

Adam Wholesalers, Inc.¹ and Chauffeurs, Teamsters and Helpers Local Union No. 171. Cases 11-CA-16535, 11-CA-16639, 11-CA-16717, and 11-RC-6083

September 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On May 30, 1996, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief. The Union filed an answering brief and request for sanctions. The General Counsel filed a motion to strike the Respondent's exceptions, and the Respondent filed a motion opposing the General Counsel's motion to strike the Respondent's exceptions. The General Counsel subsequently filed an answering brief.²

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,³ and conclusions as modified⁴ and to adopt the recommended Order as modified and set forth in full below.

¹The name of the Respondent appears as reflected in the transcript.

²In its answering brief and request for sanctions the Union requested that the Board reject the Respondent's exceptions and brief because of the Respondent's failure to properly serve the documents on the Union's attorney. The General Counsel also moved that the Respondent's exceptions and brief be stricken because of the Respondent's failure to serve the General Counsel with those documents. In the alternative, the General Counsel requested an extension of time to file an answering brief after the proper service of the Respondent's exceptions and brief on the General Counsel. In its response to the General Counsel's motion to strike exceptions, the Respondent represented that following its receipt of the General Counsel's motion to strike, it served its exceptions and brief on both the General Counsel and the Union's attorney. The Respondent did not oppose giving the parties the opportunity to file answering briefs. Subsequently, an extension of time for the filing of answering briefs was granted to the parties and the General Counsel filed an answering brief. (The Union had previously filed its answering brief with its request for sanctions.) Because the General Counsel and the Union were ultimately served with the Respondent's exceptions and brief and both had the opportunity to file answering briefs, we find that the Respondent's initial failure to properly serve the documents did not result in any prejudice to the General Counsel or to the Union. Accordingly, the General Counsel's and the Union's motions to strike the Respondent's exceptions and brief are denied.

³The 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.

⁴We shall modify the judge's conclusions of law to conform to the violations found by the judge.

1. In its request for sanctions, the Union requested that in light of the frivolousness of the Respondent's exceptions and brief and the flagrant nature of the violations, the Respondent should be ordered to pay for all the Union's costs, including legal fees, since the issuance of the judge's decision. We deny the Union's request for sanctions. We find, contrary to the Union's contention, that the Respondent's defenses, although meritless, are not frivolous. A respondent's defenses will generally be considered debatable, rather than frivolous, if they turn on issues of credibility. *Workroom for Designers*, 274 NLRB 840 (1985). Although the Board in *Frontier Hotel & Casino*, 318 NLRB 857, 861 (1995), clarified that it may find a respondent's defense frivolous and order reimbursement of litigation expenses where the defense relies on testimony that presents no legitimate issue of credibility, we find that in the instant case, unlike in *Frontier Hotel*, supra, the Respondent presented a legitimate credibility issue. Accordingly, we decline to order the reimbursement of litigation expenses as requested by the Union.

2. The Respondent has excepted to the judge's imposition of a *Gissel*⁵ bargaining order, asserting that its conduct was not exceptional, pervasive, or outrageous. We find no merit in the Respondent's exceptions.

In agreeing with the judge that a *Gissel* bargaining order is a necessary component of the remedy in this case, we find that the Respondent's conduct, both pre and postelection, clearly demonstrates that holding a fair election in the future would be unlikely. The enduring coercive effect of the Respondent's pervasive misconduct, considered as a whole, cannot be denied.

Shortly after becoming aware of the employees' organizing activities, the Respondent embarked on a series of serious unfair labor practices which were designed to dissipate the Union's majority support.⁶ The Respondent initially announced an incentive bonus plan, and then engaged in numerous violations of the Act, including, inter alia, unlawful threats of loss of benefits, job loss, and other unspecified reprisals. The Respondent also discriminatorily prohibited the wearing of union hats, offered to remedy employee grievances, created the impression of surveillance, informed the employees that selecting the Union would be futile, promised and granted wage increases, threatened not to bargain with the Union, threatened that union supporters would be "dealt with" and that employees would be "on the sidewalk," interrogated employees, and threatened not to place a union supporter in a supervisory position. In addition, the Respondent unlawfully warned and discharged Steve Bell, the employee who

⁵*NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

⁶The judge found, and we agree, that the Union achieved majority status during the campaign. In a unit of not more than 32 employees, 18 employees signed union authorization cards by the time the Union demanded recognition on March 21, 1995.

initiated the organizing drive, as well as Gary Blankenship, who was perceived by the Respondent to be associated with Bell.⁷ Many of these unfair labor practices occurred at company meetings attended by substantial numbers of unit employees.

Threats of discharge and the discharge of union adherents have long been considered by the Board and the courts to be "hallmark" violations justifying the issuance of bargaining orders.⁸ Here, the Respondent not only threatened employees with loss of jobs, but also retaliated against the leading Union organizer and his perceived associate by issuing them disciplinary warnings and discharging them. Such action demonstrates to the employees that the Respondent is willing to carry out its threats, and reinforces the employees' fear that they would lose employment if they persisted in union activity. *America's Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), enfd. 44 F.3d 516 (7th Cir. 1995), cert. denied 115 S.Ct. 2609 (1995). Both the Board and the courts have recognized that threats of job loss are among the most flagrant interferences with Section 7 rights and are more likely to destroy election conditions for a lengthier period of time than other unfair labor practices. *Koons Ford of Annapolis*, 282 NLRB 506, 508 (1986), enfd. 833 F.2d 310 (4th Cir. 1987), cert. denied 485 U.S. 1021 (1988). The discharge of employees Bell and Blankenship because of their union affiliations is unlawful conduct that "goes to the very heart of the Act" and is not likely to be soon forgotten. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

The Respondent committed other highly coercive and enduring unfair labor practices that directly affected a substantial portion of the unit employees when it promised and granted wage increases and initiated an incentive plan. The Respondent used a classic "carrot and stick" approach with respect to the incentive plan, announcing it shortly after the Respondent became aware of the organizing activity, but later threatening to withdraw the plan if the employees selected the Union. The Supreme Court has recognized that employees are quick to perceive the "fist inside the velvet glove" implicit in such tactics. *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964); and *America's Best Quality Coatings Corp.*, supra at 472. The Board has held that unlawfully granted benefits "are particularly lasting in their effect on employees and difficult to remedy by traditional means . . . not only because of their significance to the employees, but also because the Board's traditional remedies do not require the Respondent to withdraw the benefits from the employ-

ees." *Triec, Inc.*, 300 NLRB 743, 751 (1990), enfd. 946 F.2d 895 (6th Cir. 1991); and *Flexsteel Industries*, 316 NLRB 745, 746 (1995), enfd. 83 F.3d 419 (5th Cir. 1996).

We also consider the Respondent's threats of loss of benefits to be likewise highly coercive and enduring. By threatening loss of benefits, the Respondent communicated to its employees that their continued efforts to gain union representation would result in terms and conditions of employment even worse than those in existence. Such a message would not likely soon be forgotten.

The severity of the Respondent's misconduct is further compounded by the fact that most of the violations were committed by the Respondent's highest ranking official at the Lynchburg facility, General Manager Michael Yett. This served to strengthen and amplify in the minds of employees the seriousness of the unfair labor practices. "When the antiunion message is so clearly communicated by the words and deeds of the highest levels of management, it is highly coercive and unlikely to be forgotten." *Electro-Voice, Inc.*, 320 NLRB No. 134, slip op. at 3 (Mar. 29, 1996); and *America's Best Quality Coatings Corp.*, supra at 472.

We also note that the Respondent continued its unlawful conduct after the election by discharging and reprimanding Bell and Blankenship, interrogating employees, and threatening not to place a union supporter in a supervisory position. These postelection actions demonstrate the Respondent's continuing propensity to violate the Act and indicate that the coercive effects of the Respondent's unlawful conduct are likely to linger, making it highly unlikely that a free and fair second election can be held.

