

**Patrick Industries, Inc., Mobilcraft Wood Products  
Division and Amalgamated Clothing & Textile  
Workers Union, AFL-CIO, CLC.** Cases 25-  
CA-22849, 25-CA-22875-2, 25-CA-22962-8,  
25-CA-22979, and 25-RC-9317

August 7, 1995

**DECISION, ORDER, AND DIRECTION OF  
SECOND ELECTION**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

The issue in this case is whether the administrative law judge correctly found that the Respondent violated Section 8(a)(1) of the Act and engaged in objectionable conduct interfering with a representation election by warning employee Russ Adams for engaging in protected activity and by telling unit employees that they could guarantee that their wages remain higher than at the Respondent's represented facilities only if they voted against the Union.<sup>1</sup>

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Patrick Industries, Inc., Mobilcraft Wood Products Division, Elkhart, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

<sup>1</sup> On April 6, 1995, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party each filed answering briefs.

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

<sup>2</sup> Member Cohen finds it unnecessary to rely on the judge's finding that par. 8 of the Respondent's December 17, 1993 letter to unit employees violated Sec. 8(a)(1) and was objectionable. In all other respects, he agrees with his colleagues.

*Ann Rybolt, Esq.*, for the General Counsel.  
*Steven K. Like, Esq.* and *Michael J. Grattan III, Esq.*  
(*Warrick & Boyn*), of Elkhart, Indiana, for the Respondent.  
*Richard J. Swanson, Esq.* (*Macey, Macey and Swanson*), of  
Indianapolis, Indiana, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

**I.**

STEPHEN J. GROSS, Administrative Law Judge. Patrick Industries is a large, publicly held corporation in the business of manufacturing products for other manufacturers—more specifically, for manufacturers of mobile homes and recreational vehicles. The company does so in numerous facilities throughout the United States.

Mobilcraft Wood Products is an unincorporated division of Patrick Industries. It has about 150 employees, divided into 2 shifts. None of Mobilcraft's employees are represented by a union. Mobilcraft manufactures doors for the built-in cabinets of mobile homes and recreational vehicles. Mobilcraft has three plants. All three are in Elkhart, Indiana. Mobilcraft has designated the three plants as plants 3, 7, and 8. Only the activities in plants 7 and 8 are at issue in this proceeding, and, with minor exception, only activities on the first shift.<sup>1</sup>

The Charging Party, the Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC (the Union or the ACTWU) filed an election petition on November 1, 1993, and began campaigning vigorously for the votes of the employees.<sup>2</sup> Mobilcraft, just as vigorously, urged the employees to vote against unionization.

The election was held on December 21, 1993. One hundred twenty-seven employees voted. There were 122 valid, unchallenged ballots. The ACTWU lost by two votes.

During the election campaign, and shortly after its close, the Union filed a number of unfair labor practice charges. Additionally, the Union challenged the ballots of certain voters and filed timely objections to conduct that, it claimed, affected the results of the election.

Four of the unfair labor practice charges led to the issuance of complaints. And thereafter a number of the Union's objections and challenges were consolidated for hearing with the unfair labor practice issues.<sup>3</sup> (A stipulation subsequently

<sup>1</sup> Mobilcraft admits that it is an employer engaged in commerce within the meaning of the National Labor Relations Act (the Act).

<sup>2</sup> The bargaining unit: "All full-time and part-time production and maintenance employees employed by Mobilcraft Division of Patrick Industries at its Elkhart, Indiana facilities; but excluding all office clerical personnel, all sales persons, all professional employees, and all guards and supervisors as defined in the Act." Mobilcraft admits that the ACTWU is a labor organization within the meaning of the Act.

<sup>3</sup> The dates on which the charges were filed and the complaints issued are as follows:

ULP charge in Case 25-CA-22849 filed on November 3, 1993.

ULP charge in Case 25-CA-22875-2 filed on November 12, 1993.

ULP charge in Case 25-CA-22962-8 filed on January 5, 1994.

ULP charge in Case 25-CA-22979 filed on January 21, 1994.

Complaint in Cases 25-CA-22849, 25-CA-22875-2, and 25-CA-22979 issued on January 25, 1994.

Order consolidating cases and consolidated complaint in Cases 25-CA-22849, 25-CA-22875-2, 25-CA-22979, and 25-CA-22962-8 issued on February 25, 1994.

Report on challenged ballots and objections, order directing hearing, and order consolidating cases in Cases 25-CA-22849, 25-CA-22875-2, 25-CA-22979, 25-CA-22962-8, and 25-RC-9317 issued on July 12, 1994.

eliminated the challenges as an issue here.) I heard the case in Elkhart on August 29 through September 1 and September 19 and 20, 1994.<sup>4</sup> The General Counsel, the ACTWU, and Mobilcraft have filed briefs.

## II. MOBILCRAFT'S DISCIPLINE OF RUSS ADAMS

On November 2, 1993, Mobilcraft issued a written warning to employee Russ Adams for harassing fellow employee Deana Ebling. The General Counsel and the Union contend that Mobilcraft did so because of Adams' union activities and in order to discourage other employees from participating in such activities.<sup>5</sup>

### A. Adams' Union Activities

Adams joined Mobilcraft's work force in 1981. He became a supervisor in 1992 but voluntarily returned to employee status, in plant 8, in May 1993. He quit Mobilcraft in June 1994.

Tim Bear is Mobilcraft's general manager and, as such, the Company's highest ranking official. On October 27 about 20 employees met with Bear in his office. Adams served as spokesman for the group. (All the events to which this decision refers occurred in 1993 unless otherwise specified.) Adams advised Bear that the group of employees were members of the Mobilcraft Organizing Committee and that they would be campaigning on behalf of the ACTWU.

Adams had met with ACTWU organizers 5 days before in what was the first meeting between a Mobilcraft employee and representatives of the Union. Adams signed an authorization card on October 26 and began urging other employees to do likewise. By November 2 Adams had handed out 10 or 15 authorization cards.

The record is clear that Mobilcraft's management recognized that it was Adams who had introduced the ACTWU to the Company's work force. In fact on November 2 (the same day that Mobilcraft disciplined Adams), an attorney for the Company gave a speech to Mobilcraft's employees in which he referred to Adams as the employee who had instigated the union campaign. (I discuss this speech further in part V, *infra*.)

### B. Mobilcraft's Discipline of Adams

Deana Ebling was and still is a Mobilcraft employee. She works in plant 8 (as did Adams at all times relevant to this proceeding). Adams and Ebling are (or, perhaps, were) friends; Adams and his wife socialized with Ebling and her husband.

On October 26 or 27 Adams spoke to Ebling about signing an authorization card. Adams assumed that Ebling would sign one since he had often heard her and two of her friends, Barbara Burmeister and Lisa Kissel, complain about conditions at Mobilcraft. (Burmeister is a group leader. Group leaders at Mobilcraft are employees and are part of the bargaining unit.) But Ebling put Adams off, saying that she was undecided about whether to support the Union. The same thing happened when Adams spoke to Ebling a few days later about signing an authorization card, and again a day or

<sup>4</sup>On the afternoon of August 30 counsel for all parties and I toured plants 7 and 8.

<sup>5</sup>The Union's contention about Adams' discipline is set out in the ACTWU's Objection 9.

two after that. Then, on about November 1, Adams again encountered Ebling. Adams told Ebling that she, Burmeister, and Kissel were "three of the biggest bitches in the company that didn't seem to want to do anything about it to change anything." (The quotation is from Adams' testimony. Ebling did not testify.)

On November 2 Burmeister and another group leader separately advised Supervisor Michael Wyatt that Ebling was upset because of "harassment" by Adams. Burmeister specifically mentioned that Ebling had said that Adams had called Ebling a "bitch."

Wyatt called Ebling to his office and asked her about the incident. Ebling told him that Adams was harassing her about signing an authorization card, that Adams had called her and two other employees "bitches," and that she was uncomfortable about taking breaks in the plant's breakroom because of her concern that she would be "bugged" by Adams. Ebling seemed very nervous and upset, especially by Adams' use of the term "bitch."

Since I have found that Adams referred to Ebling as a "bitcher," not as a "bitch," I further find that Ebling, wittingly or otherwise, misinformed Wyatt when she told him that Adams used the term "bitch."

Wyatt, convinced that Adams had acted in the manner that Ebling described, and after checking with his superiors, wrote the following on an employee warning notice form.

I am issuing this written [warning] to Russ Adams for his conduct toward co-workers. I have a complaint from an employee that Russ was being persistent about this employee signing a union authorization card. I explained to Russ that this will not be tolerated and that if another employee comes to me with a complaint about him pressing them, termination will result.<sup>6</sup>

At that point Wyatt met with Adams. (As Adams remembers it, Wyatt was accompanied by Bear. But I find that Adams and Wyatt met alone.) Wyatt told Adams that Adams was being written up because a fellow employee had complained that Adams was trying to force the employee to sign an authorization card. Wyatt said nothing about Adams having used the term "bitch."

Adams denied harassing anyone and asked who had accused him. Wyatt said that that was confidential.

Wyatt, who in any event had gone into the meeting with his mind almost wholly made up, decided that Adams' denial was not credible and that Adams should be disciplined. Wyatt told Adams this and showed Adams the employee warning notice he had prepared. Adams appealed the discipline to Bear (Mobilcraft's general manager), but Bear refused to countermand Wyatt's action. Bear then did ask Ebling about the incident, but Ebling refused to talk to Bear about it.

