

**Laser Tool, Incorporated and International Union,
United Automobile, Aerospace, and Agricultural
Implement Workers of America, UAW,
AFL-CIO. Cases 34-CA-6748 and 34-RC-1272**

December 18, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

On July 10, 1995, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.²

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

² In adopting the judge's finding that a bargaining order is appropriate to remedy the unfair labor practices found, we rely particularly on the threats of plant closure made by the Respondent's senior management in the presence of the Respondent's owner, the participation of the Respondent's owner in many other unfair labor practices, and the small size of the unit.

We deny the Respondent's motions to reopen the record to introduce evidence of employee turnover, as it is the Board's established policy that the propriety of a bargaining order turns on the circumstances in existence at the time of the unlawful conduct. *The Salvation Army Williams Memorial Residence*, 293 NLRB 944, 945 (1989), enf. mem. 923 F.2d 846 (2d Cir. 1990). We recognize that this case arises in the Second Circuit, which considers evidence of turnover to be relevant in determining whether a bargaining order should issue. See *J.L.M., Inc. v. NLRB*, 31 F.3d 79 (2d Cir. 1994) (bargaining order not appropriate when "a significant number of employees . . . have moved on"; court refused to enforce bargaining order based on 57-percent turnover of employees between date unfair labor practices commenced and date of hearing, 40-percent turnover of managers, and 3-year delay in issuance of bargaining order by the Board). In this case, the Respondent claims that 1 of the 11 employees whom we have found to be properly included in the unit at the time of the election left the Respondent's employ between the date of the election and the date of the hearing, and that 2 more employees departed after the hearing had closed and the judge had issued his decision. Even if we were to consider this evidence asserted by the Respondent, we would find that it does not constitute "substantial" turnover of the type that has concerned the Second Circuit in other cases. We further note that there is no evidence here of management turnover, or of delay in the issuance of the bargaining order.

Member Cohen does not necessarily agree with the Board's general principle that employee turnover is irrelevant in cases involving

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laser Tool, Incorporated, Hartford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that Case 34-RC-1272 is severed from this proceeding and remanded to the Regional Director for Region 34 for further appropriate action.

a *Gissel* bargaining order. However, he agrees that, in this case, the employee turnover is not sufficiently substantial to preclude a *Gissel* order.

Darryl Hale, Esq., for the General Counsel.

David A. Ryan, Esq., of Waterbury, Connecticut, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Hartford, Connecticut, on April 19-21, 1995. Briefs were filed by the General Counsel and Respondent. The proceeding is based upon a charge filed September 29, 1994,¹ by International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, AFL-CIO. The Regional Director's complaint dated January 10, 1995, as subsequently amended, alleges that Respondent Laser Tool, Inc., of Thomaston, Connecticut, violated Section 8(a)(1), (3), and (5) of the Act by promising increased wages; engaging in surveillance; threatening with a loss of benefits; expressing the futility of union representation, threatening to close the plant; harassing union supporters by restricting their movement and their ability to talk in the plant; harassing John Desrochers by placing him under close observation and prohibiting him from jogging; failing to grant its employees the benefit of a half day off with pay; and by failing and refusing to recognize and bargain with the Union as the collective-bargaining representative of a unit of its employees.

Related issues were raised when the Union filed objections to the election and the Regional Director issued a supplemental decision on January 27, 1995, referring those matters for hearing. Although no documentary order consolidating the cases was issued, the matter was discussed at the opening of the hearing and I orally ordered that the matters be consolidated for a decision.

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

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the manufacture and sale of form tools. It annually purchases and receives goods and ma-

¹ All following dates will be in 1994 unless otherwise indicated.

terials valued in excess of \$50,000 directly from points outside Connecticut, and it admits that at all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent has operated for nearly 50 years and it presently employs approximately 13 employees who are classified as grinders and machinists. Its owner, Ed Laser, has an office in the design department on the upper level of the two-story facility and oversees the daily operation of the facility and directly supervises Jean Morton, a tool designer who also has space in Laser's office. Others who work on the upper level include several office employees in an office run by Office Manager Flo Brasacchio located next to the design department; Foreman John Cooke (who has approximately 42 years with the company) and who immediately supervises the grinders and the machinists; and several grinders, each of whom works in his own glass partitioned room. The machinists work on the ground level, as does Jimmy Vieira, a designer/grinder who has his own office. The grinders and machinists normally work from 7:30 a.m. to 5 p.m. Monday–Thursday and 7:30 a.m. to 4 p.m. on Fridays. The size of the facility is approximately 2300 square feet and the progression of tool making (after design) moves from machining work performed downstairs to precision form grinding work upstairs. Despite its small size the facility has seven functionally integrated departments; machining, circular form grinding, shipping and packing, design, office, and maintenance. Raw materials are worked on initially by the machinists and then passed on for the more precise work, done upstairs by the precision form tool grinders. All employees receive the same benefits, are paid on an hourly basis, receive overtime, punch timecards, use the same parking lot entrance, lunchroom, rest rooms, and work the same shift hours (except for several employees who are regular part-time employees).

An organizing drive at the facility began on June 17 after grinder Heinz Roller, met with Union Representative Henry Fijalkowski and signed an authorization card. On June 21 five other employees, machinists Kevin Kennedy, Michael Smart, and Ray Moore and grinders John Desrochers and Richard M. Daley, signed authorization cards at a union meeting held at a restaurant located a short distance from the plant. I credit Fijalkowski's testimony that he told the employees that the cards would authorize the Union to represent them in collective bargaining. Based on the belief that there were 11 production and maintenance employees and drivers and that it had 6 authorization cards, the Union requested recognition by letter dated June 23. Respondent did not respond to the request. On June 27 the Union filed a petition in Case 34–RC–1272 seeking to represent a unit of Respondent's production and maintenance employees (excluding design employees). On the same date Respondent hired Mark Sevigny as an apprentice, and on July 10 it hired Christopher Ferry as a "trainee" grinder. The Union obtained another authorization card from employee Scott Taylor dated July 14. A representation hearing was held in the Regional Office on July 15, and pursuant to the Decision and Direction of Election issued by the Regional Director on August 2, an election

was conducted on August 29. The "design" employees were not specifically excluded from the unit, subject to challenge, "drivers" were added and office clerical, guards, professional employees, and supervisors were excluded. The result of the election was four votes for the Union, five votes against the Union, and four challenged ballots which were determinative of the outcome of the election. As noted, on August 31, the Union filed objections to the elections, the majority of which mirror the instant alleged unfair labor practices.