In sum, the Respondent's course of serious and pervasive misconduct emanated from upper level management, was swift and severe, persisted during the post-election period, and directly affected the entire unit. In light of all these circumstances, we believe that the traditional Board remedies are insufficient to rectify the damage done by the Respondent to the employees' Section 7 rights and will be unlikely to ensure the fairness of a second election. Thus, we conclude that the possibility of erasing the effects of the Respondent's unfair labor practices is slight and that holding a fair election is unlikely. For these reasons, we agree with the judge that a *Gissel* bargaining order is warranted. Accordingly, we shall order that the election held in Case 11-RC-6083 be set aside and the petition in that case be dismissed.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

"3. Respondent, by discriminatorily prohibiting its employees from wearing Teamsters union baseball

⁷When Blankenship received his first disciplinary warning, he was told by the Respondent's general manager that he was "with the wrong person at the wrong time."

⁸*Exchange Bank*, 264 NLRB 822, 824 fn. 12 (1982), enfd. 732 F.2d 60 (6th Cir. 1984).

caps while openly soliciting its employees to wear vote no buttons; threatening its employees with unspecified reprisals for wearing Teamsters union baseball caps; threatening its employees with loss of benefits and jobs if they selected the Union; offering to remedy employee grievances if the employee refrained from selecting the Union; creating the impression that its employees' union activities were under surveillance; informing employees that it would be futile to select the Union; threatening that if the Union was selected everything would be renegotiated, that the Respondent did not have to give anything in negotiations and the employees could lose all their benefits; threatening that the employees' life insurance would be dropped immediately if the Union came in; promising and granting increased wages to its employees to discourage union activity; initiating and granting an employee incentive pay plan to discourage union activity; threatening its employees that everyone that supported the Union would be dealt with; threatening employees that it did not have to bargain with the Union and if the Union came in and anything happened the employees would be on the sidewalk; threatening its employees that if the Union came in they would be on their own as far as benefits; interrogating employees concerning their union activities and sentiments and their contact with the Board; and threatening not to place a union supporter in a supervisory position, has engaged in conduct violative of Section 8(a)(1) of the Act."

AMENDED REMEDY

In light of the egregiousness and pervasiveness of the unfair labor practices committed by the Respondent, which demonstrate a general disregard for the employees' fundamental rights, we find it necessary to issue a broad order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). Accordingly, we shall modify the judge's recommended Order to substitute a broad cease and desist order for the narrow one recommended by the judge.⁹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Adam Wholesalers, Inc., Lynchburg, Virginia, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Discriminatorily prohibiting its employees from wearing Teamsters union baseball caps while openly soliciting its employees to wear vote no buttons.
- (b) Threatening its employees with unspecified reprisals for wearing Teamsters union baseball caps.
- (c) Threatening its employees with loss of benefits and jobs if they selected the Union.
- (d) Offering to remedy employees' grievances if the employees refrained from selecting the Union.
- (e) Creating the impression that its employees' union activities were under surveillance.
- (f) Informing employees that it would be futile to select the Union.
- (g) Threatening that if the Union was selected everything would be renegotiated.
- (h) Telling its employees that Respondent did not have to give anything in negotiations and the employees could lose all their benefits.
- (i) Threatening its employees that the employees' life insurance would be dropped immediately if the Union came in.
- (j) Promising and granting increased wages to its employees to discourage union activity.
- (k) Initiating and granting an employee incentive pay plan to discourage union activity.
- (l) Threatening its employees that everyone that supported the Union would be dealt with.
- (m) Threatening employees that it did not have to bargain with the Union and if the Union came in and anything happened the employees would be on the sidewalk.
- (n) Threatening its employees that if the Union came in they would be on their own as far as benefits.
- (o) Interrogating employees concerning their union activities and sentiments and their contact with the Board.
- (p) Threatening not to place a union supporter in a supervisory position.
- (q) Reprimanding and discharging its employees in order to discourage its employees from engaging in union activities.
- (r) Refusing to recognize and bargain in good faith with Chauffeurs, Teamsters and Helpers Local Union No. 171 as the exclusive collective-bargaining representative of its employees in the following appropriate bargaining unit:

All full time and regular part time production and maintenance employees, including drivers, employed by Respondent at its Lynchburg, Virginia facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

- (s) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

⁹ We shall also modify the recommended Order and substitute a new notice to employees to remedy all of the violations found by the judge and to conform to the remedial language set forth in *Indian Hills Care Center*, 321 NLRB 144 (1996).

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

(a) Within 14 days of this Order, offer Steven Bell and Gary Blankenship full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Steven Bell and Gary Blankenship whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings and discharges of Steven Bell and Gary Blankenship, and within 3 days thereafter notify the employees in writing that this has been done and that the warnings and discharges will not be used against them in any way.

(d) On request, recognize and bargain with Chauffeurs, Teamsters and Helpers Local Union No. 171 as the exclusive collective-bargaining representative of its employees in the above appropriate collective-bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(e) Preserve and, within 14 days of a 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.

(f) Within 14 days after service by the Region, post at its facility in Lynchburg, Virginia, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 11, 1995.

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election in Case 11-RC-6083 is set aside and the petition is dismissed.

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 discriminatorily prohibit our employees from wearing Teamsters union baseball caps while openly soliciting our employees to wear vote no buttons.

WE WILL NOT threaten our employees with unspecified reprisals for wearing Teamsters union baseball caps.

WE WILL NOT threaten our employees with loss of benefits and jobs if they selected the Union.

WE WILL NOT offer to remedy employees' grievances if the employees refrained from selecting the Union.

WE WILL NOT create the impression that our employees' union activities were under surveillance.

WE WILL NOT inform employees that it would be futile to select the Union.

WE WILL NOT threaten that if the Union was selected everything would be renegotiated.

WE WILL NOT tell our employees that we do not have to give anything in negotiations and the employees could lose all their benefits.

WE WILL NOT threaten our employees that the employees' life insurance would be dropped immediately if the Union came in.

WE WILL NOT promise or grant increased wages to our employees to discourage union activity.

WE WILL NOT initiate and grant an employee incentive pay plan to discourage union activity.

WE WILL NOT threaten our employees that everyone that supported the Union would be dealt with.

WE WILL NOT threaten employees that we did not have to bargain with the Union and if the Union came in and anything happened the employees would be on the sidewalk.

WE WILL NOT threaten our employees that if the Union came in they would be on their own as far as benefits.

WE WILL NOT interrogate employees concerning their union activities or sentiments, or their contact with the Board.

WE WILL NOT threaten not to place a union supporter in a supervisory position.

WE WILL NOT reprimand and discharge our employees in order to discourage our employees from engaging in union activities.

WE WILL NOT refuse to recognize and bargain in good faith with Chauffeurs, Teamsters and Helpers Local Union No. 171 as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

All full time and regular part time production and maintenance employees, including drivers, employed by us at our Lynchburg, Virginia facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Steven Bell and Gary Blankenship full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Steven Bell and Gary Blankenship whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings and discharges of Steven Bell and Gary Blankenship and WE WILL, within 3 days thereafter, notify Bell and Blankenship in writing that this has been done and that the warnings and discharges will not be used against them in any way.

WE WILL, on request by the Union, recognize and bargain with Chauffeurs, Teamsters and Helpers Local Union No. 171 as the exclusive collective-bargaining representative of our employees in the above appropriate collective-bargaining unit concerning terms and

conditions of employment and WE WILL put in writing and sign any agreement reached.

ADAM WHOLESALERS, INC.

Rosetta Lane and Michael W. Jeannette, Esqs., for the General Counsel.

Fred F. Holroyd, Esq., of Charleston, West Virginia, for the Respondent.

