

Sunbelt Manufacturing, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO. Cases 15-CA-11527 and 15-CA-11572

September 11, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On April 7, 1992, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.¹

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,² and conclusions³ 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, Sunbelt Manufacturing, Inc., Monroe, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

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

We correct the judge's typographical error concerning the election results. The parties stipulated that the tally of ballots shows 63 for the Petitioner, 128 against the Petitioner, with 29 nondeterminative challenged ballots.

³ In adopting the judge's finding that the Respondent's videotaping of employee handbilling activity at the front gate violated Sec. 8(a)(1) of the Act, we find it unnecessary to rely on his finding that the Respondent's conduct "necessarily tends to interfere with, restrain or coerce employees in the exercise of Section 7 rights." It is a reasonable tendency under the circumstances which governs the inquiry in each case. Here, the Respondent's videotaping, at the culmination of the election campaign, during which we have found that the Respondent unlawfully expressed antiunion animus by threatening to close the plant and reduce wages and unlawfully discharged a known union adherent, specifically revealed whether certain employees accepted or rejected campaign literature. In these circumstances, even though some employees actively sought publicity as a memento, this purpose had not been explained to other employees, and we find that the Respondent's videotaping *reasonably* tended to interfere with, restrain, and coerce employees in the exercise of Sec. 7 rights.

Ronald K. Hooks and Dwana King, Esqs., for the General Counsel.

James B. Irwin and Lawrence G. Pugh III, Esqs. (Montgomery, Barnett, Brown, Read, Hammond & Mintz), of New Orleans, Louisiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. I heard these cases in trial in Monroe, Louisiana, on January 27, 28, and 29, 1992 (all dates below are in 1991 unless I indicate otherwise). The cases arose when Amalgamated Clothing and Textile Workers Union (the Union) filed charges against Sunbelt Manufacturing, Inc. (the Company), on May 10, in Case 15-CA-11527, and on July 5, in Case 15-CA-11572. After investigating the charges, the Regional Director for Region 15 of the National Labor Relations Board (the Board) issued an order consolidating cases, consolidated complaint and notice of hearing (the complaint) on August 30. The complaint, as amended at trial, alleges the Company discharged its employee Lamont Holmes (Holmes) on April 23, because of his union activities, thereby violating Section 8(a)(3) and (1) of the National Labor Relations Act (the Act), and that on specified dates in April and May, specifically named company supervisors/agents threatened employees with reduction in wages, plant closure, relocation of the plant, and loss of benefits if the employees selected the Union as their collective-bargaining representative. It is also alleged the Company engaged in surveillance of its employees' union activities. All of the above is alleged to have tended to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act thereby violating Section 8(a)(1) of the Act.

The Company admits its operations are in and affect commerce, that the Board's jurisdiction is properly invoked, and that the Union is a labor organization within the meaning of the Act. The Company denies all alleged wrongdoing and asserts Holmes was discharged for insubordination—calling his immediate supervisor a "goddamn liar"—in accordance with past practice.

All parties were afforded an opportunity to call, examine, and cross-examine witnesses, and to present relevant evidence. I have considered the entire record including briefs filed by counsel for the General Counsel and counsel for the Company. I carefully observed the demeanor of the witnesses as they testified. Based on the above, and more particularly on the findings and reasonings set forth below, I will find the Company violated the Act when it discharged Holmes and when it, through Supervisor James Williams (Supervisor Williams), threatened employees with a reduction in wages and that the plant would close if the employees selected the Union as their collective-bargaining representative. I will also find the Company violated the Act when it, through Supervisor Paul Perkins (Supervisor Perkins), videotaped certain of its employees' union activities. I will conclude Company President David Cattar (President Cattar) did not violate the Act in any manner alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION

The Company is a Louisiana corporation with an office and place of business in Monroe, Louisiana, where it is engaged in the manufacture of plastic products. During the 12-month period ending May 31, which is a representative period, the Company, in the course and conduct of its business operations, sold and shipped from its Monroe, Louisiana facility products, goods, and materials valued in excess of \$50,000 directly to customers located outside the State of Louisiana. It is alleged in the complaint, the parties admit, the evidence establishes, and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION STATUS

It is alleged in the complaint, the parties admit, the evidence establishes, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. A BRIEF OVERVIEW

The Union commenced an organizing campaign at the Company in the early spring and filed a representation petition in Case 15-RC-7603 on April 1. An election was conducted by, and under the supervision of, the Board among the production and maintenance employees at the Company on May 16 and 17. The results of the election were that 63 employees voted for the Petitioner (the Union), 28 employees voted against the Petitioner (the Union), and the ballots of 29 employees were challenged. A certification of election results was issued by Region 15 of the Board on May 28. The unfair labor practice allegations arose during and grew out of the organizing campaign.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

In attempting to establish or defend against the claims set forth in the complaint, the parties called some 12 witnesses and presented numerous documents. The testimony and responses thereto are set forth below with the allegations related to Supervisor Williams and the discharge of employee Holmes addressed first and then the allegations related to Supervisor Perkins and President Cattar are addressed.

A. Allegations of Section 8(a)(1) Coercion Attributed to Supervisor Williams

The allegations involving Supervisor Williams are described at paragraphs 7(a) and (b) of the complaint. In these subparagraphs, it is alleged that on or about April 11, the Company, acting through Williams, threatened employees with a reduction in their wages and with plant closure if they selected the Union as their bargaining representative.

1. The facts

I have intertwined with the evidence on these allegations Holmes' work history and certain of his union activities as well as the Company's reactions thereto.

Holmes, a 6-year employee, worked as a machine operator on lines 11 and 12 under the direct supervisor of B shift lead operator, Supervisor Williams. Holmes worked for Williams

for approximately 2-1/2 to 3 years before he was suspended on April 23, and subsequently discharged on April 27. Holmes first became involved with the Union in March after a union organizer visited him at his home. Holmes signed a union card and thereafter attended union meetings that were held at a local motel. Holmes solicited several employees to sign cards for the Union and estimated approximately five did so at his request. Holmes stated he "mostly" approached employees between workshifts about signing union cards; however, he said he asked one or two employees to sign cards at their workstations while they were working.

Holmes testified that "around" the first week in April, management asked him about his solicitation efforts for the Union. Holmes explained that Shift B Supervisor Randy Adams (Supervisor Adams) came to line 11 and asked him to report to the training room. Holmes said he accompanied Supervisor Adams to the training room where Company Vice President Bryan Caldwell (Vice President Caldwell) and Plant Manager Russell McMullen (Plant Manager McMullen) already were. According to Holmes, Vice President Caldwell "asked me was I going around the plant passing out union cards." Holmes denied doing so and testified "[Caldwell] told me that they was aware of me passing out union cards, but since I said I wasn't, that if I was he wanted me to stop because it was unlawful for me to do that during working hours." Holmes again told Caldwell he "wasn't passing out no union cards" that he "didn't know nothing about it." That ended the meeting.