### C. Mobilcraft's Defense of its Discipline of Adams

According to Mobilcraft, there are at least three reasons why its discipline of Adams was appropriate: first, it comported with numerous other disciplinary actions Mobilcraft has taken against other employees; second, Adams' behavior violated the Company's no-harassment policy; and third,

<sup>6</sup>G.C. Exh. 12.

Mobilcraft would have been subject to potential liability had the Company not taken some sort of action against Adams, and the form of action it did take—a warning—was a mild one (as opposed to suspension or discharge).

Turning first to the question of precedent at Mobilcraft for the kind of action under consideration here, Mobilcraft has indeed disciplined numerous employees for behavior it labeled “harassment.” But none of those instances are remotely akin to the Adams-Ebling incident. Almost all involved insubordination (toward leadpersons or supervisors), although one of those also covered “obnoxious behavior toward other employees.” Of the four disciplinary actions for “harassment” that involved behavior toward coworkers who were not group leaders, two were for sexual harassment, and the other two were for fighting with or hitting another employee. Adams, of course, did not hit Ebling. And, as will be discussed later, Adams plainly was not guilty of sexual harassment.

Turning to Mobilcraft’s no-harassment policy, it reads as follows (in pertinent part):

#### NO HARASSMENT POLICY

All Patrick employees have the right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive or disruptive.

We will not tolerate harassment of any of our employees. Any forms of harassment related to an individual’s race, color, sex, religion, national origin, citizenship status, age, or disability is a violation of this policy and will subject an employee to discipline, up to and including discharge.

#### SEXUAL HARASSMENT

For these purposes, the term harassment refers to unwelcome behavior which is personally offensive and includes slurs and other offensive remarks . . . . Sexual harassment includes, but is not limited to, the following:

- a. Any threat or insinuation . . . .
- b. Other sexually harassing conduct in the workplace . . . is also prohibited. Such conduct includes, but is not limited to: . . . .

(3) Sexually degrading words used to describe an individual . . . .

#### PROCEDURE FOR REPORTING AND DEALING WITH ALLEGATIONS OF HARASSMENT

- d. Actions taken to resolve harassment complaints through internal investigations shall be conducted confidentially, whenever possible.<sup>7</sup>

The record shows that Mobilcraft made sure that its entire work force was aware of the no-harassment policy.

Let us first dispose of sexual harassment considerations.

Adams used the word “bitchers.” A bitcher is someone who bitches. And “to bitch” means to complain, to gripe,

or to grouse.<sup>8</sup> There is nothing sexual about that. In fact “bitcher” is not even gender-specific.

I will assume that when Adams referred to Ebling and two other women as “bitchers,” Ebling could have misheard Adams and thought he said “bitches.” “Bitch,” of course, when used as a noun is gender-specific and, when used to refer to a human, can mean a “lewd” woman.<sup>9</sup> But, at least as frequently, it is used in the sense of a woman who is disagreeable, malicious, or domineering.<sup>10</sup> And even if Ebling did think she heard Adams say “bitches,” given the context in which Adams used it, Ebling had to have understood it in the latter sense. Again, that involved no sexual connotations.

In any case, if Wyatt had in fact believed that Adams had been sexually harassing Ebling, his warning notice to Adams would have said so. Instead the notice referred only to “Russ . . . being persistent about [the complaining] employee signing a union authorization card.”

But that does not rule out the applicability of Mobilcraft’s no-harassment policy. While that policy does focus on harassment that is sexual or racial or religious or the like, it covers any kind of harassment of one employee by another. Here, in the space of a week, Adams made a request of Ebling, was put off, made the same request of Ebling two more times, and then said something unpleasant to Ebling about it. Two employees told Wyatt that that upset Ebling and Ebling confirmed that. Under these circumstances it was not irrational for Mobilcraft’s management to deem Adams’ actions to be the kind of behavior that is covered by the no-harassment policy. In that connection, I find that Mobilcraft’s management did conclude in good faith that Adams had violated Mobilcraft’s no-harassment policy.

That is not the end of the matter, however, as will be discussed in section E of this part of the decision.

Lastly, Mobilcraft argues that:

If Mr. Wyatt had simply ignored a male employee calling female employees “bitches” or “bitchers,” he would have been subjecting the Company to liability for hostile environment sexual harassment under Title VII of the 1964 Civil Rights Act and the equivalent Indiana statute.

But as previously discussed, Adams’ words did not constitute sexual harassment and Wyatt’s discipline of Adams was not based on Adams having sexually harassed anyone. Moreover at no time did Ebling ask Mobilcraft to punish Adams for the behavior at issue here. In fact Ebling’s refusal to speak to Bear about the incident should have been a signal to Bear that Ebling was uncomfortable about Mobilcraft intervening in the matter. Finally, I have failed to locate any case suggesting that an employer would be subject to liability for failing to respond to behavior equivalent to Adams’

<sup>8</sup> See *The American College Dictionary* and *Webster’s Third New International Dictionary*.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>7</sup> R. Exh. 2.

four interactions with Ebling. Certainly the cases cited by Mobilcraft do not.<sup>11</sup>

#### D. *The General Counsel's and the Union's Contentions*

The General Counsel and the ACTWU contend, essentially, that Mobilcraft's motive in disciplining Adams was to stifle the prounion employees' campaign activities. That is shown, the General Counsel and the Union say, by the reference in Adams' writeup to his "being persistent" about having an employee sign an authorization card. It is also shown by the timing of the discipline: 1 day after the ACTWU filed its election petition. While Ebling may perhaps have expressed concern about an interaction with Adams, so this argument goes, Mobilcraft's supervisors knew full well that Adams' actions were not discipline worthy.

As discussed above, however, I have found that the decision by Wyatt and his superiors to discipline Adams was made in good faith. They honestly believed, that is, that Adams behaved improperly toward Ebling.

#### E. *Mobilcraft's Discipline of Adams—Conclusion*

An employee's efforts to persuade another employee to sign a union authorization card is, obviously, activity that the Act protects. E.g., *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); *Nashville Plastic Products*, 313 NLRB 462 (1993); *Paramount Mining Corp.*, 239 NLRB 699, 708 (1978), enf. denied on other grounds 631 F.2d 346 (4th Cir. 1980). Of course, activity that would otherwise be protected may lose that protection if the means by which that activity is conducted are sufficiently abusive or threatening. E.g., *Clear Pine Mouldings*, 268 NLRB 1044 (1984).

Here on three occasions Adams urged Ebling to sign an authorization card, and on a fourth occasion he referred to Ebling and two of her friends as "bitchers." That behavior sufficiently disturbed Ebling that she was hesitant about going to the breakroom for fear that she would be confronted by Adams there. But the test for determining whether a given union card solicitation was protected is not the perhaps idiosyncratic reaction of the particular employee who happened to be on the receiving end of that activity. Rather, it is for the Board to decide whether or not the Act's protections apply. *Paramount Mining*, supra; see also, e.g., *Mast Advertising & Publishing*, 304 NLRB 819 (1991), *Quality Inn Albany*, 283 NLRB 1146 (1987); *Roto Rooter*, 283 NLRB 771, 772 (1987); *Electra Food Machinery*, 279 NLRB 279 (1986).

Turning to the actions for which Adams was disciplined, it was up to Mobilcraft to show that it had reason to believe that Adams' conduct was sufficiently inappropriate as to deprive him of the Act's protections. *Burnup & Sims*, supra, 379 U.S. at 23 fn. 3. Yet nothing in the record suggests that Adams ever threatened or abused Ebling in any way. In fact there has been no showing Adams even raised his voice toward Ebling. Concluding that an employee loses the protections of the Act in these circumstances could significantly limit the ability and willingness of employees to solicit their fellow employees' support for, or opposition to, a union, activity that is central to the purposes of the Act.

<sup>11</sup> Mobilcraft cites *Dombeck v. Milwaukee Valve Co.*, 40 F.3d 230 (1994), and *Breuer v. Rockwell International Corp.*, 40 F.3d 1119 (1994).

I accordingly conclude that Mobilcraft violated Section 8(a)(1) of the Act when Wyatt disciplined Adams for "harassing" Ebling. On the other hand, since I have found that the discipline was not discriminatory and was not done in order to encourage or discourage membership in any labor organization, I shall recommend that the complaint be dismissed insofar as it alleges that Mobilcraft's discipline of Adams violated Section 8(a)(3).

#### F. *Mobilcraft's Cancellation of its Discipline of Adams*

On November 3 (1993) the ACTWU filed an unfair labor practice charge against Mobilcraft contending that Mobilcraft's discipline of Adams violated the Act. Sometime between November 3 and December 21 (the date of the election) Bear ripped up Adams' warning notice. He did this in response to the advice of Mobilcraft's counsel and to the suggestion of a Board agent who said that that might help settle the proceeding that the unfair labor practice charge began.

But Mobilcraft did not advise Adams of this action until January 6, 1994, when Bear sent the following letter to Adams:

I have removed from your personnel file the written warning notices given to you on October 29th 1993 and November 2, 1993.

Mobilcraft will not consider these warnings in any way, in any future disciplinary action against you.<sup>12</sup>

(The General Counsel does not contend that Mobilcraft acted unlawfully in issuing the October 29 warning notice to which the statement refers.) At no time did Mobilcraft notify any employee other than Adams of that action.

Under some circumstances an employer may cure what would otherwise be an unfair labor practice by promptly and publicly notifying its employees of its unlawful behavior, by disavowing such action, and by assuring the employees of their right to engage in activity that the Act protects. *Broyhill Co.*, 260 NLRB 1366 (1982); *Kawasaki Motors*, 231 NLRB 1151, 1152 (1977).