Hugh J. Beins, Esq., of Washington, D.C., for Charging Party.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This hearing was on March 11, 12, and 13, in Rustburg, Virginia. The charge in 11-CA-16535 was filed on May 11, and amended on August 3, 1995. The charge in 11-CA-16639 was filed on August 3, 1995. The charge in 11-CA-16717 was filed on September 28, 1995. A consolidated complaint issued on November 8, 1995. The Regional Director issued a report on objections in 11-RC-6083 along with an order consolidating cases, on August 15, 1995. The 11-RC-6083 petition was filed on March 23, 1995. A stipulated election agreement was approved on April 19, 1995. An election was held on May 4, 1995. A majority of the employees in the described collective-bargaining unit voted against representation by the Petitioner (the Union). Challenge ballots were not determinative of the results of the election. The Union filed timely objections that were found to be based on evidence similar to that presented in Case 11-CA-16535. A hearing was directed to resolve substantial and material issues in consolidation with the hearing on the unfair labor practices.

I. JURISDICTION

Respondent admitted that it is an Ohio corporation with a facility located in Lynchburg, Virginia, where it is engaged in the nonretail sale of wood products. It admitted that during the past 12 months, it purchased and received at its Lynchburg facility goods and materials valued in excess of \$50,000, and it sold and shipped products valued in excess of \$50,000, directly from and to points outside the Commonwealth of Virginia. It admitted that it has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act (the Act), at all material times.

II. LABOR ORGANIZATION

Respondent admitted that Chauffeurs, Teamsters and Helpers Local Union No. 171 (the Union) has been a labor organization within the meaning of Section 2(5) of the Act, at all material times.

III. MOTION

Following the close of the hearing the General Counsel moved for the admission of General Counsel's Exhibits 23, 24, and 25. There was no opposition to the motion. The motion is hereby granted.

IV. THE UNFAIR LABOR PRACTICE ALLEGATIONS

The complaint alleges that Respondent engaged in various activities in violation of Section 8(a)(1) of the Act; that it issued warnings, granted a pay raise and incentive bonuses, and discharged employees in violation of Section 8(a)(1) and (3); and that it has refused to recognize and bargain with the Union as exclusive representative for collective bargaining in violation of Section 8(a)(1) and (5) of the Act.

A. *Credibility Determinations*

In consideration of the demeanor or all witnesses and after full examination of the record, I make the following credibility determinations.

Thomas Daniel, Larry Kidd, and Gary Garrett appeared to testify truthfully. Their testimony was not rebutted and is credited.

Cynthia Glass appeared to be a truthful witness. She recalled a conversation with Michael Yett in her office. As shown below, I find Yett was not a truthful witness. I credit Glass' testimony.

Gary Blankenship impressed me as a reliable witness. In all areas where his testimony was not in conflict with credited evidence, I credit Blankenship.

I found that Steven Bell demonstrated good demeanor. His testimony was consistent and was opposed only by the unreliable testimony of Michael Yett. I credit the testimony of Bell in its entirety.

Because of confusion as to when he first learned of incentive bonuses, I am unable to fully credit the testimony of David Clegg. I credit the testimony of Clegg to the extent it is not in conflict with his or other testimony.

The testimony of Steven Simpson was credible. It was disputed only by the questionable testimony of Michael Yett. I do not credit Yett's testimony and I do credit the testimony of Simpson.

Mike Epperson appeared to be a candid witness. In large measure his testimony was not disputed. Moreover, where there were disputes, his was in dispute with the testimony of Michael Yett and, as shown below, I find that Yett was not a reliable witness. I credit the testimony of Epperson.

I found Robert Earl Bruce to be a straightforward witness. Bruce is a current employee of Respondent. He has worked there for 15 years. As shown herein his testimony seriously conflicted with that of Michael Yett. On the basis of his demeanor, the fact that he is a current employee and my determination below that Yett was not a reliable witness, I credit the testimony of Bruce.

Gary Smoot was confused in his testimony about whether there was a threat of lost benefits. He testified that Michael Yett did not say anything about employees losing benefits but he then testified that Yett held up a blank sheet of paper and told employees they would be pretty much on their own. In view of the confusion in his testimony I do not credit Smoot to the extent his testimony conflicts with that of credited testimony.

General Manager Michael Yett admitted that he is responsible for the complete operation of the Lynchburg facility and that the employee complement is between 38 and 40. Nevertheless, he testified that he was unaware of such mundane facts as the general time within 2 hours when drivers customarily left the facility on their routes; he testified that

he rarely looked at drivers' logs; he denied knowledge of whether drivers were required to take lunchbreaks at specific times but testified that time was probably between noon and 1 p.m., and Yett first testified that two employees came in and told him there was a movement to organize for the Union during March 1995. Yett denied recalling which employees came in on that occasion; then Yett testified that he could not recall which employees came in because there were more than two employees that came in—actually he then testified that several employees told him about employees involved in union organization. Yett then testified that it was his operations supervisor that told him about the union campaign. Yett was evasive when questioned as to whether employees were paid for time spent in employee meetings beginning in late March. He was evasive when questioned as to whether he held up a blank sheet of paper while addressing the employees during those employee meetings. When confronted with a Respondent position statement, Yett admitted that when asked by employees during those meetings what the contract would read, he held up a blank sheet of paper and said it begins with this. Yett was also evasive when asked if his signature appeared on a mailing to the employees. Yett was evasive when questioned as to whether he told employees they could lose benefits. Respondent argued in its brief that Yett's testimony was consistent with antiunion mailings to employees and that fact supports Yett's credibility. I note that Yett testified that he was not familiar with all those mailings and some had been mailed directly to the employees from corporate headquarters without being seen by Yett. In view of the full record and in consideration of his demeanor I am convinced that Michael Yett was not truthful and I shall not credit his testimony to the extent it does not constitute admissions and to the extent it is in conflict with other evidence.

B. *Section 8(a)(1) Allegations*1. *Threatened employees and discriminatorily prohibited employees from wearing prounion insignia*

Steve Bell testified that while he was loading in the plant around May 2, 1995, Operations Manager Houck came to him. Houck said, "Mike Yett sent me out here and had already spoken to the attorney and you need to take your Teamsters hat off." Bell was wearing a Teamsters 171 baseball cap. Bell asked what would happen if he did not remove the cap. Houck told him that if he did not take it off he would find out what is going to happen.

Bell testified that Respondent had no policy restricting wearing caps or T-shirts. Before the union campaign employees wore various sports caps and T-shirts with other company logos. No one had ever said anything about wearing those caps and shirts.

Respondent's dress code found in its employee policy manual does not mention any restrictions on caps nor does it limit the wearing of attire that advertises a particular organization.

General Manager Michael Yett admitted that Operations Manager Houck told him that he saw Steve Bell wearing a Teamsters hat and Houck told Bell that he could not make deliveries with that hat.

Michael Yett testified "we told the employees (vote no) buttons were available if anybody wanted one they could

come to Paul Houck's office or (Yett's) office." Yett did not know whether drivers were permitted to wear vote no buttons while making deliveries but he testified that he assumed they were not allowed to wear the buttons outside the plant.

According to David Clegg, employees wore all kind of caps including sports caps such as baseball, football, and racing. There was no rule against wearing any type cap.

On the day after Mike Epperson attended a May 2 or 3, 1995 union meeting Mike Yett asked what they had talked about and Yett gave Epperson a vote no button.

About 2 or 3 weeks before the election Michael Yett, William Jennings, and Paul Houck started handing out vote no buttons at work. Steven Simpson wore the button. One day at work, Yett asked Simpson why he did not wear his vote no button. Simpson had the button on his rear pants pocket.

Gary Blankenship testified that while he was a truck driver with Respondent in 1995 it was commonplace to wear different caps such as baseball, NASCAR, and other caps. Blankenship wore such caps and he was not told that was not allowed.

Respondent called Gary Smoot. Smoot has worked for Respondent since May 1994. He worked under the supervision of Operations Manager Paul Houck. Smoot testified that he was given a vote no button by Paul Houck before the election.

