a prepared speech which clearly demonstrated that the Respondent was strongly against the Union and equated the organizational drive with the prior situation when Respondent closed its plant in Saint Louis and moved to Milan because of "Union interference." During the course of the Union's organizational attempt other company supervisors engaged in threats of plant closure and several other acts of interference with employees' rights as further discussed below.

Under these circumstances, the record contains sufficient and suitable evidence to persuasively support an inference of antiunion animus, and I find that the General Counsel has met his initial burden and made a prima facie showing that the employee's union activities were a motivating factor in Respondent's subsequent decision to terminate the alleged discriminatee. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), see *NLRB v. Transportation Management Corp.*, 462 U.S. 265 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Respondent's defense is based on its contention that Bledsoe's termination was justified in accordance with its rules against fighting and that he was discharged for legitimate, nondiscriminatory reasons.

The Respondent attacks the reliability of Bledsoe's testimony and contends that it is patently incredible, especially

as it relates to his descriptions of the several incidents which occurred prior to the alleged "fight" on April 27.

My evaluation of Bledsoe's demeanor indicates that he displays annoying personality traits and a somewhat single mindedness in his opinions and recall of events such that he apparently tends to extrapolate information and to interpret and describe more than what actually occurred. This, however, does not make the heart of his testimony incredible. The testimony of the other employees on the foam line during the week of April 23 generally discounted the seriousness of the several incidents that Bledsoe said had occurred and Dale White essentially denies his involvement in any of them. Supervisor Blackburn also denies that any complaints were made to him about the first two incidents involving the bottle of cleaning alcohol and the verbal threat that he would be "cut." Superintendent Branscum, however, did recall that Bledsoe spoke about the bottle complaint the day he was terminated, within 1 week of the alleged occurrence and Personnel Manager Warmath also recalled that Bledsoe brought up the "dust" complaint at the same time.

Several of the line employees confirm the "dust" incident as well as details of the "fight" incident but, as noted, they deny any knowledge of the cause or involvement in the "dust" matter. The so called "dust" incident did occur and it was clearly a singular and unusual occurrence. I find that it could not have been caused accidentally in the normal course of operation as suggested by Respondent. Supervisor Blackburn insistently treated the matter as an accident and no meaningful investigation of the matter was made even after it became apparent that a relatively serious eye irritation had resulted that was chargeable to Respondent's work environment, and I infer that Blackburn was attempting to cover up an incident of harassment and job related injury that should be chargeable to his responsibility. In the light of subsequent events, the "incredible" aspects of Bledsoe's testimony fall into place and become more credible and plausible and, for these reasons, I further conclude that Bledsoe was the target of harassment by other employees in the bottle and dust incidents, and I do not find Blackburn's and White's denial credible under the circumstances. I also specifically find that threatening comment were made to Bledsoe to the effect that some one would get him.

These matter did not cumulate with the "fight" incident but continued even after Bledsoe was terminated when Supervisor Blackburn, in the company of two other employees and Kimmons, the other participant in the fight incident, followed Bledsoe and vandalized his vehicle. When this action occurred on Monday evening, April 30, Kimmons was still an employee and he was not sent a termination notice until Wednesday. As noted, Blackburn, Kimmons, and one other employee were arrested, entered guilty pleas, and were given suspended jail sentences and ordered to pay \$750 in restitution. All those involved, except Kimmons, returned to work for Respondent and were never subjected to any disciplinary action in relation to the incident.

Here, I find that Blackburn's position as a supervisor, his repeated connection to all the harassment incident testified to by Bledsoe, his admission of guilt and sentence in state court, and his association with other employees including Kimmons, the "fight" participant and alleged assailant, all support an inference that he untruthfully denied the basic assertions made by Bledsoe. In light of all these factors, it be-

comes probable that Bledsoe's basic testimony is not incredible but, in fact, is highly likely and lead to a plausible inference that Blackburn both conspired with other employees and condoned their harassment of Bledsoe. The record otherwise shows that, in turn, other of Respondent's supervisors condoned or endorsed this harassment. Under these circumstances, I credit Bledsoe's testimony regarding the underlying facts concerning his harassment and discharge over the testimonies of the other witnesses, testimony which I find is essentially self-serving and in furtherance of an effort to conceal their participation in the conspiracy against Bledsoe.

