

Torbitt & Castleman, Inc. and General Drivers, Warehousemen and Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Cases 9-CA-32463 and 9-RC-16459

February 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The issues for Board review in this proceeding are whether Administrative Law Judge Judith A. Dowd correctly found that the Respondent engaged in conduct that violated Section 8(a)(1) of the Act and interfered with employees' free choice in a Board representation election.¹ 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,² and conclusions, and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Torbitt & Castleman, Inc., Buckner, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Add the following as paragraph 1(d).

“(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.”

¹On December 4, 1995, the judge issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

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

²The 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.

³We shall modify the recommended Order by adding the traditional paragraph enjoining the Respondent from engaging in like or related violations of the Act.

Theresa L. Donnelly and *James Schwartz, Esqs.*, for the General Counsel.

D. Patton Pelfrey and *James D. Cockrum, Esqs.*, of Louisville, Kentucky, for the Respondent.

Alton D. Priddy, Esq., of Louisville, Kentucky, for the Charging Party.

DECISION

STATEMENT OF CASE

JUDITH A. DOWD, Administrative Law Judge. In about August 1994, the General Drivers, Warehousemen and Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL-CIO (the Union) commenced an organizational drive among the production and maintenance employees of Torbitt & Castleman, Inc. (the Respondent). On September 21, 1994, the Union filed a petition in Case 9-RC-16459 seeking an election. Thereafter, pursuant to a Decision and Direction of Election, a secret-ballot election was conducted on December 2, 1994, in the appropriate unit. The tally of ballots showed that of the approximately 120 eligible voters, 47 cast ballots in favor of representation and 64 against, with 5 challenged ballots, which were not determinative. On December 7, 1994, the Union filed objections to conduct affecting the results of the election.

Subsequently, in Case 9-CA-32463, the Union filed charges and amended charges alleging that the Respondent had engaged in certain unfair labor practices. On February 7, 1995, a complaint and notice of hearing was issued alleging that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: (1) sometime in mid-October 1994, granting employees improved conditions of employment by giving them access to more convenient parking, in order to discourage support for the Union; (2) sometime in early November 1994, installing suggestion boxes soliciting employee complaints and grievances and promising employees improved terms and conditions of employment, in order to undermine support for the Union; and (3) on November 23, 1994, threatening an employee with unspecified reprisals because of his union activities.

On February 8, 1995, a Second Supplemental Report on Objections, Order Consolidating Cases and Notice of Hearing was issued. In this report, the Acting Regional Director found that issues raised in the Union's Election Objections 1, 2, 5, and 7 paralleled issues raised in the unfair labor practice complaint. Accordingly, the Acting Regional Director consolidated Cases 9-RC-16459 and 9-CA-32463 for hearing before an administrative law judge.¹

This case was heard at Louisville, Kentucky, on March 6, 1995. At the beginning of the hearing, the Union withdrew its Election Objections 1 and 2 and stipulated that Election Objection 5 was restricted to the installation of suggestion boxes. During the course of the hearing, all parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of the hearing, Respondent and the General Counsel filed briefs. The Union adopted the General Counsel's brief. On consideration of the entire record, including my observation of the witnesses and their

¹The Acting Regional Director also approved the Union's request to withdraw its Election Objections 3, 4, and 6.

demeanor, as well as the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent manufactures condiments and syrup products and produces its own bottles at its facility in Buckner, Kentucky. The Respondent's operation is divided into five departments; syrup, blow molding, jelly, shipping, and receiving. The Respondent employs a total of around 170 employees, of which about 120 perform production and maintenance work. Unit employees work on one of three regular shifts. The first shift generally begins at 6 a.m. and continues until 2:30 p.m. The second shift begins at about 2:30 p.m. Employees on the second shift work either in the syrup plant or the jelly plant, depending on production requirements. The blow molding department operates on a continuous three-shift basis around the clock.

B. *The Alleged Unfair Labor Practices that are Coextensive with Union Election Objections*

1. The change in parking policy

Prior to October 13, 1994, the parking lot nearest the entrance to the Respondent's facility (lot A) was reserved for office employees, supervisors, and managers, during regular office hours. Office hours are generally 8 a.m. to 4 or 5 p.m. Since the majority of the Respondent's production and maintenance employees work on the first or second shift, their work hours overlap with the office hours. Accordingly, most of the unit employees were permitted to park only in a larger lot that is located further away from the entrance to the facility (lot B).² Employees complained among themselves about the longer walk to the facility from lot B, particularly during inclement weather.

