

International Paper Company and United Paperworkers International Union, AFL-CIO, CLC.
Cases 11-CA-14781 and 11-RC-5803

November 23, 1993

DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The issue presented in this case is whether the Respondent committed various violations of Section 8(a)(1) and (3) during the course of an election campaign and, whether the election should be set aside and a second election directed.¹

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,

¹ On November 5, 1992, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief.

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.

³ The Respondent excepts to the judge's finding that Dan Carson "was placed in a position by Respondent wherein it could reasonably be inferred that he was speaking on behalf of management." We find merit in this exception. The record is devoid of evidence establishing Carson's duties, his job location, or even whether he was employed by the Respondent. Under these circumstances, we do not find that the General Counsel has established that Carson's questioning of employee Harry Zechman violated Sec. 8(a)(1), and we reverse this finding of the judge. See *Detroit Plaza Hotel*, 267 NLRB 1030, 1040 (at sec. 2,a) (1983).

The judge found that the Respondent violated Sec. 8(a)(3) and (1) of the Act by curtailing the 2-week training course of employees Carly Brooks and Richard Davis at the Respondent's sister facility in Clinton, Iowa, in response to union activity that they engaged in while at that facility. The Respondent defended by asserting that the recall of Brooks and Davis was necessary in order to appease a union which represented some of the employees at the Clinton facility. That union allegedly threatened to file a grievance over the performance of bargaining unit work by Brooks and Davis in connection with their training. In rejecting this defense as pretextual, the judge noted that the Clinton union had no apparent contractual basis to object to "mere observation" by Brooks and Davis of the lithographic printing process. We disavow this statement by the judge in light of Brooks' testimony that his training in Clinton involved the handling of machinery, which constitutes the performance of unit work. However, based on the judge's additional reasons for rejecting the Respondent's defense, with which we agree, we affirm his finding of a violation. That is, even though Brooks and Davis performed some unit work at Clinton, and even if a union at Clinton objected thereto, we agree with the judge that this was not a reason for the Respondent's recall of Brooks and Davis. See sec. III,B, Analysis of the judge's decision.

In finding that the Respondent violated Sec. 8(a)(1) by its supervisors' monitoring of employees Zechman, Sant, and Stephens, the judge credited these employees' testimony over that of the Respondent's witnesses. However, with respect to the 8(a)(1) findings regard-

findings,² and conclusions³ as modified below and to adopt the recommended Order as modified.⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Paper Company, Raleigh, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following as paragraph 2(a).

"(a) Provide employees Richard Davis and Carly Brooks with the opportunity for the second week of training which was unlawfully curtailed at its Clinton, Iowa plant."

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

[Direction of Second Election omitted from publication.]

CHAIRMAN STEPHENS, dissenting in part.

I join my colleagues in their disposition of all issues except for their adoption of the finding that the Respondent violated Section 8(a)(3) and (1) with respect to its calling employee Carly Brooks and Richard Davis back to the Raleigh plant before they had completed a projected 2 weeks of training on a color lithographic press at the Respondent's plant in Clinton, Iowa. I would find that, even assuming that the Gen-

ing the monitoring of employees Moore and Andrews by Supervisors Godwin and Clayton, as reflected in his Conclusion of Law 8, the judge failed to make credibility findings regarding the conflicting testimony of the General Counsel's and the Respondent's witnesses. Because a finding of a violation with respect to the monitoring of Moore and Andrews would be cumulative to the other 8(a)(1) monitoring violations, which we affirm, and would not affect the remedy ordered herein, we find it unnecessary to pass on this allegation and we shall not remand the case to the judge for the purpose of making further credibility determinations.

The Respondent asserts that the judge's finding of unlawful monitoring affected, at most, only 7 employees and, therefore, as there were over 160 employees who voted in the election, the judge erred by finding that a "majority" of the prounion supporters were monitored. Contrary to the Respondent's interpretation, we interpret this statement by the judge as referring not to the overall unit complement, but rather to the five-man "core support group for the Union," which the judge identified in sec. III,B of his decision as consisting of employees Brooks, Henderson, Stephens, Zechman, and Andrews. However, since we have found it unnecessary to pass on the monitoring allegation with respect to Moore and Andrews, the judge's statement that a majority of the prounion employees were monitored is no longer correct. Nevertheless, for the other reasons stated by the judge, we agree with his finding that this conduct and the other unlawful conduct involved here interfered with the conduct of the election.

⁴ Although the judge found that the Respondent violated Sec. 8(a)(3) and (1) by curtailing the 2-week training course of employees Carly Brooks and Richard Davis, he inadvertently omitted from his recommended Order and notice affirmative language requiring the Respondent to offer Davis the opportunity for a second week of training. We modify the judge's recommended Order and the notice to provide for this remedial relief.

eral Counsel made out a prima facie case of discrimination, the Respondent established a *Wright Line*¹ defense that it would, in any event, have sent Brooks and his fellow trainee, Richard Davis, back to the Raleigh plant before the 2 weeks was up for a lawful reason, i.e., because the management at Clinton had been informed that a representative of one of the two incumbent unions at the Clinton plant was contending that letting Brooks and Davis work on the litho press there was “in outright violation of the [Clinton union] contract.” That contract permitted only “members of the bargaining unit” to perform “work under the jurisdiction of the Union,” and the record clearly shows that Brooks and Davis were doing unit work in the course of their training.

¹ 251 NLRB 1083 (1980), *enfd.* on other grounds 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

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 interrogate you concerning your union activities and those of your fellow employees.

WE WILL NOT threaten you with ruining your future or with loss of future opportunities with us because of your engagement in union activities.

WE WILL NOT curtail training sessions or opportunities because of your engagement in union activities.

WE WILL NOT follow you or more closely monitor you because of your engagement in union activities.

WE WILL NOT withhold your paychecks until the end of your shift or engage in repaging you in order to harass you because of your union activities.

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 make available and offer to employees Richard Davis and Carly Brooks the additional week

of training at our Clinton, Iowa plant which we unlawfully curtailed.

INTERNATIONAL PAPER COMPANY

Patricia L. Timmins, Esq., for the General Counsel.
Gardner G. Courson, Esq. (Glass, McCullough, Sherrill & Harrold), of Atlanta, Georgia, for the Respondent.
Nancy L. Logan, Representative, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on May 5 and 6, 1992, at Raleigh, North Carolina. The hearing was held pursuant to a report on objections, direction, order consolidating cases, and order rescheduling hearing made and entered by the Regional Director for Region 11 of the National Labor Relations Board (the Board) consolidating Cases 11-RC-5803 and 11-CA-14781 for hearing, ruling, and decision by an administrative law judge. In his report on objections the Regional Director determined that pursuant to a Stipulated Election Agreement approved on October 15, 1991,¹ a secret-ballot election was held under the supervision of the Regional Director on November 14 and 15 with the following results:

Approximate number of eligible voters . . . 175; number of void ballots . . . 2; number of votes cast for Petitioner-Charging Party United Paperworkers International Union, AFL-CIO, CLC (the Union) . . . 60; number of votes cast against participating labor organization(s) . . . 93, number of valid votes counted . . . 153, number of challenged ballots . . . 9; number of valid votes counted plus challenged ballots . . . 162

Based on the foregoing, the Regional Director determined that the challenged ballots are not sufficient in number to be determinative. In his report the Regional Director also found that on November 22, the Petitioner filed 14 timely objections to conduct affecting the results of the election which were duly served on the Employer. Objections 1, 2, 3, 6, 7, 8, 12, 13, and 14 were withdrawn by the Petitioner. The Regional Director determined that remaining Objections 4, 5, 9, 10, and 11 allege that the Employer threatened the loss of jobs, loss of promotions, isolated and harassed employees, more closely watched employees as the result of their union activities, and furnished gifts to the employees to influence the outcome of the election. The Regional Director also determined that the evidence in support of these objections is similar to that presented in Case 11-CA-14781 in which a complaint and notice of hearing issued on January 16, 1992, alleging violations of the National Labor Relations Act (the Act) and found that these objections raise substantial and material issues which would best be resolved by record testimony.² At the hearing, the General Counsel moved to delete paragraph 8(h) of the complaint which alleges that Respond-

¹ All dates are in 1991 unless otherwise specified.

² Only incidents which occurred in the “critical period” between September 16, the date of the filing of the petition, and November 14 and 15, the dates of the election, are considered.

ent assigned its employees to isolated job areas because of their union activities. The motion was granted and this allegation was withdrawn. As Objection 9, alleging the assignment of onerous duties and isolation of employee is based largely on the allegation in paragraph 8(h) which was withdrawn at the hearing and no evidence of the assignment of more onerous duties was established at the hearing, it will be overruled. The complaint is joined by Respondent's answer of January 30, 1992, which raises certain affirmative defenses which were not substantiated at the hearing and which I find to be without merit and also denies the commission of the alleged unfair labor practices.

On the entire record in this proceeding, including my observations of the witnesses who testified, and after due consideration of the briefs filed by the General Counsel and counsel for the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits, and I find that at all times material Respondent is, and has been, a New York corporation with a facility located at Raleigh, North Carolina, where it is engaged in the production of paper cartons, that during the past 12 months, a representative period of all times material, Respondent received at its Raleigh, North Carolina facility goods and raw materials valued in excess of \$50,000 directly from points outside the State of North Carolina and shipped from its Raleigh, North Carolina facility products valued in excess of \$50,000 directly to points outside the State of North Carolina, and that Respondent is now and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, the Respondent admits, and I find that at all times material the Union is, and has been, a labor organization within the meaning of Section 2(5) of the Act.