As the credible evidence shows, Bledsoe was subjected to verbal and physical harassment during the week of April 23 and it continued on Friday with further verbal threats suggesting what was to come. Bledsoe responded to this apparent provocation with his own verbal retorts. Regardless of the nature or wisdom of his actions, there is nothing in the record to suggest that he was responsible for causing a fight or that he participated in a fight. A few of the line employees testified that both Kimmons and Bledsoe were swinging, however, the general tenor of the collective testimony is that Kimmons left his work station, went 15 to 20 feet brushing past Jones and began attacking Bledsoe and that Bledsoe's movements were defensive in nature. Finally, as stated by line employee P. J. Gonzales (who was significantly larger than either Bledsoe or Kimmons), he saw Bledsoe going down on the concrete floor with Kimmons "going on top of" and toward Bledsoe when he intervened and grabbed Kimmons to break it up.

Respondent's investigation of the matter and the basis for Bledsoe's termination is based on statements taken by management from several employees. The statements by these six line employees show that Kimmons went to Bledsoe's station and was the aggressor. One also said "they started passing licks" and one "they pushed each other around." Three statements said nothing about any aggression by Bledsoe and even Alan Baumgardner (who subsequently was involved with and arrested with Kimmons and Blackburn in the vandalism to Bledsoe's vehicle but who was not called to testify) wrote "Bledsoe struck his foot up. I was pulling seats and couldn't tell whether he was trying to kick him or push him away. Then they fell off cat walk some kind of way."

The tenor of the statements and Bledsoe's abbreviated assertion to management in his own defense strongly suggest that Bledsoe was the victim of an assault by aggressor Kimmons. Respondent, however, hastily discounted any defense and immediately took the strongest possible action against the less culpable person involved. Even after it became aware of the subsequent off duty actions against Bledsoe by Supervisor Blackburn, witness Baumgardner, Kimmons, and another employee, it did nothing to reevaluate its decision and I infer that each action was motivated by its antipathy toward Bledsoe because of his prounion sympathies.

The circumstances strongly indicate that the so-called "fight," as well as the harassment that preceded it, was "set up" by the production line nonunion employees. This "set up," if not participated in by Supervisor Blackburn, was at least condoned by him, and thereafter condoned and endorsed by successively higher levels of management. The Respondent immediately seized on the incident as an opportunity to rid itself of a prounion agitator. It fired Bledsoe

after making a hasty and perfunctory investigation that disregard any exculpatory matter and it took strict disciplinary action that was inconsistently followed by its complete avoidance of any disciplinary investigation or action regarding the criminal activity against Bledsoe by Supervisor Blackburn and other employees shortly after his discharge.

Here, I find that Bledsoe was unjustifiably subjected to harsh and disparate discipline for pretextual reasons motivated by a discriminatory intent based on his union sympathies. I conclude that Respondent has failed to show that Bledsoe was terminated for valid business reasons, and I find that the General Counsel otherwise has met his overall burden of proof. Accordingly, I further conclude that Respondent's discharge of employee Bledsoe is shown to have violated Section 8(a)(1) and (3) of the Act, as alleged.

B. Alleged Plant Closure Threats

As noted above, the termination incident was preceded by a number of alleged actions by management that are indicative of interferences with employees' rights during the course of a union organizational campaign. The occurrence of several actions by management is unrefuted. Specifically, on October 17, Plant Manager James Ramsey gave a speech in which he stated:

A union is not in the best interest of either the Company or its employees. It will stand between us, sow seeds of mistrust between employees and their supervisors and interfere with our ability to efficiently and effectively operate this plant.

In fact, the only reason any of you have a job here today is because of union interference. This operation was originally started in 1973 in St. Louis. That is a strong union town, and shortly after the plant opened the Teamsters got in. The union was disruptive and continually interfered with the ability of that plant to operate effectively. Just three years after the plant was opened, the company determined that it could not operate effectively in that environment, closed the plant and moved the operation here where you now work. The Company to this day believes that if it had not been for union interference, the plant would have been successful in St. Louis and would still be there.

These are the types of risks you run when a union comes in.

I find this speech constitutes a threat to close the plant if the Union comes in, and that it clearly interferes with, restrains, and coerces employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act, as alleged.

Foreman Douglas, in the presence of the production manager, told employees that every place she had worked closed because a union came in. Supervisor Fly told employees that a customer's plant had closed because of friction between the company and a union, and Supervisor Kyle told her employees the same story and said that the company could close down because it didn't want to take a union contract. Supervisor Elliot told employees a customer's plant was going out of business because a union had been voted in. He also told them that the reason the Respondent had opened in Tennessee was because the Saint Louis plant had voted in the

Union and the company therefore closed, and that if the Milan plant voted union the work would be shipped to Mexico.