On October 13, 1994, the Respondent's president, Steve McDonald, and its chief operating officer, Mike Upchurch, posted a memorandum announcing that the only reserved parking from that time forward would be "eight parking spaces reserved for visitors, two spaces reserved for handicapped parking and one space reserved for mail delivery," all in lot A. All remaining parking spaces in both lot A and lot B would thereafter be available to all employees on a

²Third-shift employees in the blow molding department, whose work hours did not coincide with office hours, apparently were not prohibited from parking in spaces in lot A. The capacity of lot A is about 70 spaces and lot B has approximately 150 parking spaces.

"first come basis." After October 13, all production and maintenance employees, as well as office employees, supervisors, and managers, parked in either lot A or lot B, depending only on the availability of spaces when they arrived at work.

The Board has long recognized that "[t]he danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). The Court further stated that Section 8(a)(1) of the Act prohibits "conduct immediately favorable to employees which is undertaken with the express purpose of infringing upon their freedom of choice for or against unionization and is reasonably calculated to have that effect." *Id.* The Board has drawn the inference that benefits granted during the critical period prior to the election are coercive. *B & D Plastics*, 302 NLRB 245 (1991), and cases cited. The Board has, however, permitted the employer to rebut the inference by coming forward with an explanation, other than the union organizing campaign, for the timing of the grant or announcement of benefits. See *Gordonsville Industries*, 252 NLRB 563, 575 (1980), and cases cited (applying the principles to complaint cases).

In this case, the Union filed an election petition on September 21, 1994, and the election was conducted on December 2, 1994. The Respondent announced its change in parking policy on October 13, approximately 6 weeks prior to the December 2 election, and it implemented the more favorable policy immediately. Since the Respondent admittedly announced and implemented a new employee benefit during a critical period, the burden is on the Respondent to rebut the presumption that the increased benefit was unlawful, by showing that it had a legitimate business reason for announcing and implementing the change at that time.

The Respondent contends that its change of parking policy was noncoercive because it was implemented solely as part of the gainsharing program recommended by its independent consultant, Barbara Wry. Contrary to the Respondent's contention, there is no mention of any planned change in parking policy at the Respondent's facility in any of the communications between the Respondent and Wry, in which she outlined the elements of a gainsharing program. There is also no suggestion of any change in parking policy in either Wry's situation assessment or in her three-phase action plan for implementing a gainsharing program at the Respondent's facility. No references were made to any particular parking policy in either the gainsharing time line Wry created or in the documents she relied on when formulating the gainsharing program. Furthermore, the Respondent's own evidence shows that the decision to change its parking policy was not made until September 22 or 23, 1994—1 or 2 days after the Union filed its election petition—at a meeting between McDonald, Upchurch, and Wry. The Respondent's president, Steve McDonald, testified that the change in parking policy was his idea and that the Respondent's former policy of restricting parking in the lot nearest the building (lot A) to office employees, supervisors, and managers had bothered him for years. He further testified that Wry merely agreed that the idea would be compatible with a gainsharing

program.³ When McDonald was questioned about the timing of the announcement and implementation of the change in parking policy, he was unable to explain why the Respondent chose October 13, rather than some other date after the election, to announce and implement the change in policy. Accordingly, I find that the Respondent has failed to show that its change in parking policy was an integral part of its pre-election petition decision to implement a gainsharing plan. On the contrary, the evidence shows that the change in parking policy was more likely adopted in response to the Union's filing an election petition. See *Yale New Haven Hospital*, 309 NLRB 363 (1992). I therefore find that the Respondent's announcement and implementation of a more favorable parking policy during the election campaign constituted an unlawful increase in benefits and violated Section 8(a)(1) of the Act.

2. The installation of suggestion boxes

On and about October 1, 1994, the Respondent conducted a series of employee meetings at which McDonald, Upchurch, and Wry discussed with them the details of the gainsharing program. Employees were informed, among other things, that certain committees would be formed, and they were requested to volunteer their services for these committees. After the series of meetings concluded, the Respondent posted a notice asking employees to sign up for committee service. McDonald, Upchurch, and Wry selected committee members at random from each department and they became known as the "Improvement Team." The membership of the Improvement Team included at least one supervisor. On October 18, the Respondent posted a memorandum from the Improvement Team, announcing that suggestion boxes would be installed that week, as a means of "identifying problems at T&C, and implementing successful solutions." The memorandum further stated that the Improvement Team needed to know "from each and everyone of you, [the employees] what *you* think our major problem[s] are and how they can be effectively resolved." (Emphasis in original.)