As soon as the Union requested recognition Roller and Kennedy spoke openly about supporting the Union. On July 11, Roller and Desrochers were subpoenaed by the Union to attend the representation hearing scheduled for July 15 at the Regional Office and both presented copies of the subpoena to management on July 11. Laser sat for several hours 2 days later in a position where he could observe both Roller and Desrochers. Roller also testified that Laser spoke to him about settling the union matter and told him they had been planning to do something about their pension and insurance but wouldn't because "this" all started. In mid-July both Roller and Desrochers were restricted in exercising their former free movement in and near the plant.

During August, Respondent started showing videos about unions to the employees eligible to vote. Laser and Cooke were present at the showings, and Laser would read a script prior to the video. At least four videos were shown, one per week, usually on a Friday. Laser and Cooke also answered questions and made comments after the videos. At one of the sessions, Laser is alleged to have said that if the Union got in he did not have to negotiate and that he could start from scratch, and the employees could wind up with less. Employees testified that other such statements were made by both Laser and Cooke. During this same timeframe Cooke placed numerous posters that displayed material linking unions with strikes and plant closure and Roller and Desrochers each said that Cooke also made separate remarks along the same lines. Smart testified that after the campaign began Laser told him he would like to pay him more but that his hands were tied by the union campaign.

On the day of the election Laser stood outside his office where eligible voters were waiting in line, and spoke to new employees Sevigny and Ferry until the Board agent asked him to leave at which time he went into Cooke's adjacent office where he still could see the voting line area through the glass wall.

After the election, Roller and Smart, also a union adherent, were talking about a new insurance offer by the Respondent when they discovered that Laser was behind a nearby cabinet, apparently monitoring their conversation. Finally, on the Friday before the Labor Day weekend just after the election, Roller asked Cooke if they would have a half day off with pay as they did on previous Labor Days and before Independence Day. Cooke said he'd have to talk to Laser and he thereafter said the answer was "no," without any further explanation.

Otherwise, the Respondent has not recognized or bargained with the Union since the bargaining request was made. Additional descriptions and factual findings relative to these events will be set forth below in the discussion of the specific allegation and objections.

III. DISCUSSION

A series of alleged violations of Section 8(a)(1) of the Act occurred during the critical period after the union campaign began and continued up to and beyond the day of the election, and are critical to the fairness and validity of the election itself. Here, it appears that the General Counsel has met his burden of proof and shown that a number of violations occurred which must be considered to have affected the outcome of the election.

In addition, the status of four employees whose ballots were challenged must be examined in order to determine the outcome of the election and provide a setting for a conclusion of whether the appropriate remedy should be the direction of a second election or the imposition of a bargaining order in accordance with the decision in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

A. Ballot Challenges

Kevin Kennedy is alleged by the Respondent to be a statutory supervisor and it objected to his vote on this basis. Since 1984 Kennedy has been a machinist and in 1987, he was designated as the leadperson for the machinist on the ground floor. He was referred to as the machinists' foreman by the Respondent's witnesses Laser, Cooke, and Vieira. He received a bonus in 1987 for doing a good job "in charge, downstairs," however, Laser reluctantly admitted that Vieira also received a bonus at the same time. As "Foreman" Kennedy distributes work to the machinists working downstairs and is said to be responsible for production flow. Kennedy has not trained any employees for over 4 years. Kennedy spends his time completing cutter orders and making blanks and doing special jobs designated by Laser. Respondent's witness Moore testified that Kennedy does not set up his machine and that Kennedy only tells him what work order has to be done and Moore carries it out. Kennedy has no authority to hire, fire, discipline, set hours, grant time off, or overtime, or to transfer employees, and has never disciplined anyone, conducted performance evaluations, or recommended that an employee be hired, granted a pay raise, or laid off. Kennedy also testified he has not ordered supplies in the past 2 years and that supplies are ordered by Brasacchio, Vieira, and Cooke.

Inasmuch as the Respondent raised Kennedy's purported status, it has the burden of proof to establish that status, see *Thayer Dairy Co.*, 233 NLRB 1383 (1977). Here, the Respondent has not met its burden and as the record otherwise fails to show that Kennedy was a supervisor within the meaning of Section 2(11) of the Act (see the next page), at the time of the election I find he is not a statutory supervisor and that the challenge to his ballot should be overruled.

William Galske, was identified as an employee whose vote was challenged by the Union, however, the supplemental decision inadvertently failed to recognize that the Union withdrew its challenge in this respect. Accordingly, I conclude that his vote properly, may be counted.

Jean Morton, unlike the machinists and grinders who make up the production and maintenance unit, is not immediately supervised by Cooke. Rather, she is a designer, supervised by Laser, the owner and principle designer, and shares office space in the "Design Department" with Laser.

Morton, begins and ends work at various times between about 7:45 a.m. and about 1:30 p.m., she does not have regular working hours and is allowed to work later or leave earlier. In contrast, the production and maintenance workers start at 7:30 a.m. and finish at 5 p.m., Monday–Thursday, and 7:30 a.m. to 4 p.m. on Fridays. Morton takes her lunch in the design room, also receives a 20-minute paid lunch whereas grinders and machinist do not receive a paid lunch.

Morton works closely with Laser (and Vieira) designing and preparing prints for the tools made at the facility. Although she does not have a professional degree, she has a computer and telephone and spends virtually all of her time working on the computer in the design area and talking to customers. Laser and Vieira also have computers and interact with customers on their phones in their offices. Cooke, the number two management official in the Company and immediate supervisor for the production and maintenance employees, has a grinding room like the other grinders. He does not have a computer and has little interaction with customers.

Morton does not perform any production or maintenance work but does get paid for work performed at home. Morton's interaction with the production and maintenance workers is limited to answering a particular question about a tool print, or to contact them when looking for a particular job for a customer. Kennedy testified that from January through August, Morton rarely brought down prints to the machinists, a task normally done by Laser or Vieira, and that he had very little interaction with her during working time.