Here, the plant manager's speech included a threat that the company would react the same way it did in Saint Louis when the plant closed after the Union came in and this same theme was repeated by several other supervisors in both private and group conversations. It is well established that an employer may not threaten to close a plant or terminate employees because of union activities, *Penn Color, Inc.*, 261 NLRB 395, 405 (1982). This threat was the clear message understood by the employees in each of these instances and, under these circumstances, I find that each of Respondent's supervisor's actions have infringed on the employee's Section 7 rights and, accordingly, I conclude that Respondent violated Section 8(a)(1) of the Act, as alleged.

C. Other Alleged 8(a)(1) Violations

During the same period of time when the threats of plant closure were made by various supervisors, some of these same persons, as well as other supervisors, allegedly engaged in other practices which they deny in whole or in part and, accordingly, the decision on the validity of these allegations must be based on an evaluation of the credibility of the witnesses' conflicting testimony.

Here, I find that the individual and collective testimony of the employee witnesses generally should be credited over the denials or conflicting recollections of Respondent's supervisors. As noted above, the occurrences of threat of plant closure essentially stand unrefuted and they indicate the prevalence of a climate which is highly compatible and consistent with the nature of the other allegations discussed below. Specifically, the testimony by employee Callis regarding several requests that she attend union meetings to see what was going on. Respondent admit that Callis attended a union meeting on company time but asserts that she did so voluntarily and that there was no violation of the Act, citing *Senco Mfg. Corp.*, 141 NLRB 1306, 1308-1309 (1963). The latter case however, supports the General Counsel position as it goes on to state that the giving of payment for time spent at the meeting is an element that violates the Act. More in keeping with Board law is the precept that even if a person volunteers, a company's acquiescence to such a proposal is an act of encouragement that violates the Act, *Murray Envelope Corp. of Mississippi*, 130 NLRB 1574, 1576-1577 (1961), and the addition of an inducement or a payment also is a violation *Cello-Tak Co.*, 143 NLRB 295, 295-296 (1963).

Here, I also credit Callis' testimony that she specifically was asked by Second-Shift Plant Superintendent Branscum to attend several union meetings, and I do not credit Branscum's testimony that she volunteered to do so nor his testimony denying a personal relationship with Callis. Callis' testimony tends to be corroborated in part by Glynda Williams, a currently employed inspector at the company who testified that one evening in November she observed Callis leaving the production office (an office open only to supervisors with keys). Callis "didn't look right," she looked "upset" and when Williams asked her to come here, Callis answered she couldn't and said, "I can't walk." Two or three minutes later, after Callis went back toward her department, Williams saw Branscum come out of the same office.

Branscum himself testified that he called Callis from the production line stating:

A. I don't remember the date, but there was one afternoon that we heard that they were having a union meeting. I went out on the floor and asked Ms. Callis to step out of the cell, and asked her did she know they was going to have a union meeting that night, and she said, yes, that she did, but she didn't plan on going, because she had been laid off and couldn't afford it, but if I could figure out a way to keep her from losing any time, that she would like to go.

Q. And what did you do?

A. I called Mr. Ramsey and advised him of the situation and we decided since she had been going and wanted to go of her own free will, that we'd let her go.

Q. To the union meeting?

A. Yes, sir.

Q. And was she clocked in when she went to the union meeting?

A. Yes, she was.

Q. And after she came back from the union meeting, did she come back to work?

A. Yes.

Q. What did she do when she came back to work?

A. Gerald Keele paged me and said that Ms. Callis would like to speak with me, and I went up to the office, and talked with her.

It is clear that Branscum's relationship with Callis was more than just that of plant superintendent and line employee. Branscum was senior to Line Supervisor Bell and Production Manager Keele (who both were mentioned in Callis' testimony), neither of whom was called to corroborate Branscum's testimony and Ramsey, who also was involved, did not refute the testimony about Callis going to union meetings to spy for the Respondent, although he did deny he had any personal relationship with her. Although the Respondent asserts that the fact that Callis (who is no longer employed by the Respondent) filed charges of sexual harassment and discrimination with the EEOC should serve to discredit her testimony, the two proceedings are mutually independent of one another and I otherwise find that Callis' apparent candor in this proceeding under trying and embarrassing conditions reflects affirmatively on her credibility.

Accordingly, I credit Callis' description of the several occasions when she was asked to attend union meetings and engage in surveillance of other employees' union activities and I therefore find that Respondent engaged in unlawful surveillance as well as solicitation of an employee to undertake surveillance, both in violation of Section 8(a)(1) of the Act, as alleged.