Vice President Caldwell testified Supervisor Adams told him in April that an employee was soliciting for the Union at work during working time. Caldwell said he verified Adams' report with Supervisor Williams and then instructed that employee Holmes be brought to the training room for a meeting. Caldwell said he asked Holmes if he knew what he was doing was in violation of the Company's no-solicitation rule set forth in the Company's handbook. Caldwell said he wanted to ensure Holmes understood so he read the portion of the employee handbook that pertained to solicitation. Caldwell stated he still did not believe Holmes understood what solicitation meant so he told Holmes "[i]t's my understanding that you were up and down the shop floor distributing cards in reference to union activity." According to Caldwell, Holmes denied engaging in any such conduct. Vice President Caldwell testified:

I explained to him that the issue simply was that we could not do that on company time at company work. If he desired to do something like that, it's perfectly all right to do that in the break area if he was on break, or if other people were on break, but he could not do it at any other location in the plant.

Caldwell said Holmes was "incensed" so he explained to him that he should consider their meeting "a verbal warning" and that if he did it again, "there would be a written warning."¹

Holmes testified that starting around April 11, Supervisor Williams had approximately three conversations with him

¹ Supervisor Adams testified but was not questioned about this meeting. Plant Manager McMullen did not testify. Counsel for the General Counsel does not contend that Caldwell's actions on this occasion violated the Act in any manner.

about the Union. Holmes said the first one took place at his machine. Holmes testified:

Oh, we was on graveyard, and [Supervisor Williams] came up to me and he said that the company was going to shut the plant down. He said the company was going to drop wages to four twenty-five an hour if the union got in.

Holmes told Williams, “No, they can’t do that. I don’t believe that.” According to Holmes, Williams responded, “All right, I’m telling you.” Holmes said he did not respond.

Holmes said Supervisor Williams next spoke with him about the Union in front of line 9 where he and fellow employees March Davidson² and Jeff Killebrew were talking about the advantages and disadvantages of the Union. Holmes said Davidson mentioned that his (Davidson’s) father had worked in a “union shop” and wages had been cut and the facility eventually closed. Holmes testified:

And by this time [Supervisor Williams] walked up and he said, ‘You all still don’t believe [President] Cattar is going to drop wages to four twenty-five an hour?’”

According to Holmes, Davidson responded: “He said that he was just trying to tell me that, that you all could do that, he can even shut the plant down.”

Holmes testified Supervisor Williams stated: “[President] Cattar was going to cut the wages to four twenty-five or shut the plant down and move somewhere else.”

Holmes testified Supervisor Williams’ only other comment about President Cattar at the time was “This man has got money.”

Holmes testified Supervisor Williams had a third conversation with him at about this same time. Holmes testified Williams stated, “You still don’t believe the company can drop wages to four twenty-five an hour?” Holmes answered no to which Supervisor Williams responded:

I’ll tell you what, why don’t you bring me something in writing proving that the company can’t drop your wages to four twenty-five an hour.

Holmes laughed and told Williams he would do so. Williams gave Holmes 3 days to come up with something.

On or about April 19, Williams asked Holmes if he had the information that wages could not be reduced. Holmes said he told Williams he could not get the information. Supervisor Williams asked Holmes again the next day (April 20) if he had the requested information. Holmes again told Williams he did not. Holmes said Supervisor Williams asked him again on April 22, if he had the information. Holmes said he was going about his job and did not respond to Williams this time. Holmes testified that later during that same shift, Supervisor Williams came to his (Holmes’) desk and told Holmes he had let him down. Holmes asked how, and Williams said “I thought you was going to bring me that information.” Holmes asked Williams “where am I supposed to get that information from” to which Williams responded, “Your union man.” Holmes responded, “My union man” and Williams said “Let me rephrase that. The union man.”

²Davidson is reflected as Davis at some places in the record.

Holmes told Williams he didn’t know any union man but that what he was saying—that wages could not be reduced—was just “common sense.”³ Holmes said that as he left his workdesk Supervisor Williams followed and stated, “I’ll tell you if the union comes in, wages are going to be cut to four twenty-five an hour.” Holmes told Williams he did not believe that. Williams then asked Holmes if he had ever heard of collective bargaining. Holmes told Williams he “had read a little about it in a book that [Supervisor Adams] had let [him] read.” Holmes testified Williams responded that “all [President] Cattar had to do was sit across from the union lawyers and state that he wanted the wages to be four twenty-five.” Holmes testified:

I told him that’s not bargaining. I told him that—when I told him that that’s not bargaining, I told him that that don’t mean we’re going to get four twenty-five. I told him bargaining is going from one point to the next point.

I told him the book that I read in say that you must bargain in good faith.

Holmes testified Williams challenged him to show him “that” in the book. According to Holmes, they went to Supervisor Adams’ office where Supervisor Williams unlocked a file cabinet and “pulled out the National Labor Relationship book that I told him I had read about [the meaning of] . . . bargaining.” Williams gave the book to Holmes. Holmes said he located the part on bargaining and handed the book back to Supervisor Williams. Williams then asked Holmes to underline the part on bargaining. Holmes told Williams he would not, but that Williams could. Holmes testified that at that point employee Culpepper appeared at Supervisor’s Adams’ office and said there was a problem on the line so Holmes left to look into the problem. Holmes described the meeting with Supervisor Williams as one involving “everyday talk” and denied any profanity was used.

Although Supervisor Williams could not recall exactly when he learned of union activity at the Company, he said it was in late March or early April.⁴ Williams’ said his first knowledge of union activity came when he was given a prounion leaflet at the main gate to the plant. After learning of union activity at the plant, he said he handed out various memorandums prepared by and that explained the Company’s position on the Union. Supervisor Williams testified he knew Holmes was for the Union:

Just by the way he presented hisself toward me.

. . . .
Just simply that no matter what literature I brought him to get him to understand how the process went, he was totally against it. He didn’t want to believe none of it.

Supervisor Williams testified he felt it was his responsibility to try and make Holmes better informed on the Company’s position about the Union because “[Holmes] was just naive

³Holmes said three other employees were in the area at the time of this exchange, namely, Glenda Moy, Monica Culpepper, and Carrie Russell.

⁴Williams testified he first learned of union activity about 3 to 5 weeks before Holmes was terminated on April 23.

to the situations that were actually real and what really took place.” Williams estimated he talked to Holmes about the Union four or five times prior to April 19, and that he did so in conjunction with handing out company memorandums on the Union. Williams said he never actually stated what the Company’s position on the Union was prior to President Cattar’s April 19 speech to the employees outlining the Company’s position. Supervisor Williams said that prior to April 19, he and Williams talked about:

Just different things like how unions have shut companies down, little shop talk stuff like that. And about a company like Gaylord Bag had all their employees— When the union moved in there and that guy decided he was going to leave town, then they all said, “Well, we’ll drop the union. Just bring us our jobs back.”

Supervisor Williams said that prior to President Cattar’s speech on April 19, all he knew about collective bargaining was what he had learned from a week-long television special hosted by CBS Evening News Anchor Dan Rather that aired during that same timeframe. He said he tried to get the employees under his supervision to watch Rather’s reports because the reports were “very informative.” Williams described what he learned from Rather’s reports:

Just overall mainly of how many plants and companies are closing down, which is basically all I got off the Dan Rather specials.