Here Mobilcraft did none of that. Plainly Bear's letter to Adams was insufficient to obviate the unfair labor practice that Mobilcraft committed against Adams. See, e.g., *Dennett Road Manor Nursing Home*, 295 NLRB 397 (1989); *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Cf. *F. L. Thorpe & Co.*, 315 NLRB 147 (1994).

### III. MOBILCRAFT'S DISCIPLINE OF AL FIELDS

Among the machines that Mobilcraft uses to make cabinet doors are mechanized clamps. The clamps squeeze together the four pieces of wood that make up the frame of the door and hold them in place while the operator pins the joints.

Al Fields and Nancy Beggs were employees at all relevant times. (Beggs has since left Mobilcraft, voluntarily. Fields remains employed by Mobilcraft.) Both Fields and Beggs were among the original members of the Mobilcraft Organizing Committee, each signed the petition that Adams gave to Bear, and each participated in the October 27 meeting with Bear.)

<sup>12</sup>G.C. Exh. 13.

On November 2 Fields and Beggs were working near one another. Each was operating clamps. Fields' machine began operating inconsistently. In that situation plant rules required Fields to notify his group leader. Instead Fields called Beggs over and asked if she could figure out what was wrong.

Beggs fiddled with the clamps for a moment, then activated the machine. Unhappily, that was the moment that Fields chose to try to take the door he had been working on out of the machine. The clamps closed on Fields' fingers, injuring them. There is no doubt at all that Fields acted negligently in reaching into the machine while Beggs was at its controls.

Later that day (after Fields had returned to the plant from having his cuts stitched up), Fields' supervisor, Darlene Detweiler, issued a written warning to Fields, for carelessness.<sup>13</sup> Fields complained to Detweiler's superior, Steve Barella, about the discipline, even though Fields told Barella that he agreed that it was "stupid" of him to have put his hand in the machine while Beggs was operating it. Barella supported Detweiler's decision to issue the warning.

The General Counsel and the Union contend that the true reasons that Mobilcraft issued the warning to Fields were to punish him for his support of the ACTWU and to discourage other employees from doing so.<sup>14</sup> And it is true that the warning issued just 1 day after the ACTWU filed its election petition. Nonetheless, this contention edges up to the frivolous if, indeed, it does not actually arrive there.

First, Fields did act carelessly.

Second, nothing that Detweiler (or any other supervisor) said in any way suggested that the discipline was connected with Fields' union activities.

Third, there is no evidence that Mobilcraft's response to Fields was inconsistent with its response to other employees who behaved in comparable ways. In fact, the reverse is true. In September (a month before the ACTWU arrived on the scene), Mobilcraft issued a written warning to employee George Price when he cut his finger as a result of negligently operating his machine.<sup>15</sup> And on the same day that Fields was hurt (November 2), Mobilcraft issued a written warning to employee Calvin Hurst for "allowing yourself to be injured on the job. Not taking enough precautionary measures."<sup>16</sup> Hurst was not known to be a supporter of the Union.

Fourth, Beggs was at least as active on behalf of the Union as was Fields. (Subsequently, in fact, the ACTWU picked Beggs to serve as an election observer.) And, certainly, a case could be made out that Beggs also was blameworthy in the incident. Yet Mobilcraft did not discipline Beggs.

Additionally, I credit the testimony of the Mobilcraft supervisors who testified about this incident and about Mobilcraft's disciplinary policy regarding employee carelessness that results in injury. (I also credit Beggs' testimony about this incident. Fields did not testify.)

I shall recommend that the Board dismiss the complaint's allegations regarding Fields.

<sup>13</sup> The warning is in the record as G.C. Exh. 14.

<sup>14</sup> The ACTWU deals with Mobilcraft's discipline of Fields in its Objection 11.

<sup>15</sup> R. Exh. 9.

<sup>16</sup> R. Exh. 10.

#### IV. MOBILCRAFT'S TRANSFER OF GEORGE DEAL FROM HIS FORKLIFT JOB

##### A. What Happened

George Deal III was one of the first Mobilcraft employees to join the Mobilcraft Organizing Committee. Deal's name was at the top of the committee's roster that Adams handed to Bear on October 27, and Deal was present at the committee's meeting with Bear. Deal signed an authorization card at the first union meeting (on October 26) and he handed out authorization cards to other employees. A day or two after the organizing committee met with Bear, Bear asked then Supervisor Terry Markin, whom Bear knew to be a friend of Deal's, "what George Deal's problem was, why . . . he was so upset" (referring to Deal's support for the Union).

At all relevant times until November 8, 1993, Mobilcraft employed George Deal III as a forklift operator. On Thursday, November 4, about an hour after Deal was scheduled to begin work, Deal called in to say that he was going to be late. Because Deal had been late so frequently in the recent past, Deal's supervisor, Darlene Detweiler, suspended him for 3 days—until November 8. (The General Counsel does not contend that this suspension violated the Act in any way.) When Deal returned to work on November 8, Detweiler told Deal that she was taking him off the forklift indefinitely and assigning him to be a sanding machine operator. The reason for that, Detweiler said, was that, because of Deal's frequent tardiness, materials that had to be transported to work areas by the forklift too often did not get there on time.

The General Counsel and the Union contend that: (1) the true reason that Mobilcraft removed Deal from his forklift job was that the Company knew that the forklift job was a good one for an employee interested in drumming up support for a union in that it enabled the operator to move about Mobilcraft's facilities relatively freely; and (2) Mobilcraft moved Deal to the sander job as punishment for his support for the ACTWU—the job is a dirty, physically tiring one—and because it would permit a supervisor to keep an eye on Deal.

My conclusion is that Mobilcraft's transfer of Deal did not violate the Act.

##### B. Deal's Job as a Forklift Operator at Mobilcraft

Deal joined Mobilcraft's work force in 1987. He became a forklift operator in 1989.

At all relevant times Mobilcraft had two forklift operators. Deal was the forklift operator for plant 7. As such it was his job to: (1) move raw materials from plant 3 to the appropriate locations in plant 7 and partly finished goods from plant 8 to plant 7; (2) move finished goods from plant 7 to plant 3; and (3) move and dump hoppers filled with scrap materials. The job was not a simple one. To begin with, there was the task of operating the forklift, sometimes with its forks piled very high. Second, two or more departments would sometimes simultaneously demand forklift services. It was part of Deal's job to know which forklift jobs had priority over others. Third, the job demanded considerable expertise about the kinds of raw materials used by Mobilcraft and where each kind of material was located. For example, often the instructions to Deal were on the order of "we need 2-

3/8 inch molding." Deal had to be able to expeditiously distinguish 2-3/8 inch molding from, say, 2-5/8 inch molding. Finally, Deal's job required him to negotiate the forklift on city streets that sometimes were heavily trafficked.

Everyone agrees that Deal was very good at his job.

There is no doubt that the job was a crucial one. The output of plant 7 depended on the forklift placing in the plant the various materials needed for production. Additionally there were only a few employees whom Mobilcraft could use to replace Deal when he was absent or late. All were busy with jobs of their own. And none was particularly competent at the job, in large part because efficient operation of the forklift required constant practice.

As the description of Deal's job indicates, his work took him to all three of Mobilcraft's plants and brought him into contact with almost all of Mobilcraft's employees. That obviously could have been very useful to Deal in his efforts to gain adherents for the ACTWU (although there is no evidence that he in fact used his job as forklift operator for that purpose). Another facet of his job that must have been helpful if he did engage in organizing efforts while at work was that he was "pretty free to come and go as he pleased"; by and large his supervisor (Detweiler) supervised him only via radio.<sup>17</sup>

### C. Mobilcraft's Problems with Deal

**Attendance.** I earlier briefly referred to Deal's tardiness problems. Deal's home was only about 5 minutes from Mobilcraft. Nonetheless Deal had considerable difficulty getting himself to work on time. That was particularly the case starting in June 1993. His tardiness record for the months of June through October looks like this:

Month	Number of Times Late	Hours Late
June	6	Five times less than 1 hour, once more than 4 hours
July	2	Both times between 1 and 2 hours
August	4	Once between 1 and 2 hours, three times for less than 1 hour
September	3	Twice between 1 and 2 hours, once for less than 1 hour
October	5	All less than 1 hour

Mobilcraft has a no-fault attendance policy. Under that policy, employees accrue points for being absent or late. The point system:

Less than 1 hour late	1 point
1 to 2 hours late	2 points
2 to 4 hours late	3 points
Missing more than 4 hours	4 points

Eight points results in a oral warning, 12 points in a written warning, 16 points in a 3-day suspension, and 20 points

means discharge. Points are totaled on a rolling 90-day basis. Deal's tardiness problem meant that he received a number of warnings, a 3-day suspension in early August and, as we have seen, another 3-day suspension on November 4.

**Allegations of drug dealing and murder threats.** Bear testified twice, the first time when called as a witness by the General Counsel. The second, when called as a witness on behalf of Mobilcraft. During his first stint on the witness stand, the only reason Bear gave for Mobilcraft's decision to transfer Deal was Deal's attendance problems. When Mobilcraft called Bear as a witness, however, he said that he had an additional reason for wanting to move Deal to another job.