Although Morton is not a "professional employee" (excluded from the unit description) she is a design technician with specialized skills shared principally with the owner (and to a lesser degree, Vieira). While the function she performs is necessary to start the production process, she interacts with customers but rarely deals with any workers in the production department. She works at home or in areas with and under the supervision of the owner of the Company, apart from the production areas, and at part-time hours that differ from those of the unit employees. Under these circumstances, I am persuaded that the General Counsel has shown factors consistent with applicable criteria, i.e.: whether employees have common supervision; the degree of their functional integration; the nature of their skills and functions; the interchangeability and contact among employees; their work sites; their general working conditions; and their fringe benefits, see for example, *Atlanta Hilton & Towers*, 273 NLRB 87 (1984); *Harron Communications*, 308 NLRB 62 (1992), that otherwise supports a conclusion that Morton lacks a community of interest with the unit of employees. Accordingly, the Board's challenge to her ballot is sustained.

James Vieira testified that he spends approximately 90 percent of his workday as a tool grinder and approximately 3–4 hours per week milling. He reluctantly conceded that he "occasionally" fills in for Laser or Morton in the design room when they are out or when there is additional design work to do.

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if

in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The existence of any one element can be sufficient to convey supervisory status, however, sporadic or occasional exercise of supervisory authority may be insufficient to make an employee a supervisor. The Board also has considered secondary indicia, the possession of which weigh in favor of such supervisory status, including such factors as whether the individual is considered by others to be a supervisor, and whether he has the authority to grant time off. Here, the Respondent's other supervisors, Laser and Cooke and Vieira himself minimize Vieira's supervisory activities and employee Nikolai Slawnyz testified, "He's just a plain worker. I don't see he's supervising anything." Slawnyz, however, only works mornings and leaves at noon. General Counsel witness Roller considers Vieira management as Vieira answers questions on prints, talks to customers, and tells him when a job needs to go. John Desrochers and Kevin Kennedy (Vieira is "in charge of the shop when John and Ed are gone"), and Chris Ferry (supervised by Laser, Cooke, and Vieira, "go to him—anything I need") have observed Vieira throughout the day and gave credible explanations of what they have observed that leads them to consider Vieira to be one of their supervisors. My observation of the demeanor of these latter witnesses as well as Michael Smart and the circumstance of their detailed, explanatory testimony (essentially developed with nonleading questions), leads me to conclude that their testimony has a quality of reasonableness and trustworthiness and I generally credit their testimony over that of Laser, Cooke, and Vieira who gave cursory dismissive testimony with respect to these matters.

More specifically, it is shown that Vieira works in a separate room on the first floor apart from the other tool grinders, who have room on the second floor. While each grinder's room has a sophisticated grinding machine, Vieira's room has two specialized grinding machines, a desk, a computer, a phone, and an intercom connection with Office Manager Brasacchio. Vieira also has trained Chris Ferry and "worked with" Jim Daloisio when he first started and showed him what to do (Vieira denied that this was "training"). Vieira's estimate that he spends 90 percent of his time grinding appears to be an exaggeration and it otherwise appears that he prepares designs and prints and is paid for working on prints that he takes home or that were sent home to him. It also appears that he assigns work to machinists, including Kennedy and Smart. Vieira also orders supplies for machinists and fixes machines.

During January through August, Vieira was in charge of ordering steel and the grinding wheels used by the grinders, and he was responsible for dealing with vendors, such as Safety Clean, that pick up Respondent's waste. Vieira could charge Respondent's account with Safety Clean and he signs the waste generator's certification for purposes of the Connecticut Department of Environmental Protection Hazardous Waste Manifest Programs as the Respondent's representative.

Vieira uses the phone in his office to order steel, tool bits, and grinding wheels and to receive and make calls from or to customers. His assertion that if he was on the phone 10 minutes per day he would be surprised appears to minimize his involvement with these activities. Roller testified that he

frequently has heard Vieira get notified over the intercom of calls from customers. Kennedy has observed Vieira interviewing job candidates, and was told by Vieira how he recommends to Laser that certain grinders be hired or laid off.

Vieira has flexibility in his work hours, he usually has lunch with and supplied by the owner, and he has a key to the facility. Although he is an hourly employer and did not receive incentive pay and though his hourly wage was \$12 (less than that of Roller at \$13.25 and Desrochers at \$12.65, but more than that of Kennedy at \$11.35), Respondent's pay records show that Vieira makes more money than any other grinder or machinist (although he has less seniority) and that for the period January through September, Vieira was the third highest paid person in the plant behind only Laser and Cooke. Vieira's only immediate supervisor is Laser, not Cooke. And, in the absence of Laser and Cooke, Vieira is in charge of the facility. Kennedy was told by Laser that Vieira was in charge when the shop was open on Saturdays and the timecards reveal that Vieira worked many Saturdays with other production workers like Ferry, Daloisio, and Kennedy when no other supervisors were present. During the period prior to the representation hearing when both Cooke and Laser were away at meetings Vieira was observed to sit at Laser's desk and take calls from customers. Vieira is in charge of the facility in the absence of Cooke and Laser generally at least once a week and at these times he answers questions concerning prints; is responsible for the completion of projects; assigns work to Morton; handles customer inquiries; and approves time off.

Finally, it is noted that grinder Ray Moore (who's wife is Laser's niece), who was called as a witness by the Respondent, testified that he thought Vieira was a supervisor and that he observed Vieira give assignments to and direct the work of employee Nikoliy Slawnyz.

Under these circumstances, the fact that Vieira is an hourly employee who spends the majority of his time on manual, nonsupervisory labor is not controlling. If Vieira was not a supervisor (at the time of the election), the other employees frequently would be unsupervised and an opened, operating plant with an inventory of costly machinery and tools would be functioning on weekends and on regular occasions during the week with no onsite supervision. Clearly, Vieira was the highest ranking onsite employee and his duties were expanded to include many functions not entrusted to other employees, he enjoyed special privileges, higher earnings, and the trust of the owner who placed him in a position to make some independent judgments in dealing with and directing other employees. Vieira had the apparent authority to act as the onsite person in charge when Laser and Cooke were not present and his performance as a supervisor was on a regular, ongoing basis and was not merely sporadic. Accordingly, I find that Vieira was a statutory supervisor at the time of the election, see *Schnuck Markets v. NLRB*, 961 F.2d 700, 706 (8th Cir. 1992), and cases cited therein. I therefore find that the Board's challenge to his ballot should be sustained.