II. THE APPROPRIATE UNIT

It was stipulated and I find that the appropriate unit is:

All production and maintenance employees employed by the Employer at its Raleigh, North Carolina facility, excluding all office clerical employees, guards and supervisors as defined in the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Attendance Warning Issued to Employee James "Buck" Sant*

Sant is a maintenance employee and has been employed by Respondent approximately 4-1/2 years. Until early 1991, Sant had an excellent attendance record. In early 1991, Sant began to miss work because of chronic fatigue and was under a doctor's care. His fatigue was ultimately diagnosed as Epstein-Barr virus. Respondent had in place a no fault attendance policy under which there are no excused absences and employees accumulating 48 hours of absences for any

reason whatsoever within a 12-month period received an oral warning which is documented in writing. However, if employees bring a note from a doctor giving a valid reason for the absence they are charged for only the first day for absences exceeding 1 day. During this period, Sant reported to Maintenance Supervisor Dan Geurin. In early spring and summer, Geurin asked Sant to bring a note from his doctor to substantiate his illness. Sant brought in two notes dated May 13 and June 13 which were not as definitive as Respondent desired as to the nature of Sant's illness. On July 16, Human Resources Manager Carlin Johnson wrote to the doctor after unsuccessful attempts to contact him by telephone and inquired as to the nature of Sant's illness, whether he should be placed on a leave of absence, and stressed in the letter Respondent's concern for Sant's welfare and that of his fellow employees should the condition be contagious. On August 1, the doctor replied by letter outlining the nature of Sant's illness and what might be expected concerning the period of recovery.

On September 26, during the union campaign and over a month after Respondent had received the doctor's reply, Supervisor Geurin issued Sant an oral warning which was documented and backdated to May 27. According to Sant, Geurin gave him the warnings without explanation or comment. Geurin testified he had issued the warning and backdated it to May as this started to run a period of 6 months during which if no further absences occurred the warning could be removed from the files 6 months from the date of the notice, and that he had backdated the issuance of the warning to give Sant the earliest opportunity for his record to be cleared of the warning. He further testified he had not issued the warning in early summer because he had not known whether to charge Sant with the second and subsequent days for periods of continuous absences because of insufficient information received from the doctor. Geurin's testimony was supported by Human Resources Manager Carlin Johnson who testified of her attempts to obtain more information from Sant's doctor and their decision (hers and Geurin's) that they needed to resolve the matter which Geurin did by his issuance of the warning to Sant in September.

The General Counsel contends that the warning was issued to Sant because of his known union activities on behalf of the Union and during the critical period, noting that Respondent had the doctor's report as early as August but took no action against Sant until September 26, 10 days after the filing of the petition for an election. It also relies on other testimony of Sant concerning close monitoring of his activities during the "critical period," after the filing of the petition for an election, and other evidence presented of Respondent's alleged animus toward union supporters discussed *infra*. The Respondent contends that Sant was treated fairly and that the backdating and issuance of the attendance warning was intended to benefit Sant by removing the warning from his file as soon as possible. It also points to Sant's own contentions and filing of a complaint with the Veterans Administration based on his belief that the issuance of the warning stemmed from his status as a Vietnam veteran and alleged bias by a certain unnamed member of management against Vietnam veterans, as evidence of Sant's own inconsistent reasoning for his conclusion that he had been discriminated against.

After a review of the above and considering the record as a whole, I conclude that the General Counsel has established a prima facie case of a violation of the Act by the issuance of the attendance warning to Sant. Thus, Sant was well known as a union adherent, there was ample evidence of Respondent's close monitoring of union adherents to preclude them from campaigning on behalf of the Union as well as interrogation of union adherents and a comment by Human Resources Manager Johnson that it was "good" that union supporters were being discriminated against, all discussed infra. However, I find that the prima facie case has been rebutted by the preponderance of the evidence submitted by Respondent in its defense of this allegation. Thus, I credit both Geurin and Carlin that the Respondent was concerned about the welfare of Sant and was legitimately attempting to ascertain the nature of his illness and that Geurin waited until after the receipt of the doctor's letter in August to issue the warning based on the need to know whether to charge Sant with the second and subsequent days of continuous periods of absences. I further find that, contrary to the General Counsel's position, the backdating of the warning is supportive of Respondent's position that this was done to give Sant the benefit of the period following May during which Sant had no absences to ensure the removal of the warning from Sant's file as soon as possible. I further note that although the warning does threaten termination for continued absences, this threat is part of the boilerplate preprinted language on the warning. I thus recommend the dismissal of this allegation. *Wright Line*, 251 NLRB 1083 (1980), enf. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

B. *The Allegations Concerning Carly Brooks and Richard Davis*

Carly Brooks, a litho printing press operator, testified as follows: He has been a Litho operator for 2 years. Prior to this he worked in the extruder department and in quality control and in the plant office with the plant superintendent. At the time of the filing of the petition for election on September 16, 1991, he was operating the color console for the 28-inch Kamori press. In this capacity he controlled input materials, inks, water solutions and was responsible for ascertaining that the material used was of high quality. He also was responsible for checking the condition of the color press. The litho department is in the center of the plant with walls on three sides and an open area to the sealer department and other printing presses.

There was a prior union campaign in 1990 which he was not active in. However, he was an active union supporter in the 1991 union campaign. In early October he handbilled, made house calls, and solicited union cards. He handbilled on behalf of the Union on the street in front of the plant on several occasions and was observed by supervisors. On one occasion, Department Head Joe Blackman stopped and asked for a handbill but he refused to give him one. Supervisors Jay Lynn and Doug Weiss also came through while he was handbilling. Several other employees also handbilled at various times on behalf of the Union and formed a core support group for the Union. They were Robert Henderson, Mike Stephens, Harry Zechman, and Phil Andrews. During this pe-

riod Brooks also left union literature in the break area and spoke to other employees on behalf of the Union. On October 28, he left for Clinton, Iowa, for training. This was in the middle of the campaign as the election was held in November. He was sent to Clinton as he was considered the best employee at his job because of his ability to learn quickly and work with and train others. He was told this by Department Manager Doug Weiss, Supervisor Robert Frost, and by his coworkers. Around October 12 to 15, Frost offered him the opportunity to go to Iowa along with Richard Davis, another operator who was easily trained. Frost told him and Davis that there was an opportunity for a 2-week trip to Clinton that was a chance in a lifetime and would open doors for them to work with people who had 30 years of knowledge to see if it could be passed down to them. Specifically, this was four-color control training. Lithographic printing is a very unstable process and without experience, a great deal of waste and down time can be incurred and it was anticipated that if the training were successful, the Respondent would save money as there had been a great deal of waste in terms of color variation and rejects in the past. He and Davis and Frost (who stayed in Clinton for only 1 night) left for Clinton on October 28.

While at Clinton he met some of the union officials representing one of the units of the Clinton plant and learned they were in the midst of contract ratification. He was invited to the Union's contract ratification meeting held on the Saturday following the completion of his first week in Clinton and was asked to sit in front with the union officials which he did. He was also asked to speak about the differences between the nonunion Raleigh plant and the unionized Clinton plant which he did. Davis also attended the meeting but stayed in the back and did not speak. After his speech, he was in his room making a rough draft of the report to be made to the Raleigh plant and left to pick up Davis who was standing outside the Clinton plant. Davis appeared emotionally distraught and told him the plant manager had told him to leave the plant. The plant manager also spoke to Brooks and told him that union officials were objecting to his presence in the plant although he did not know the reason. Davis and Brooks flew back to Raleigh on November 5 and did not receive the second week of training as scheduled.

Davis and Brooks had been directed to use the office of Department Manager Doug Weiss to write their report on the litho color training received at Clinton. On the day of their return, Weiss told Brooks in his office in the presence of Davis that he was terribly disappointed with Brooks' behavior in Clinton. "He said I was a representative for the Raleigh plant . . . that my focus seemed to shift from my religion, to my family and now Union. He said I had ruined my future . . . that I also screwed it up for any other person to go on trips because of my behavior at Clinton." While in Clinton he had not received any complaints about his behavior in Clinton concerning his training.

About 20 minutes after the discussion with Weiss he had a short discussion with Plant Manager Mike Rehwinkel and Director of Employee Resources Keith LaVoie, who is normally assigned to Respondent's headquarters in Memphis, Tennessee. Rehwinkel told him he did not know what had occurred between Brooks and Weiss and they did not want him to feel that his future was at stake. About an hour later,

Rehwinkel spoke with him in his office along with Richard Davis. Rehwinkel told Brooks that Brooks had gotten him into trouble with his superiors, and that people he did not even know were calling him and that he (Rehwinkel) was in hot water. Rehwinkel asked Brooks what he had said at the union meeting. Rehwinkel said he knew what Brooks had said but wanted to hear it from Brooks. He also said he believed Brooks had gone over the "peoples" heads with his "eloquent speech" and had "played on their emotions." Brooks told Rehwinkel he had simply told the truth and that if he had been cheating on his wife or drinking, it would have been okay, but since he was at a union meeting on his free time there was a problem. Rehwinkel told him he wanted him on his side and that things weren't exactly as they seemed. He told Rehwinkel he knew exactly what was going on, there were a lot of inequities in the plant and that he wasn't depending on him to straighten them out. Davis remained silent during this meeting.

Brooks further testified that after he returned from Clinton there was a change in his working conditions. His supervisor Jay Lynn:

Started following me around and peering and seeing where I was going. I went to turn in my expense report and he [Lynn] followed me up there to the copier. I went on my way to the breakroom, stopped at the bulletin board. He was there. . . . I went to the breakroom—I purposely—at this point in time I was getting suspicious—I purposely cut my breaks short. I got up, he left. I went to the bathroom, he went to the bathroom.

Brooks testified further, he began to make erratic movements and turns to make certain Lynn was following him before he confronted him and that Lynn mimicked all of his movements. Later that evening, he approached Lynn and asked why he was following him and Lynn said he just wanted to be sure Brooks was doing his job. Lynn continued to follow him from the time Brooks returned to Raleigh from Clinton until the election was over. When Brooks said you have "never done this before," Lynn said, "Well you're interfering with people's lives and their livelihoods and you need to understand what you're doing." Lynn also said, "When it was all over he would sit me down and explain why things were happening and what was going on." Lynn told Brooks that Rehwinkel told him to follow Brooks because Brooks might feel intimidated in the plant. Brooks told Lynn that he was intimidated by Lynn's following him. After the election Lynn stopped following him.