Supervisor Williams testified about President Cattar’s April 19, shift-wide meeting with employees.⁵ Williams said Cattar asked two employees to role play as union and company negotiators in order to demonstrate what happens in collective bargaining. Williams said Cattar told the employees the Company would bargain in good faith and did not threaten to lower wages, close the plant, or refuse to bargain. Williams stated President Cattar did say that wages could go up, down, or remain the same.

Supervisor Williams testified that after President Cattar’s April 19, meeting with shift employees, he spoke with Holmes two or three times (on April 20) about the Union and the negotiating process. He said Holmes was the only employee who did not hear Cattar’s speech. Williams said Holmes “was really kind of in the dark as far as the [bargaining] procedure and how it went.” Williams explained that if Holmes “had been there he could have seen how it actually went into effect when people sit down to negotiate like that.” Williams said he explained the bargaining process to Holmes by telling him that both sides sit down together to talk about “whatever,” “negotiate,” and the like. Williams stated Holmes still did not believe his (Williams’) version of how “negotiations” went and continued to state that negotiations started “from where you’re at and go up.” Williams said he tried to explain to Holmes that whatever benefit was being negotiated could result in that particular benefit going up, down, or staying the same. Williams testified he

⁵He said the meeting, which dealt with the union situation and the positions the Company would take with respect to the Union and collective bargaining, was announced in a memorandum distributed to all employees around April 17. Williams said Holmes did not attend the meeting.

also explained to Holmes how President Cattar had described good-faith bargaining. Williams testified:

I told him that [President] Cattar stated that they would bargain in good faith which meant that they would definitely be wherever they set up to have a negotiation at, that they would definitely be there.

Williams denied telling Holmes that President Cattar would cut wages to \$4.25 an hour.

Supervisor Williams testified that during his several meetings with Holmes on April 20, he showed, but did not read, to Holmes a portion of a booklet that described collective bargaining. The portion Williams said he showed Holmes reads as follows:

Collective bargaining is defined in the Act. Section 8(d) requires an employer and the representative of its employees to meet at reasonable times, to confer in good faith about certain matters, and to put into writing any agreement reached if requested by either party. The parties must confer in good faith with respect to wages, hours, and other terms or conditions of employment, the negotiation of an agreement, or any question arising under an agreement.

The obligation does not, however, compel either party to agree to a proposal by the other, nor does it require either party to make a concession to the other.

Williams said he attempted again to explain collective bargaining to Holmes but that Holmes “didn’t agree” that the way he explained was “the way it worked.” Williams said Holmes told him he could get proof that Williams’ explanation was not the way it worked. Williams gave Holmes 3 days to get that proof.

Supervisor Williams recalled that his third meeting with Holmes on April 20, was “mainly to get him to . . . understand what collective bargaining was about.”

Supervisor Williams said he did not speak with Holmes on Sunday, April 21, but that he did so on Monday, April 22. Williams said his first conversation with Holmes that day was simply to tell him President Cattar would be able to see him if he wanted to speak with President Cattar.⁶ Williams said Holmes told him he had all the answers he needed and did not wish to speak with President Cattar. Williams said he next spoke with Holmes that Monday at around 5 p.m. when he gave him a copy of President Cattar’s 1-page campaign letter (dated April 22) addressed to all employees. Williams said he also showed Holmes a copy of the *Bendix* case⁷ and read Holmes the following:

Neither United States Government nor National Labor Relations Board guarantee employees that, if they unionize, the collective-bargaining process starts from “where you presently are in wages, insurance, pensions, profit sharing and all other conditions of employment.”

⁶Williams said it was his understanding Holmes had been seeking an appointment with Cattar. Holmes denied seeking any such appointment.

⁷Williams identified *Bendix Corp. v. NLRB*, 400 F.2d 141 (6th Cir. 1968), as the case he showed Holmes.

Williams said he again spoke with Holmes that day (April 22) "trying to get him to understand what was going on so far as bargaining in good faith and what that actually meant." Williams stated Holmes still insisted bargaining started at where you were and went up. Williams said he kept telling Holmes that benefits could go up, down, or stay the same. Williams said he then asked Holmes "if he had gotten his proof . . . that bargaining in good faith meant that you started where you were at" and that Holmes said he had proof in a book that was in Supervisor Adams' office. Williams said that as they started toward Adams' office, he asked Holmes:

If he really thought we were lying to him about all the information we were trying to give him. And that's when he turned to me and stuck his finger in my face and called me a g—d⁸ liar.

Williams told Holmes he was being insubordinate. Williams stated they were not angry and added "my feelings were a little hurt because I didn't deserve that, just by trying to let him know the truth of what reality was." Williams said they proceeded to Supervisor Adams' office where Holmes showed him something about bargaining in good faith but that what he showed him pertained to a union's obligations not an employer's obligations. He said an employee (either Moy or Culpepper) came to the office and told Holmes they had a problem back on the production line and that Holmes immediately left the office.

Supervisor Williams testified that after Holmes left the office, he underlined the portion Holmes referred to in describing collective bargaining and then telephoned Plant Manager McMullen. Williams said he left the following message on McMullen's voice mail:

That in talking with Lamon Holmes about the collective bargaining and what he showed me in the book was more or less—was about the union position not the employer position, and that before we come in there and talked to that that he called me a g—d liar right there in front of A die on line 12.

2. Credibility resolutions and conclusions

In attempting to resolve the conflicts between Williams' and Holmes' version of their April exchanges, I have set the exchanges forth in far greater detail than would have been necessary if supporting or corroborating testimony had been presented for either or both versions. Both Williams and Holmes were presentable witnesses. Both testified for the greater part in a thoughtful and conscientious manner, however, at various places in their testimony, both witnesses appeared to vary from giving a full, correct, and accurate account of what had taken place. I carefully observed their mannerisms and gesticulations and noted when voices dropped or when they seemed less eager to testify or when they appeared to be less sure of what they were testifying about. From all of the above, I am fully convinced of the following. I am persuaded Supervisor Williams told Holmes on occasions before April 19, the Company would drop wages to \$4.25 an hour if the Union got in or would shut

⁸Williams explained Holmes said "god-damn" rather than just "g—d."

the plant down and move elsewhere. Williams acknowledged that prior to April 19, he learned about unions and the bargaining process through a series of television reports presented by CBS News Anchor Dan Rather. Williams impressed me that he was pleased with what he had learned from Rather about unions and collective bargaining. He explained he tried to have each of the employees under his supervision watch Rather's special series. Williams described Rather's series as "very informative" but stated he mainly learned "how many plants and companies" closed down. From Williams' admissions, and even aside from my demeanor observations, it is reasonable to conclude that Williams told Holmes, as Holmes testified, that the Company could be shut down or moved somewhere else if the Union got in. Williams felt a special responsibility to "make" Holmes, who in his opinion was a "naive" worker, better informed on the effects of unionization and collective bargaining.

Based on the above-credited facts, I find the Company, through Supervisor Williams, on or about April, threatened Holmes that employees' wages would be reduced and the Company would close or move elsewhere if the employees selected the Union as their bargaining representative. Such violates Section 8(a)(1) of the Act and I so find.