Findings

The credited record illustrated that employees, including Steve Bell, were prohibited from wearing Teamsters baseball caps on the job while employees, including supervisors, were permitted to wear vote no buttons and various caps while working. In making that finding I note that the testimony as to statements by Operations Manager Houck were not disputed. Houck did not testify and even though Michael Yett testified that he tried unsuccessfully to contact Houck, I do not credit Yett's testimony. As shown herein I find Yett was not a reliable witness. Additionally, I credit the testimony of Steve Bell that Houck was available in the courtroom during the second day of the hearing.

The admission of Michael Yett and the credited testimony of Mike Epperson, Gary Smoot and Steven Simpson shows that Respondent through its supervisors including General Manager Yett, openly distributed vote no buttons to employees during work in the plant.

The credited testimony of Steve Bell, Gary Blankenship, and David Clegg shows there were no rules prohibiting the employees from wearing caps, clothing, or buttons and that employees wore all kinds of caps and vote no buttons while at work. Only Teamsters caps were not allowed. The credited evidence shows that Respondent discriminatorily prohibited the wearing of Teamsters caps. Additionally the credited testimony of Bell proved that he was threatened with unspecified reprisals when Houck told him that he would find out what is going to happen if he did not take off the cap. By its actions, including supervisors offering employees vote no buttons, Respondent engaged in conduct in violation of Section 8(a)(1). *A. O. Smith Automotive Products Co.*, 315 NLRB 994 (1994).

2. Threatened employees with loss of benefits and jobs if the Union was selected, informed employees it would be futile to select the Union, created the impression of surveillance of employees' union activities, and offered to remedy grievances

David Clegg attended some plant meetings regarding the union campaign. He was paid for the time he spent in those meetings. He recalled Mike Yett conducting three or four company meetings. Yett held up a blank sheet of paper and said that was the contract and the employees would get nothing and would not have any benefits or anything like that. Yett said the benefits would be taken from the employees and if they went on strike they would lose their jobs. Yett said they would lose their jobs and be replaced with other people. Clegg recalled that Yett said that he would make sure the Union did not come in.

Michael Epperson attended several company meetings regarding the Union. Mike Yett conducted those meetings. Epperson recalled that Yett told the employees that the Union was the worst thing that they could get in the plant. Yett often stated that Steve Bell would be the employees' boss if the Union came in. Yett showed the employees a blank sheet of paper and said that would be their contract if the Union came in. Yett also said the employees would lose most of, if not all of their benefits, and their life insurance would be immediately dropped, if the Union came in.

After Michael Epperson attended a May 2 or 3, 1995 union meeting with others including Steve Bell, at Creek Road, he was pulled off to the side by Mike Yett. Yett asked him about the party they had attended on Creek Road. Epperson asked "what party?" Yett said that he knew about a meeting the employees had held at Creek Road. Yett asked what they had talked about and Yett gave Epperson a vote no button. Epperson told Yett that the employees discussed being treated unfairly and that he felt he was not treated fairly when he was given a reprimand. Yett asked him if he wanted the reprimand removed from his record. Epperson replied that the reprimand had been long past and it was not necessary to remove it from his record. He accepted the vote no button from Yett, and he told Yett that he would keep him in mind. Yett asked Epperson who attended the union meeting and what was said. He asked Epperson if he had spoken with Earl Bruce or anyone. Yett asked Epperson how he felt about the Union and if he wanted the Union. Epperson replied that he was trying to keep an open mind. Yett mentioned that he knew Steve Bell had had those meetings. Yett asked Epperson if he would like to have Steve Bell for a boss.

Michael Yett testified that the above conversation never occurred. He denied ever telling Epperson that he could take Epperson's reprimand off the record. Yett denied that he ever told Mike Epperson that he did not have to bargain with the Union. Yett testified that he held three or four meetings around the employees' breaktime regarding the Union.

Steven Simpson recalled that Yett told the employees during the company meetings that Steve Bell would become their boss if the Union came in. Yett said that Bell would become our liaison between the Company and the employees. Yett said that if the employees struck, the Company had every right to hire people in their places and was not necessarily bound to hire the striking employees back at the end of the strike.

Simpson testified that he worked for Respondent in the door shop from June 1993 until June 1995. Simpson attended company meetings during the 1995 union organizing campaign. Michael Yett spoke. Yett stated that he was totally against the Union. Yett held up a blank sheet of paper. He said that this is our contract with the Union and if the Union is voted in the employees will have to bargain and barter for any benefits they presently have. Yett said that the employees could lose their benefits including medical, health, vacation, and overtime.

Respondent called Gary Smoot. Smoot has worked for Respondent since May 1994. Smoot attended company meetings where Mike Yett discussed the Union. Smoot testified that Yett did not say anything about employees losing fringe benefits. Yett said that if they went Union it was pretty much a blank sheet on how the employees would be covered with health insurance. Yett said the employees would be pretty much on their own, each employee could take care of matters in their own way but no type of association would back the employee as far as benefits.

As to negotiations, Yett said that if the employees went union "you would be on your own as far as benefits and if—the Adams part of it was gone." Yett held up a blank sheet of paper and said words to the effect that this is the union contract and "you fill in the blank spaces." As to the blank paper Yett said the employees would be "pretty much on their own. You can take it for what it's worth, nothing."

According to Yett he said nothing in those employee meetings that was inconsistent with the mailings to employees during the union campaign (see R. Exh. 2). Yett testified that he followed advice of counsel not to threaten loss of jobs concerning the Union, to emphasize the Company's rights; and not to threaten loss of benefits. Yett denied telling employees they would lose their life insurance, or that they would lose their incentive plan. He admitted telling employees that if they went out on strike the Company could hire replacement workers and only rehire workers on a priority rehiring practice. Yett admitted holding up a blank sheet of paper and saying:

This is the Union contract when it begins, and after that we fill in the blanks. It is possible, if neither party can agree that we will still have a blank piece of paper at the conclusion of those negotiations. Those blanks would only be filled in if we can agree to a contract that would permit Adam Wholesalers to stay in business.

Michael Yett denied telling employees that the blank sheet of paper showed what the employees have or this is what you would get if the Union got in. He denied telling employees they would lose all their benefits if the Union came in, but he admitted telling employees they could lose all their benefits through the course of negotiations with the Union. Yett denied telling any employee that he would refuse to bargain with the Union. Yett admitted telling employees they were operating against competition that was nonunion and it was possible they could not survive as a business paying union scale due to the low profit margin in the industry.

Michael Yett admitted that he told the employees that if the Union came in Steve Bell would probably be the senior union representative and if anyone had a grievance they

would probably have to report that to Bell. He denied saying that Bell would be president of the Union or of the Company. He denied telling employees that Bell would be their boss.

Findings

I credit the testimony of David Clegg, Steven Simpson, and Mike Epperson as to what Michael Yett said in the company antiunion meetings. I find that Michael Yett threatened employees that if the Union were elected the employees would start with a blank contract and not have benefits. Yett told employees that if the employees struck, the Company had every right to hire people in their places and was not necessarily bound to hire the striking employees back at the end of the strike. *Casa Duramax, Inc.*, 307 NLRB 213, 218 (1992); *Baddour Inc.*, 303 NLRB 275 (1991). Yett said that Steve Bell would be their boss if the Union came in. I also credit the testimony of Mike Epperson that Yett told him that he knew Steve Bell had had union meetings. As shown below I do not credit the testimony of Michael Yett. As to the testimony of Gary Smoot, I find the testimony confusing. Even though Smoot testified that Yett said nothing about losing benefits, he testified that Yett said that employees would be on their own if the Union came in and no type of association would back the employees as far as benefits.

The credited testimony proved that Respondent threatened employees on numerous occasions that they would lose benefits and jobs if the Union came in.