B. Alleged Violations of Section 8(a)(1) and (3)

The following discussion and recitation of affirmative statement of facts are my factual evaluations and conclusions in this decision and are based upon the demeanor of the various witnesses, the overall circumstances, and the plausibility of the testimony. In particular, while I believe that portions

of the testimony given by the Respondent's witnesses are credible, my observation of their demeanor and the frequent dismissive conclusory nature of their testimony gave me the impression that they were minimizing the import of events and brushing off the real significance of their actions. The essentially bare denial that events occur or that any specific statements were made is not a persuasive or helpful aid to an evaluation of credibility. The General Counsel's witnesses, on the other hand, usually testified with some detail and in a narrative fashion that lends an air of plausibility to their testimony. And, while I believe that parts of their testimony (such as estimates or opinions on how often certain actions were taken or observed) may be exaggerated I otherwise find that the demeanor of the employee witnesses (discussed below) was forthright, responsive, and convincing and, in general, I find that the testimony of the General Counsel's witnesses overall is most reliable and trustworthy and I have found it to be the most credible in instances where it tends to conflict with testimony or representations made by the Respondent and its witnesses.

1. Alleged placement of union adherents under close observation

On July 11, employees Roller and Desrochers were subpoenaed by the Union to attend the representation hearings scheduled for July 15 at the Regional Office and Laser was made aware of that fact.

On July 13, 2 days before the representation hearing, Laser pulled up a chair in the hallway between Roller's grinding room and Desrochers' grinding room which are located directly across the hall from each other and sat for approximately 2 hours in a position to watch both Roller and Desrochers. Laser had never engaged in this activity before and although Laser was sitting looking at blanks (piece of steel from which a tool is made that are stored in the hall), he did not have a print with him, which would customarily be required in order to determine the width and the size of the blanks needed. The process of matching a tool blank with the print specifications usually takes only about a couple of minutes.

Laser, admitted that he was working on that day in the area outside Richard Daley's room, hanging blanks on the rack. He further explained that he "probably took a little time off to just get them off the benches," and assemble them in order. When asked by Respondent's counsel if he stared at Roller or Desrochers, Laser responded that that was not his style of doing things and that he would not have reason to stare at them while he was working with the blanks.

Here, it is shown that a union recognition demand had been made in late June, that Roller was the principal union activist and that the Respondent was aware both Roller and Desrocher's were to be union witnesses. Although it may not have been Laser's "style" to act in the manner described, I am persuaded by the overall record that he was deeply affected the sudden turn of events and I conclude that he reacted to the pressure of the union organization threat with a change in style that betrayed an apparent antiunion animus. I am persuaded that he instinctively "faced down" two of his apparent adversaries and uncharacteristically placed them under close and obvious observation. This sudden action before the two employees were to be witnesses in the representation hearing has an influence and effect upon the employ-

ees that clearly interferes with, restrains, and coerces employees in the exercise of their rights guaranteed them by Section 7 of the Act and I find that by this action Respondent has violated Section 8(a)(1) of the Act, as alleged.

2. Alleged threat of loss of benefits

Roller testified that on July 14 Laser came to his work room to talk to him about settling the union campaign before the parties went to the hearing. Laser asked Roller if he could come up to Roller's house and talk to him and his parents about the matter. Roller said no and told Laser that he would have to speak to Union Representative Fijalkowski. Laser responded that he did not want to speak to Fijalkowski and that Faye (who is Laser's daughter and corporate vice president and who signs the payroll checks) had been going to do "something" with the pension and the insurance, but since all this started, she wasn't going to do anything. Laser then stated that he was 72 years old, that he was getting too old, and that he was not going to take too much more.

In response to counsel for Respondent's question as to whether Laser had such conversation with Roller on the day before the hearing Laser stated, "I wouldn't. No, I wouldn't." Also, in response to counsel's question as to whether he recalled approaching Roller in an attempt to settle the case, Laser stated, "absolutely not, that would be against the law." Here, I do not find Laser's denial to be persuasive or credible and, most significantly, his testimony failed to address or rebut that portion of Roller's testimony regarding the Company's plans for benefits. I therefore credit his un rebutted testimony on this matter and, accordingly I find that that the General Counsel has shown that the Respondent violated Section 8(a)(1) of the Act by threatening the loss of pension and insurance benefits because of the union campaign, as alleged, see *Waste Management of Utah*, 310 NLRB 883, 889-890 (1993).

3. Alleged harassment

Roller testified that on the Monday after the representation hearing held on July 15, Laser told Roller that he could not go downstairs anymore and that if he needed anything from downstairs he was to see Cooke. Prior to that time Roller and other employees had moved freely throughout the facility. Roller said that thereafter he went down on his own time or snuck down. Kennedy testified that he understood that after the representation hearing only grinder Daloisio was allowed to come downstairs and that he saw the grinders come down less frequently, when they had permission to pick up a tool. Desrochers testified that during that period Cooke told him that: "the boss doesn't really want you going downstairs much."

Laser denied telling Roller he couldn't go downstairs saying, "No, I wouldn't do that." Laser then added that at times he would offer to pick up something downstairs for others when he went down and he denied telling Desrochers he couldn't go downstairs. Cooke was asked, and responded, "no," to a series of questions by Respondent's counsel including whether he ever heard or witness Laser restrict employees from going one place to another in the plant? He did not, however, deny or refute that he, Cooke, had told Desrochers that Laser didn't want him going downstairs much. Under the circumstances, I do not credit Laser's deni-

als and I find that the more credible evidence from Roller and Desrochers shows and supports a conclusion that they were subjected to disparate treatment because of their union activities and they were restricted from exercising their previously enjoyed freedom to go downstairs at their own discretion.

Here, the record indicates that Laser's initial reactions to the organizational campaign set a tone which thereafter began to display a consistent pattern of reaction which resulted in conduct which has the inherent tendency to intimidate and to restrict and interfere with employees' rights, especially when such intimidation occurs during the several weeks prior to a representation election.