Williams continued throughout the organizing campaign and specifically after President Cattar's April 19 speech to have Holmes understand his (Williams') version of what bargaining in good faith meant. I find it unnecessary to determine which, if either, version of the various conversations Williams and Holmes had after Cattar's April 19 speech is correct. It is clear that during that time period, Supervisor Williams continued to try to persuade this "naive" employee to come around to his views on collective bargaining. It is just as clear employee Holmes held fast to his views about collective bargaining. Supervisor Williams even challenged Holmes to prove that his (Holmes') views on collective bargaining were correct. There were various exchanges between the two on April 22, with Holmes finally agreeing to show Supervisor Williams in a publication in Supervisor Adams' office that his understanding of the bargaining process was correct. I am persuaded Williams asked Holmes if he thought he was lying to him and that Holmes responded that Supervisor Williams was a "goddamn" liar. I make this finding even though Holmes denied making any such comment because Holmes' denial was extremely unpersuasive. I need not decide if the emotion of the moment and/or other work-related distractions blurred Holmes' memory or if he just perceived it would be in his best interest to deny calling Williams a "goddamn liar." Simply stated, I am persuaded he made the comments attributed to him. It is undisputed that Supervisor Williams left word on Plant Manager McMullen's voice mail system that Holmes had made such a comment to him. I note Williams said the exchange was not an angry one but rather that his (Williams) feelings "were a little hurt."

B. The Suspension and Discharge of Holmes

1. Allegations

It is alleged at paragraph 10 of the complaint that on or about April 23, the Company terminated Holmes because he joined, supported, or assisted the Union and/or because he

engaged in concerted activities for the purpose of collective bargaining or mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Facts

Holmes testified that on April 23, at around 3 p.m., Supervisor Adams came to his work area and told him Plant Manager McMullen wanted to see him in McMullen's office. Holmes asked what it was all about and Adams told him it pertained to something that happened the day before between him and Supervisor Williams. Holmes told Adams nothing had happened between him and Williams. Holmes testified that when he and Adams arrived at McMullen's office, McMullen and Supervisor Williams were already there. After Holmes sat down, Plant Manager McMullen told him Supervisor Williams had said he called him a "goddamn liar." Holmes said he laughed and started to leave the office because he thought they were joking. McMullen told Holmes "If you go out that door, don't come back. We're serious." Holmes said that when he realized they were serious, he sat back down and told McMullen "Okay. Let me tell you what happened." According to Holmes, McMullen responded saying Williams had reported Holmes had "cussed him out" and that he was going to lay Holmes off for 3 days. Holmes protested and stated he had not told his side of the story. Holmes then told McMullen he had not called Supervisor Williams that. Supervisor Adams testified Holmes told Plant Manager McMullen he did not remember calling Williams a "goddamn liar" but that if he did, he was just "joking." Supervisor Williams testified Holmes said to him "Man, you ought to quit. That was a conversation between you and I and then you run up here behind my back and tell these people." Williams said he and Holmes "bickered back and forth" at the meeting until Plant Manager McMullen told both of them "to shut up, that he was going to take care of this, [that] he was ready to go home."⁹ At the end of the meeting, Holmes was escorted from the plant.

Holmes testified he returned to the plant on Friday, April 26, to pick up his paycheck and while there asked to speak with Plant Manager McMullen. Holmes asked McMullen if he was to return to work on Saturday, April 27, or Sunday, April 28. McMullen told Holmes not to return to work. Holmes reminded McMullen he had only been suspended for 3 days. McMullen told Holmes to remain at home that evening and someone would contact him.

Holmes did not remain at home that evening. However, his mother relayed a message the Company was attempting to reach him. Holmes telephoned the plant and spoke with Supervisor Pete Malta. Malta provided Holmes with Plant Manager McMullen's home telephone number. Holmes called and McMullen instructed him to meet him the next day, April 27, at the plant at 9 a.m.

Holmes met, as requested, with Plant Manager McMullen as well as Supervisor Adams. McMullen told Holmes the Company had reached a decision to terminate him. Holmes immediately left the plant.

On Monday, April 29, Holmes telephoned for an appointment with President Cattar. Cattar met with Holmes on May

1. Holmes explained to Cattar what happened between he and Supervisor Williams. Holmes testified he explained to Cattar:

That Junior [Williams] wanted me to bring him some information in writing proving that the company couldn't drop wages and that Junior [Williams] had told Russell [McMullen] that I called him a god-damn liar, but I didn't.

Cattar asked Holmes why he thought Williams would accuse him of such. Holmes told Cattar it was "simply because I didn't agree with what he had to say." President Cattar called Vice President Danhart to his office and asked him to meet with Holmes. According to Holmes, Danhart arranged to meet with him the next day.

Holmes said he met with Danhart at around 9 a.m. on May 2, at which time Danhart told him the only reason he was meeting with him was that President Cattar had directed him to do so. Holmes related to Danhart the same thing he had told Cattar. Danhart also asked Holmes why he thought Williams would accuse him of such. Holmes gave Danhart the same answer he had given Cattar. Danhart told Holmes he wanted to get with Williams to see why their stories were so totally different. Holmes suggested Danhart immediately bring Williams in so the three of them could "discuss this and get it over with." Danhart declined saying he didn't do things that way and that he would telephone Holmes the next day.

Holmes testified that because he had not heard from Vice President Danhart by the following Monday, he telephone Danhart. Danhart apologized for not calling and said he had talked "to several people" and they had one witness that heard Holmes curse Williams. Holmes disputed Danhart's claim and hung up the telephone. Holmes had no further contact with company officials after that.

Vice President Caldwell testified he made the ultimate decision to terminate Holmes. Caldwell said he learned on April 23 about the incident between Williams and Holmes. He said Plant Manager McMullen either told him personally about the incident or left a message on his voice mail. Caldwell said McMullen wanted to discuss the incident. Caldwell testified that as soon as the various supervisory functions were performed that day, he asked Plant Manager McMullen, Supervisors Adams and Williams to meet with him. Caldwell had Williams tell what had taken place the day before. Caldwell testified:

[Williams] said he had a conversation with Mr. Holmes on the night before, or the day before, which would have been Monday. There were two or three conversations, one about a book, one about collective bargaining.

And somewhere around ten o'clock or so, there was an issue regarding bargaining and that Mr. Holmes put his finger in his chest and he called him a liar.

After that they went to the production office. And shortly thereafter a bubble went down, shift change. That was the end of that night.

⁹Plant Manager McMullen did not testify.

Caldwell stated he specifically understood that the exchange between Holmes and Williams grew out of a discussion related to collective bargaining.

Caldwell said Holmes was at first suspended for 3 days in order to give the Company time to investigate the incident and to see if it could be determined what had really occurred. Caldwell said the Company also needed to see how situations like this one had been handled in the past. Caldwell testified the Company's investigation did not reveal any verification for either Holmes' or Williams' version of their encounter. Caldwell said he did not personally interview Holmes but that with no verification of either story, he accepted his supervisor's version.