As shown above I credit the testimony of Mike Epperson. Epperson's testimony proved that Yett questioned him about a union meeting on Creek Road on May 2 or 3, 1995. Yett's questioning of Epperson and his statement that he knew Steve Bell was holding those meetings carried the impression that Yett was engaged in surveillance of employees' union activities. *Flexsteel Industries*, 311 NLRB 257 fn. 2 (1993). That testimony also shows that Yett offered to remedy a grievance by offering to remove a reprimand from Epperson's file.

The evidence that Yett told employees that Steve Bell would be their boss and that he knew that Bell had held union meetings, had the tendency to create the impression of surveillance of the employees' union activities.

The credited testimony proved that Respondent engaged in conduct in violation of Section 8(a)(1) of the Act by threatening employees that if the Union came in everything would be renegotiated; that the employees could lose the benefits they already had and Respondent did not have to give them anything in negotiations. *Goldtex, Inc.*, 309 NLRB 158, 162 (1991).

The standard for determining whether statements of this type violate Section 8(a)(1) of the Act is set out in *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980), enf. 810 F.2d 638 (9th Cir. 1982), as follows:

It is well established that "bargaining from ground zero" or "bargaining from scratch" statements by employer representatives violate Section 8(a)(1) of the Act if, in context, they reasonably could be understood by employees as a threat of loss of existing benefits and leave employees with the impression that what they may ultimately receive depends upon

what the union can induce the employer to restore. On the other hand, such statements are not violative of the Act when other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations.

Applying this standard to the facts here, we find it clear from both the text of Camp's speech and the General Counsel's witnesses' description of the speech that the statements indicating that benefits would start from zero could reasonably have been understood as a threat of loss of existing benefits. . . . [*Lear-Siegler Management Service*, 306 NLRB 393 (1992).]

See *LRM Packaging, Inc.*, 308 NLRB 829, 830 (1992).

The Board considered the same issue in a recent holding:

[T]he test the Supreme Court fashioned in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). As the Court stated, an employer's prediction of dire economic effects stemming from union organization must not contain "any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities known only to him." *Id.* at 618. If such a prediction is made, it must be supported "on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." *Id.* *Dominion Engineered Textiles*, 314 NLRB 571 (1994).

In view of the above I find that Respondent engaged in 8(a)(1) violations by threatening employees with loss of benefits and jobs if the Union was selected, informing employees it would be futile to select the Union, creating the impression of surveillance of employees' union activities, and offering to remedy grievances if the employees rejected the Union.

3. Promised and granted increased wages and bonuses

David Clegg testified that Respondent announced that it would pay its employees an incentive bonus of \$18, based on the number of doors produced. Clegg believed the bonus was announced after he signed a union authorization card and before the election. However, on cross examination he testified that he learned about the incentive plan about a month before he heard about the Union.

During the company meetings Yett announced an incentive plan of 5 to 10 percent. Michael Epperson recalled that he received some incentive bonus payments during the union organizing campaign before the election. Yett told the employees that the incentive plan would be erased if the Union got in but that the quotas would remain in effect and if the employees could not achieve their quotas, Respondent would get someone that could achieve the quotas.

In April or May 1995, Epperson received a 50-cent pay increase. He along with other employees were sent to Paul Houck's office by Supervisor William Jennings. In the office Houck told Epperson that he was not ready for his raise at that time but they were going ahead and do it anyway. Houck asked Epperson his opinion of the Union.

During the union campaign, after Respondent started having antiunion meetings. Steven Simpson received his second

increase in pay. While driving him to the hospital after Simpson cut his finger, Operations Manager Houck told Simpson he was going to receive a 50-cent-an-hour raise. Simpson recalled that Michael Yett also brought up an incentive program after the employees started attending the company antiunion meetings. Yett said that in order to prompt the employees they would be given a certain quota and paid incentive for exceeding the quota. Simpson recalled receiving at least one bonus during the campaign before the election.

Gary Blankenship was told that he would get a raise 30 days after he was hired and then another raise in 90 days. Blankenship did not receive either of those raises after he was hired on February 20, 1995. However, on April 26, the day he received a reprimand, he was granted a 75-cent-an-hour raise. He was not evaluated at the time he received the raise.

After Michael Yett was called by the General Counsel he was called by Respondent. He explained that all Respondent's raises are based on merit. Thirty days after hire there is an evaluation followed by a second evaluation after six months. There is no policy of automatic raises at any time.

Yett identified an agenda from a February 17, 1995 production meeting. He recalled the meeting was held in the afternoon of February 17 around 2:30 or 3:30. The agenda included the following topic:

III—Bonus/Incentive Plan—Interior & Stanley Dept.

Time: Spring as order file dictates

Basis: Base Efficiency Level per person per day—Production exceeding "Base Level Efficiency" will be rewarded on two levels—5% Bonus level & 10% Bonus Lever

Base Efficiency Level—100–110 units per day per person (Interior) 60–80 units per day Stanley Dept.

Michael Yett testified that Respondent was last in efficiency and productivity among the corporations 13 branches. Yett admitted that the incentive plan was not discussed with corporate or somebody like that before February 17. However, he testified:

Yes, we discussed it as far back as October of 1994 and again Yes, we discussed it as far in our November meeting and again in our December meeting, trying to determine from the employees what kind of plan would they like and weigh it with the plan that we would propose to come up with a workable and agreeable plan that everybody would agree to.

Yett testified that the drivers were never included in those production meetings.

According to Yett he was not aware of any union movement as far back as February 17, 1995. He testified "I was not aware of a Union movement, officially, until we received the letter, March 21st." He then testified that he was not aware of any union movement unofficially prior to February 17. He testified that announcement of the incentive plan had nothing to do with the union activity. At another point in his testimony Yett testified that he believed he first found out that Steve Bell was one of the principal union pushers in "late February or early March. I think it was like the first week of March and that was in the form of a rumor."

However, as shown above, during earlier testimony after being called by the General Counsel, Yett testified that he first learned that employees were discussing the Union in early March. As shown below, after receiving a warning on February 10, 1995, Operations Manager Paul Houck told Bell that he knew what the reprimand was all about but could not say anything.

Yett testified that Paul Houck is no longer employed by Respondent. Houck was terminated on March 1, 1996. Yett tried to have Houck testify. He made several phone calls but Houck never returned the calls. After counsel for the Union stated that he had subpoenaed Houck and that Houck had been present in the courtroom during the hearing on March 12, 1996, Yett denied that he had noticed Houck in the courtroom. On rebuttal Steve Bell testified that Houck was seated in the courtroom next to Gary Smoot, for a couple of hours during the second day of the hearing. Bell testified that he saw Michael Yett turn and look toward Houck two or three times while Houck was seated in the courtroom.

According to Yett a number of personnel files have disappeared from the plant. Paul Houck was the official in charge of those files but Yett's efforts to contact Houck and discuss the disappearance of the files have not been successful.

Bell testified on rebuttal that he asked for his personnel file when he was reprimanded on April 28, 1995, and Yett responded that his "personnel files are kept in Cincinnati."

Findings

David Clegg was unable to recall during direct and cross whether an incentive bonus was announced before or during the union campaign. However, the full record including the testimony of Michael Yett, shows that the employees were informed of a new incentive plan on or after February 17, 1995. The credited testimony of Michael Epperson proved that the employees received some incentive bonuses during the union organizing campaign and that Yett threatened to withdraw the incentive bonus if the employees selected the Union. Yett also threatened the employees with discharge if the Union was selected by telling them they would be replaced if they failed to achieve production. I also credit Epperson, Blankenship and Steven Simpson that they received a pay increase during the union campaign. I credit Epperson's testimony that Operations Manager Houck told him he was not ready for the raise. During that same conversation Houck asked Epperson his opinion of the Union.

I do not credit inconsistent testimony of Michael Yett for the reasons outlined above. I specifically reject his contention that Paul Houck was unavailable to testify. The credited testimony of Steve Bell proved that Houck was available in the courtroom during the hearing. Moreover, Yett admitted that Houck was not subpoenaed by Respondent. I do not credit Yett's testimony to the extent it would show that all but two personnel files have disappeared. Credited testimony of Steven Bell proved that Yett had previously told Bell that his personal file was held at corporate offices in Cincinnati.