On October 19, 1994, the Respondent posted another letter from the Improvement Team indicating that the suggestion boxes would be used to gather ideas for "productivity and quality of life improvements," and that forms were available at the boxes for the employees to use in submitting ideas. Shortly thereafter, the Respondent installed suggestion boxes in the facility and provided forms for submitting suggestions. The suggestion forms, entitled "Ideas for Improvement," asked the employee to identify the problem, suggest some possible solutions, and indicate whether the suggestion concerned safety, production efficiency, cost reduction, or quality of life. The employee was also asked to state his or her name, department, and shift, for purposes of "follow-up." Once a suggestion was placed in a box, the Improvement Team (sometimes referred to by witnesses as the Suggestions

Committee) met and rated it with respect to urgency, identified what action should be taken, and followed through on implementation of the suggestion. Information on the progress of suggested improvements was then posted on the bulletin board on a form entitled "Suggested Improvements from T&C Team Members." After the suggestion had been acted on, another form was posted on the bulletin board entitled "Suggested Improvements Completed" which informed the employees of the disposition of each of the suggestions. Employees submitted suggestions on a wide variety of topics, including improving insurance coverage, reducing the number of hours that employees were required to work, and requests that the Respondent initiate paid sick days.

It is well established that absent a previous practice of doing so, the solicitation of grievances during an organizational campaign accompanied by a promise, express or implied, to remedy such grievances, violates the Act. *Capitol EMI Music*, 311 NLRB 997, 1007 (1993); *Columbus Mills*, 303 NLRB 223, 227 (1991); and *Reliance Electric Co.*, 191 NLRB 44, 46 (1971). The solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy grievances. *Capitol EMI Music*, supra at 1007. However, the inference that the employer is impliedly making a promise to correct grievances is rebuttable. *Gull, Inc.*, 279 NLRB 931, 946 (1986); *Uarco, Inc.*, 216 NLRB 1 (1974).

The Respondent maintains that the installation of suggestion boxes was intended only to obtain employees' ideas on ways to increase productivity, as part of its gainsharing program. Unlike the change in parking lot policy discussed above, some form of solicitation of employee opinion concerning productivity was included in consultant Barbara Wry's recommendations for a gainsharing plan, albeit Wry never specifically recommended the installation of suggestion boxes. The flaw in the Respondent's argument—that it did not install suggestion boxes to solicit employee grievances—is that the Respondent did not attempt to limit employee suggestions to methods for improving productivity. On the contrary, the Respondent permitted the Improvement Team to specifically solicit employees' ideas on "quality of life improvements," as well as improvements in productivity. Using the Respondent's bulletin board, the Improvement Team encouraged employees to identify "problems" at the facility, along with suggestions as to how the problems could be resolved. Employees reasonably could have perceived the suggestion boxes as a forum for airing their problems and grievances and, in fact, they submitted suggestions on such non-production-related matters as the Respondent's failure to provide paid sick leave and the condition of the restroom facilities. Accordingly, I find that the Respondent solicited employee grievances during the critical period prior to the election.

As noted above, in the absence of a showing of a past practice of soliciting grievances, the solicitation of employee grievances during a union campaign carries with it a presumption that the employer also impliedly promised to correct the grievances. In this case, the evidence shows that the Respondent maintained a suggestion box at one time, but that it removed the box about 2-1/2 years ago. This evidence is insufficient to establish a past practice of soliciting employee grievances and the Respondent therefore bears the burden of rebutting the presumption that its solicitation implied a prom-

³In a somewhat similar vein, Wry testified that she, Upchurch, and McDonald all agreed during the September meeting that the change in parking policy would be a good symbolic gesture, illustrating the new equality of employees under a gainsharing plan. Under either Wry's or McDonald's version of events, the change in parking policy was not an integral part of the gainsharing plan which the Respondent had decided to adopt prior to the filing of the election petition.

ise to correct the grievances.⁴ The Respondent seeks to rebut this presumption by pointing to instances where it declined to implement employee suggestions. In particular, the Respondent cites its refusal to provide more expensive boots to employees and to include Christmas pay in employees' preholiday paychecks, regardless of employees' complaints and suggestions. Although the Respondent may not have corrected every grievance that employees submitted, it remedied a substantial number of employee complaints. For example, one employee complained that toilets were broken, another that the towel dispensers did not function properly, and a third that the water fountain needed to be fixed. All of these items were repaired. In response to a complaint that the parking lot is hazardous during the winter, the Respondent agreed that the lot would be plowed. Moreover, information that the restroom and water fountain repairs had been made and that the parking lot would be plowed was conveyed to all the employees through posting on the Respondent's bulletin board. Based on all of the evidence, I find that the Respondent has failed to rebut the presumption that it impliedly promised to remedy employee grievances.⁵