Bear testified that in about October (1993) employee David Beggs told Bear that he (Beggs) had purchased cocaine from Deal, that he had not paid Deal for the cocaine, that Deal had threatened Beggs' life, and that he didn't think that Deal's threat was an idle one. Bear said that Mobilcraft passed on the information to the Elkhart police force but did not otherwise take any action against Deal on the ground that Mobilcraft could not lawfully do so based on that hearsay information. Subsequently, according to Bear, David Beggs' wife, Nancy Beggs (then also a Mobilcraft employee), reported to Bear that Deal had spoken to her about killing her husband and that he had made that threat, in Mobilcraft's parking lot, while loading a handgun.

Nothing in the record suggests that there was any reason for Bear to dismiss what David and Nancy Beggs said about Deal on the ground, say, that the Beggs were known to have some sort of feud with Deal and wanted to get him fired or that either of the Beggs were known to be liars.

Bear testified that David Beggs said that he and Deal used the plant's bathroom for their drug dealings—Deal didn't make sales while sitting in his forklift. On the other hand, said Bear, Beggs told him that Deal sold drugs in all three of Mobilcraft's plants. That is significant because it was the forklift that gave Deal a job-related reason for spending time in all three plants.

David Beggs did not testify. Mobilcraft had discharged him prior to the hearing. (The discharge is not alleged to have violated the Act.) As discussed earlier, Nancy Beggs was actively pronoun during the ACTWU's campaign and served as one of the Union's observers during the voting. The General Counsel called Nancy Beggs as a witness. No party asked her any questions about this testimony by Bear. (Nancy Beggs had voluntarily quit her job at Mobilcraft prior to the hearing.) The General Counsel called Deal as a witness. No party asked him any questions about drugs, handguns, or threats on David Beggs' life.

At a time not specified in the record, Deal flunked a drug test. Deal then agreed that Mobilcraft could administer randomly timed drug tests. On about February 2, 1994, Deal flunked another drug test and Mobilcraft fired him. Deal's failure to pass a drug test on February 2 could not, of course, have been a factor in Mobilcraft's decision 3 months earlier to transfer Deal from the forklift. But the fact that Deal failed two drug tests does heighten the credibility of Bear's testimony about Deal selling drugs and threatening David Beggs.

Notwithstanding the difference between Bear's testimony as a witness when called by the General Counsel and as a witness when called by Mobilcraft, I am convinced that Bear

<sup>17</sup>The quotation is from Tr. 176.

testified honestly about what the Beggs told him about Deal and that Bear considered what the Beggs told him to be relevant to the question of whether Deal should be transferred from the forklift job.

#### D. *The Transfer*

As mentioned earlier, Mobilcraft's attendance policy provides for a 3-day suspension whenever an employee accrues 16 points as a result of absence or tardiness. Deal's failure to get to work on time on Thursday, November 4, put him over the 16-point limit. Detweiler accordingly told Deal that he was suspended for 3 days beginning immediately. Detweiler told Deal to report back to work on Monday, November 8. (Detweiler thus permitted Deal to count Saturday as 1 of his 3 suspension days even though employees worked only a half day that Saturday. Deal recognized that Detweiler did not have to do that. She could have suspended him until November 9.)

Detweiler (Deal's immediate supervisor) was no longer employed by Mobilcraft when the hearing here was held and did not testify. But according to the testimony of Mobilcraft Production Manager Steve Barella (Detweiler's immediate superior) and Bear, sometime during Deal's 3-day suspension, Detweiler proposed that the Company reassign Deal from the forklift to the sanding department. The discussion, said both Barella and Bear, focused entirely on Deal's "bad attendance and tardiness."<sup>18</sup> Both Barella and Bear agreed with Detweiler's proposal. Bear told Detweiler to make the transfer. Bear testified that while he said nothing about it to Detweiler and Barella (or to Deal), he had another reason for agreeing with Detweiler's proposal to transfer Deal from the forklift—that is, the Beggs' statements to him about Deal's threats and drug dealing.

As for why Mobilcraft's management decided that it was the sanding department to which Deal should be transferred, Bear testified that "it was just the place that we had an opening for George."<sup>19</sup> Additionally, the record shows that while Deal was a forklift operator, on those occasions in which the forklift was not needed, Deal operated a sanding machine.

Deal testified that as soon as Deal arrived at the plant on November 8, he was called into one of the plant's offices. Three supervisors were there: Detweiler, Mike Wyatt, and Joe Gregory. Detweiler handed Deal two employee warning notices, one for attendance and one involving carelessness in the performance of his forklift job. (Neither discipline is alleged to be violative of the Act. Mobilcraft does not contend that the discipline regarding carelessness had anything to do with Deal's transfer from the forklift operator position.<sup>20</sup>)

According to Deal, Detweiler then told him that she was transferring him indefinitely from his forklift operator job because of his poor attendance record, and because he "wasn't getting material" to the machine operators in plant 7 "on time" (according to Deal's testimony).<sup>21</sup> Deal appealed the transfer to Bear. But Bear supported Detweiler and, like

Detweiler, told Deal that the action stemmed from his poor attendance record. (The transfer was effected that same day, November 8.)

None of the three supervisors who participated in that meeting with Deal testified about it. As already mentioned, Detweiler was not employed by Mobilcraft as of the hearing. That was also the case with Gregory. Mobilcraft did still employ Wyatt, and Mobilcraft called him as a witness. But no one asked Wyatt about any meeting with Deal.

Deal testified, credibly, that Detweiler had never before told him that his attendance problems resulted in materials not getting to where they belonged on time and had never told him that his tardiness might result in his being transferred from the forklift.

Mobilcraft routinely transfers employees from one job to another. On the other hand, Deal was the first employee in years—perhaps in the history of Mobilcraft—who was transferred from one job to another because of an attendance problem. (Employee Bret Dolgos replaced Deal as the plant 7 forklift operator. A month or two later Mobilcraft removed Dolgos from the job because of Dolgos' poor attendance. I do not consider that that circumstance tells us anything about what Mobilcraft's true reasons were for transferring Deal.)

Mobilcraft transferred Deal to the sanding department in plant 7 (where he continued to be supervised by Detweiler). There is no doubt that Mobilcraft could far more easily have found someone to fill in for Deal once he moved to the sanding department in the event that he was late or absent than was the case when he was a forklift operator.

In terms of the effect of the move on Deal, one supervisor testified that as a result of the move Deal worked inside at all times and thus no longer had to face the inclement weather that Elkhart sometimes offers. Additionally, the supervisor testified, the demands made on forklift operators sometimes were mentally stressful, much more so than for employees working in the sanding department. And the transfer did not cause Deal to lose any pay or benefits.

But working in the sanding department was dirty, noisy work that often involved lifting, sometimes heavy lifting. Plainly, the forklift operator job was more attractive than sanding machine operator's. Additionally, sanding department personnel were within sight of Detweiler much of the time. And Deal no longer had access during the workday to employees in plant 3 or 8. Asked about that, Bear denied that Mobilcraft moved Deal to the sanding department because of the unpleasantness of the work there or because the job kept him within Detweiler's sight.

Deal testified that when Detweiler was in her office (which was about half of every workday), she spent "most of the time watching me on the sander."<sup>22</sup> Since Detweiler did not testify, this testimony by Deal about how Detweiler spent her time stands un rebutted. Nonetheless I do not credit it. First, no other employee testified that Deal became the center of Detweiler's universe after he was transferred to the sanding department. Second, it is commonplace for an employee to be certain that he or she is the focus of a supervisor's attention. Third, everyone at Mobilcraft was busy during the period at issue, especially the supervisors; it is inconceivable that Detweiler would forgo her other responsibilities (which covered all of the manufacturing side of plant

<sup>18</sup> Tr. 66.

<sup>19</sup> Tr. 81.

<sup>20</sup> The Union filed an unfair labor charge alleging that Mobilcraft's discipline of Deal on November 8 violated the Act. But the charge was dismissed. See the G.C. Exh. 1(t) at 8.

<sup>21</sup> Tr. 179.

<sup>22</sup> Tr. 212. Accord: Tr. 214–215.

7) to keep her eye only on Deal as he operated a sanding machine.

#### E. Deal's Transfer—Conclusion

Throughout the period of concern to us, Mobilcraft's customers were making exceedingly heavy demands on Mobilcraft's resources. Mobilcraft depended on its two forklift drivers to position the materials its machine operators needed to fashion the cabinet doors that those customers were in such a hurry to get. Under these circumstances it was reasonable for the Company to want as a forklift operator an employee who could be counted on to consistently get to work on time. Deal, plainly, was not such an employee.

As for the choice of sander operator as the job to which Deal was transferred, Mobilcraft's production areas are noisy, gritty, places to work. Many, if not most, of Mobilcraft's production employees have noisy or dust-laden or potentially hazardous or physically tiring jobs or, even more likely, jobs that combine two or more of these unpleasant qualities. (I note, in this connection, that when Deal first became an employee of Mobilcraft, he was assigned to a "gang rip saw.") And virtually all are closely supervised. I accordingly find nothing suspicious about Mobilcraft's decision to place Deal in a job that involved noise, sawdust, lifting, and close supervision.

Further, I think it clear that David and Nancy Beggs did in fact tell Bear what he testified they told him about Deal's threats and connection with drug dealing. I also think it clear that Bear believed what they told him. (I make no finding about the accuracy of what the Beggs told Bear. My finding concerns only Bear's state of mind.) In that regard, the ACTWU and the General Counsel stress the fact that the forklift job was an attractive one for a union activist since it gave the operator unique access to employees in all three plants without close supervision. These same attributes, of course, made the forklift operator position ideal for an employee who sold illegal drugs to his fellow employees.