I find that the credited testimony including the admission by Yett that he learned of employees' union activity in early March and especially the credited testimony of Steve Bell that Paul Houck told him that he knew what was behind his February 10 reprimand but could not say, illustrates that Respondent knew about Steve Bell and other employees' union

activities before employees received the wage increases noted herein and before any employee received an incentive bonus.

As shown above Michael Yett admitted that all pay increases are based on merit and that employees are evaluated without assurances of pay increases. Nevertheless, as shown in the record, the above-mentioned employees received pay increases during the union organizing campaign without being evaluated. In the case of Michael Epperson, Operations Manager Houck told him of his pay increase during the same conversation in which he asked Epperson for his opinion of the Union. Gary Blankenship received a pay increase on the day he received a reprimand for stopping his truck with Steve Bell. Blankenship was told that he was caught with the wrong man.

As to the incentive pay, none of the unit employees received any incentive pay until after the start of the union campaign. General Manager Yett coupled the incentive pay with the campaign by telling employees they would lose the incentive pay if the Union came in but that the quotas would remain and they would be replaced if they could not maintain their quotas. Yett admitted that the incentive pay plan had not been discussed with corporate before February 17, 1995.

I find that the General Counsel proved that Respondent promised its unit employees increased wages and it announced and implemented an incentive bonus in order to discourage union activities. I find that unit employees were granted increased wages in order to discourage union activities at a time when they were neither scheduled for nor granted wage increase evaluations. *Fontaine Body*, 302 NLRB 863 (1991); *Dlubak Corp.*, 307 NLRB 1138 (1992).

4. Interrogated and polled employees

Michael Epperson worked for Respondent during the 1995 union organizing campaign. Epperson testified that he never did anything at work to show that he favored the Union.

As shown above on the day after Epperson attended a May 2 or 3, 1995 union meeting with others including Steve Bell, at Creek Road, he was pulled off to the side by Mike Yett. Yett asked him about the party they had attended on Creek Road. Epperson asked what party? Yett said that he knew about a meeting that we had held at Creek Road. Yett asked what they had talked about and Yett gave Epperson a vote no button. Epperson told Yett that the employees discussed being treated unfairly and that he felt he was not treated fairly when he was given a reprimand. Yett asked Epperson who attended the union meeting and what was said. He asked Epperson if he had spoken with Earl Bruce or anyone. Yett asked Epperson how he felt about the Union and if he wanted the Union. Epperson replied that he was trying to keep an open mind. Yett mentioned that he knew Steve Bell had had those meetings. Yett asked Epperson if he would like to have Steve Bell for a boss.

Epperson was recalled to work for Respondent in August after a July layoff. After returning to work, Michael Yett pulled him off to the side and asked if he had any contact with the Union or the Labor Board. Epperson told Yett that he had no such contact. Later in August Yett pulled Epperson aside and asked him if he had any confrontations with anyone at Adams dealing with the Union. Yett specifi-

cally asked Epperson if he had any contact with Gary Blankenship or Earl Bruce.

Around the second or third week after the Company started the antiunion meetings, Michael Yett asked Steven Simpson for his opinion on the Union. Simpson told Yett that he was not necessarily for the Union and probably would not vote for the Union.

Robert Earl Bruce has been employed by Respondent for 15 years. Bruce is a truck driver. Bruce was active in the union campaign. He along with Steve Bell and Pete Mobley first met with Teamsters Local 171 President Jim Gwynn in January 1995.

In March or April 1995, at the upstairs conference room in Respondent's plant, Mike Yett asked Bruce if he had heard anything. Bruce asked, "Like what?" Yett replied, "You know, about the Union." Bruce replied that he had heard of it and it was a good idea. Yett responded, "I can't believe you saying that." As shown below, Bruce and Yett talked about Bruce becoming a supervisor.

Respondent called Gary Smoot. A few weeks, probably two, before the election Michael Yett asked Smoot if he had been approached by Steve with the Union. Smoot replied yes. Smoot told Yett that he did not want anything to do with the Union.

I granted the General Counsel's motion to amend the complaint by alleging that by questioning Smoot as noted in the immediately preceding paragraph, Respondent engaged in illegal interrogation.

Findings

As shown above I credit the testimony of Michael Epperson. His testimony proved that he was not a known union advocate even though his testimony shows that General Manager Yett learned that he had attended a union meeting on May 2 or 3, 1995. Yett asked Epperson about the union meeting at Creek Road and what they talked about. Yett asked Epperson if he had spoken with employee Earl Bruce of anyone. Yett asked him how he felt about the Union and if he wanted the Union. Yett asked Epperson if he would like to have Steve Bell for a boss. Epperson's testimony shows that he was also interrogated about whether he had been contacted by the Union or the Labor Board and if he had any confrontations with anyone at Adam dealing with the Union during August 1995. Epperson was asked by Yett if had any contact with Gary Blankenship or Earl Bruce.

I credit the testimony of Steven Simpson showing that Yett asked him his opinion of the Union during the organizing campaign. I credit Robert Bruce that Yett questioned him about the Union in March or April 1995. There was no showing that Bruce was a known union supporter when he was questioned.

I credit the testimony of Gary Smoot to the effect that Yett asked him if he had been approached by Steve with the Union. That conversation occurred during the union campaign.

I find in agreement with the General Counsel and the Union that the interrogation regarding union feelings and meetings constitute interrogation in violation of Section 8(a)(1) of the Act. *Stoody Co.*, 320 NLRB 18 (1995), 151 LRRM 1169 (1995); *Somerset Welding & Steel*, 304 NLRB 32, 41 (1991). The questioning of Epperson as to his testimony before the NLRB, also constitutes a violation of Sec-

tion 8(a)(1). *Bradford Coca-Cola Co.*, 307 NLRB 647 fn. 3 (1992).

5. Threatened employees with unspecified reprisals

Supervisor William Jennings once told Mike Epperson that everyone with the Union would be dealt with.

In mid to late April, Robert Earl Bruce asked Yett what difference it would make if the Union came in. Yett replied, "Well, I'll tell you, it ain't going to happen. There's not going to be a Union here. If it is, if anything happens and you all go on strike or whatever, if it comes in, that's where you're going to be, on the sidewalk." Yett told Bruce that they did not have to bargain with the employees.

Respondent called Gary Smoot. Smoot attended company meetings where Mike Yett discussed the Union. Smoot testified that Yett did not say anything about employees losing fringe benefits. Yett said that if they went Union it was pretty much a blank sheet on how the employees would be covered with health insurance. Yett said the employees would be pretty much on their own, each employee could take care of matters in their own way but no type of association would back the employee as far as benefits.

As to negotiations, Yett said that if the employees went Union "you would be on your own as far as benefits and if—the Adams part of it was gone." Yett held up a blank sheet of paper and said words to the effect that this is the union contract and you fill in the blank spaces. As to the blank paper Yett said the employees would be "pretty much on their own. You can take it for what it's worth, nothing."

Findings

I credit the testimony of Mike Epperson that he was told by Supervisor William Jennings that everyone with the Union would be dealt with. Jennings did not testify. That comment constitutes a threat of unspecified reprisals against all union supporters.

I credit Robert Bruce's testimony that Yett told him Respondent did not have to bargain with the Union and "if anything happens you're going to be on the sidewalk." I credit the testimony of Smoot to the extent his testimony shows that Yett told employees they would be on their own as far as benefits if the Union came in.