I credit the testimony of employee Howard regarding her conversations with Supervisor Elliot. Elliot agreed that he had several conversations with her and agreed with the general nature of their talks, however, he denied any specific illegal conduct. Employees Aeshbacher and Dorsett also corroborated Howard's testimony regarding statements by Elliot which related to threatened plant closure and I therefore find Howard's testimony to be more trustworthy than that of Elliot, and conclude that Elliot made the statement which implicitly threatened employees that the plant would close if the Union came in and that employees who supported the

Union would be fired. I also find that he told her she should wear a "Vote No," antiunion button if she wanted a job and that he asked her to identify any persons who distributed union literature, all actions which infringes on employees' Section 7 rights and which violate Section 8(a)(1) of the Act, as alleged.

The allegations by employee Mosby that Manager Ramsey interrogated her about who attended union meetings is denied by Ramsey. Mosby once asked her supervisor's permission to see Ramsey, saying she needed to correct some statements she had told him and otherwise her demeanor indicated that she displayed a changeable and inconsistent nature and attempted to manipulated her relationship with Ramsey. Ramsey's assertions that Mosby in fact volunteered information about the Union is equally as persuasive as the questionable testimony by Mosby and, under these circumstances, I cannot find that the General Counsel has shown a violation of the Act in this respect as alleged in paragraph 8(a) and (d) of the complaint.

Finally, the record shows that Sewing Line Supervisor Fly announced the availability of "Just Say No To Unions" buttons and Fly admitted she allowed employees to go and get them while still on the clock. I credit employee Moore's testimony that Fly checked to see if she had gotten a button over Fly's self-serving claim that she didn't bother to see who got buttons, especially because she asserted that "some" ran past her in their eagerness to get a button and, as was able to name five specific persons who did so, I find that Fly did engage in surveillance designed to determine the union or antiunion sympathies of employees, an action which violates Section 8(a)(1) of the Act, as alleged. Otherwise, for the reasons noted above, I am not persuaded by credible testimony that Fly engaged in any violative interrogation of employees (including Mosby, who again may have volunteered information), and I therefore find no additional violations of the Act in this respect as alleged in paragraph 9(b) and (d) of the complaint.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening that its Milan facility would close if the Union came in, by threatening that an employee should wear a vote no button if she wanted a job, by interrogating employees concerning their union sympathies and activities and those of other employees, by creating the impression that union activities are under surveillance, and by soliciting an employee to attend union meetings and to obtain information for management, during the course of a union campaign, Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By discharging employee Marion Bledsoe on April 30, 1990, Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

5. The Respondent otherwise is not shown to have engaged in conduct violative of the Act as alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate Marion Bledsoe to his former job or a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered because of the discrimination practiced against him by payment to him a sum of money equal to that which he normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),² and that Respondent expunge from its files any reference to his discharge and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel action against him.

Otherwise, it is not considered to be necessary that a broad order be issued.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Douglas & Lomason Company, Milan, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act by interrogating any employee about union support or union activities, by threatening plant closure, by threatening employees with loss of their job if they didn't wear antiunion buttons, by soliciting an employee to obtain information for it about union meetings, and by creating the impression that union activities are under surveillance.

(b) Discharging any employee for engaging in activities protected by Section 7 of the Act.

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

(a) Offer Marion Bledsoe immediate and full reinstatement and make him whole for any losses he incurred as a result of the discrimination against him in the manner specified in the remedy section and expunge from its files any reference to his discharge and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against him.

(b) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to ana-

lyze the amount of backpay due under the terms of this Order.

(c) Post at its Milan, Tennessee facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional director for Region 26, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately on 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 to ensure that said notices are not altered, defaced, or covered by any other material.

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

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

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 interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act by interrogating any employee about union support or union activities, by threatening plant closure, by threatening loss of employment for not wearing antiunion buttons, by soliciting employees to obtain information for us about union meetings, or by create the impression that union activities are under surveillance.

WE WILL NOT discharge any employee for engaging in activities protected by Section 7 of the Act.

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.

WE WILL offer Marion Bledsoe immediate and full reinstatement and make him whole for any losses he incurred as a result of the discrimination against him in the manner specified in the remedy section of the administrative law judge's decision.

²Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

³If 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.

WE WILL expunge from our files any reference to Marion Bledsoe's unlawful discharge and notify him in writing that this has been done and that evidence of the unlawful dis-

charge will not be used as a basis for future personnel actions against him.

DOUGLAS & LOMASON COMPANY