But the question that perplexes me is why Mobilcraft waited until November 8—which is less than 2 weeks after Mobilcraft's management first learned of the Union's campaign—to transfer Deal out of the forklift position. Deal's tardiness record was terrible in June, then again in August, less bad in September but still not good (he was late on 3 days), and then terrible again in October. How is it that Detweiler did not propose transferring Deal out of the forklift position in June, August, or October?

Mobilcraft has not answered that question. That necessarily presents the possibility that Mobilcraft's management did not in fact think that it was particularly important for the Company's forklift operators to get to work on time and that Bear did not in fact care very much about the Beggs' allegations about Deal. And that, in turn, presents the further possibility that there was a causal as well as chronological connection between the beginning of the union campaign and Mobilcraft's transfer of Deal.

On the other hand, I find nothing in the record proving that Mobilcraft's management harbored such animus toward union activists that its supervisors would be willing to base personnel decisions on employees' union activities. (As for Bear's asking another supervisor why Deal supported the Union, I consider the question innocuous.)

Further, we are here concerned with an employee whom the Company's general manager believed to be selling illegal drugs, to have brought a handgun to the plant, and to have twice threatened the life of another employee. In these circumstances I am unwilling to find, based merely on timing, that Mobilcraft violated the Act in any respect when it transferred Deal out of a position that was as well suited for drug dealing as it was for promotion of the Union.

I accordingly shall recommend dismissal of the complaint's allegation concerning Deal.

#### V. MOBILCRAFT'S ANTIUNION CAMPAIGN COMMUNICATIONS

The General Counsel (supported by the ACTWU) alleges that on November 2 and 18 and on December 15 and 17 Mobilcraft communicated to employees in ways that interfered with, restrained, and coerced the employees in the exercise of their Section 7 rights. This part of this decision deals with these allegations.<sup>23</sup>

##### A. Steven Like's Reference to Russ Adams

As previously discussed, employee Russ Adams was the first Mobilcraft employee to meet with the ACTWU, and Adams acted as spokesman for the employee organizing committee when it met with Bear on October 27. Adams actively sought support for the Union among his fellow employees.

Mobilcraft had also employed Adams' sister, Michelle, but the Company fired her in early October (1993); that is, a few weeks before Adams first met with the ACTWU.

Steven Like is an attorney for and an agent of Mobilcraft. On November 2 he gave two speeches to employees; one in plant 8, one in plant 7. The speeches were intended to dissuade the employees from supporting the Union. The General Counsel contends that Like's speeches violated the Act in only one respect. That is, in Like's speech in plant 8, Like said something on the order of: "Probably the reason that Russ Adams brought in the Union is that he's pissed off because his sister was fired."

The complaint alleges that, by that remark, "Mobilcraft unwarrantedly criticized its employees who supported the Union and held them up to ridicule in front of other employees because of their union activities and in order to dissuade other employees from supporting the Union," thereby violating Section 8(a)(1).

I will recommend that the Board dismiss this allegation.

Under some circumstances an employer violates the Act if the employer refers to union supporters in ways that indicate that the employer considers them to be unsuitable as employees. See *Dlubak Corp.*, 307 NLRB 1138 (1992), enfd. mem. 144 LRRM 2936 (3d Cir. 1993); *Animal Humane Society of South Jersey*, 287 NLRB 50 (1987).<sup>24</sup>

But Like's reference to Adams in no way suggested that the Company was considering taking any action against Adams. Adams led the way in bringing the ACTWU to Mobilcraft, and Like's speculation about Adams' motivation

<sup>23</sup> See also Objection 7: "On a number of different occasions throughout the [Company's] anti-union campaign the company made continual threat[s] of loss of wages and benefits if Union representation was accepted by the employees on December 21st."

<sup>24</sup> But see *M. K. Morse*, 302 NLRB 924, 925 (1991).

for doing so was plainly an expression of views within the scope of Section 8(c) of the Act.

Like's speech to employees occurred on the same day that Mobilcraft unlawfully disciplined Adams in connection with his efforts to have Ebling sign an authorization card. I have considered whether that disciplinary action somehow made Like's reference to Adams more threatening. My conclusion is that it did not. But as noted earlier, and as will be discussed below, Like's mention of Adams is relevant to the issue of whether a new election should be ordered.

#### B. *The November 18 Speech to Employees*

On November 18 Tom Baer (Patrick's vice president of operations) and Tim Bear (Mobilcraft's general manager) jointly gave speeches to all of Mobilcraft's bargaining unit personnel, reading from a prepared text. (The text indicated when Baer was to speak, and when Bear was to.) The prepared text is more than eight double-spaced pages long. The following quotation includes all those portions of the text that the General Counsel and/or the Union argue violate the Act. (All indicated emphasis is in the original.)

Union representatives . . . can make big claims about all the union can supposedly do for you—but, union organizers seldom talk about what a union can do *to you*. If you make the mistake of letting this union in our operation, then the union would win the right to bargain—but *nothing* more!!

It is true that this right to bargain also includes the right to make all kinds of demands on the Company—but the law is perfectly clear that—in bargaining—Mobilcraft is not required to agree to any union demand which the Company feels is not in its best interest, the best interest of our customers, or the best interest of *all* our employees. There is no law which says that a company has to do what a union says do and there is no law which requires a company to give in to a union's demands . . . .

Let me repeat . . . the Company does *not* have to agree to any particular demand—or agree to any particular union proposal—and the Company does not have to agree to sign the union's contract. The law specifically says that a company, in good faith, can *refuse* to make any economic concessions to a union. . . .

Some employees have the mistaken belief that if the union were to win an election and get in here, you would automatically get more and your work would be easier . . . . Let's set the record straight—if the ACTWU wins an election here, the only thing that will automatically happen is that we will *sit down* with the union and bargain with them over *your* pay, *your* benefits, and *your* working conditions. The Company would bargain in good faith, but we would have the absolute legal right to say "*NO*" to *any* union demand that the Company did not feel was in the best interest of the Company.

The ACTWU is a large union whose headquarters are in New York City. As its name, the Amalgamated Clothing & Textile Worker's Union, indicates, the majority of the ACTWU's membership works in the textile industry . . . . A large percentage of their member-

ship is based where the textile industry is located, that is, in the South. As you all probably know, the stronger unions in the Midwest are the Teamsters and the UAW. . . . If you chose the ACTWU as your bargaining representative, you are choosing a union that is, at least here in Elkhart, a weak unheard of union. This union can't force the Company to do anything.

I hope you now all understand that under the law, there is no guarantee that your pay would go up, your benefits would improve, or that there would be any change in any of our policies or practices with a union. Not only is there no guarantee that you would get more or that anything would change for the better—there is no guarantee that your pay and benefits would *stay the same*. In fact, there is always the danger that they could *go down* or be *reduced*!! A lot of people have the mistaken belief that having a union always means more money and better benefits and easier work. But under the law, there is always a possibility that you could lose some benefits which you already have, or your pay could be *reduced*, or work rules could become tougher after bargaining. Everything would be up for grabs, and absolutely no one knows what would happen in bargaining or what would come out of the bargaining. . . .

[Referring to a case in which bargaining led to a pay cut and in which the union sought help from the Board], the Labor Board said that the company's actions in cutting the employees' pay was legal because the company had lived up to its obligation by bargaining in good faith with the union . . . .

Patrick Industries . . . has always attempted to maintain equal or better wages for its non-union employees. Your advantages over unionized shop[s] at Patrick are no accident. Patrick has succeeded in maintaining advantages for its non-union workers in the past and we expect to be successful in that into the future.

Now Patrick does not want to cut your wages or benefits. It has always been our policy to maintain the highest wages and benefits possible while still remaining competitive and we expect to continue that policy. But it is a well-known fact that unions have traded away something important to employees in exchange for something the union itself wants in a contract. Bargaining is a *give* and *take* proposition. The Company trades something it wants, like lower wages or benefits, for something the union wants, like closed shop or dues check-off.

The General Counsel and the Union argue that the November 18 speech violated Section 8(a)(1) in a number of respects. Namely: (1) the speech allegedly asserted that it would be futile for the employees to unionize because unionization would "at best, result in the maintenance of existing wages and benefit levels . . . ." (G.C. Br. at 6); (2) the speech warns employees that if they vote for representation by the Act, "they risk losing wages and benefits . . . ." (id.); (3) the speech "denigrates" the ACTWU (id. at 7); and (4) the speech, in its reference to Patrick Industries' "attempt[ ] to maintain equal or better wages for its non-union employees," amounts to a statement that the Company

will not bargain in good faith with the Union (Union Br. at 9).

But as I read the November 18 speech, it has none of those faults. Certainly an attack on the ACTWU as “weak” is within the scope of Section 8(c). And saying that the Company attempts to provide equal or better wages for non-union employees is not a refusal-to-bargain threat, particularly where the speech specifically promises that the Company will bargain in good faith.

As for the speech’s other alleged faults, here, as in the communication at issue in *Custom Window Extrusions*, 314 NLRB 850, 851 (1994)—

taken as a whole, the Respondent’s [speech] indicates that the Respondent will participate in the bargaining process even without the pressure of a strike and that results of the process could be dictated by tradeoffs agreed to by the parties. Such a description of the bargaining process, albeit skewed in the service of the Respondent’s campaign effort to encourage votes against the Union, is an expression of opinion protected by Section 8(c) of the Act and therefore is not a violation of Section 8(a)(1).<sup>25</sup>

### C. The December 15 Speech

As was the case with the November 18 speech, the December 15 speech was read from a prepared text, this time by Bear alone. According to the General Counsel and the ACTWU, the speech: (1) threatened employees that a strike would be inevitable if the employees voted in the ACTWU; (2) threatened employees with the loss of their jobs if they became economic strikers; and (3) asserted that it would be futile for the employees to gain union representation.