On cross-examination, Brooks testified he had not been active in the prior 1990 union campaign, but was a very open and active union supporter in the 1991 campaign both before and after the trip to Clinton. Prior to his trip to Clinton he wrote a letter to the employees encouraging their support for the Union. Prior to being asked to leave he and Davis had worked on the presses at the Clinton plant as a support group and were being trained by union and nonunion employees and were working alongside them. He had previously traveled to Japan and Korea with Weiss to learn about litho presses. The relationship between Weiss and himself was that of manager-employee. He does not recall Weiss telling him during their conversation on the day of his return to the Ra-

leigh plant that Weiss was speaking to him as a friend or that he was not speaking to him as a manager. He did not take Weiss' comments to be "friendly advice." The conversation with Weiss lasted 2-3 minutes. Weiss did all the talking and he listened and then Weiss "stormed out of the office." Shortly after this he met with Rehwinkel and LaVoie. He does not recall Rehwinkel telling him that the Union had filed a grievance. Rehwinkel did not say that what he did on his own time was his own business. Rehwinkel and LaVoie did tell him there would not be any unfavorable repercussions because of Weiss' comments. He was not told that his union activities would not affect his job. On one occasion, a procompany employee, Bryant Dennis, threatened him. He remembers a conversation with Rehwinkel about this but doesn't remember the specifics. There were various conversations with Rehwinkel but the tone of these conversations was not that he was not going to be penalized for his union activities. He does not remember Rehwinkel telling him he was going to protect him from being physically threatened in the plant but Rehwinkel did tell him employees would not be harassed and intimidated and there was a posting to that effect. Some employees expressed differences to him but not irritation concerning his union activities. In his conversation with Lynn wherein Lynn had said he "was messing with people's livelihood . . . and it was a serious matter," Lynn went on to say that he had been a union member for many years and on a union executive board. After all of these conversations, Brooks continued in his active support of the Union. On redirect, Brooks testified that prior to leaving Clinton, Iowa, he spoke to the president of Local 711 (the Union at Clinton) and Local 711's secretary-treasurer and they stated they had no objections to his being in the plant and did not understand why the plant manager had said this. Davis and Weiss were not called by either party and did not testify.

In support of its position, Respondent called Raleigh Plant Manager Mike Rehwinkel, Director of Employee Resources Keith LaVoie, Supervisor Jay Lynn, and the Clinton plant manager of human resources, Terry Gertson. In large part, their testimony does not differ drastically from that of Brooks except in emphasis. Rehwinkel testified he was informed by Keith LaVoie of the conversation between Brooks and Weiss on the day Brooks came back to the Raleigh plant from Clinton, Iowa, and that after consulting with legal counsel, he and LaVoie met with Brooks and Weiss at 2 p.m. that day. Rehwinkel told Brooks that whatever had been said by Weiss to Brooks that was inappropriate that morning or said by Rehwinkel himself at an 11 a.m. meeting he had with Brooks that morning, that these conversations would not have any bearing on Brooks' employment or future promotions, and that management "still considered Brooks to be a very bright individual in our facility and he had a very bright future with International Paper." Brooks said it was just a misunderstanding and he and Weiss shook hands and that ended the meeting.

With respect to the early return of Brooks and Davis from the Clinton, Iowa plant, Rehwinkel testified the trip was cut short because of a call made by Clinton Plant Human Resources Manager Terry Gertson who stated to someone (unidentified) at the Raleigh plant that Brooks and Davis could no longer be in the Clinton faculty "due to them doing bargaining unit work." Rehwinkel testified further that he, him-

self, had an earlier conversation with Brooks and Davis on the morning of their return to the Raleigh plant from Clinton, Iowa, and that he told them he “was disappointed that I had to be called by several people—through other people I was hearing that why was this big mess going on that we had to send people out of Raleigh—out of Clinton back into Raleigh” He was made aware of the attendance by Brooks and Davis at a union meeting and wanted to know what had happened to cause the Union’s grievance as “I was being called by people and pulled under the rug for this action.” Director of Human Resources Keith LaVoie whose office is at the Respondent’s Memphis headquarters testified that about 9 or 9:30 on the morning of the return of Brooks and Davis to the Raleigh plant, Department Manager Doug Weiss came in to see him in an office he was using at the Raleigh facility at that time and told him that he had spoken with Brooks in an off-the-record discussion for about an hour to an hour and a half as they had been friends for a long time and that he (Weiss) was now concerned about the conversation and wanted to tell LaVoie about it as he had asked Brooks some questions (unspecified). LaVoie became concerned because of the union campaign and called legal counsel and sought advice. He went to see Rehwinkel but his door was closed and he was informed that Rehwinkel was talking to Brooks. He accordingly waited until Rehwinkel was available and informed him of his conversation with Weiss and the advice received from legal counsel and he and Rehwinkel met at 2 p.m. that afternoon with Weiss and Brooks. Rehwinkel told Brooks that anything that had occurred in Clinton, Iowa, or anything said to Brooks that morning would not have any impact on his career with International Paper and that he was free to support the Union and it would not interfere with his future with the Company. Brooks said he was not offended by anything Weiss or Rehwinkel had said to him.

Iowa Human Resources Manager Terry Gertson testified there are two unions in the Clinton plant. They are both locals of the Graphic Communications International Union (Local 711 and Local 518). “Local 518 has sole jurisdiction over any piece of equipment used in offset printing; the remainder of the plant is under Local 711.” On a Monday morning he received information from the general foreman of the litho department that “representatives of Local 518 had complained to the litho supervisor that there were employees doing manual work on the printing presses which was under their sole jurisdiction, and if we did not cease, they were going to file a grievance.” The General Counsel objected to this testimony as hearsay. I consider it only as evidence that Gertson received this information from the general foreman. Gertson testified he “told them we were in outright violation of the contract, and due to the situation of the past jurisdictional dispute with both the Locals between themselves, that we would have to have the people leave.” Paragraph two entitled “Jurisdiction” of the Local 518 labor agreement states:

2. JURISDICTION

2:01 All employees (including superintendents and foremen) engaged in lithographic production work, including but not limited to, pressman, feeder operators, platemakers, inkmakers and their apprentices, trainees and helpers, shall be covered by the terms of this con-

tract. *Only members of the bargaining unit shall perform work under the jurisdiction of the Union.* [Emphasis added.]

Gertson testified he was not aware of any complaint from Local 711. He told the Clinton plant manager that the employees (Brooks and Davis) should be removed from the Clinton plant and also called someone at the Raleigh plant informing that person of this action.

With respect to the following of Brooks by Supervisor Jay Lynn, Rehwinkel testified that a few days after the trip to Clinton, employee John Smith and Brooks got into a “heated discussion” concerning union activities and within a day or two thereafter there was an “altercation between Carly [Brooks] and Mike Drager and Bryan Dennis” and that he then took steps to protect Brooks. He told Brooks he did not want him to feel intimidated and that he (Brooks) had a legal right to support the Union and that he (Rehwinkel) had a legal right to protect him in the facility. At that time Rehwinkel asked Supervisor Jay Lynn to “watch out after Carly” to make sure other employees did not intimidate him and if they did, to let Rehwinkel know and he would “have them back off.” Supervisor Jay Lynn testified that he had a conversation with Brooks. Brooks asked him why he had been following him. He told Brooks that he had met with Rehwinkel and told him that Brooks had “almost got into an altercation with another crew member that morning and Mike [Rehwinkel] wanted me to watch him and make sure that there wasn’t anymore fighting going on so that somebody didn’t end up getting hurt or fired.” He also witnessed an incident with employee Mike Drager and Brooks when Brooks grabbed a union hat out of Drager’s hands after they had been passed out as employees came in that morning. Brooks also told Lynn that employee Charles Bryant had threatened him with a ball bat in the parking lot and told Lynn he had filed assault charges against him. Brooks told Lynn he had lost a lot of respect for the other employees and Lynn responded, “Yeah, because probably some of them feel that you’re screwing around with their livelihood.” This was the extent of the conversation about the Union. He did not say anything else about Brooks’ involvement in the union campaign and he did not tell him he was following him because of the union campaign.

Analysis

I credit Brooks’ testimony as set out above with the exception of his recall of the time of the meeting with Rehwinkel. I conclude that this meeting took place prior to the meeting attended by LaVoie, Rehwinkel, Weiss, and Brooks as testified to by both Rehwinkel and LaVoie. I find that the interrogation by Weiss and Rehwinkel concerning Brooks’ union activities at the Clinton plant was violative of Section 8(a)(1) of the Act as was the threat issued by Weiss to Brooks that Brooks had ruined his future with the Company because of his speech at the union meeting in Iowa. I also find that the removal of Brooks and Davis from the Clinton plant was a direct result of the speech given by Brooks at the union meeting attended by Brooks on the Saturday following the first week of work there. Assuming *arguendo* that Local 518 did threaten to file a grievance concerning the performance of bargaining unit work, I find the Respondent seized on this to get Brooks out of the Clinton plant because of his speech

at the Clinton meeting. I find it unlikely that the mere threat of filing a grievance would have resulted in the drastic action of barring Brooks and Davis from the Clinton plant rather than offering assurances to Local 518 that Brooks and Davis were there for training purposes in this very special situation. Certainly there appears to be no basis under the contract clause on which the Union could object to mere observation by Brooks and Davis of the litho process. Thus, I simply do not believe that the threat to file a grievance was the real reason for the removal of Brooks and Davis from the plant. Moreover, on the return of Brooks and Davis to the plant, the focus of the interrogation and threats issued to him was Brooks' speech at the union meeting. I thus conclude that Respondent violated Section 8(a)(3) and (1) of the Act by its curtailment of the scheduled 2-week training course and the removal of Brooks and Davis from the Clinton plant. *Wright Line*, supra; *Roure Bertrand Dupont, Inc.*, supra; *NLRB v. Transportation Management Corp.*, supra.