Roller testified that on July 18 he stopped by Daley's grinding room (located next to Roller's room), when Cooke came out of his room, walked up to them and said, "We get paid to grind not to talk. Eddie used to let you do that before, but the rules have changed now." Desrochers testified that since July 18 he was told by Cooke that he couldn't talk and that when he went by to get a wheel that he shares with Roller and tried to engage in small talk, Laser would come up and stare at him from outside Roller's door. Desrochers testified that the latter activity stopped in early February 1995 (at the same time the Board filed for a civil injunction). Moore, heard Respondent's own witness, testified that he heard about Cooke restricting people from talking in the plant. The record otherwise shows that Scott Taylor, a part-time employee who punches in at 2:30 p.m., has been allowed on a daily basis to talk to Jim Daloisio in his grinding room for an average of 10 minutes after punching in. No member of management has confronted Taylor or Daloisio about this activity, and there is no written rule prohibiting talk during working time.

Laser responded to counsel for Respondent's questions on whether he prohibited Roller from talking during working time said, "That would be foolish for me to do that," and he denied prohibiting Desrochers from talking. Cooke denied that he said, "things have changed," and said that he "just wouldn't say that now, knowing the Union was in there in the first place . . . Yeah, you can't say stuff like that."

Desrochers also testified that after the Union requested recognition, Laser began using a previously vacant grinding room located in front of Desrochers' room on a daily basis. While there, Laser would work on a blank tool then turn and look into Desrochers' room. This activity continued until early October when Chris Ferry was moved into the room. Laser failed to specifically address this allegation in his testimony but did deny that he "spied" upon his employees. Otherwise, there are no explanations given regarding reasons for imposing prohibitions on some employees at that time (such as problems with productivity).

Desrochers also testified that for the past year he regularly would jog during his breaktime going off the Respondent's property to do so. He asserted he has Laser's permission and said that he never was counseled or disciplined regarding his jogging. After he had attended the July 15 hearing Laser told Desrochers that he could not jog during his breaks because Laser did not have the right kind of insurance.

Laser denies giving Desrochers permission to jog, but admitted that he knew that Desrochers has been jogging for quite a period of time. Laser admitted that he spoke to Desrochers about his jogging after the July 15 hearing and

testified that he told Desrochers that he wasn't sure how the insurance people would handle his jogging. Laser stated that he told Desrochers that he would have to get back to him, but admitted that he never checked with the insurance company or got back to Desrochers (he asserts he might have told the office manager to check but wasn't sure if she did).

Under these circumstances, I conclude that the record shows that the Respondent had antiunion animus and knowledge of the union activities of its employees, and it applied new rules which had the effect of discriminatorily harassing union adherents, and it eliminated benefits or privileges of movement they previously enjoyed. I find the Respondent's explanations to be unpersuasive and pretextual and I find that it would not have engaged in this conduct were it not for the employees protected union activities. The described actions are also shown to have interfered with the employees' rights to self-organization and I find that the Respondent is shown to have violated Section 8(a)(1) and (3) of the Act, in these respects, as alleged.

4. Futility of union representation

Roller testified that on August 15 at about 7:30 a.m. as he was talking with Cooke about something that happened at home, Cooke interjected and said, "If the Union got in, Eddie does not have to bargain." He further said that "Eddie" does not have to sign a contract and that he could bargain from scratch. Cooke does not directly address this conversation in his testimony, but simply makes a general denial that he ever threatened Roller because of his support from the Union and a general denial that he used the term "bargain from scratch."

Also, during August, the Respondent started showing videos about unions to the employees. Laser and Cooke were present at the showings, and Laser would read a script prior to the video. At least four videos were shown, one per week and usually on a Friday. Laser and Cooke also answered questions and made comments after the videos. Smart testified that he saw two videos and at one of the sessions, Laser said:

A. Oh, yes. He said he doesn't have to negotiate, you could wind up starting from scratch, wind up losing more than you have, and there's no guaranteeing anything if the Union comes in.

Laser admits that he called employee meetings in August to discuss the election and contended that he couldn't recall talking to the employees other than reading speeches, and that he couldn't recall hearing or using the term "bargain from scratch" at the meetings and Cooke testified that he would have remembered the term "scratch" if it had been used and that he didn't hear it used. Laser admitted that he answered questions at the first meeting and that Cooke answered questions at the other meetings.

Here, I find that Laser did more than just read from prepared material and I credit Smart's more reliable recollection that Laser made the statement alleged. The importance of his comment constitutes an announcement that the Respondent would engage in regressive bargaining, leaves the impression that it would not bargain in good faith, and clearly implies employees could lose existing benefits and that it would be futile for the employees to select the Union. This implication

of futility shortly before an election reasonably tends to interfere with, restrain, and coerce employees in the exercise of their rights and I find that Respondent's conduct is shown to have violated Section 8(a)(1) of the Act, in this respect, as alleged. See *Heartland of Lansing Nursing Home*, 307 NLRB 152, 158 (1992).

5. Threat to close plant

Roller testified that on August 15 he and Kennedy went into Cooke's room, as was their custom, during lunchtime. They were talking to Cooke about the GM strike that was going on at the time, and Cooke said, "Places are shut down over this." Cooke did not mention the Union. Roller and Kennedy then had to return to work. Cooke admits that he told Roller that his two brother-in-laws had to go down to Ohio to work because they were afraid the Connecticut GM plant in Bristol was going to close and it has now. Cooke also states that the subject was on his mind a lot, but he could not recall saying anything else. Here, I might find the evidence is too vague to support a finding that Respondent violated Section 8(a)(1) of the Act by threatening its employees with plant closure, if the allegations stood alone. It is undisputed, however, that several posters were placed both up and downstairs at Respondent's facility by Cooke.

Shortly after lunch, Roller went to the area near the water cooler and saw a poster depicting the General Time building with four or five strikers out front: one had a picket sign, the other ones were wearing signs saying, "UAW on Strike," and a banner on the building that said "closed." The caption on the poster read: "Do You Want This To Happen To You? VOTE NO." Another copy of the same poster was posted at the bottom of the stairs leading to the basement of the facility. General Time was located about a quarter mile from Respondent's facility and had closed about 10 years ago. Roller asked Cooke for a copy of the poster and was told, "No. It goes back to the lawyer."