The text of the speech is as follows (excluding the parts of the speech that are not at issue; emphasis in the original):

The first point I’d like to make is that the only thing that will automatically happen if the Union were to win the election on December 21 is that we would sit down with the union at the bargaining table and negotiate in good faith over your pay, benefits and other terms and conditions of employment. No one knows what would come out of that bargaining. The reason that no one knows what will happen is because both parties, the union and the company, would have to agree to each and every proposal or demand put forth by the other party before it would go into any contract. We don’t know what demands or proposals the union has in mind, but the company would have an *absolute legal right* to reject any proposal or demand that the company did not feel was in its best interests. Don’t misunderstand me, the company would bargain in good faith, but the law would not require the company to give in to any particular union demand or proposal and the company could say “NO.”

The second point I’d like to mention is that if the company said no to a union proposal or demand, the only thing the union could do to try to force the company to give in would be to call you, the employees,

out on strike. A strike would be devastating to the company and the strike could be devastating to you.

You should all know what can happen during a strike. . . . [E]conomic strikers can be **PERMANENTLY REPLACED** and if a striker is permanently replaced, the replaced striker runs a high risk of losing his or her job.

Let me explain permanent replacement. The company has the legal right to *replace* strikers with new workers in order to continue operating. If the ACTWU called a strike against Mobilcraft, it would probably be Mobilcraft’s intent to hire in permanent replacement employees to replace the strikers. And, if that happened, all of you who went out on strike would run the very real risk of having to look for new jobs if yours here at Mobilcraft were filled.

Let me emphasize that Mobilcraft intends to continue servicing its customers, union or no union, strike or no strike. If the company has to bring employees in here to take the place of every striker in order to keep operating, the company will do it.

[At this point, the speech refers to another company’s announced plant closing in a nearby city, purportedly resulting from a union’s demands, and to a strike at another company in Elkhart.]

Now the union is going to tell you that those are different unions and different situations. The fact remains, however, that the union’s only weapon to enforce its demands is a strike. . . . They will say that they don’t strike often. Well, the ACTWU has had over 8,200 of its employees [sic] go out on strike in the last four years. In each of these situations, anguish, violence, tension, poverty and lost jobs were possibilities. Don’t let them fool you into thinking that they never go on strike. They do, and they could go on strike here. Don’t let it happen.

For the reasons stated concerning the November 18 speech, the December 15 speech by no means amounts to an assertion that unionization would be futile. Nor does the speech claim that a strike would be inevitable. A strike would occur, according to the speech, only if the Company, after bargaining in good faith, rejected a union proposal and the Union then sought to force Mobilcraft to agree to it.

The more difficult question is whether, in the speech, Mobilcraft improperly threatened the employees with the loss of their jobs if they became economic strikers.

One point of concern is that the speech nowhere refers to strikers’ reinstatement rights. But an “incomplete statement” by an employer “of economic strikers’ *Laidlaw* rights” is not necessarily unlawful. *John W. Galbreath & Co.*, 288 NLRB 876, 877 (1988). And the speech under consideration here makes it plain that, even if Mobilcraft did obtain replacement employees, the permanently replaced economic strikers might not lose their jobs and that striking employees who are permanently replaced are not thereby discharged.

Additionally, according to the speech—

Mobilcraft intends to continue servicing its customers . . . strike or no strike. If the company has to bring employees in here to take the place of every striker in order to keep operating, the company will do it.

<sup>25</sup> See also *Hertz Corp.*, 316 NLRB 672 (1995).

That, plainly enough, is a threat: If there is a strike, Mobilcraft will keep operating, using replacement workers to do so. As the Union points out, moreover, there is no evidence that Mobilcraft's (or Patrick Industry's) management had in fact decided to continue to operate during a strike.

But Mobilcraft has the right to continue to operate during a strike, using replacement employees to do so. As for Mobilcraft's stated intention to operate during a strike, the record shows that, given the nature of the relationship between Mobilcraft and its customers, a temporary shutdown of Mobilcraft's facilities, whether stemming from a strike or any other reason, would be exceedingly costly for Mobilcraft in terms of lost business.

I conclude that nothing in the December 15 speech violated the Act in any respect.

#### D. *The December 17 Letter to Employees*

On or about December 17, Mobilcraft's management sent a letter to each of the Company's bargaining unit employees noting that "the union election is a just a couple of days away now" and urging the employee to "vote NO for the ACTWU to represent you." The letter lists nine reasons why, the Company claimed, the employee should vote against union representation. Seven are either innocuous or are comparable to language in the already discussed November 18 and December 15 speeches. The remaining two are worth some attention here. They read—

1. Your wages and benefits are higher than other unionized facilities at Patrick. You have previously been provided with comparisons to those facilities. . . . You can guarantee that you will remain higher only if you vote NO to the Textile Workers.

8. Mobilcraft will operate better for the company and the employees without a union. The company can pay higher wages and better benefits if it is non-union. It will not have the extremely high costs of negotiating union contracts or dealing with silly union policies.<sup>26</sup>

The complaint alleges that the December 17 letter, *inter alia*, "informed employees that it would be futile for them to select the Union because contract negotiations would result in a loss of economic benefits" and "impliedly promised employees increased wages and benefits if the employees did not select the Union as their bargaining representative."

My conclusion is that, as reasonably read, the letter has both these defects and thus violates Section 8(a)(1).

Recall that in the November 18 speech, Mobilcraft supervisors spoke of Mobilcraft's past *attempts* to maintain the differential between wages in Patrick's nonunion plants and those in its unionized plants and management's expectation that that relationship will continue. Also in that speech management referred to the fact that, because of the bargaining process, there could be "no guarantee" that wages would improve if the employees voted for union representation; in fact, the Union could not even guarantee that wages would not diminish.

<sup>26</sup>G.C. Exh. 9.

Paragraph 1 of the December 17 letter, by contrast, can reasonably be read as management's "guaranteeing" that wages at Mobilcraft would be higher without a union in place than if the employees voted in favor of union representation. Gone is the "attempt" and "expectation" language. Gone is the explanation (in the context of discussing why the ACTWU's promises should be disregarded) that no one can guarantee what will flow from bargaining. Here management guarantees a differential in wages and benefits favoring employees who are not represented by a union. That, surely, is either a promise of a benefit for voting against unionization or a threat that employee remuneration would decline if the employees opted for union representation. I find, in fact, that it was both a promise and a threat.

As for paragraph 8 of the letter, standing alone it would merely represent the expression of a point of view that was within the scope of Section 8(c). But given the earlier management "guarantee," the second sentence of paragraph 8—"The company can pay higher wages and better benefits if it is non-union"—emphasizes that Mobilcraft's employees could count on management ensuring that the employees' wages and benefits would be better if the employees voted against union representation than if they voted for it.<sup>27</sup>

#### VI. UNION OBJECTIONS

The ACTWU objected on numerous grounds to conduct that, the Union claims, affected the results of the election. A number of the objections are identical to the General Counsel's unfair labor practice allegations (as indicated above). But eight objections have no counterpart in the General Counsel's consolidated complaint.

##### A. *The "Gauntlet"*

One of the ACTWU's objections is that—

On December 21, 1993, employees were forced to walk through a gauntlet of management persons (plant manager, supervisor and other members of management) as they were entering the polling area during voting times.

December 21, of course, was the day of the election. The objection refers to circumstances during the first shift in plant 8.

The polling place for Mobilcraft's plant 8 employees was in the plant 8 breakroom. One door provides access between the breakroom and the factory floor. The voting booth was on the far side of the breakroom from that door—37 feet from the door.

In plant 8 the first-shift employees voted between 1:30 and 2:10 p.m. The plant's employees were divided into four groups of between 8 and 13 employees, and each group was allotted a specified 10-minute period between 1:30 and 2:10

<sup>27</sup>During the campaign, Mobilcraft told its employees that: "Patrick's insurance is the same for all its plants, even those represented by *strong unions* . . . . Everyone in the company, top to bottom, has the exact same insurance coverage. If *strong unions* . . . could not change their members' insurance coverage, it is highly unlikely that this union would be able to change yours either." (G.C. Exh. 10; emphasis in the original.) The ACTWU, but not the General Counsel, attacks that message as unlawful. My conclusion is that Mobilcraft could properly present that argument.

p.m. to vote. At the designated time, employees walked from their work locations to the breakroom, then waited inside the breakroom for their turns to vote. On completion of their voting, they retraced their steps back to their work stations.

The factory floor in plant 8 is divided roughly into two halves by a wall that has one large opening in it. The normal path from the various work locations in plant 8 to the breakroom is either through or next to that opening in that wall. As a separate matter, in order to be able to view the maximum amount of the factory floor, one needs to stand in or next to that opening in the wall. Supervisors routinely station themselves there for brief periods.

As touched on earlier, Mobilcraft's production rates were exceedingly high in the autumn of 1993, with customers pressing Mobilcraft's management for deliveries. That circumstance obtained as well on December 21. One customer in particular telephoned Bear about an overdue shipment. Bear knew that one machine used in the manufacture of those doors—a "foiler"—was operating erratically. The foiler was in plant 8. As it happens, the foiler is a few feet from the above-described opening in the wall separating the two halves of the factory floor. The foiler is about 35 feet from the door to the breakroom.