With respect to the following of Brooks by Respondent's supervisor on his return to the plant, I conclude that such action was taken because of Brooks' open and active support of the Union in order to discourage and impede his union activities. I conclude that the personal safety of Brooks was not the motivating factor in its following of Brooks but rather that he was followed to thwart his support of the Union as there was no contention by Respondent that Brooks was not performing his work. I thus conclude that Respondent violated Section 8(a)(1) by closely monitoring Brooks' activities in order to discourage his engagement in union activities. See *National Micronetics*, 277 NLRB 993 (1985). Re: Creating the impressions of surveillance, I do not find the cases of *Liberty House Nursing Homes*, 245 NLRB 1194, 1197 (1979), or *Midland Transportation Co. v. NLRB*, 962 F.2d 1323, 1328-1329 (8th Cir. 1992), dispositive of this issue as I find the Respondent's asserted concern for Brooks' safety was not the reason for its close monitoring of Brooks.

C. Actions Taken Against Other Union Supporters

In addition to Brooks, several other employees testified they were active union supporters and related alleged acts of interrogation and monitoring of their activities and breaks on the Respondent's premises during the critical period between the filing of the petition for an election and the date of the election.

Harry Zechman, an electrician in the maintenance department, testified as follows: He has been in the maintenance department since his hire 2 years and 8 months ago. He works a 12-hour rotating shift and consequently has different supervisors as the hours of the supervisors generally do not change. He performs his duties throughout the entire plant. He had been actively involved in the prior 1990 campaign on behalf of the Union. In 1991, he initially engaged in union activities by soliciting union cards on the first night that cards were passed out. He does not believe his supervisors were aware of this. During the 1991 union campaign he had several discussions with supervisors. The first discussion took place on the morning the Company put a notice on the bulletin board stating that a petition for an election had been filed. On that occasion his supervisor, Dan Geurin, came up to him and other maintenance employees including employees Mike Stephens and Ken Massey in the maintenance shop as a change of shift for the maintenance depart-

ment was occurring. Geurin asked the employees why they "were getting cards signed and trying to attempt the unionization again." The employees "let him know that we were trying again because we thought we needed one." At the time Geurin asked this question, he Zechman had not engaged in any union activities other than the passing out of union cards. He also had discussions about the Union with Dan Carson, an engineer from one of the other plants who was advising the maintenance mechanics on how to modify their new equipment. This conversation took place by the unwind for the 40-inch litho press on the night he returned to work after the posting of the notice by the Company announcing that a petition for an election had been filed. Carson asked Zechman if the employees were passing out union cards and Zechman asked him why Carson was including him in the inquiry as Zechman was not aware that anyone in management knew that he was passing union cards out. Carson did not respond to this question. In addition to the distribution of union cards, Zechman later passed out union flyers and hats and took the union representatives on visitations to other employees' homes. He also put a union sticker on his toolbox and lunchbox and wore a union button. He began to wear a union button approximately October 1-3, and put on the stickers around the same time and began handbilling in the plant's front entrance driveway on October 3. He handbilled about eight times. Other employees who also handbilled on these occasions depending on their shifts were Carly Brooks, Mike Stephens, James Hobson, Phillip Andrews, and Union Representatives Nancy Logan and Mike Black. On one occasion, he gave Plant Manager Rehwinkel a flyer. He also gave one to Supervisor Dan Geurin and to other supervisors. After handbilling on October 3, he came into Geurin's office in the maintenance shop to pick up his paycheck and Geurin remarked, "he didn't understand why I was coming in there to get a paycheck, most of my work seemed to be getting done out in the parking lot." After he began engaging in handbilling on behalf of the Union, Geurin who had previously rarely come out into the plant began checking on the maintenance employees "a lot more frequently," whereas previously Geurin "had never come out in the plant to check on what I was doing." During the last few weeks prior to the election, Geurin began to check on him much more frequently. During one 2-hour span, Geurin went back and forth five times from the maintenance shop to the area in the plant where Zechman was working. Geurin had never done this before that date. On another occasion he was assigned a job in the warehouse and while he was there working, a litho supervisor called him over to one of the litho presses which were the top priority machines for repair in the plant and Zechman went over to repair the litho machine and Geurin arrived and asked what he was doing working on the machine. He told Geurin he had been hired to keep the machines running. He had been previously instructed to repair the litho presses and get them running anytime they were down. The warehouse job he was performing at the time was a low priority job. A day or two prior to the election, Geurin, on two occasions on the same day, followed Zechman and Mike Stephens from the maintenance shop to the breakroom. For 2 or 3 weeks prior to the election, Geurin who had previously kept the door to his office in the maintenance department shut, began to keep the door open and whenever two or more employees who were union

supporters got together, a supervisor would approach. Right after the election, Geurin "pretty much went back to shutting his door." Prior to the union campaign, other employees were permitted to freely come into the maintenance shop and talk to the maintenance employees and on occasion the maintenance employees took their break in the maintenance shop and a number of employees from the extruder department would come in there as it was one of the few areas where employees could smoke. However, after the commencement of union activities, the maintenance shop became off limits to all employees other than maintenance employees. During the period after the commencement of the union activities, Sue Beightol, who was a warehouse supervisor, made a U-turn and followed him "to the front breakroom and stood at the door with her watch up, looking at the watch, while I was taking my break." Prior to this he had not received any complaints about his breaktimes. At a "Visions meeting" conducted by Respondent's human resources director, Carlin Johnson, she stated that employees wearing "Vote No" T-shirts were being harassed and this was not acceptable and would not be allowed. Zechman raised his hand and said "that those of us wearing union hats were being harassed," and she replied "Good." On cross-examination, Zechman acknowledged that his relationship with Geurin was a good one and they had joked from time to time. He, however, did not regard Geurin's comments as being in a joking manner on the day he came in to pick up his paycheck. He continued in his union activities after the comments by Geurin. Plant Manager Rehwinkel also attended the Vision's meeting and shortly after the comment by Carlin Johnson at that meeting, Rehwinkel told the employees at the meeting that regardless of whether they were for or against the Union, there would be no harassment allowed.

Maintenance employee Mike Stephens who has been employed by Respondent for 8 years and is classified as a machinist/mechanic testified as follows: Dan Geurin was his supervisor during the 1991 union campaign. He has been a maintenance/mechanic about a year and makes and repairs machine parts and repairs machines throughout the plant. He became involved in the 1991 union campaign in October and attended meetings and solicited union cards. He obtained signed union cards before the filing of the petition for an election. He also handbilled in the parking lot about the same day the petition was filed on September 16. He also handed out union hats a couple of days prior to the election. He handbilled on behalf of the Union at the front entrance to the plant six to eight times. Carly Brooks, Harry Zechman, Robert Henderson, James Hobson, Robert Goldsmith, and David Moore also regularly engaged in handbilling. He also was the union observer at the 1991 election as well as the prior 1990 election. While handbilling on behalf of the Union he was observed by Supervisors Dan Geurin, Joe Reinstidt, Joe Blackman, and Plant Manager Rehwinkel. Right after the petition was filed his supervisor Dan Geurin said to a group of employees in the maintenance shop, "I see you've been handing out cards again. You're doing it again." The employees did not respond. During that period of time he had not handed out union cards except during breaks and after hours and there were no supervisors around when he was handing out union cards. After the petition was filed, Geurin would come to the breakroom and look at his watch when Stephens was taking a break whereas Geurin had not gone

to the breakroom prior to the filing of the petition. Additionally, after the filing of the petition, Geurin began following him around the plant and whenever he was asked to look at a machine either Geurin or the immediate supervisor would stand around and watch him. Prior to his engagement in union activities in 1991, he spent approximately 50 percent of his time out in the plant working on the machinery. After the filing of the petition, he was restricted to the machine shop and kept occupied with machine shop work and other nonemergency work. For the week prior to the election when he was confined to the machine shop Geurin propped his door open and stayed in his office at least 8 hours a day. After the election, Geurin no longer monitored him in the machine shop or in the plant. It was only during the period between the filing of the petition and the election that Geurin monitored him. About 2 weeks before the election there was a sign put on the door to the maintenance shop that said "Authorized Personnel Only" and the maintenance employees were told to tell everyone else to leave, whereas prior to the filing of the petition the maintenance shop had been open to other employees. Within the 2-week period prior to the election, Geurin came up on one occasion and listened when an employee came into the maintenance shop to talk to Stephens. About 10 days prior to the election, Geurin began to tell other employees that the maintenance shop was not a breakroom and not to loiter in there. Nonmaintenance employees were no longer excluded from the maintenance area after the election.

On cross-examination, Stephens acknowledged being one of several maintenance employees who had complained about cigarette butts being left on the floor in the maintenance shop sometime before the union activities had started. He denies having asked Geurin to keep other employees out of the shop. Prior to the filing of the petition, he spent 50 percent of his time in the shop and 50 percent of his time in other parts of the plant repairing machines. In the 2 weeks prior to the election, Geurin gave him nonemergency work in the machine shop consistently, one assignment after another which kept him confined to the shop. During the 2 weeks prior to the election, Geurin spent 90 percent of his time in his office. Prior to this 2-week period, he had never seen Geurin's door propped open.

Phillip Andrews, a 4-year employee of Respondent who is currently assigned to the sealer department, testified as follows: During the 1991 union campaign, he was assigned as a forklift operator/loader to the litho department and reported to Supervisor Bobbi Holder. Prior to the filing of the petition, he had recently transferred from the extruder department to the litho department as a result of a reduction-in-force in the extruder department. At the time of the union campaign he was responsible for the transfer of pallets to and from the 28-inch litho press which entailed transferring pallets with finished products to the staging area and taking waste pallets and banding, weighing, and wrapping them. He was also responsible for supplying good cartons to the sealers so they could be fed through the sealer machines and removing empty pallets from this area and transferring them to the 28-inch litho press. His duties had been described to him at the time of the posting of the job and when he was interviewed by Bobbi Holder and Eddie Siler and once again when he was selected for the position. He worked an 8-hour shift and received two 10-minute breaks and a 20-minute

lunch break during the shift. Prior to the advent of the union campaign, he had not received any instructions as to how to take these breaks and he took them as the work permitted as he had to keep the sealer machines supplied and keep up with the waste from the litho department.