Desrochers testified that he saw the same poster and asked Cooke if it was a threat to close the shop. Cooke testified that there were no other posters posted about General Time or Seth Thomas other than Respondent's Exhibit 34. Roller, however, specifically denied seeing Respondent's Exhibit 34 posted in the plant, testified that he was on vacation the week before the election, and that he did not talk to any member of Respondent's management about that specific poster. Desrochers testified that although he saw Respondent's Exhibit 34 up in the plant he spoke to Cooke about a different poster. Cooke testified that Roller asked him about the poster in the General Counsel's Exhibit 12 and whether the shop was going to close and he responded, "Oh that was just telling you what happened at that shop." Cooke also said that he did not talk to the employees about the posters unless they came to him, and he only recalled Roller coming to him. Desrochers also testified that after the August 26 final video before the election, Cooke, in an answer to an employee's question in the presence of Laser answered that shops have been either closed or moved because of unions. The video showed an empty shop where the company had moved away. Desrochers also testified that when the video was over he asked Cooke:

Is this suppose to scare us? Like, you guys are going to shut the shop down or something?" It's just showing

you—Cooke said, "The video is just showing you what could happen if the union got in."

Laser made no further comment and there was no further objective explanation of fact or probable consequences beyond the Respondent's control, and it appears to be a "calculated threat during the course of an intense anti-union campaign." See *Overnight Transportation Co.*, 296 NLRB 669, 670-671 (1989), *enfd.* 938 F.2d 815 (7th Cir. (1991)), when the Board noted that employer statements equating unionization with unprofitability, loss of jobs, and business closing, without being based upon objective fact or probable consequences beyond the employer's control, were "calculated threats" violative of the Act. Here, the Respondent's posters are replete with references to plant closure and job loss as a direct consequence of unionization and, in particular, the UAW. Nowhere do the posters provide any objective basis for the claim that unionization would lead to job loss and plant closure for reasons beyond the Respondent's control. Moreover, I agree with the General Counsel's continuation that a reference in one poster to Colt Firearms Division hiring "group to replace strikers" (where the Colt strikers were unfair labor practices strikers) is, "in effect, a veiled threat of discharge" and underscores the coercive impact of the posters. Accordingly, I conclude that the totality of the circumstances shows that the Respondent's oral remarks threatened its employees with plant closure if they selected the union as their collective bargaining representative and I find that it is shown to have violated Section 8(a)(1) of the Act in this respect, as alleged.

6. Promise of benefits

Smart testified that about 3 years ago he started performing another employee's job of forming tools to fit a print, along with his regular job of making circular form tools (blank tools that do not have their diameters cut). Smart received no extra pay for the additional responsibilities, complained to Cooke but was told by Cooke that he was only doing one job at a time. After the union organizing drive began in June, Laser told him on several occasions that he knew that Smart was doing much better work and that he would like to pay him more, but because of the union campaign his hands were tied.

Laser did not refute this testimony and his conversations imply that the Union bears the onus for withholding benefits (his reason for not giving Smart a raise) see *LRM Packaging*, 308 NLRB 829, 830 (1992). Accordingly, I find that this conduct is shown to violate Section 8(a)(1) of the Act, as alleged.

7. Surveillance

Roller testified that a few days after the election on August 31 he was on the first floor before the beginning of his shift talking to Smart about the new insurance offered by Respondent. They saw Laser come downstairs and stand behind a cabinet located behind the stamping bench and appeared to attempt to listen in on the conversation. Upon being noticed, Laser came out from behind the cabinet, went over to the rack of blank tools, took some tools off the rack and placed them on the stamping bench. Laser then proceeded to go upstairs. Laser made a general denial that he did not spy on his employees but did not otherwise explain his actions. In

light of Roller's and Smart's status as known union adherents and the fact that Laser had engaged in similar behavior prior to the election, I conclude that his actions on the latter occasion would imply to the union adherents that they were going to be closely observed even though the election was over. As noted above, this interferes with employee rights and I find that it violates Section 8(a)(1) of the Act, as alleged.

8. Change in benefits

Several witnesses testified that for several years it has been Respondent's practice that if a holiday fell on a Saturday, Sunday, or Monday, employees who worked a half day on the Friday prior to the holiday would be allowed to leave at noon and get paid for the full day. This practice was applied for the Memorial Day and Independence Day holidays in 1994. However, after the August 29 election, employees were denied the benefit of a half day off with pay for the afternoon of September 2, the Friday before Labor Day. Instead, the employees had to work 7:30 a.m. to 4 p.m., their regular hours on Fridays. Although employees asked, no explanation was given by Respondent regarding its change in practice.

On brief the Respondent admits that if failed to give employees a half day holiday on the Friday before Labor Day, but it argues that the most reliable testimony presented on this subject was by Office Manager Brassachio, who testified that no employee had ever been paid one-half day on the Friday before Labor Day, despite the fact that they occasionally have been paid for one-half day for the Friday before some other holidays. It further contends that even if this benefit had previously been granted and was discontinued in 1994, union adherents were treated the same as all other employees. Morton testified that she had never received the half day before Labor Day off, however, she was not a production employee and otherwise she is a part-time worker whose day usually ends near 1 p.m. And, although Brassachio is familiar with the pay records, the employees' testimony indicates that it was Laser's practices to let the employees leave while he punched out their timecards. Accordingly, the pay records would not prove or disprove the existence of the practice.

Here, the record otherwise shows that Laser was asked by Cooke if the employees' would get the half day off with pay and were told "no" without any other explanation.

In a case or where conditions of employment have been affected, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected concerted activity concerted activities were a motivating factor in the employer's decision to alter their conditions of employment or to terminate them. Here, the record shows that Respondent's principal owner was well aware of union activity and that he also engaged in certain unfair labor practices directly involving several employees.

Under these circumstances, I find that the General Counsel has met his initial burden by presenting a prima facie showing, sufficient to support an inference that the employees' union activities were a motivating factor in Respondent's subsequent decision to alter their conditions of employment. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), see *NLRB v. Transportation*

Management Corp., 462 U.S. 393 (1983), to consider Respondent's defense and whether the General Counsel has carried his overall burden.