Caldwell testified it was discovered that an employee, Jeffrey Brown, had been discharged as a result of an incident involving profanity between Brown and Supervisor Malta.

Caldwell said his decision to terminate Holmes was in no way motivated by any union activity on Holmes' part. He said he would have taken the action he did even in the absence of any union activity on Holmes' part. Caldwell said Holmes was discharged simply for insubordination.

As testified to by Vice President Caldwell, the Company's employee handbook addresses insubordination. The following is reflected starting at page 10 of the employee handbook:

Any violation of these rules may constitute grounds for immediate discharge for the first offense.

. . . .

(3) Disobedience and/or insubordination, including offensive conduct toward a supervisor or refusing to follow instructions given by a supervisor.

Regarding past practice at the Company, Supervisor Malta testified he terminated employee Jeffrey Brown on December 12, 1988. Malta said Brown was terminated "[b]ecause he questioned my authority in front of everybody and cursed me." Malta's written account of the incident follows:

12/8/88

Jeffrey Brown, was told to give breaks on line #2 and he ignore the order and went about doing what he wanted to do, which was labeling boxes on line #4. I had a talk with Jeff before about his attitude on line #5, for not doing what he was told. He assured me that it wouldn't happen again. I went to Jeff while he was on line #4 and asked why he didn't do what he was told. And he wanted to know why everyone was picking on him. I told him that nobody was picking on him and that it was part of his job, and that Karl Washington did the same things that he was told to do, when he worked the floor on lines #1 thru #4. He tried to argue about the job and I told him to go give the break on line #3 or else. He then told me that I was full of shit. And when I asked him what did he say, and he then said that we all were full of shit, meaning me, T. C. Flowers, Toby Cagle, and Tommy Washington. So I told him to go home and that I would let him know later if he would be terminated or not, for disobedience and insubordination to a superior.

Supervisor: Peter D. Malta

On cross-examination, Malta acknowledged that the fact Brown cursed him was not the sole reason for his discharge, that part of the reason was that Brown refused a direct order.

From testimony given at trial by Holmes, the Company learned employee Ronnie Rayford had been discharged for insubordination. Vice President Caldwell testified that after learning about the Rayford situation, he researched the Company's files and discovered Rayford had in fact been discharged for insubordination. The Company's records related to Rayford's termination were received in evidence. The records reflect Rayford was terminated in mid-August 1989 for "offensive conduct toward supervision." Rayford's supervisor, Frank Marcello, wrote on Rayford's termination notice "[Rayford] told me 'I swear on my mother's and father's graves I will fuck you up.'" Vice President Caldwell said he was not involved in Rayford's discharge but that from his review of the records, he would conclude Rayford was terminated for profanity and making a threat to his supervisor.

3. The *Wright Line* test

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), the Board set forth its causation test for cases alleging violations of the Act that turn on employer motive. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. An employer cannot simply present a legitimate reason for its actions but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of protected activity. The classic elements commonly required to make out a prima facie case of union-discriminatory motivation under Section 8(a)(3) of the Act are union activity, employer knowledge, timing, and employer animus.

4. Analysis and conclusions

Examining the instant facts in light of the principles outlined above, I am persuaded counsel for the General Counsel established a prima facie case. Holmes was an active supporter of the Union. He attended union meetings, signed a union authorization card and solicited fellow employees to sign union cards and support the Union. Holmes engaged in union activities at and away from the plant. The Company knew of Holmes' support, or perceived support, for the Union. In early April, Vice President Caldwell summoned Holmes to his office and in the presence of Plant Manager McMullen and Supervisor Adams advised Holmes to stop soliciting for the Union during working time. Caldwell even told Holmes to consider the admonishment a verbal warning. Holmes' immediate supervisor, Williams, testified he knew Holmes was for the Union. In that regard, Williams noted that Holmes was "totally against" every piece of company literature he gave him during the union campaign. Supervisor Williams, as noted elsewhere in this decision and need not be repeated here, spent a great amount of time with Holmes trying to convert Holmes to his (Williams') and the Compa-

ny's views on collective bargaining. Simply stated, the Company knew of Holmes' support for the Union. The timing of Holmes' suspension and discharge is clearly suspect. Holmes' discharge occurred in the middle of a very active union campaign and his discharge grew out of a discussion with Supervisor Williams about the effects of unionization and how the collective-bargaining process worked. There is evidence of the Company's antiunion animus in that Supervisor Williams unlawfully threatened that the plant would close and wages would be reduced if the employees selected the Union to represent them. Williams' threats were specifically directed at Holmes.

I am, for a number of reasons, persuaded the Company failed to demonstrate it would have taken the same action it did in the absence of any protected conduct on Holmes' part. First, the Company tolerated in others the type of conduct for which it discharged Holmes. The record is quite clear the Company has, and continues to, tolerate profanity in the work place between employees and supervision and/or in the presence of supervision. Employee Culpepper credibly testified she cursed "all the time" at work and "a whole lot" in the presence of supervisors. She said employee Tony Milletello, who wore antiunion T-shirts and handed out "vote no" literature during the union campaign cursed in Supervisor Williams' presence. Culpepper testified about a specific incident that involved the late arrival of the outside food orders for the employees. Culpepper testified Milletello commented in Supervisor Williams' presence "Why didn't they go get the goddamn food on time?" and told Williams "[y]ou could have let me went and got it." Culpepper testified Supervisor Williams was "laughing" at the time. Culpepper testified that recently Milletello was again unhappy with the time it took an employee (Ann Church) to bring the outside food orders to the plant and "holler[ed]" at Supervisor Adams and used the term "motherfucker" and stated they needed to let "somebody responsible" get the food.

Perhaps the most telling testimony that the Company treated Holmes differently was given by employee Moy. Moy credibly testified that the day the Company removed Holmes from his job (for using profanity) she heard Milletello tell Supervisor Williams near lines 9 and 10 "Man, I'm tired of this fucking shit. Y'all are always fucking over me." Moy testified Supervisor Williams' response "Tony, what's all the cursing about."¹⁰ Moy said it was not uncommon for Milletello to use profanity. She testified: "if his machine [was] running poorly, he's upset and he's cursing . . . that's normal . . . for Tony." Supervisor Williams acknowledged that Milletello and "everybody out there" used profanity but he denied employees ever directed profanity specifically at him or supervision.

Supervisor Malta acknowledged "cursing" was common place at the plant.

Employee Ike Byrd credibly testified that employees use profanity at work and stated it was an "everyday" occurrence "between some employees and some supervisors." Byrd specifically recalled that employees used profanity in the presence of Supervisors Adams, Malta, and C shift Supervisor Frank Marcello. Byrd candidly acknowledged using

¹⁰I note no evidence was presented that any action was taken against Milletello.

profanity daily during his 8 years at the Company and said he had done so in the presence of supervision.

Employee Culpepper testified she overheard employee Milletello say to Supervisor Adams regarding the work habits of a specific employee that the Company "ought to do something about that mother fucker back there." She said an employee even asked Supervisor Adams if he was "going to let him talk to you like that" and that Supervisor Adams responded "Aw, just let him blow off some steam."