In the fall of 1991, he became involved in union activities. He handed out union cards prior to and after the filing of the petition for an election. He also handbilled two or three times on behalf of the Union and handed out union hats. He initially handbilled on October 29. He handbilled on the street in front of the plant and handed out hats on November 12 outside the plant. Harry Zechman, Rick Stevens, David Moore, Nancy Logan, and Curtis Hawkins also handbilled on these occasions. After he commenced handbilling, his breaks began to be timed, he was followed to the restroom, and his paychecks were given to him differently and separately from other employees. His supervisor Bobbi Holder would watch him when he went on break and other employees in the sealer area reported to him that she had been inquiring about his whereabouts and what time he had left. On October 29, Holder asked him and David Moore whether they had combined their first break with their lunch break. He told her that sometimes they did and that sometimes he only took two breaks a night depending on the workload. He asked her if she was timing his breaks and she said she was. On October 29, he had combined the two breaks. Prior to the filing of the union petition, he had combined breaks as it was a new job and he was trying to establish a routine to accomplish the work as required but no one had spoken to him about combining his breaks. Around October 29, Sam Godwin, the supervisor in the plate room, began following him to the restroom and stood in a little room containing lockers and a wash basin while he used the toilet facilities and after he left, Godwin would leave. This happened on more than one occasion. Godwin stopped following him to the restroom and Supervisor Doug Clayton, the converting department supervisor, started following him on a couple of occasions right after Godwin stopped following him. Neither Godwin nor Clayton had followed him prior to his engagement in union activity. His supervisor Bobbi Holder also started monitoring him after he engaged in handbilling on behalf of the Union. If someone would talk to him, she would come up behind them and tell him to "Sweep the floor," or "Go pick up some trash" or "something out of the ordinary that wasn't done before." Sometimes she would go to Supervisor Doug Clayton's office which sits up and has a glass front which enables her to look down on him which she had not done before his engagement in union activity. She continued to do this until after the election. Prior to the advent of the filing of the petition and the union campaign, other employees had come in and talked to him and Holder had not come up and listened or interrupted him. All the monitoring by Holder ceased after the election. On other occasions during the union campaign, Supervisor Joe Blackman would watch him and if another employee approached to talk to him, Blackman would wave to Holder who was standing by the 28-inch press to observe him. Prior to the onset of the union activity, Holder spent most of her time in the office and he seldom saw her. On November 12, he gave out union hats and that night at 10:15 p.m. he and employee David Moore were taking a break and Holder came in and told them they could no longer take a break after 9 p.m. Prior to this he had taken breaks as he

could fit them into the work. At the time of this conversation employee Warren Hendricks came into the room and Moore jokingly told him he could not take a break then and Holder told Moore it was none of his business as Hendricks worked for her and was doing his job and not to worry about Hendricks. Hendricks stayed in the cafeteria that evening.

Prior to the union campaign, the employees were given their paychecks around 1 or 2 p.m. on the first shift and 6 p.m. on the second shift from the supervisor. After the commencement of the union campaign, Holder did not give him his check on the second shift until 10 minutes to 11 p.m., whereas other employees received them at 6 p.m. On one occasion, he had to find Holder to get his check after 11 p.m. and he asked Holder about this and she said, "Well, I give them out to who I want to first." This could present a potential problem if there was a discrepancy in the check and he did not receive it until the end of the shift. David Moore was also receiving his checks late.

On cross-examination, he testified he was not given instructions by Holder before the union campaign concerning his breaks. He denies that a number of employees complained about his not being there to do his job or that on several occasions he was gone too long from his job. Holder wrote him up and he complained to Rehwinkel about it and she removed a document from his file but he does not know what it was. Holder also said she would do a better job communicating with him. It is true that if he does not do his job, the sealing department would lose productivity since if he does not deliver pallets to the machines, they may shut down and if he does not remove waste properly, it will stack up. He denies that he was constantly away from his job or that Holder found him late one evening in the shipping office with his feet up smoking a cigarette with the lights out. He sometimes took a break away from the breakroom to smoke a cigarette. Both Godwin and Clayton would also use the same restroom he does. As soon as Blackman waved down to Holder, she would come over to where he (Andrews) was and tell him to do something.

David Moore, an employee of Respondent since July 1987, has worked in the shipping department since August 1991 when he left the extruder department. Eddie Siler was the supervisor in the shipping department between September and December 1991. Siler and Holder both interviewed him for his position in the shipping department and he was told that he would take his orders from Siler. After he went to work in the department, he received his orders from both Holder and Siler. He went to Siler for vacation time and Siler prepared the form and signed it and he received the vacation time. In late September, he needed time off and he went to Siler who approved it and, he received an occurrence under Respondent's no-fault attendance policy but did not receive a writeup. He also saw memorandums and notices with Siler's name as designated supervisor on them come in the departments and Siler signed his timecard and wrote the time in when it was not in the proper slot for him to mechanically punch it in the timeclock. Siler also asked him to work overtime and he was paid for the overtime. General Counsel's Exhibit 3 which was posted on the bulletin boards in the plant on October 9, 1991, announces the promotion of David DeVries to production manager and lists Eddie Siler as an "Hourly Shipping Supervisor." General Counsel's Exhibit 4

is an employee schedule which lists supervisors including Siler to whom the schedule is to be distributed.

Moore became involved in the union campaign the Thursday and Friday before the petition was filed. At that time he solicited union cards. After the filing of the petition he handbilled, made house calls, and employees came up to him on break and asked him about the Union. He also wore union hats. He began handbilling the first 2 or 3 days in October and did so on the curb in front of the plant. He handbilled seven or eight times and did so during the course of the union campaign. Other employees who did so during this period were Carly Brooks, James Sant, Mike Stephens, Phil Andrews, Robert Henderson, and Harry Zechman. One morning he gave a handbill to Rehwinkel and Kevin LaVoie. Sue Beightol came out one time and asked for a handbill. After he began handbilling he was assigned extra duties, his breaks were timed, he was followed to the restroom, and he was paged continuously until he answered the page. Supervisor Sam Godwin commenced following him on October 29 and 30. His name was on the union handbill as having been denied information that he had asked for from the Company. He handled the 40-inch litho and the 28-inch litho presses and as he would walk by Holder and Godwin who would be talking at the 40-inch litho, Godwin would come right out behind him and follow him to the restroom. Godwin would stand in the wash area and smoke a cigarette. He followed Moore two times the first day and once the second day. Godwin did not use the facilities on any of these occasions. Moore talked to Production Manager Dave DeVries about this when DeVries wanted to know late on the October 30 "why I was in the shipping office on the 29th smoking a cigarette, with my feet threw up on the desk, the lights out, threw back in a chair." He told DeVries his work was finished, it was 5 minutes until the end of the shift, he did not have his feet on the desk, there was a lamp lit on the desk, and he was smoking a cigarette but he did not want to punch out 5 minutes early or management would give him an "occurrence." He also asked DeVries what he was trying to get at but DeVries did not respond. Moore also told DeVries he was tired of being constantly paged and followed to the restroom. Up to this point Holder had on one or two occasions paged him constantly so he could not get through on the phone system. After that it kept happening for about a week. Prior to his engagement in union activity, she had paged him but had given him time to respond to the page. After his engagement in union activity, Holder began to time his breaks. On the first occasion he and Andrews had returned from a break and Holder told them they had been on break longer than allowed and asked whether they had combined their first break and their lunch break. He told Holder that they sometimes combined their breaks because as a result of needing to keep up with the presses he could not always take his breaks when he wanted. As a shipping loader and material handler he kept the chestnut press loaded, the zerand press loaded, and the 40-inch press and 28-inch litho loaded. He hauled good cartons from the 40-inch litho and banded up their waste. Prior to the onset of his union activity, he took his breaks as time was available and about 50 percent of the time he combined his breaks. On November 12, he and Andrews were in the breakroom between 10 and 10:15 p.m. and Holder came in and said they should take their break between 9 and 9:30 p.m. but no later than this. At that time,

employee Warren Hendricks came in and Moore said to Hendricks in a joking manner, "Warren, you need to start taking your break between 9:00 and 9:30" and Holder told him "No, what Warren was doing was fine." Prior to his engagement in union activity, he had taken breaks as late as 10 or 10:15 p.m. and had not received any complaints about doing so. November 12 was the day he started handing out union hats.

When Moore started in the department, he received his checks when everyone else in the litho department did, usually 2 hours before the end of the shift or sooner, sometimes a bit later. After his engagement in union activities, he did not receive his check from Holder until "just before I got off." This only applied to Andrews and himself as at the end of the shift she would page them to pick up their checks or they would have to look for her.

On cross-examination, he testified he has never had a problem with getting his job done and that he was not aware that a number of employees had complained that he was not there to do his job. Although he works in the entire plant and was always subject to being paged, he was not paged to the extent Holder paged him after the onset of his union activity. Holder did not complain to him about being out of his area too frequently. On the occasion when Hendricks came into the breakroom, Hendricks was not working over that night so as to entitle him to take a late or additional break.

James Sant, an electrician employed by Respondent 4-1/2 years, testified as follows: As an electrician he does routine preventive maintenance throughout the plant until he is called to repair a machine that has broken down. He was engaged in union activity in the 1990 campaign. He spoke on behalf of the Union, solicited union cards, and wore union buttons on his hat. He was also involved in the 1991 union campaign and solicited union cards, handbilled, and answered employees' questions about the Union. He handbilled at the front entrance to the plant on several occasions along with several other employees such as Harry Zechman, Mike Stephens, David Moore, and Carly Brooks and he was observed handbilling by Supervisor Dan Geurin and Plant Manager Rehwinkel and by LaVoie. After he began to engage in union activity, he was watched more closely by Supervisors Doug Clayton, Bobbi Holder, and Dan Geurin. If he was walking through the litho area and an employee in the litho department asked him a question, Holder would approach and send the employee off to do something else. Prior to the union activity, Holder had not done this but would come and sit in the maintenance shop and talk. Holder continued these interruptions until after the election. Doug Clayton was his supervisor on the night shift and began to watch him closely after the advent of the union campaign. When he walked to the breakroom or through another department and another employee would engage him in conversation, Clayton would appear within a minute or so and look at him. Clayton did not do this prior to the union campaign. Clayton no longer does this and ceased to do so after the election. Supervisor Dan Geurin would come out of his office and stand around during the union campaign whenever anyone approached in the shop. He had not done this prior to the filing of the petition and continued to do it through the union campaign. There was no rule prohibiting employees from talking to one another.