Shortly before 2 p.m. Bear entered plant 8 and made his way to the foiler. Michael Wyatt (the supervisor who disciplined Russ Adams) was the plant 8 supervisor. He joined Bear at the foiler, either because Bear motioned him to come over or because Wyatt would naturally want to know why the Company's general manager was in plant 8. (Bear's office is in plant 7.) Steve Berella is Mobilcraft's production manager. His office is in plant 8. Bear motioned Berella to join him at the recalcitrant foiler.

Thus at about 1:50 or 2 p.m., in the midst of the period allotted for voting, a group consisting of the general manager, the production manager, and the plant 8 supervisor were gathered at a location within a few feet of the route taken by most of plant 8's employees as they went to vote, 35 feet from the breakroom, and 72 feet from the voting booth (inside the breakroom).

The three supervisors stayed at that location for at least 20 minutes. Thus they were there past 2:10 p.m., when the voting ended. It is unusual for three supervisors to stand in one spot on the factory floor of any of Mobilcraft's facilities for 20 minutes. But the evidence shows that Bear, Wyatt, and Berella were there for reasons unrelated to the voting. Some of the time the three discussed the foiler and production output. The rest of the time they discussed a broken air compressor. (The compressor was in plant 3, not plant 8; but the air compressor was crucial to Mobilcraft's operations, and the mechanic working on the compressor came over to plant 8 to speak to Bear about it.)

During those 20 minutes or so, one employee spoke a few words to Wyatt (a brief reference to the time during which the voting was conducted). Otherwise none of the three spoke to any employee. And nothing about the demeanor of the three supervisors was threatening. There is a small window in the breakroom door. One employee testified that the three supervisors stared at that window, but I do not credit that testimony. Two employees testified (credibly) that, standing inside the breakroom, they could see Wyatt (but not Bear or Berella) through that window.

Plainly it was insensitive of the three supervisors to spend so much time next to the route the plant 8 employees took to the polling area. The supervisors knew that the voting was occurring. And they could readily have held their conversation in a nearby office in plant 8. But supervisory sensitivity about the election process is not the test for whether conduct is objectionable.

Had the supervisors engaged the employees in lengthy conversation as the employees made their way to the polling area, or if the supervisors' purpose in standing near the foiler was to convey to the employees that they were being watched, or, perhaps, if the supervisors had been standing immediately next to the door to the breakroom, the ACTWU's objection might well be a valid one. See *Electric Hose & Rubber Co.*, 262 NLRB 186 (1982); *Michem, Inc.*, 170 NLRB 362 (1968).

But the supervisors were at the foiler for work-related reasons, they did not converse with the employees, they were a reasonable distance from the breakroom, and nothing about their behavior was intimidating. I conclude that their conduct was unobjectionable. *Roney Plaza Management Corp.*, 310 NLRB 441, 447 (1993); *Standard Products Co.*, 281 NLRB 141, 163-164 (1986); *B.E. & K, Inc.*, 252 NLRB 256, 267-268 (1980); *American Induction Heating Corp.*, 221 NLRB 180 (1975).

#### B. Did Supervisors Peer into the Polling Area in Plant 8

The Union's objection 2 reads:

On December 21, members of management were observing the voting process through an open window into the polling area and were visible to voters as they waited to vote during voting times.

To a considerable extent the facts relevant to this objection have already been discussed in connection with the Union's "gauntlet" objection.

As noted above, small groups of employees who were waiting to vote at plant 8 gathered in the breakroom, where the voting booth was also located. The window in the breakroom door in plant 8 is a relatively small one, about 18 inches by 12 inches. One supervisor, Wyatt, who was standing near the foiler on the factory floor about 35 feet from the breakroom, could be seen through that window while the voting was in progress. But Wyatt was busy with business unrelated to the voting. No supervisor tried to look into the breakroom through the window.

I conclude that Objection 2 is without merit.

#### C. Did Members of Mobilcraft's Management Enter Polling Areas

According to the ACTWU's Objection 3, Mobilcraft's—

plant manager, [a] supervisor and [another] member of management entered the polling area while employees were waiting to vote, during voting times.

The objection relates to the behavior of Wyatt, Bear, and Nick Delorenzo.

**Wyatt.** The ACTWU's observer at the plant 8 polling place, Jonathan Woodruff, testified that near the end of the

first shift's voting period Wyatt entered the plant 8 breakroom, asked a question of the Board agent, and left. The only members of the bargaining unit in the room were the two observers who had already voted. Wyatt testified that he did not enter the breakroom during the voting times. The testimony of Woodruff and Wyatt was equally credible. Since the Union has the burden of proof, I am unable to find that Wyatt entered the polling area during voting times.

**Bear.** Only one bargaining unit employee worked in plant 8 during the second shift. One 10-minute period was specified for that employee to vote: from 4:30 to 4:40 p.m. (in the plant 8 breakroom). Other employees could use that period to vote if, for some reason, they had not voted during the time specified for them. One voting period was scheduled after 4:40—the voting period for plant 7's second-shift employees. That was set for 5:30 to 5:40 p.m.

Sometime between 4:30 and 4:40 p.m., but after the one second-shift bargaining unit employee in plant 8 had voted, Bear entered the plant 8 breakroom. He knew that the solo employee had voted. Three persons were in the room at the time: the two employee observers and the Board agent. (As previously indicated, the two observers had already voted.) Bear said "hello" to the two observers and then proposed to the Board agent that the second-shift voting in plant 7 be moved up in time. The Board agent turned down that notion, saying that she would adhere to the previously agreed-upon schedule.

Bear's conduct could not have affected the election in any way. See *Roney Plaza Management Corp.*, 310 NLRB 441, 448 (1993); *Pizza Crust Co.*, 286 NLRB 490, 508–509 (1987).

**Nick Delorenzo.** As of December 1993 Nick Delorenzo was head of quality control for Mobilcraft. The record shows that he was not a supervisor. On the other hand, when Delorenzo found defects in an employee's output he often reported that to the employee's supervisor. For some purposes, then, Delorenzo was an agent of Mobilcraft.

Employees assigned to plant 7 voted in the breakroom attached to that plant. During plant 7's first-shift voting period, at a time when there were about six bargaining unit members in the room, Delorenzo entered the plant 7 breakroom through one door, stood there for a few seconds, then exited the room through another door without saying a word to anyone. He was in the breakroom for less than 1 minute.

The record provides no basis for finding that Delorenzo was an agent of Mobilcraft for any purpose other than reporting defective output to management. In any event, Delorenzo was in the breakroom for only a very brief period and, during that period, said nothing. I conclude that Delorenzo's conduct could not have affected the results of the election.

For the reasons discussed above, I shall recommend that Objection 3 be dismissed.

#### D. Was the Polling Area in Plant 7 in "Open View" of Management

Plant 7 has a factory area, a breakroom, a paint shop, an area that I will call the clerical area where Mobilcraft's three clerical employees work, and three offices (including Bear's) that open onto the clerical area.

As previously noted, employees whose work stations were in plant 7 voted in the plant 7 breakroom. There are three

doors into the breakroom. One from the factory floor; one from the paint shop; and one from the clerical area.

The door between the breakroom and the clerical area was closed throughout the voting except on two occasions. (The door was left open one time as a result of Delorenzo's passage through the breakroom; the record does not disclose why the door was opened a second time.) On one of those occasions, Nancy Beggs, who was the ACTWU's observer during the voting in the plant 7 breakroom, closed the door. On the other, Bear, who was passing through the clerical area with two Mobilcraft attorneys, shut the door after being told to do so by the Board agent.

The record fails to indicate that any employee in the breakroom saw anyone in the clerical area during the voting period.

The Union, in its Objection 4, contends that "the polling area [in plant 7] was in open view of members of management and office personnel during voting times." But the two occasions of the door to the clerical area being open during voting times could not have affected the results of the election. I shall recommend that this objection be dismissed.

#### E. Alleged Misbehavior by the Company's Observer

The ACTWU's Objection 5 reads: "the [C]ompany's observer [in plant 8] continually engaged persons voting in conversation, while this privilege was not extended to the Union's observer."

Mobilcraft chose bargaining unit employee Kerry Kelter to be its observer at the polling in plant 8. Unit member Jonathan Woodruff was the Union's observer. The Board agent instructed both Kelter and Woodruff that they should not talk to employees coming in to vote, not even to respond to a "hello."

Initially both Kelter and Woodruff nonetheless did say "hi" back to any employee who greeted them. Kelter went farther, sometimes saying something on the order of "how are you doing" or "hi" to employees entering the breakroom to vote even if the employee had said nothing, and sometimes telling employees to hurry (toward the voting booth or to leave the breakroom when done).

The Board agent on one occasion admonished both observers not to say anything to the employees, and on a second occasion repeated to Kelter that he was to say nothing to employees coming to vote. Kelter, however, continued to say "hi" back to employees who greeted him. Additionally, Kelter used arm signals to urge the employees to proceed to the voting both and to leave the breakroom when they had completed voting.

It is clear that Kelter communicated to employees coming in to vote considerably more frequently than did Woodruff.

At no time did Kelter (or Woodruff) electioneer or otherwise say anything about the ACTWU or unionization. (During moments when no voters were in the room, Kelter and Woodruff conversed with each other about routine, day-to-day, matters and with the Board agent. But the ACTWU does not object to that behavior.)