6. Threatened not to place union supporter in supervisory position

As shown above, in March or April 1995, at the upstairs conference room in Respondent's plant, Mike Yett asked Robert Earl Bruce if he had heard anything. Bruce asked, "Like what?" Yett replied, "You know, about the Union." Bruce replied that he had heard of it and it was a good idea. Yett responded, "I can't believe you saying that." Bruce and Yett discussed Bruce becoming a supervisor and "haggled about the price." Bruce walked down the steps to leave and told Yett that his final offer was \$10.25 an hour. Yett agreed to that price. For the next 5 weeks Bruce received \$10.25 an hour as opposed to his former wage of \$8.35, but he never did become a supervisor. During the 5 weeks of his increased salary Bruce continued to drive a truck.

In late May 1995, Yett told Bruce that "he thought he was going to give the job to Pete (Mobley) because, you know, he couldn't have nobody in there working for the Union, that

was for the Union." Pete Mobley did become a supervisor in late May or June 1995.

In mid to late April, Bruce asked Yett what difference it would make in the Union came in. Yett replied, "Well, I'll tell you, it ain't going to happen. There's not going to be a Union here. If it is, if anything happens and you all go on strike or whatever, if it comes in, that's where you're going to be, on the sidewalk." Yett told Bruce that they did not have to bargain with the employees.

Michael Yett admitted that he talked to Bruce about replacing the shipping foreman after the former foreman was severely burned. He offered Bruce the opportunity to be shipping foreman and agreed to immediately raise Bruce's pay to \$10.25 an hour. However, during that week another driver, Pete Mobley, had a heart attack and he discussed with Bruce letting Bruce continue to drive for a while at his increased wage level. After Mobley returned to work Bruce told Yett that he would prefer to stay on as a driver and not become a supervisor until after the union election. Yett told Bruce that he could not continue as a driver at supervisor's pay. Bruce replied, "Well, okay, but you haven't heard the last of this." Yett denied that he told Bruce that he would never be a supervisor with his Union sympathy.

Findings

As shown above I credit the testimony of Robert Bruce and do not credit the testimony of Michael Yett. In March or April, Yett offered Bruce a supervisor position. Yett and Bruce agreed on an hourly wage but the promotion was delayed when another driver suffered a heart attack. On agreement Bruce continued to drive until the other driver returned to work. I do not credit Yett's testimony that Bruce thereafter declined the supervisory position. That testimony conflicts with the testimony of Bruce. Instead I credit Bruce's testimony that Yett told him that he was going to give the job to Pete Mobley because he could not have anyone in there working for the Union. There was no evidence that Yett knew or suspected that Pete Mobley was involved in union activity. I find that Yett's actions constitute another violation of Section 8(a)(1) by threatening not to place a union supporter in a supervisory position. *Health Care & Retirement Corp.*, 307 NLRB 152 (1992).

C. Section 8(a)(3) Allegations

1. Increased wages and bonuses

As shown above, David Clegg testified that Respondent announced that it would pay its employees an incentive bonus of \$18, based on the number of doors produced. Clegg believed the bonus was announced after he signed a union authorization card and before the election. On cross-examination Clegg testified that he learned about the incentive plan about a month before he heard about the Union. In consideration of the conflicts in Clegg's recollection as to the time he first heard of the incentive bonus, I am unable to credit his testimony as to when Respondent announced the bonus.

During the company meetings Michael Yett announced an incentive plan of 5 to 10 percent. Michael Epperson recalled that he received some incentive bonus payments during the union organizing campaign before the election. Yett told the employees that the incentive plan would be erased if the Union got in but that the quotas would remain in effect and

if the employees could not achieve their quotas, Respondent would get someone that could achieve the quotas.

In April or May 1995, Epperson received a 50-cent pay increase. He along with other employees were sent to Paul Houck's office by Supervisor William Jennings. In the office Houck told Epperson that he was not ready for his raise at that time but they were going ahead and do it anyway. Houck asked Epperson his opinion of the Union.

During the union campaign, after Respondent started having antiunion meetings. Steven Simpson received his second increase in pay. While driving him to the hospital after Simpson cut his finger, Operations Manager Houck told Simpson he was going to receive a 50-cent-an-hour raise.

Gary Blankenship was told that he would get a raise 30 days after he was hired and then another raise in 90 days. Blankenship did not receive either of those raises after he was hired on February 20, 1995. However, on April 26, the day he received a reprimand for stopping his truck along with Steven Bell at Shady's Deli, he was granted a 75-cent-an-hour raise. He was not evaluated at the time he received the raise.

Michael Yett denied giving anyone a pay raise or bonus in March, April, or May 1995, in order to discourage their union activity.

Findings

In consideration of the full record, I find that Respondent initiated an incentive bonus plan during the Union organizing campaign and that it granted pay raises without evaluating employees, during the union campaign. That evidence includes the testimony of Michael Yett that he announced the incentive bonus on February 17, 1995; the testimony of Mike Epperson that he received some incentive bonuses during the union campaign and that Yett told the employees during the campaign that they would lose their incentive bonus if the Union came in but the quotas would remain and they would be replaced if they did not achieve quota; the credited testimony of Epperson that he received a 50-cent pay increase during the campaign, that Paul Houck told him he was getting the raise even though he was not ready for the raise and Houck interrogated Epperson about the Union during the interview regarding his pay raise; the testimony of Steven Simpson that he was told of his pay increase during the union campaign while riding with Paul Houck; and the credited testimony of Gary Blankenship that he was given a 75-cent pay increase on the day he received a reprimand for stopping his truck at Shady's Deli on April 20, 1995.

As to this alleged violation of Section 8(a)(1) and (3), I shall first examine whether the General Counsel proved a prima facie case. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 401 (1983), approving *Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

In consideration of the full record including the February 17 meeting agenda, I am convinced that Respondent initiated its incentive bonus on or after February 17, 1995. The employees started their union organizing campaign in January.

As to knowledge there is evidence shown above, that Operations Manager Houck implied something other than business was involved in Steve Bell's February 10 warning; and there was evidence that Respondent knew of its employees' union activities in late February or early March. The evi-

dence shows that employees began receiving incentive bonuses after Respondent learned of the union campaign and before the NLRB-conducted election.

Respondent illustrated its animus toward its employees' union activities in the numerous 8(a)(1) violations found herein. Moreover, Michael Yett coupled the bonus with the union campaign by telling employees they would lose the bonus but the quotas would remain if the Union was selected.

The full record shows that Respondent granted pay increases and incentive bonuses during the union organizing campaign and coupled those benefits with the union campaign. In view of that evidence and the showing of Union animus, I find that General Counsel proved a prima facie case in support of this allegation.

I shall consider whether the evidence proved that Respondent would have granted the pay increases and incentive bonus in the absence of the union activities.

As shown herein, Respondent at Lynchburg, is the only one of 13 facilities to grant an incentive bonus and before February 17, no one in management at Lynchburg had talked to corporate about the incentive bonus. As to the pay increases, there was no showing that before the union campaign any employee had ever received a pay increase that was not based on merit. Yett testified that all pay increases were based on merit. However, as found above, the instant record shows that employees were granted increases during the union campaign upon being told they were not ready for a merit increase and without being evaluated to determine if a merit increase was justified. I find that Respondent engaged in conduct in violation of Section 8(a)(1) and (3) by granting the wage increases and incentive bonuses in an effort to discourage its employees' union activities. *ARA Food Services*, 285 NLRB 221 (1987); *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964).

2. Reprimands and discharges

It is alleged that Respondent reprimanded and discharged Steve Bell and Gary Blankenship in violation of Section 8(a)(3).

Steven Bell

Steve Bell was the employee that contacted the Union and set up the initial meeting in the organizing campaign. Bell signed an authorization card on January 20, 1995, which was the date of the first meeting with the union representative. His card was undated but was received in the NLRB office on March 23, 1995. During March and April, Bell talked to other employees about the Union. He solicited other employees to sign authorization cards. Bell witnessed and authenticated cards signed by several other employees.

After Bell received a February 10, 1995 warning (see below), Paul Houck talked to Bell. Houck said, "You know, Steve, you're a good worker, I can depend on you to be there at work every day, you do anything that I ask you to do, you run any extra runs that I ask you to do and I just can't understand what this is about but I know, but I can't say anything."