Robert Henderson, a shipping department employee, testified as follows: His supervisor is Sue Beightol. Prior to this, Eddie Siler was his supervisor approximately 12 months until Beightol came about a month and a half before the 1991 election. Siler assigned him work, signed his timecard for overtime worked, and wrote him up for attendance. Siler also directed the work of the other employees. Siler authorized him to work overtime and he was paid for working it. Siler was also listed as an acting supervisor on the November 28, 1991 work schedule. He attended the initial meeting when Siler was introduced to the entire shipping department as their supervisor by then Assistant Plant Manager Dave DeVries. He also turned in a request form for vacation which was signed by Siler. On another occasion, he called Siler at his home and told him his mother had had a heart attack and he had to leave and Siler told him to go ahead. Siler also permitted him to leave the plant to deposit his check in the bank. Henderson worked as a loader in the shipping department. Siler had an office and had his own telephone. He noted no difference in Siler's duties or responsibilities than those of his predecessor Supervisor Larry Miller or his successor, Supervisor Sue Beightol. On occasions when he forgot to punch in, Siler would sign off the time worked on his timecard and he would be paid for it.

Henderson engaged in union activities in 1991 from the beginning of the union campaign. On the day the petition was filed at about 5:30 or 6 a.m. toward the end of his shift, Siler came into the shipping office and asked him if he was the one who had "started this mess," and he replied, "What mess?" and Siler said, "You know what mess," and he said "No, I don't know what you're talking about." Siler replied, "This Union mess" and Henderson said, "No, I did not start this one." At this point in time Henderson had not engaged in any union activity in the 1991 union campaign that the supervisors would have been aware of although they were aware of his activities on behalf of the Union in the prior campaign in 1990. On cross-examination, Henderson acknowledged that he was the employee who initiated the union campaign in 1990 and that Siler knew from prior discussions that he was a union supporter.

David Chalk, an employee in the shipping department, testified as follows: He is a shipping loader. From December 1990 until January 1992, he worked as a warehouse coordinator and his supervisor was Eddie Siler. Siler was in charge of the day-to-day affairs of the shipping department. In December 1990, Dave DeVries introduced Siler to the employees on the day shift in shipping as their supervisor. Subsequently, people who asked for the shipping supervisor were sent to Siler. Until January 1992 when Sue Beightol became supervisor of shipping, Siler made the job assignments in the shipping department and reassigned employees to different jobs in shipping. Siler granted him time off for vacation or to leave work to go to the dentist. Siler also held meetings with the employees in his office and he Chalk was paid for the period of time he spent in those meetings. Siler was the only employee in the shipping department who had an office and a telephone.

The Respondent called Joe Raulerson, a sealer operator who works next to the Chestnut press. Phillip Andrews is the forklift driver assigned to move the product to and from his area. On one occasion, he asked Supervisor Bobbi Holder if Andrews was back in another area doing his job banding pal-

lets or bringing pallets to the front. He never complained to Holder. The Respondent also called Ricky Wilson, a machine operator on the litho press who testified that during the period from September to November 1991, Phillip Andrews took care of the handling of finished pallets for his area and that David Moore brought in roll stock for the back of the press. Bobbi Holder was the supervisor during this period. He on occasion spoke to Holder about Phillip Andrews "when I had a hard time locating him to get pallets off the press." He also talked to Holder about David Moore, "At times when you would request roll stock, he'd be a little on the ill side and, you know, maybe mouth at you a little bit. So, finally, I'd just go to Bobbi and, hey, we need roll stock. You need to talk to the guy. And she would page him and if he could hear the page, you know, he'd come out to the press."

Litho Services Supervisor Sam Godwin testified he spends approximately half his time in his office and half in the plate room. His office and the plate room are separated and he walks through the production area to get from one to the other. He has occasion to go to a men's restroom to use the facilities and to drop off and pick up uniforms which are cleaned by a uniform service and an adjacent area is used as a dropoff and pickup point and which is also used as a smoking area and he smokes in this room. He denied ever following Phillip Andrews or any other employee or ever trying to stop Phillip Andrews or any other employee from engaging in conversations concerning union activities.

Converting Supervisor Doug Clayton, who has responsibility for the zerand and chestnut press, testified he uses the toilet facilities in the men's rest room as well as the adjacent locker facilities. He denied following Phillip Andrews to the locker room because of his union activities or to see what he was doing, but acknowledged he may have been behind him if he, himself, was going to use the facilities. He denies ever having stopped Andrews from discussing the Union with anyone unless they were on the production floor and should be working. The only occasion he remembers is when he observed employee James Sant talking to Billy Suggs who works in his department and he walked up there and they dispersed. He did not say anything to Sant. He knows David Moore and James Sant and has never followed them because of their union activities. On cross-examination, he testified that there is no plant rule against talking to other employees but contended that Suggs, who gets parts ready for shipping and operates a fork lift, cannot talk and do his job at the same time. He was aware that Phillip Andrews, David Moore, and James Sant were union supporters.

Eddie Siler testified that in August 1991 he was acting shipping supervisor until Sue Beightol was brought in as shipping supervisor and he became assistant shipping supervisor. As acting supervisor, he could not discipline employees for absenteeism alone. He needed Dave DeVries' signature along with his recommendation. He issued warnings because of absences; the absenteeism system was automatic and if you missed the designated number of days within a predetermined period, it showed on a report and the employees were automatically issued a notice. He had the authority to approve vacation. They could not let too many employees go on vacation at the same time. They also required a 2-week notice for vacations in the absence of an emergency. As an acting supervisor he interviewed an employee alone

after the questions were approved by Dave DeVries who was then the shipping department manager. He recommended the hire of both employees he interviewed but could not make the final decision. He denied asking Robert Henderson whether he had started the 1991 union campaign. Following the 1991 election, he and Henderson were talking one day and Henderson told him he had initiated the union campaign. He did not ask any employee if they started the 1991 union campaign. He did ask James Hobson, a well-known union supporter, "What are you guys up to now?" After the commencement of the 1991 union campaign, he had seen Hobson handbilling on behalf of the Union. He was paid on an hourly basis during his tenure as acting supervisor.

Bobbi Holder, the production supervisor in charge of the litho department at Raleigh during the 1991 union campaign, testified she had worked in the Raleigh plant from June 1991 until February 1992 when she was transferred to the Plant City, Florida plant. At the Raleigh plant she was responsible for the startup of the litho department and for production of the two litho presses in the department. At the Raleigh facility she was responsible for 15 employees, some of whom were responsible for production on the machines and 2 of whom were responsible for material handling. Phillip Andrews began reporting to her in August 1991. His responsibilities were to stage empty pallets by the 28-inch litho press to enable the operators to place work in process on them. He was to then remove the work in process pallets as well as waste pallets from the area. He was responsible for banding, weighing, and placing the waste pallets on a truck for recycling and to transfer the work in process to the staging area or directly to the sealers or another warehouse area for temporary storage. Thus, he was responsible for keeping the presses running by removing waste pallets and work in process to permit production to continue. He was also responsible for transferring the work in process to the sealers which utilize and seal the product run on the presses. Thus, the sealers must be kept supplied with the product or they will shut down. As Andrews' job was a new position, she prepared a memo outlining his job duties and her expectations of him. During the period of September, October, and November 1991, Andrews did not adhere to his job responsibilities. He took excessive breaks, overstayed his breaktimes, and did not take breaks at appropriate times. There were also several occasions when the equipment was out of pallets and it was necessary to remove pallets from the 40-inch press and take them to the 28-inch press to keep the equipment running. There were many occasions when there was a potential shutdown of production. Additionally, he did not always dispose of the waste pallets properly. She issued a written warning to Andrews in the presence of DeVries. The warning sets out that Andrews improperly disposed of waste pallets in the compactor rather than preparing them for sale for recycling. The warning also sets out an incident on October 8, 1991, when she asked Andrews to "band up and remove three waste pallets that had been sitting on the floor for most of the morning." Andrews refused to move them and said he would leave them for Marshall, his counterpart on the next shift. She asked him again to remove them. Near the end of the shift, she "went back into the breakroom to find Andrews and I asked him to please remove the waste pallets from the area. Toward the end of the shift, he finally complied." The warning was given to

Andrews and a copy was placed in his file. However, after several conversations with Plant Manager Rehwinkel, they called Andrews "into the office to try to understand exactly what was going on. Phillip and I had a long talk and decided that I had misunderstood what he said to me. He was frustrated. He was upset for other reasons. And the way he responded to me was not what he really meant. So I misunderstood him and there was a miscommunication about the removal of the pallets." During the conversation, she told Andrews she would remove the writeup from his file and she did so in his presence.

At the time Andrews came to work for her, her department was on a two-shift rotation which differed from the rest of the facility. Employees in her department were allowed a 10-minute break after 2 hours of work, 2 hours later a 20-minute lunch break, and 2 hours thereafter another 10-minute break. Since Andrews was supplying the sealers, it was important because of the limited number of employees on the crew, that Andrews adhere to their break schedule as close as possible. After the above-described incident involving Andrews, there were many subsequent conversations with him about breaks. The operators on the sealers were complaining to her that Andrews was not available and it was necessary to pull operators from their crew to perform his work to feed the sealers with product. Additionally, the product was backing up on the press and the waste was backing up. His break habits caused problems in keeping the equipment running. The operators on the sealers complained to her that it was deleterious to their production and their ability to efficiently run the sealers. She spoke to Andrews about this on many occasions and about taking breaks at 10:30 p.m. when his shift was over at 11 p.m. She was concerned about his taking his break at 10:30 p.m. because both sealer crews were working on the equipment and did not have an extra person to permit Andrews to go on break at that time. She had scheduled Andrews' breaks to coincide with times when there was only one sealer crew running which would allow him to "stage the product in such a way that his ten minute or his twenty minute break taken at the time one of the sealer crews took a break would not hinder production." She explained to Andrews the need for him to take his breaks with the sealing department and he did not dispute this.