I reject the Company's contention that Holmes' use of profanity was different in that it was directed specifically at Supervisor Williams. I find this contention of the Company to be nothing more than an attempted distinction without a difference. Prounion employee Holmes called Supervisor Williams a "goddamn liar." Antiunion activist Milletello told Supervisor Williams, on the very same day Holmes was removed from the job for using profanity, that Supervisor Williams was "always fucking" him and that he was tired of "this fucking shit." I also reject the Company's contention that Holmes' "goddamn liar" comment was an attempt to injure and insult Williams in a personal manner because Williams is a minister. I note no such contention is made regarding Milletello's comment to Supervisor Williams that the Company needed to select someone to get "the goddamn food" to the plant on time.

The two situations involving discharged employees (Brown and Rayford) that the Company relies on to demonstrate the validity of its action against Holmes involved more than the use of profane or vulgar language. Supervisor Malta, who discharged employee Brown, acknowledged that part of the reason for Brown's discharge was that Brown questioned his authority (refused to do a job he was specifically asked to perform) in front of other employees and cursed him (told Malta he was "full of shit"). In Holmes' situation, no employees or anyone else for that matter overheard Holmes intemperate remarks and his remarks did not involve the performance of any work-related tasks. Furthermore, I note Holmes was continually confronted by Supervisor Williams with Williams' views on collective bargaining. It was in that context that Holmes, perhaps provoked, made his profane remarks.

Vice President Caldwell testified employee Rayford's termination played no part in his decision to terminate Holmes. However, the facts surrounding Rayford's discharge were presented at trial to demonstrate the Company's consistent practice with respect to discharging employees for using profanity at or toward supervisors. Company records reflect Rayford was discharged for telling his supervisor "I swear on my mother's and father's graves I will fuck you up." Vice President Caldwell acknowledged that from his reading of Rayford's file, Rayford was discharged for the use of profanity as well as for making a threat against his supervisor. In Holmes' case, no threats were involved. In fact, Supervisor Williams described the incident as one where only his feelings were a little hurt.

It is clear from the circumstances surrounding the above two incidents that both involved more than just employees directing profanity at their supervisors.

Thus, I conclude the Company has failed to demonstrate it would have discharged Holmes, an admittedly good em-

ployee, in the absence of any protected conduct on his part.¹¹ This conclusion is buttressed by the fact that Vice President Caldwell, who made the ultimate decision to terminate Holmes, never interviewed or questioned Holmes. Such suggests a pre-determined course of action by the Company.

C. The Videotaping

1. Allegations

It is alleged at paragraph 9 of the complaint that on or about May 16 and 17, the Company acting through Quality Control Manager Paul Perkins engaged in surveillance of its employees' union or concerted activities in violation of Section 8(a)(1) of the Act.

2. Facts

The facts related to this allegation are for the most part undisputed.

Quality Control Manager Perkins testified he has been with the Company for approximately 12 years and has, during that time, videotaped a number of activities at the Company. In that regard, Perkins testified:

I do a lot of filming of Christmas parties, birthday parties and just around the office just filming things as requested.

Perkins testified that antiunion employee Hal Rice asked him to videotape certain activities of the AAAUC¹² during the union campaign. Perkins explained he sought and obtained Vice President Caldwell's permission to do the videotaping of the antiunion committee's activities.¹³

Quality Control Manager Perkins testified he first videotaped AAAUC activities on May 15, the day before the Board-conducted election was scheduled to start at the Company. He said on that occasion he videotaped at the front gate entrance to the plant where approximately 8 to 10 members of the antiunion committee were handing out flyers to employees coming to work. Perkins said he did not observe any prounion employees or union organizers handbilling on that occasion.

Perkins testified the next occasion he videotaped AAAUC activities was at around 7 a.m. on May 16, at the front gate. He said on that occasion, approximately five to six union organizers as well as employee Byrd were handbilling for the Union.¹⁴

Employee Byrd testified it was easy to distinguish the antiunion employees from the prounion representatives on

May 16 because the antiunion employees were wearing antiunion hats and T-shirts. Byrd said the prounion and antiunion handbillers were 5 to 6 feet apart¹⁵ and that employees entering the plant gate first stopped for prounion literature and then for antiunion literature. Byrd stated Perkins "walked around the area that we were standing" and videotaped "signs the anti union people had posted along the side of the street."¹⁶ Byrd estimated Perkins videotaped on this occasion for approximately 15 minutes.¹⁷

Quality Control Manager Perkins testified he next videotaped AAAUC activities during the afternoon (approximately 2-3 p.m.) on May 16. He stated a local television station was also videotaping the handbilling activities at the main gate on that occasion and that he even videotaped the television station doing its videotaping. Perkins testified he did not observe any prounion employees handbilling on this occasion but stated union representatives were present for part of his videotaping activities.

Perkins testified he videotaped AAAUC employees handbilling at the front gate on May 17, from approximately 2 to 3 p.m. He said the election polls were open at the time. According to Perkins, no prounion employees were at the gate but he said several employees of another company in the area that the Union was attempting to organize were present as well as a number of union representatives.¹⁸

With respect to his videotaping activities, Quality Control Manager Perkins acknowledged "he . . . video taped whether employees . . . took the [AAAUC committee] handbills or didn't take the handbills."¹⁹

3. Positions of the parties

The Company argues Quality Control Manager Perkins' videotaping was justified in that he was simply recording the activities of the antiunion committee at the request of and as a memento for that committee. The Company asserts it had no intention of videotaping the prounion employees or union representatives/organizers and that the inclusion of non-antiunion committee members on the videotape was "merely incidental." The Company asserts the union organizers and/or prounion employees that appear in the videotape did so eagerly and even positioned themselves in such a manner as to insure their appearance in the videotape. The Company also points out that prounion employee Byrd, who appears on the videotape, admitted he was not discouraged from his activities by Perkins' videotaping and that he understood the

¹¹ An employer cannot carry its *Wright Line* burden simply by showing it had a valid reason for its actions, rather, it must "persuade" by a preponderance of the evidence that the action would have taken place even in the absence of the protected conduct. This the Company herein has failed to do.

¹² Perkins described the AAAUC as "basically an anti union committee formed by Sunbelt employees."

¹³ Perkins stated the video equipment (camera and film) was owned by the Company and he obtained both from then Personnel Manager Hosea McNew.

¹⁴ A composite videotape prepared by Perkins was received in evidence as R. Exh. 22. Perkins acknowledged prounion employee Byrd as well as the union organizers appear in that segment of his composite videotape.

¹⁵ Union Representative/International Organizer John Cunningham testified that "at times [the prounion and antiunion handbillers] were standing shoulder to shoulder on the apron on the driveway on either side of the driveway, so there wasn't necessarily a distance between them."

¹⁶ Cunningham described Perkins' activities on this occasion as generally covering the entire area and videotaping all activity in the area.

¹⁷ Union Representative and International Organizer Cunningham estimated Perkins was present for 30 minutes on this occasion.

¹⁸ It is undisputed that the union representatives as well as the prounion employees from the other local company appear on the videotaped May 17 segment of handbilling at the main gate.