C. *The Effect of the Respondent's Unfair Labor Practices on the Election*

The Respondent's contention that its solicitation of grievances and change in parking policy during the critical period prior to the election are insufficient to have affected the outcome of the election is unpersuasive. In *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962), the Board held that "[c]onduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammelled choice in an election." The Board departs from this policy only in cases "where it is virtually impossible to conclude that the misconduct could have affected the election results." *Gonzales Packing Co.*, 304 NLRB 805 (1991), quoting from *Clark Equipment Co.*, 278 NLRB 498, 505 (1986). Here, challenged ballots aside, the record reflects that the Union lost the election by a margin of 17 votes. The solicitation of employee grievances and change in parking policy affected all the unit employees and may have influenced the way they voted. When an employer becomes unusually solicitous of its employees in the midst of a union campaign, "the suggestion of a fist inside the velvet glove," *Exchange Parts*, supra, is inescapable. I therefore conclude that this is not a case where it is "virtually impossible" to conclude that the Respondent's unfair labor practices could have affected the election results. I also find that, even without specifically relying on the Board's holding in *Dal-Tex*, the Respondent's unlawful conduct is sufficient to warrant setting aside the election. I recommend that the Board set aside the results of the December 2, 1994 election and remand Case 9-RC-16459 to the Regional Director for Region 9 for the purpose of conducting a new election.

⁴Indeed, the Respondent does not even argue in its brief that it had a past practice of soliciting employee grievances.

⁵The complaint does not allege that the Respondent actually conferred benefits on employees, and the General Counsel does not advance such an argument on brief. Although the factual conclusion that there was such a conferral seems obvious, I shall make no findings on that point.

D. *The Alleged Threat of Retaliation*

On or about August 9, 1994, the Respondent learned about the Union's organizing campaign and began a campaign opposing unionization. On November 10 and 14, 1994, the Union filed unfair labor practice charges, later withdrawn, alleging that the Respondent had interfered with employees' Section 7 rights. In both of these charges, Timothy Hornback was named as one of the employees whose rights had been violated. On November 23, the day before Thanksgiving, Hornback was working on the production line. The Respondent's production manager, Arnold Nelson Mayse, approached Hornback and stated: "We have the Gains Sharing Committee, the Improvements Team Committee, we have the Placing Team Committee and we have the Hatchet Committee." Hornback asked Mayse what the hatchet committee was. Mayse responded by raising his hands, repeatedly stating, "I didn't say that," and walking away.

I credit Hornback's testimony that Mayse threatened him, rather than Mayse's testimony denying the entire conversation, because Hornback appeared to be the more credible witness. Hornback testified in a forthright manner and was consistent in his testimony concerning what Mayse said to him. Hornback also had no apparent motive for fabricating the statement attributed to Mayse. Moreover, it seems unlikely that, if Hornback wanted to falsely accuse Mayse of making threats, he would have chosen the particular language quoted above, rather than something more obviously threatening. On the other hand, Mayse had a motive to falsify his testimony to evade responsibility for having made an unlawful threat to an employee.⁶

The fact that Hornback may not have been sure of exactly what other dates in November and December he operated a forklift and what dates he worked on the box job does not, as the Respondent argues in its brief, serve to undermine Hornback's credibility on this issue. Despite Hornback's initial confusion over job assignment dates, he was ultimately resolute in his testimony that he was assigned to the box job on November 23, and the Respondent offered no evidence to the contrary.⁷

⁶Contrary to the Respondent's contention in its brief, the failure of counsel for the General Counsel to call as a witness employee George Reese, who was working with Hornback on November 23, does not give rise to an adverse inference that Reese would not have supported Hornback's testimony. *International Automated Machines*, 285 NLRB 1122 (1987), which the Respondent cites in support of its adverse inference argument, does not support its position. In *International Automated Machines*, the Board held that an adverse inference should be drawn against an employer who failed to call one of its managers as a witness. The Board reasoned that the manager could be expected to testify favorably to the employer and the failure to call the manager supported an adverse inference against the employer. Here, however, the absent witness was an employee, who could not reasonably be expected to favor one party over the other. Since Reese was equally available to all the parties and none chose to call him, no adverse inference can be drawn against any party to the proceedings.

⁷The Respondent further contends that Mayse did not know about the charges naming Hornback until November 28, 1994, and he therefore could not have threatened the employee because of them. Mayse testified that he did not learn about the unfair labor practice charges naming Hornback until the Respondent's chief operating officer, Mike Upchurch, called him into a supervisory meeting on November 28, at which time Upchurch read the charges to all of his

An employer violates Section 8(a)(1) of the Act by threatening an employee with retaliation for engaging in union activities, including charging the employer with having committed unfair labor practices. See *Action Mining, Inc.*, 318 NLRB 652 (1995); *Crown Cork & Seal Co.*, 308 NLRB 445 (1992); and *Cox Fire Protection, Inc.*, 308 NLRB 793 (1992).