On October 28 at 10:12 p.m., she went to the sealer area to talk to Andrews and was told by the operator that he was on break. She checked the breakroom and he was not there. She found him in the shipping office with employee David Moore at 10:19 p.m. They were smoking a cigarette with their feet on the desk and the lights out taking a break. She "asked them to please come to work." Their response was "Nothing, a smirk." "They complied very slowly, but they complied." On October 29, Andrews and Moore took a break from 8:30 to 9 p.m. which is beyond their 20-minute lunch break. She went to the breakroom and told them to watch their breaktime. Moore came back to the 40-inch press at about 9 p.m. She told him he only received a 20-minute lunch break and he should watch his breaktime. She also told him he should pay more attention to the 40-inch press as on this day they were down to two empty pallets on the press almost necessitating a shutdown because Moore had not given them the proper supplies to run the equipment. She told him she should not have to page him to bring pallets or rolls to the press as this was his job. He raised no protest

about this. On November 12, 1991, her crew was working late that night. Moore and Andrews went on break at 10:20 p.m. which was not their breaktime as they were not working over. She talked to Moore and asked him to take his break at 9 p.m. so he could take his break at the same time as the sealer operators. At that point Warren Hendricks, a member of her crew, entered the breakroom at about 10:25 p.m. Moore turned to Hendricks and said, "Warren, you need to take your break at 9:00 o'clock." Warren said, "What?" And David Moore responded, "Well, that's what she said. You need to take your break at 9:00 o'clock." She told Moore she was Hendrick's supervisor and would regulate his breaks. It was not his responsibility. Hendricks had been entitled to a break as he was working beyond his normal shift that night which entitles him to another break. On another occasion, she told Moore to sweep up some poly pellets on the warehouse floor as they were a safety hazard and the warehouse was part of his responsibility. She and Siler had discussed this a couple of days previously as Moore had previously reported to Siler. Moore began to report to her in October 1991. On November 15, the day of the election, they were working the second shift and she could not find Moore. She later learned that he was a poll watcher although he had not informed her of this or made any effort to get coverage for his job. She denies ever being called to the floor by Supervisor Joe Blackman to observe an employee's union activity.

David Moore's primary job duties were to deliver roll stock to the 40-inch press and remove waste and work in process from the 40-inch press. He was also responsible at times for removing roll stock from rail cars and stacking, organizing, and cleaning the warehouse. Holder was responsible for monitoring Moore's breaks. Often when he was in the production area, he went on break with Andrews. If Moore overstayed his break, she would look for him. She never followed Andrews or Moore because of their union activities. She did not follow them to the breakroom but went to the breakroom after them when they overstayed their breaks. She did not take any action against Moore or Andrews any different from her treatment of other employees. With regard to the second shift, her practice was to pay the employees by the end of the shift before they went home. She did not receive any complaints from Moore or Andrews that she was not paying them properly or that she was withholding their checks.

There is a paging system in the facility used to page employees to the equipment or to call them when they cannot be found. There are areas where the page is hard to hear as it becomes muffled and raspy. During the period of September, October, and November 1991, she had occasion to page both Andrews and Moore because they were not in their area and she needed them. Typically, she needed Moore to remove the pallets from the 40-inch press or to bring roll stock to the press. She also paged maintenance employees and operators and her supervisor to the press. She did not page Andrews or Moore because of their union activities but they were paged more often than others because they were not in their work areas and they were not performing their job duties. She did not interfere with the paging system so they could not call her back. On cross-examination, Holder acknowledged that she had not given Andrews or Moore any written warning concerning breaks.

Dan Geurin, who served as Respondent's maintenance supervisor during the 1990 and 1991 union campaigns, testified as follows: Harry Zechman, Mike Stephens, and James Sant are all maintenance employees who reported to him and were active union supporters. He denied ever taking any action against them because of their union activities. His office was adjacent to the maintenance shop. It was necessary for him to go in and out of the shop to get to his office. He was responsible for the maintenance of the entire plant and part of his job duties was to keep track of the maintenance employees and what they were doing. When he received work orders or verbal requests from supervisors, he would dispatch a maintenance employee to handle them. If the maintenance employees themselves answered the code, they could go to handle the job on their own initiative. They worked throughout the plant. He was responsible for knowing what the maintenance employees were doing, what needed to be done, and whether they needed help. In his job he spent time all over the facility. He denies ever following anyone because of their union activities. He would use whatever rest room he was near as needed. He smokes and availed himself of smoking areas throughout the plant. He never followed any employee into a breakroom because of their union activities. He has been in the presence of union supporters in the breakrooms and has had various conversations with them. On one occasion, when Harry Zechman came in from the front of the plant where he had been handbilling on behalf of the Union on a morning when Geurin was passing out paychecks, he jokingly said to Zechman, "you expect me to pay you when you're doing all your work out front, or something like that." Zechman laughed and he gave him his paycheck. He has never questioned anyone about union activity or asked if they had started union activity again. There is a door to his office in the maintenance shop which he keeps open or closed as necessary to regulate the temperature in his office as there is one furnace and one thermostat in the center of the shop. If the doors to the maintenance area are open, the furnace pumps heat into his office and he has to open his door because his office becomes extremely hot. He has never taken any action to be present during or to prevent employees from discussing the Union by his presence. Nor has he spied on or surveiled groups of employees engaging in union activity. He did not alter his daily work pattern in any way during the union campaign. He did not receive any complaints from Harry Zechman, Mike Stephens, or James Sant that they were being harassed or bothered by him because of their union activities.

The maintenance employees had the responsibility for cleaning the maintenance shop. It was to be cleaned daily. In the fall, there came a time when the maintenance area was unacceptably strewn with trash. He met with his employees on September 16, 1991, for a Monday morning safety meeting and discussed as one topic, shop cleanliness, noting the problem of coffee cups, soft drinks cans, and cigarette butts strewn around the shop floor. One of the main suggestions was to keep employees who had no business in the maintenance shop out. This was made by Mike Stephens who was in the maintenance shop all day and who commented he did not want to clean up after someone else who had no business there. On September 19, he ordered signs for the maintenance shop stating "Authorized Personnel Only" in front of the maintenance shop and a nearby high voltage area where

debris had also been strewn and which should be restricted to trained personnel. The union activities had nothing to do with the posting of these signs. He denies having taken any actions to discourage employees' union activities. Nor did he alter anyone's work schedule or change anyone's duties to stop them from supporting the Union. He also denies having stayed in his office 8 hours a day the 2 weeks prior to the election or ever to surveil or spy on union activity. On cross-examination, he denied that Zechman had told him prior to his comments about the paycheck that he did not think the Union was something to joke about. He acknowledges that cleanliness in the shop was a problem since early 1990 when he first moved into the shop.

Analysis

I find the evidence establishes that Respondent through its supervisors Dan Geurin, Doug Clayton, Bobbi Holder, Sam Godwin, and Jay Lynn, as set out above, more closely monitored its employees because of their union activities. I credit the employees' testimony as set out above with respect to the close monitoring of their activities after the onset of the union campaign. I found, with some exceptions in the case of Andrews and Moore, the testimony of the employees to be forthright, specific, and convincing and I credit it fully with respect to the close monitoring by Respondent's supervisors after the onset of the union campaign and the cessation of this close monitoring after the election. Particularly noteworthy was the testimony of Zechman, Stephens, and Sant who were closely monitored and who had not previously encountered any problems with their work or with breaks. I do find in the case of Andrews and Moore that Respondent has demonstrated by the preponderance of the evidence that the close monitoring of their activities and breaks was motivated in part by their unavailability to perform their duties as a result of their absences, overstaying their breaktimes, and not following the procedures set by their supervisor Bobbi Holder for coordinating their breaks with the operators to ensure that production could continue. It appeared to me at the hearing based on my observation of both Andrews and Moore and their testimony and that of Bobbi Holder and operator Ricky Wilson, who testified concerning his need to contact Holder when Moore did not respond to his need for material, and operator Joe Raulerson, who testified that when Andrews was not available the operators had to put the pallets on the sealers, that Andrews and Moore were reluctant to comply with Holder's directions and that some of Holder's monitoring of them and their breaktimes was in direct response to their recalcitrance in complying with Holder's directions. However, certain of Holder's activities, such as her immediate repaging of Moore and her withholding of Andrews' and Moore's paychecks according to Andrews and Moore whom I credit in this regard until the end of the shift, clearly constituted unwarranted harassment, which I find supports the inference that these activities of Holder were motivated by their engagement in union activities.

I thus find that Respondent violated Section 8(a)(1) of the Act by the close monitoring of its prounion employees in order to inhibit their activities on behalf of the Union and by the repaging of Moore and violated Section 8(a)(3) and (1) of the Act by the withholding of paychecks from Moore and Andrews.

I credit the testimony of Zechman and Stephens concerning the inquiries made of them on September 6 or 7 by Geurin as to why they were starting the union campaign according to Zechman or that they were "doing it again" according to Stephens. While the recall of these employees is not identical, I credit Zechman's version as the more accurate. It is clear from both versions that Geurin was inquiring into the union activities of employees who had been active during the prior 1990 union campaign but who had not as yet publicly aligned themselves with the union campaign in 1991, as at that point in time only union officials were handbilling in the front of Respondent's premises. I thus find that since these employees had not as yet expressed themselves as open union supporters in this campaign, Geurin's inquiry into their union sympathies and activities in this instance tended to interfere with the free exercise of their Section 7 rights under the Act and was coercive. *Rossmore House*, 269 NLRB 1176 (1984). I also credit Zechman's un rebutted testimony that later that evening Dan Carson, a company advisor from another plant, asked him if he had been passing out union cards. I also credit the testimony of employee Robert Henderson that on the same day Acting Supervisor Siler asked him if he were the one who had started the "union mess." I find that these inquiries of employees who had not disclosed their roles as union supporters in this campaign constituted unlawful interrogation which tended to interfere with their Section 7 rights. *Rossmore House*, supra. I find that Carson was placed in a position by Respondent wherein it could reasonably be inferred that he was speaking on behalf of management in his coercive inquiry as to whether Henderson had started the "union mess." I also conclude based on the ample evidence covering Siler's position that he was a supervisor under the Act and that his inquiry as to whether Zechman was passing out union cards was coercive under the circumstances. I thus conclude that Geurin's inquiry of Zechman and Stephens, Carson's inquiry of Zechman, and Siler's inquiry of Henderson were each violative of Section 8(a)(1) of the Act.