I conclude that Kelter's conduct could not have affected the results of the election.

*Michem, Inc.*, 170 NLRB 362 (1968), makes it plain that agents of a union or an employer are not to engage in "prolonged conversations" with employees waiting to vote, even about matters unrelated to the election. But exchanges on the

order of “hi, how’re things going” are not the kinds of communications that concerned the Board in *Michem*. I shall recommend that Objection 5 be dismissed.<sup>28</sup>

*F. Mobilcraft’s Distribution of a Leaflet on  
Election Day*

The ACTWU’s Objection 6 alleges that “the company handed out threatening leaflets in near proximity to the polling area during voting times.”

On the day of the election, in plant 8, beginning at about 11:50 a.m., a Mobilcraft agent acting on behalf of Mobilcraft handed out copies of an antiunion campaign leaflet to the hourly employees in plant 8. (There is no serious issue about the language of the leaflet; it plainly was lawful.) The distribution of the leaflet was completed a few minutes before noon or, perhaps, as late as a few minutes after noon. As previously discussed, voting began in plant 8 at 1:30 p.m. Plant 7 is about a block from plant 8. Voting in plant 7 began at noon.

An employer (or a union) may distribute campaign literature “at any time prior to an election.” *Peerless Plywood*, 107 NLRB at 427, 430 (1953).

In light of *Peerless Plywood* I conclude, for two reasons, that the distribution of the leaflet was unobjectionable. First, even assuming that distribution occurred as late as noon, that was well before the polls opened in plant 8, the facility in which the distribution occurred. It is true that the polls in plant 7 opened at noon. But plants 7 and 8 are a block apart, and there was no showing that any employee assigned to plant 7 ever saw any of the leaflets that were distributed in plant 8. Second, it was up to the ACTWU to show that the leaflet was still being distributed when the polls opened. And as indicated above, as far as the record here is concerned it is as likely that distribution of the leaflet was completed prior to noon as it is that the distribution extended beyond noon.

*G. Did Mobilcraft tell its Employees that the NLRB was  
the Source of an Antiunion Video*

According to the ACTWU’s Objection 8, “during the Company’s anti-Union campaign the company misrepresented the NLRB by claiming that an anti-Union video had been created and distributed by the NLRB.”

Agents of the Company showed a number of antiunion videos at mandatory employee meetings. After one of the video showings, an employee asked where the Company had obtained it. According to several employee witnesses called by the ACTWU, a Mobilcraft agent responded that the Company had gotten the video from the NLRB. (Everyone agrees that Mobilcraft did not in fact obtain the video from the NLRB.) But Mobilcraft’s witnesses denied ever saying anything like that. I credit Mobilcraft’s witnesses, not the Union’s, and will recommend that Objection 8 be dismissed.

<sup>28</sup> Mobilcraft contends that Kelter, as an observer, was not its agent and that, accordingly, even had Kelter engaged in the kind of sustained conversation to which *Michem* refers, that would be no basis for ordering a second election. I need not and do not reach that contention.

*H. The Lottery that Mobilcraft Conducted  
Among its Employees*

On November 29, Mobilcraft distributed the following message to each of its unit employees (emphasis in the original):

WIN 260 LOTTERY TICKETS

Mobilcraft will give one employee 260 Hoosier lottery tickets if that employee can guess the total amount ACTWU spent during 1991 and 1992 on behalf of its individual members (such as you will be if you vote the union in).

*HINT:* During that period, the ACTWU paid a total of \$117,698,045.00, and paid its officers and employees a total of \$22,064,649.00. Yes, that’s right, the union spent over One Hundred Seventeen Million Dollars (\$117,000,000.00) in two years.

To qualify to win the 260 lottery tickets, all you have to do is tear off the entry blank below, write in the amount you think the ACTWU spent on behalf of its individual rank and file members during 1991 and 1992, and give your entry to your supervisor. The winner will be judged on the basis of the entry coming closest to the total amount the ACTWU spent on its individual members during this period. In case of a tie, the winnings will be evenly divided. Each employee may make only one entry. . . . The winner will be announced on Friday, December 3, 1993.

By the way, the \$260.00 is the amount you will pay each year in ACTWU union dues if you vote the union in. . . .

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TOTAL AMOUNT SPENT ON  
BEHALF OF INDIVIDUAL  
MEMBERS

\$ \_\_\_\_\_

The Company’s position was that ACTWU spent nothing at all—\$0—on “individual rank and file members.” Forty employees submitted that figure and accordingly shared the 260 lottery tickets. (Each of the winners received six or seven tickets.)

State of Indiana lottery tickets cost \$1 each. The highest amount a lottery ticket can win is \$3000. The lottery tickets are the kind that provide for an “instant” determination of winnings (if any). Lottery ticket holders simply scratch the coating off the ticket to see if they have won. Winnings can be collected from any one of numerous retail establishments throughout the State.

The luckiest Mobilcraft employee won \$57 with her six or seven tickets. Another employee won \$7. The record does not specify whether any of the other 38 raffle winners won any money in the state lottery.

The Union contends that, in conducting the raffle, the Company distributed lottery tickets worth up to \$780,000 (260 tickets times \$3000 maximum lottery prize). But in fact the tickets were worth only their fair market value: \$1 each, \$260 for the entire batch of 260.

While the matter is not free from doubt, I conclude that the raffle could not have affected the results of the election.

There are two aspects of the raffle that concern me. One is that the Company described the raffle in a way that could lead an employee to believe that 1 employee could win all 260 tickets—that is, a raffle prize worth \$260. Second, out of any group of 150 or so employees (the size of Mobilcraft's unit) there will be some for whom gambling is addictive. Employees in that category might well focus on a lottery to the exclusion of the more important issues raised by the election process.

But the Board has made it clear that employers may lawfully hold raffles for bargaining unit employees related to the representation election process. E.g., *Sony Corp. of America*, 313 NLRB 420 (1993). As for the possibility of 1 employee winning all 260 tickets, anyone reasonably contemplating the nature of Mobilcraft's raffle would recognize that there surely would be a number of winners.

Additionally: (1) the outcome of the raffle was determined relatively long before the December 21 election—raffle winners received their lottery tickets on December 3, 18 days before the election; (2) "the circumstances surrounding the raffle" could not have "provided the employer with the means of determining how and whether employees voted" (*Sony*, supra, quoting *Grove Valve & Regulator Co.*, 262 NLRB 285, 303 (1982)); (3) participation in the raffle was not "conditioned upon how the employee voted in the election or upon the result of the election" (*id.*); and (4) it is altogether unlikely, given the way the raffle was structured, that any of the winners felt any "sense of obligation" to vote as the Company wished (see *Easco Tools*, 248 NLRB 700 (1980)).

I accordingly shall recommend that the Union's (unnumbered) objection about the raffle be dismissed.

#### REMEDY

The most important issue raised by the foregoing findings and conclusions is whether a second election should be ordered.

I have concluded that Mobilcraft violated the Act in two respects during the critical period between the ACTWU's filing of its petition (on November 1) and the election (December 21). First, on November 2 a supervisor disciplined employee Russ Adams for engaging in activity that the Act protects. Second, in a December 17 letter to employees Mobilcraft promised a benefit for voting against union representation and threatened that the Company's remuneration of employees would decline if the employees voted in favor of unionization.

The usual policy of the Board is to direct a new election where an unfair labor practice was committed during the critical period. *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962). Accord: e.g., *Hertz Corp.*, 316 NLRB 672 (1995); *Diamond Walnut Growers*, 316 NLRB 36 (1995).

Here each of the two unfair labor practices committed by Mobilcraft require that a second election be held.

As for the disciplining of Adams: while some employees did not hear about Adams being disciplined, many did; the discipline was for activity that is central to employees' unionization efforts—speaking to fellow employees about signing authorization cards; and it was Mobilcraft itself, in Like's speech to employees, that on the same day that the

Company disciplined Adams, publicized the fact that it was Adams who introduced the ACTWU to Mobilcraft.

As regards the December letter: (1) it was disseminated to all bargaining unit members; (2) its purpose was to convince employees to vote against unionization; and (3) the letter issued just a few days before the election.

Accordingly the recommended Order calls for the setting aside of the December 21 election and the holding of a new election. Additionally, of course, the recommended Order requires Mobilcraft to cease and desist from engaging in unfair labor practices of the kind discussed above and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>29</sup>

#### ORDER

The Respondent, Patrick Industries, Inc., Mobilcraft Wood Products Division, Elkhart, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disciplining employees because they engaged in protected, concerted, activity.

(b) Promising employees a benefit for voting against union representation or threatening employees that their wages or benefits will decline if the employees vote in favor of unionization.

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

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

(a) Post at its facilities in Elkhart, Indiana, copies of the attached notice marked "Appendix."<sup>30</sup> Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by a representative of the Respondent, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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

IT IS FURTHER ORDERED that the election held in Case 25-RC-9317 on December 21, 1993, be set aside. A second election shall be held at such time as the Regional Director

<sup>29</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>30</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

decides that the circumstances permit the free choice of a bargaining representative.

APPENDIX

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

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

WE WILL NOT discipline you because you engaged in protected, concerted, activity.

WE WILL NOT promise you a benefit for voting against union representation or threaten you that your wages or benefits will decline if you vote in favor of unionization.

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.

PATRICK INDUSTRIES, INC., MOBILCRAFT  
WOOD PRODUCTS DIVISION