Here, about 2 weeks after employee Hornback was named as a principal in unfair labor practice charges against the Respondent, Production Manager Arnold Mayse told Hornback that, in addition to its other committees, the Respondent had a hatchet committee. Mayse's statement is clearly coercive with respect to employees' Section 7 rights. While Mayse never specifically mentioned Hornback's having charged the Respondent with unfair labor practices, the timing of his threat, several weeks after the charges were filed, and the absence of any other explanation for his statement, makes it reasonable to conclude that the unfair labor practice charges were the reason for the threat of retaliation, and that Hornback would rationally have so understood the remark. I therefore find that Mayse's "hatchet committee" statement was coercive and violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

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

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

supervisors. Upchurch testified that he was on Thanksgiving vacation until November 28 and did not know about the unfair labor practice charges until the day he returned to work.

I discredit Mayse's testimony that he only learned about the unfair labor practice charges on November 28, 1994, for the same reasons stated above with respect to his denial of the conversation with Hornback. With respect to Upchurch's testimony, even assuming that Upchurch did not receive copies of the Hornback charges prior to November 28, it does not necessarily follow that Mayse only learned about them during the supervisory meeting on that date. The Respondent's facility is relatively small and word of the charges and Hornback's involvement in bringing the charges might easily have been spread by employees. Moreover, the Respondent's own evidence shows that copies of the Board charges arrived at the facility sometime prior to Upchurch's return from Thanksgiving vacation on November 28. When Upchurch was asked how he became aware of the filing of the unfair labor practice charges naming Hornback, he answered: "It was brought to my attention that the information was on my desk when I arrived [at the facility]." This testimony suggests that someone at the Respondent's facility knew the contents of the charges before Upchurch read them. Moreover, when Upchurch was asked on cross-examination whether he was the one who actually opened the envelope containing the Hornback charges, his reply was evasive. Upchurch stated that generally either he or the Respondent's president, Steve McDonald, opened letters from the Board, but that he could not remember whether he had opened the envelope containing the charges naming Hornback. Upchurch's memory concerning other details of the events of November 28, 1994, was very clear and it seems unlikely that he would not remember something as important as whether or not he opened the envelope containing the charges. Moreover, as noted above, the quoted testimony indicates that someone other than Upchurch must have opened the envelope. I therefore infer that Upchurch denied any recollection whether he opened the Hornback charges because he did not want to admit that the envelope was already open when he received a copy of the charges.

3. The Respondent violated Section 8(a)(1) of the Act by the following conduct:

(a) Announcing and implementing a new parking policy favorable to unit employees.

(b) Soliciting employee grievances and impliedly promising to correct them, without having a prior policy of soliciting employee grievances.

(c) Threatening employee Timothy Hornback with unspecified reprisals for having been involved in union activities.

4. By the conduct described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

5. The conduct described in paragraphs 3(a) and (b), above, also constitutes objectionable conduct affecting the results of the representation election held in Case 9-RC-16459 on December 2, 1994.

REMEDY

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

Having further found that the Respondent engaged in objectionable conduct that affected the results of the election in Case 9-RC-16459, I shall recommend that the election held on December 2, 1994, be set aside, that a new election be held, and that the Regional Director include in the notice of election the *Lufkin Rule* paragraph set forth below:⁸

NOTICE TO ALL VOTERS

The election of December 2, 1994, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' exercise of a free and reasonable choice. Therefore, a new election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

On these findings of fact and conclusion of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Torbitt & Castleman, Inc., Buckner, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Granting employees benefits in order to thwart union organization.

(b) Impliedly promising to correct employee grievances in order to thwart union organization.

(c) Threatening employees with reprisals for being involved in union activities.

⁸ *Lufkin Rule Co.*, 147 NLRB 341 (1964).

⁹ 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.

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

(a) Post at its Buckner, Kentucky facility copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 9, 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.

(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 election held on December 2, 1994, in Case 9-RC-16459 be set aside, and that a

¹⁰If 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."

new election be held at such time and under such circumstances as the Regional Director shall deem appropriate.

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 grant employees an increase in benefits in order to discourage support for unionization.

WE WILL NOT impliedly promise to correct employee grievances in order to discourage support for unionization.

WE WILL NOT threaten employees because they were involved in union and/or protected concerted activity.

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.

TORBITT & CASTLEMAN, INC.