With respect to the comment to Zechman by Geurin on October 3 as to why Zechman was coming in to pick up his paycheck as most of his work seemed to be getting done in the parking lot in reference to Zechman's handbilling for the Union on that date, I find this an innocuous comment made in a joking manner that does not rise to a violation of the Act and will recommend this allegation be dismissed.

The Award of Safety Jackets

On the day prior to the election, Respondent gave its employees safety jackets commemorating 500,000 man-hours without a lost time accident (an accident that caused an employee to miss work). The jackets bore the Respondent's logo and the 500,000 man-hour milestone. The complaint alleges the award was an unlawful grant of a benefit designed to influence the election in violation of Section 8(a)(1) of the Act. The General Counsel contends that there was no precedent for the award at the Raleigh facility, that the award was substantially greater in value (\$25 to \$30) than any safety award previously given at the Raleigh plant such as pizza for a prior safety award accomplishment, and that the safety committee at the plant had previously decided to give a T-shirt to commemorate the 500,000 milestone but points to Plant Manager Rehwinkel's testimony that he himself made

the decision during the critical period to issue the jackets to the employees. The Respondent contends that the award of a safety jacket was proper as a reasonable award for the first time in its history that the Raleigh plant had reached the significant 500,000 man-hour milestone and that there was precedent for giving gifts of a similar nature at two unionized plants in Atlanta, Georgia, and Kansas City, Missouri, where Rehwinkel had previously served as manager and at the unionized plant in Clinton, Iowa, according to the testimony of Gertson. Manager Rehwinkel testified that he made the decision to issue the jackets to employees and that they were to be ready for a special "family day" but that there was a delay in receiving them until the day before the election. On cross-examination, Respondent's counsel elicited testimony from employee Carley Brooks that jackets in the \$20 to \$25 range had previously been given to 20 employees in recognition of a safety award in 1989.

Analysis

I find, on a review of the testimony in light of significant past practice at other of Respondent's plants of awards of a similar nature and to a lesser extent at the Raleigh plant with respect to the prior distribution of jackets to 20 employees, that Respondent did not violate the Act by the distribution of these jackets the day prior to the election. Although the timing of the distribution of the jackets raises a suspicion that their distribution was designed to influence the election, mere suspicion is insufficient to establish a violation of the Act. I credit the testimony of Rehwinkel and Gertson and LaVoie concerning the history of the safety award program and concerning the prior (precritical period) commitment of the previous plant manager to recognize the safety achievement with an award. I thus do not find that the award of the jackets was designed to influence the election or that it had a reasonable tendency to violate the Section 7 rights of the employees and do not find that Respondent violated the Act in this regard. I further find that the evidence is insufficient to establish that the distribution of the jackets would have a reasonable tendency to destroy the laboratory conditions during the critical period and to affect the outcome of the election.

The General Counsel cites *Owens-Illinois, Inc.*, 271 NLRB 1235 (1984), in support of her position. In that case, the Board found by a two to one panel majority that the gifts of 25 jackets with union insignia valued at \$16 per jacket for a total of \$100 by a union representative to employees who came to his room between the first and second voting sessions was objectionable conduct. The panel majority found it significant at page 1235 that the "jackets were not given away during the preelection campaign but on election day itself; distributed as they were between voting sessions, they could well have appeared to the electorate as a reward for those who had voted for the Petition and as an inducement for those who had not yet voted in the Petitioner's favor." In her dissent, Member Dennis stated, 271 NLRB at 1236, "applying the objective 'tendency-to-influence test' set forth in Board and Court precedent, I cannot find that a \$16 union jacket is of sufficient value to create in the recipient a feeling of obligation to favor the Petitioner in the election." I find the *Owens-Illinois* case is distinguishable from the instant case as the jackets in the *Owens-Illinois* case were clearly intended to enhance the union's position in that case whereas

the jackets in the instant case were issued to recognize the safety milestone. Moreover, I find it unlikely under all the circumstances in this case that the issuance of the safety jackets would tend to influence the outcome of the election.

Conduct Affecting the Results of the Election

As I have found that Respondent violated Section 8(a)(1) of the Act during the critical period, Petitioner's Objections 4, 5, and 10 are sustained. Objection 4 alleges that Respondent threatened eligible voters with loss of jobs in order to influence the outcome of the election. Objection 5 alleges that Respondent threatened eligible voters with loss of future promotions in order to influence the outcome of the election. As I have found that Respondent's agent Doug Weiss unlawfully threatened employee Carly Brooks with having ruined his future with the Company, I recommend that both Objections 4 and 5 be sustained, as this threat was implicitly a threat of loss of job and a loss of future promotions. I find that this statement constituted conduct which had the reasonable tendency to influence the outcome of the election as it was directed toward a known union supporter for speaking out at a union meeting. I do not find that the fact that the Union involved was another union at another of Respondent's plants to in any manner diminish the impact of the threat, I also do not find that the assurances given to Brooks by Rehwinkel and LaVoie dissipated the tendency of this threat to influence the outcome of the election particularly as it was followed up by the following of Brooks by Respondent's supervisor as set out above even in the face of Brooks telling Supervisor Jay Lynn that he was being intimidated by it. Objection 9 alleges the assignment of more onerous duties to prounion employees and their isolation from other employees. No evidence was submitted to establish the assignment of more onerous duties or the isolation of employees and paragraph 8(h) of the complaint, which alleged the isolation of employees, was withdrawn. I accordingly recommend that Objection 9 be overruled. Objection 10 alleges that Respondent followed and harassed prounion employees during the performance of their duties. As I have found that the Respondent violated Section 8(a)(1) of the Act by the monitoring of its prounion employees by harassing Moore by repaging him and Moore and Andrews by withholding their paychecks, I recommend that this objection be sustained. I find that this monitoring of the majority of the prounion supporters was established at the hearing and interfered with the exercise of free choice at the election. It is the Board's stated policy to "direct a new election whenever an unfair labor practice occurs during the critical period since conduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammelled choice in an election." *Super Thrift Markets*, 233 NLRB 409 (1977), citing *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786-1787 (1982). As I have found that the Respondent did not violate the Act by the issuance of jackets to its employees on the day prior to the election, Objection 11 based thereon shall be overruled. I accordingly recommend that Objections 4, 5, and 10 be sustained, that the election be set aside, and a rerun election be conducted. The evidence failed to support Objections 9 and 11 and I shall recommend that they be overruled.

CONCLUSIONS OF LAW

1. Respondent is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Paperworkers International Union, AFL-CIO, CLC is and has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

3. By the interrogation of its employees Harry Zechman and Mike Stephens by Supervisor Dan Geurin as to who had initiated the union campaign, Respondent violated Section 8(a)(1) of the Act.

4. By the interrogation of its employee Robert Henderson by Acting Supervisor Eddie Siler as to whether he had initiated the union campaign, Respondent violated Section 8(a)(1) of the Act.

5. By the interrogation of its employee Harry Zechman by Respondent's advisor Dan Carson as to whether he was passing out union cards, Respondent violated Section 8(a)(1) of the Act.

6. By the removal of employee Carly Brooks from its Clinton, Iowa plant and the early curtailment of his training, Respondent violated Section 8(a)(3) of the Act.

7. By the following of its employee Carly Brooks by its Supervisor Jay Lynn, Respondent violated Section 8(a)(1) of the Act.

8. By the following of its employees David Moore and Phillip Andrews by Supervisors Godwin and Clayton, Respondent violated Section 8(a)(1) of the Act.

9. By its close monitoring of employees Harry Zechman, James Sant, and Mike Stephens, Respondent violated Section 8(a)(1) of the Act.

10. Respondent did not violate Section 8(a)(1) of the Act by the issuance of safety award jackets the day prior to the election.

11. Respondent did not violate the Act by its issuance of a verbal warning to its employee James Sant.

12. Respondent did not unlawfully disparage its employee Harry Zechman by the comment of Supervisor Dan Geurin concerning his paycheck.

13. Respondent violated Section 8(a)(1) of the Act by engaging in repaging of its employee David Moore in order to harass him because of his union activities.

14. Respondent violated Section 8(a)(3) of the Act by withholding the paychecks of David Moore and Phillip Andrews until the end of the shift in departure from its past practice in order to harass them because of their engagement in union activities.

15. Respondent did not violate the Act by the timing of breaks and restrictions of breaks to certain times of its employees David Moore and Phillips Andrews by its Supervisor Bobbi Holder.

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

THE REMEDY

As I have found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act, including the providing of an opportunity to its employees Carly Brooks of the week

of training it curtailed at its Clinton, Iowa plant unlawful and the posting of an appropriate notice to the employees.

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

ORDER

The Respondent, International Paper Company, Raleigh, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their union activities and those of their fellow employees.

(b) Threatening its employees with ruining their future and with loss of future opportunities with Respondent because of their union activities.

(c) Removing its employees from its Clinton, Iowa plant and curtailing their training because of their engagement in union activities.

(d) Following its employees and engaging in close monitoring of them because of their union activities.

(e) Withholding checks of union supporters until the end of their shift and repaging them to harass them.

(f) 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) Provide its employee Carly Brooks with the opportunity for the second week of training it unlawfully curtailed at its Clinton, Iowa plant.

(b) Post at its Raleigh, North Carolina plant copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's representative, shall be posted by the 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 the notices are not altered, defaced, or covered by any other material.

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

(d) The complaint is otherwise dismissed.

IT IS FURTHER RECOMMENDED that the election held on November 14 and 15, 1991, in Case 11-RC-5803 be set aside, that the case be remanded to the Regional Director for Region 11 for the purpose of conducting a new election.

IT IS FURTHER RECOMMENDED that any allegations in the complaint which were not specifically found to be violations of the Act be dismissed.

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.

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."