¹⁹ Perkins videotaped a local TV station's account of the handbilling and a celebration party held immediately after the Board-conducted election. Those two segments also appear in the composite videotape prepared by Perkins and received in evidence as R. Exh. 22.

videotape was to serve as a memento for the antiunion committee.

Counsel for the General Counsel argues the fact the antiunion committee may have requested that a company official videotape its activities is of no moment because such conduct, by its very nature, is coercive. Counsel for the General Counsel argues the videotaping allows the Company to determine who is supporting its position and as such reasonably tends to coerce employees entering and leaving the plant. Counsel for the General Counsel argues in summary fashion “videotaping an employee accepting or rejecting handbills would necessarily tend to interfere with, restrain, and coerce employees in the exercise of their rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) of the Act.”

4. Analysis and conclusions

In agreement with counsel for the General Counsel, I find that the videotaping activities of Quality Control Manager Perkins violated Section 8(a)(1) of the Act. It is well established that absence legitimate justification an employer’s photographing its employees while they are engaged in protected, concerted activities constitute unlawful surveillance. See, e.g., *Certainseed Corp.*, 282 NLRB 1101 at 1114 (1987). There is no record evidence that the Company, and more specifically that Quality Control Manager Perkins, ever explained to the general work force the purpose of the videotaping at the front gate. The fact prounion employee Byrd may have understood the videotaping was to create a memento for the antiunion committee does not establish the general work force knew such was the stated purpose. Knowledge among the employees that whether they accepted or rejected antiunion handbills was being videotaped by a company official necessarily tends to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights. Accordingly, I find Quality Control Manager Perkins’ videotaping activities at the front gate violated Section 8(a)(1) of the Act. See, e.g., *Tennessee Packers*, 124 NLRB 1117 at 1123 (1959).

D. President Cattar’s Meeting

1. The allegations

It is alleged at paragraph 8 of the complaint that the Company, acting through President Cattar, on dates between May 6 and 9, threatened to relocate the plant and threatened employees with loss of benefits if the employees selected the Union as their collective-bargaining representative.

2. The facts

Employee Ike Byrd testified that approximately 3 to 4 days after Holmes was terminated in late April, President Cattar held shift wide employee meetings at which the union was discussed. Byrd testified:

He told us that the union representatives had told us that we would start from where we were in bargaining, but the fact of the matter is during bargaining, you start with a blank sheet of paper and you go from there. You could get higher wages; your wages could be lower or they could remain the same.

Byrd testified President Cattar said the Company would bargain in good faith with the Union.²⁰

Employee Carrie Russell testified that after employee Holmes was terminated, but before the Board-conducted election was held, she attended a number of shift wide employee meetings at which Moy and Culpepper among others were in attendance. Russell testified:

[President Cattar] gave an example of—two employees to give us a little outlook of how they would start bargaining at the bargaining table. He had two of the employees to sit down at the table, and in front we had a tablet or a big folder of white paper. He said we would start from a blank sheet of paper.

. . . .

We were told all the benefits that we already have, it consisted of also the wages. And he said it may change or it may not change. And concerning the wages, he said that, you know, they may vary, may go . . . stay the same, you know, just according to whichever way, you know, the union went.

. . . .

We were told that there were several companies that closed because of the union.

. . . .

That they had closed down and that . . . you know. They closed down and they later on relocated and opened up.

On cross-examination, Russell could not recall the names of companies she contended President Cattar said had closed and relocated elsewhere.²¹

Employee Monica Culpepper testified that approximately 1 to 2 weeks after Holmes was terminated, President Cattar held a shift-wide meeting at which the Union was discussed. Culpepper stated Cattar had employees “pretend like we were going to go to the bargaining table.” Culpepper testified Cattar said, “bargaining would start from a blank sheet of paper.” She stated Cattar said wages could go up or down,²² and that he “just let us know that . . . [n]othing that the Union tells us is concrete . . . [w]e have to go to the bargaining table and negotiate and talk about it.” Culpepper acknowledged during cross-examination that President Cattar said some good things about the union that “it could help us and it could hurt us.”

Employee Glenda Moy testified that at a meeting about a week after Holmes was terminated, President Cattar said:

Basically we discussed the benefit package that we had. I remember him saying that if the union got in, we wouldn’t be guaranteed that we would keep everything

²⁰ Byrd did not recall Cattar saying the plant would close or would refuse to bargain if the employees choose the Union as their collective-bargaining representative.

²¹ Russell stated President Cattar never at any time said the Company would close if the employees selected the Union to represent them.

²² She wasn’t sure if he said they could remain the same.

that we had, that the union could not guarantee us we would keep our same amount of pay.

He said we could gain some things, we could lose some things. He said that if they had to go to the bargaining table, he would bargain in good faith.

I know I remember him saying something about relocation, but I don't remember exactly what was said.

He said that if they did go to the bargaining table, that the bargaining could start from a blank sheet of paper.

On cross-examination, Moy acknowledged Cattar said "that if the Union is selected and if you go to the bargaining table, that wages could go up, could go down, or stay the same." Moy also recalled Cattar saying the Union could "promise everything" but could not "guarantee everything." Moy said President Cattar went over a list of benefits and wages the employees and Company had gotten without a union and stated that if the Company went to the bargaining table, the employees could gain here or lose there. Moy recalled:

I remember him saying stuff like if you get more of this, then you could lose of that, or if you get that, you could lose this. I guess that's what you call bargaining, trading.

President Cattar testified, without contradiction, that the Company has for a number of years held what he described as presidential round table meetings with employees. Cattar said the purpose of these meetings was to allow a free exchange of ideas between management and the employees on any issue or issues which the employees desired to address. President Cattar stated that a series of such meetings were scheduled for and held on April 4 and 5. President Cattar stated that although the Company had learned that a petition had been filed by the Union on April 1, it was decided the meetings would be held without discussing the Union. Cattar said he decided it would be "business as usual" and he "made it very clear" that the purpose of the meetings was not to discuss the Union. Cattar said he did not want to discuss the Union at the April 4 and 5 meetings because he was unaware of what the issues related to the Union might be.

President Cattar testified that the next shift wide employee meetings at which he spoke were held on April 18 and 19.²³ President Cattar said the purpose of these meetings was to address the issues that had been brought up in the union campaign. According to President Cattar, he started the meetings off by informing the employees a union petition had been filed and that the employees alone were the ones to make the decision of whether the Company would be unionized or not, that management did not have a vote. Cattar testified he explained to the employees that his purpose was simply to assist them in having a full understanding of the facts surrounding the issues in the campaign but that the ultimate decision was up to the employees. Cattar said he showed the employees a list of some 29 benefits the employees had accumulated over the course of the 11 years the

²³ Cattar explained it was necessary to hold meetings over a 2-day period because the Company operates on a four-shift system and every effort was made not to inconvenience or interrupt company operations.