Here, the Respondent does not offer a reason for its change in practices but asserts that it had no such benefits practice regarding the afternoon before Labor Day. The record clearly shows that the employees received this benefit for the two holidays (Memorial Day and July 4th) in 1994 prior to the election, yet were denied the benefit shortly after the election (when the outcome was subject to challenge and still in doubt) when principal union activist Roller asked Cooke and was told, "No, Ed [Laser] wasn't going to give it to us." Roller testified the benefit had been applied to the Labor Day holiday for the past 5 or 6 years, Desrochers said he got the extra Labor Day benefit for at least the last couple of years. Kennedy said the practice was also followed at Christmas and had been followed for Labor Day since 1987. I find this employee's testimony to be credible and I further find that the Respondent has failed to provide probative, trustworthy evidence that would refute the showing that provision of the benefit in question for the Labor Day holiday has been a standing practice of several years duration. Accordingly, I find that the Respondent withdrew this benefit from the employees because of and in retaliation for their union activities and I conclude that the General Counsel has carried his overall burden of proof and shown that the Respondent violated Section 8(a)(1) and (3) of the Act in this respect, as alleged.

C. Refusal to Recognize or Bargain and Request for a Bargaining Order

The Respondent received a letter from the Union noting majority status and demanding bargaining on June 23. The Respondent refused to recognize the Union and, as discussed above, made unilateral changes in benefits and working conditions without first bargaining with the Union. As discussed below, I find that the Respondent had a bargaining obligation as of June 23, and accordingly, I find that the Respondent has failed and refused to bargain with the Union as the exclusive bargaining representative of its unit employees and that the Respondent has violated Section 8(a)(5) and (1) of the Act, in this respect, as alleged.

The unit described in the demand did not mention "drivers." Subsequently the Union agreed that "drivers" could be included in the unit and therefore Respondent claims that the recognition demand is defective because it doesn't describe the appropriate unit. I find, however, that the Union's letter is clearly requested that Respondent negotiate with the Union over the terms and conditions of employment for Respondent's production and maintenance employees as the exclusive representative of the majority of employees and there is no showing that by subsequently agreeing to include drivers in the unit described in the Board's Direction of Election it lost majority status.

It is undisputed that the Union obtained authorization cards from six of Respondent's production and maintenance employees by June 21 and had seven cards by July 14. No one, including Moore and Taylor (who asserted resigned in April 1995), ever sought to rescind or withdraw their authorization.

Here, I agree with the General Counsel that Moore's testimony as to what he thought about the purpose of the card

is irrelevant under pertinent case law. In the instant case, as in *DTR Industries*, 311 NLRB 833 at 840 (1993), the purpose of an authorization card is set forth on its face in ambiguous language and “the Board may not, in the absence of misrepresentations, inquire into the subjective motives or understanding of the card signer to determine what the signer intended to do by signing the card.

Moore’s demeanor indicated that he was a literate and intelligent individual and, when asked by Respondent’s Counsel:

Q. At the time you signed the union card, were you in favor of the union?

A. I was in favor of, yes, of getting something going.

Q. Okay and—

A. Yes, I guess it would be.

Q. And did your views change at some point in time?

A. Yes, Later it did.

Moore also was shown his authorization card and asked by Respondent’s counsel:

Q. Okay, what is that?

A. It’s the authorization for union rep, I guess to represent me in some kind of preliminary negotiation. That’s—that’s what I thought it was?

Moore did not deny that he read the card before signing and the answer clearly indicates that he understood the unambiguous language of the card, which said:

The card will be used to secure recognition and collective bargaining for the purpose of negotiating wages, hours, and working conditions.

As noted above, Moore’s wife is the niece of the Respondent’s owner and I believe he experienced a convenient lack of recall or was quibbling when he testified he never was “told” the card wouldn’t be used for any other reason than an election. Otherwise, the totality of the credible testimony of those who attended the same meeting with the union representative (who explained the cards) fails to show that he was told the card would be used “only” to secure an election or that either Moore or Taylor (who did not testify), signed the unambiguous authorization cards under any misrepresentations.

Here, as in *DTR Industries*, supra, employees are bound by the clear language of what they sign unless there is a deliberate effort to induce them to ignore the card’s express language by telling them that the sole and exclusive purpose of the card is to get an election. Otherwise, the credible testimony of the union representative and other card signers establishes that the representations made by union solicitors to them does not invalidate their cards.

As discussed above, the ballot of Morton and Vieira were successfully challenged and they should be included in the following appropriate unit:

All full-time and regular part-time production and maintenance employees and drivers employed by the Employer at its Thomaston, Connecticut facility; but excluding all office clerical employees and guards, pro-

fessional employees and supervisors as defined in the Act.

On June 23, the Respondent employed 11 people who should be included in the appropriate bargaining unit (Respondent only had 1 driver on June 23 and the Union still had majority support (6 of 11 employees). The Respondent hired two (nondriver) employees only after the Union’s June 23 request for recognition and prior to July 14. As of July 15, the date of the representation hearing, the Union continued to have majority support of the production and maintenance employees and drivers (7 of 13 employees), in the unit designated by the Decision and Direction of Election. In order to obtain a bargaining order, it is sufficient that the Union obtained the support of a majority of the unit “at one point” in time, and I find that the Union had majority status on both June 21 and July 14 and has satisfied the requirement.

Based upon the ruling pertaining to challenged ballots it is now possible that the Union may receive a majority of the votes, as there now are 11 valid ballots, 4 of which were for the Union and 2 of which (Kennedy and Galske) are now to be counted. Regardless of this outcome, however, it is necessary and appropriate to grant a bargaining order inasmuch as appellate procedures could result in delays or another conclusion and because, as noted, given the gravity of Respondent’s misconduct, the Union’s card majority provides the more reliable test.

Where as here, violations of the Act have occurred during the organizational campaigning prior to the election, the NLRB broad discretion to devise remedies such as issuance of a bargaining order.

The Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), approved the remedial use of bargaining order in two types of cases involving employer misconduct. The first category of cases involve “outrageous” and “pervasive.” The second category involves “less extraordinary cases marked by less pervasive practices which nonetheless still impede the election process.” In the latter cases, the General Counsel must prove that: (1) the Union was at some point supported by a majority of the bargaining unit employees; and (2) the employer’s unfair labor practices labor practices undermined the Union’s majority strength and “the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight.”

Within these guidelines the record of violations in violations in this case, does not show outrageous or pervasive unfair labor practices, however, it does include “classic” examples of practices, which tend to undermine majority strength and impedes the election process. Here, Respondent’s unfair labor practices appear to be of a nature that would tend to have a critical impact on the election machinery and I find that they will sustain a bargaining order.

The overall record shows that the Respondent committed serious unfair labor practices including harassment and retaliation against union activists, threats of plant closure and loss of benefits, and informing employees that selection of the Union would be futile, and I find that its actions have destroyed conditions that would allow a fair, free, and open election. Respondent’s actions were not isolated and its violations were not repudiated.

Here the impact of Respondent's actions are heightened by the small size of the bargaining unit and the direct involvement of the company's president in illegal activities, see *NLRB v. Bighorn Beverage Co.*, 614 F.2d 1238 (9th Cir. 1980). Here, the personal nature of the owner's involvement in his seemingly obsessive pattern of keeping two of the union activist under observation and surveillance indicates that he would be likely to renew his tactics of intimidation, see *International Door*, 303 NLRB 582, 584 (1991). It is also noted that, the asserted turnover of employee Taylor (who signed the seventh authorization card), even if it were to be considered a relevant issue, would not qualify as "substantial" turnover. Given the gravity of Respondent's misconduct, the Union's card majority provides the more reliable test of employees' desires uninfluenced by Respondent's threatening conduct than a contested election. See *International Door*, supra, accordingly, I find that a bargaining order is shown to be justified.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The unit appropriate for collective-bargaining is:
All full-time and regular part-time productions and maintenance employees and drivers employed by the Employer at its Thomaston, Connecticut facility; but excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.
4. At all times pertinent James Vieira was a supervisor within the meaning of Section 2(11) and (13) of the Act, and both he and Jean Morton are shown to lack a community of interest with the unit employees and they should be excluded from the unit.
5. From on or about both June 21 and July 14, a majority of the unit designated and selected the Union as their representative for the purpose of collective bargaining and at all times since June 23, the Union, by virtue of Section (9) of the Act, has been, and is, the exclusive representative of the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.
6. By discriminatorily changing conditions of employment of employees by restricting jogging during breacktimes, more strictly restricting their talking and movement in the facility, placing employees under close observation and otherwise harassing employees, and failing to grant a customary holiday benefit because of their union activities, Respondent has violated Section 8(a)(1) and (3) of the Act.
7. By impliedly threatening employees with plant closure, implying that it would be futile to select the Union, promising benefits, threatening loss of benefits and engaging in surveillance of employees, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, an thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.
8. By failing and refusing to recognize and bargain with the Union on and since June 23, 1994, while engaging in un-

fair labor practices which undermine the Union's majority status and which would impede the election process, the Respondent violated Section 8(a)(1) and (5) of the Act.

9. The objection to the challenged ballots of James Vieira and Jean Morton are sustained and the challenged of employees William Galske and Kevin Kennedy from the election August 29, 1994, should be counted, resulting in the issuance of a certification of results in Case 34-RC-1272.

10. The unfair labor practices found above were independently, substantially, and pervasively disruptive of the election process, preclude a fair election, and warrant an order to bargain.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to make employees whole for any loss of benefits they may have suffered because of the discrimination practiced against them by payment to them a sum of money equal to that which they normally would have earned in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

Because of a failure to grant a bargaining Order as requested by the General Counsel would tend to reward the Respondent for its wrongdoing, *Impact Industries*, 285 NLRB 5 (1987), and as the Respondent has engaged in misconduct that has undermined the election process and otherwise demonstrates the need for a *Gissel* order, I recommend that the Respondent be required to recognize and bargain with the Union and, if agreement is reached, to reduce the agreement to a written contract.

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

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

ORDER

The Respondent, Laser Tool, Incorporated., Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing conditions of employment, restricting employees from jogging during breacktime, more strictly restricting their talking and movement in the facility, placing employees under close observation, and failing to grant customary holiday benefits or otherwise harassing, or discriminating against them in retaliation for engaging in union activities or other protected concerted activities.

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

³If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, by threatening employees with closure of the business, informing employees that it would be futile for them to select the Union as their bargaining representative, promising benefits, threatening loss of benefits, and engaging in surveillance of employees.

(c) Failing and refusing to recognize and bargain with the Union, while engaging in engaging unfair labor practices after the Union has established majority status.

(d) 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) Make employees whole for the losses they incurred as a result of the discrimination against them, in the manner specified in the remedy section of the decision.

(b) Recognize and on request, bargain collectively with the Union as the exclusive collective-bargaining representative of its employee in the following appropriate unit:

All full-time and regular part-time productions and maintenance employees and drivers employed by the Employer at its Thomaston, Connecticut facility; but excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed agreement.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Thomaston, Connecticut, facility and mail to all employees copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) 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 Case 34-RC-1272 be remanded to the Regional Director for Region 34 for such further action as is necessary based upon the findings and conclusions herein.

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

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, by threatening employees with closure of the business, informing employees that it would be futile for them to select the Union as their bargaining representative, promising benefits, threatening loss of benefits, and engaging in surveillance of employees.

WE WILL NOT change conditions of employment, restrict employees from jogging during breaktime, more strictly restrict their talking and movement in the facility, place employees under close observation, and fail to grant customary holiday benefits or otherwise harass, or discriminate against them in retaliation for engaging in union activities or other protected concerted activities.

WE WILL NOT fail and refuse to recognize and bargain with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, AFL-CIO, while engaging in unfair labor practices labor practices after the Union has established a majority status.

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

WE WILL make employees whole for the loss of customary benefits they incurred as a result of the discrimination against them, in the manner specified in the remedy section of the decision.

WE WILL recognize and on request, bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time productions and maintenance employees and drivers employed by the Employer at its Thomaston, Connecticut facility; but excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed agreement.

LASER TOOL, INCORPORATED