Company had been in business. Cattar said he then explained that benefits could go up, down, or stay the same in the collective-bargaining process. Cattar said he explained that if they chose the Union to represent them, the Company would bargain in good faith. President Cattar stated that from employee questions he realized some of them did not understand how the collective-bargaining process worked. Accordingly, he said he set up a play acting session to demonstrate how it worked. Cattar said he had one individual sit at a table to represent the Union and another to represent the Company. He said he explained that this was an over simplification of the bargaining process. President Cattar testified he had an easel at the front of the room and turned to a blank sheet of paper and asked the individual selected to represent the Union to list the demands the Union would make in collective bargaining. According to Cattar, the employee representing the Union stated they wanted the best insurance plan in America. Cattar said he wrote that on the blank sheet of paper. The union representative then indicated they wanted superior wages, so Cattar placed that on the paper. The employee play acting as the union representative then asked for sick leave and various other benefits, all of which were listed on the paper. The employee play acting as the union representative indicated they wanted all of those benefits plus the 29 benefits the Company already provided. President Cattar said he then asked the employee play acting as the company representative what his response would be to the union representative's demands. The employee responded, "give them everything." Cattar said he explained that the company representative would have to be more responsible than that and pointed out that through the give and take of the bargaining process, some benefits might be increased, others might remain the same, and some might be decreased. President Cattar stated he explained that in the give and take of negotiating, that the "pie" was only so large and that while it could be divided into many different segments, there was only so much the Company could do and remain viable. Cattar testified that during the exchange, an employee asked how high or low wages could go if the Union was selected. Cattar said he responded that legally wages could go as low as minimum wage which was pointed out to be \$4.25 per hour.

Cattar testified he never at any time said or suggested that if the Union was selected as the employees collective-bargaining agent that wages would go down to \$4.25 an hour. Cattar denied saying at any time during the employee meetings or otherwise that the plant would close if the Union came in.

3. Credibility resolutions

President Cattar was a forthright and candid witness. His sincere expression while testifying convinces me that he testified truthfully with respect to his comments at the employee meetings at which the Union was discussed.²⁴ In crediting President Cattar's testimony, I note a good portion of his testimony was borne out by witnesses called by counsel for the General Counsel.

²⁴ I also credit his testimony as to when the meetings took place.

4. Analysis and conclusions

The Board has, for an extended period, been dealing with “bargaining from zero [scratch, nothing, clean sheet of paper, blank sheet of paper, etc.]” -type explanations of the give and take in the collective-bargaining process. Administrative Law Judge Michael O. Miller noted in *Shaw’s Supermarkets*, 289 NLRB 844 at 848 (1988):

Of such statements, the Board has held:

As the Board and the courts have recognized in other cases, in the course of organizational campaigns, statements are sometimes made of a kind that may or may not be coercive, depending on the context in which they are uttered [fn. omitted.] “Bargaining from scratch” is such a statement. In order to derive the true import of these remarks, it is necessary to view the context in which they are made.

Wagner Industrial Products Co., 170 NLRB 1413 (1968). See also *Campbell Soup Co.*, 225 NLRB 222, 229 (1976), and cases cited therein. Statements that “accurately reflect the obligations and possibilities of the bargaining process . . . which do not contain any threats that Respondent will not bargain in good faith or that only regressive proposals will result” will not be found violative. *Clark Equipment Co.*, 278 NLRB 498 (1986). Statements that “effectively threaten employees with the loss of existing benefits and leave them with the impression that what they may ultimately receive depends in large measure upon what the Union can induce the Employer to restore” are objectionable (and violative of Sec. 8(a)(1)), *Plastronics*, 233 NLRB 155, 156 (1977), and cases cited therein; *Belcher Towing Co.*, 265 NLRB 1258, 1268 (1982).

First I find, as reflected in President Cattar’s credited testimony, that he did not threaten employees with plant closure, relocation, or loss of benefits if they selected the Union as their collective-bargaining representative. It is acknowledged President Cattar advised the employees the Company would meet and bargain in good faith with the Union if the employees selected the Union as their collective-bargaining representative. As noted by employee Culpepper, President Cattar even pointed out some good things about the Union. I am fully persuaded President Cattar’s remarks were nothing more than permitted expressions of opinion as to the natural and normal hazards of collective bargaining. The clear import of his comments was that although the Union could promise, it could not guarantee precisely what benefits might be increased, remain the same, or be reduced. As employee Moy noted about President Cattar’s comments in that regard “that’s what you call bargaining, trading.”

Accordingly, I shall dismiss the allegations that President Cattar violated the Act in any manner alleged in paragraph 8 of the complaint.

CONCLUSIONS OF LAW

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

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

3. By engaging in the following conduct, the Company violated Section 8(a)(1) of the Act: threatening employees with a reduction in their wages if they selected the Union as their collective-bargaining representative; threatening employees with plant closure if they selected the Union as their bargaining representative; engaging in surveillance of their employees’ union or other concerted activities conducted for the purpose of collective bargaining or other mutual aid or protection.

4. By discharging its employee Lamon Holmes on or about April 23, 1991, and thereafter refusing to reinstate him because of his union, concerted, and protected activities, the Company engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

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

THE REMEDY

Having found the Company has engaged in violations of Section 8(a)(1) and (3) of the Act, I shall recommend it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Company discriminatorily discharged employee Lamon Holmes, I shall recommend Holmes be offered immediate and full reinstatement to his former position of employment or if his former position of employment no longer exists to a substantially equivalent position without prejudice to his seniority or rights and privileges previously enjoyed, and that he be made whole for any loss of earnings he may have suffered by reason of the discrimination against him, with interest. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I also recommend the Company be ordered to expunge from all files any reference to Holmes’ discharge and notify him in writing this has been done and that evidence of the unlawful actions will not be used as a basis for any future personnel actions against him. Finally, I recommend the Company be ordered to post an appropriate notice to employees, copies of which are attached hereto as “Appendix” for a period of 60 days in order that employees may be apprised of their rights under the Act and the Company’s obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁵

ORDER

The Respondent, Sunbelt Manufacturing, Inc., Monroe, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with a reduction in wages if they selected the Union as their bargaining representative.

²⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Threatening its employees with plant closure if they selected the Union as their bargaining representative.

(c) Engaging in surveillance of its employees' union activities or their other concerted activities conducted for the purpose of collective bargaining or other mutual aid or protection.

(d) Discharging or otherwise discriminating against employees because their membership in or activities on behalf of the Union or because they engaged in other protected concerted activities.

(e) 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 necessary to effectuate the policies of the Act.

(a) Offer Lamon Holmes immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision and expunge any reference to his discharge from his work record.

(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 analyze the amount of backpay due under the terms of this Order.

(c) Post at its Monroe, Louisiana, facility copies of the attached notice marked "Appendix."²⁶ Copies of the notice, on forms provided by the Regional Director for Region 15, 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.

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not specifically found.

⁷¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

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 threaten our employees with a reduction in wages if they select the Union as their bargaining representative.

WE WILL NOT threaten our employees with plant closure if they select the Union as their bargaining representative.

WE WILL NOT engage in surveillance of our employees' union activities or their other concerted activities conducted for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT discharge employees because their activities on behalf of the Union.

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

WE WILL offer Lamon Holmes immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, with interest.

WE WILL notify Lamon Holmes that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

SUNBELT MANUFACTURING, INC.