Michael Yett admitted hearing that Steve Bell was one of two or three employees that were trying to bring in the

Union. Yett could not recall the names of the other one or two employees that he heard were pushing the Union.

Steve Bell recalled that between March and April, in an aisle in the plant, Michael Yett caught Bell and said, "I know what you're up to but it just won't work." Bell replied, "Well, I'm doing my job."

During several company meetings about the Union Mike Yett told the employees that Steve Bell was going to become their boss if the Union came in.

As shown above, on the day after Mike Epperson attended a May 2 or 3, 1995 union meeting with others including Steve Bell, at Creek Road, he was pulled off to the side by Mike Yett. Among other things, Yett asked Epperson how he felt about the Union and if he wanted the Union. Epperson replied that he was trying to keep an open mind. Yett mentioned that he knew Steve Bell had had those meetings. Yett asked Epperson if he would like to have Steve Bell for a boss.

Steve Bell received a reprimand on April 28, 1995. Bell testified that he stopped at Shady's Deli on Highway 29 near the end of his truck run on April 20 to buy a soft drink and crackers and to phone his wife. Bell phoned his wife and attempted to phone Michael Yett to arrange for his wife to pick up his paycheck that afternoon. As he was walking to the phone he noticed another Adam Wholesalers truck with Gary Blankenship driving. Blankenship came over and asked Bell where he had been that day. Blankenship then said he had to go to the restroom. Bell went to the phone and called his wife. Bell's wife told him that she had been unable to talk with Michael Yett about picking up Bell's check. Bell phoned the facility but was told that Yett and Operations Manager Paul Houck were in a meeting. He and Blankenship then went into the restaurant and ordered sandwiches. Before he finished his sandwich Bell phoned the facility again and asked for Yett but was told that Yett and Houck were still in a meeting. Bell told Blankenship that he had to stop for gas. Blankenship said he was heading in to the terminal. The two left in their trucks.

Bell testified that shortly after he arrived at Shady's Deli he saw Tim Coats and George Thurner drive by and Bell waved to them.

Bell estimated that he was at Shady's Deli from 12 to 15 minutes at the most. He and Blankenship had not arranged to meet at Shady's Deli. After leaving Shady's Deli Bell drove to Ryder, the fuel stop for Respondent's trucks, and filled his truck with gasoline. Immediately afterward Bell returned to Respondent's plant.

No one in supervision said anything to either Blankenship or Bell about their being stopped at Shady's Deli until April 26. Blankenship was called into the office where he confronted Yett and Operations Manager Houck. Houck gave Blankenship a warning. Bell was not called into the office until April 28.

On April 28 Operations Manager Houck came to Bell and told him to go with Houck to Yett's office. Bell asked to have a witness or to tape record the meeting. Yett denied that request. Houck read a discrepancy report to Bell. Yett asked why two trucks were at Shady's Deli at the same time. Bell responded that Blankenship had just happened to show up when he had pulled in. Yett replied, "Right." Yett asked how long Bell was at the deli and Bell replied that he was there 12 to 15 minutes. Yett said "no you were there thirty

to forty minutes" because they had two other employees that sat up the road and waited for them to pull out of Shady's Deli. The two employees timed them at 30 to 40 minutes. Bell denied that was the case. Yett said they had prepared a reprimand that they knew Bell would not sign. The written reprimand indicated under details of infraction:

On Thursday, April 20, 1995, Approximately 3:00-3:30 pm your truck was seen located at an Amoco Station in Lovingson, Va. This was witnessed by two Adam Wholesale employees. Your drivers log was not noted as such.

Under further action, was the notation, "Discharge." Two prior reprimands were noted as occurring on August 18, 1994, and February 10, 1995. It was noted that a written report was prepared on the February 10, 1995 incident but no written report was prepared on the August 18, 1994 incident.

Michael Yett told Bell they would take care of the matter and let him know their final decision. Bell said, "Well, this says discharge." Yett replied, "We'll let you know."

Yett testified that he received a phone call from Turner on April 20. Turner was traveling on Highway 29 with an outside sales employee, Coats. Turner told Yett that there were two Adam Wholesalers trucks at Shady's Deli Amoco Station on Highway 29. Employees Blankenship and Steve Bell were driving the two trucks. According to Yett, it was late in the day, and the two trucks should have been on their way to the plant instead of being parked. Yett testified that would violate a verbal policy that the drivers would not know about but was "deriving from logic." Yett admitted that drivers are allowed to occasionally stop and buy a Coke and a bag of "nabs" or to go to the bathroom. Yett admitted that drivers occasionally did stop to phone back to the plant but that would not be permitted where, as in the case of the two trucks on April 20, all their material had been delivered. Respondent did not produce any rules or regulations supporting Yett on that point.

Michael Yett was asked if Turner told him that he timed the trucks at Shady's Deli on April 20, 1995. Yett admitted that Turner did not time Bell and Blankenship at the deli.

After the meeting Bell walked out with Paul Houck. Houck said to Bell, "I know what it's all about and I wish I could say something but I have a boss, too."

Bell continued to work after his April 28 warning until the day after the May 4 NLRB-conducted election.

Steve Bell was the union observer during the May 4 election.

Bell walked out of the plant after the Union lost the election on May 4. All the "guys" were outside on a break and they asked Bell how did it go. He told them the vote was not to bring in the Union. Someone said, "You ought to go after Mike Yett." Bell replied, "Someday, somebody will nail him to the wall."

On May 5 Bell was discharged without further incident. Near the end of his run that day Bell phoned Operations Manager Houck. Houck told Bell to see him when he returned. Houck called Bell into his office where Michael Yett was sitting behind the desk. Yett said, "We made a decision on that last paper we wrote you up. The reprimand that we wrote you up on. . . . Here's the paper. . . ." Bell was handed an envelope which included a termination slip.

Bell said that he could not believe they were terminating him. Yett looked at him, grinned, and laughed. Bell said ". . . It's for the Union, right?" Neither Yett nor Houck replied to Bell's question. While Bell was in the office Yett told him that he had notified the police and FBI for Bell threatening Yett's life.

Michael Yett wrote Bell regarding his discharge:

Dear Mr. Bell:

I have been dissatisfied with your general attitude towards this company, your job assignment, your fellow employees, and your immediate supervisors for some time and an incident which happened on April 20, 1995, makes me feel it is necessary to write this letter.

As you know, it is company policy to receive three warnings. You received one verbal warning on August 8, 1994, making derogatory comments about the company. Then, on February 10, 1995, you received a written warning about saying things to our customers that were clearly a violation of company policy. Then on April 20, 1995, your truck was seen parked in Lovingson, VA at an Amoco station. This incident was witnessed by the Vice President of Adam Wholesalers and another employee of Adam Wholesalers. Your log book did not record this as such a stop of approximately thirty to forty minutes.

We have considered all of the above on making our decision. Therefore, we determined that it is necessary to terminate your employment at Adam Wholesalers effective May 5, 1995.

If you have any questions regarding the above or any problems that you feel should be discussed in this matter, feel free to contact me.

Bell testified that he had not received a verbal warning. After Bell received a written warning on February 10, 1995, he told Michael Yett that according to the handbook he was to first receive a verbal warning before the written warning he had received on February 10 and that he had not received a verbal warning. Yett responded "F__ the Handbook. I make the rules, I do the firing and I do the hiring around here."

At that time Bell was unaware of any warnings before February 10, 1995.

Michael Yett admitted that he told the employees that if the Union came in Steve Bell would probably be the senior union representative and if anyone had a grievance they would probably have to report that to Bell. He denied saying that Bell would be president of the Union or of the Company. He denied telling employees that Bell would be their boss.

Gary Smoot has worked for Respondent since May 1994. A few weeks, probably two, before the election Michael Yett asked Smoot if he had been approached by Steve with the Union. Smoot replied yes. Smoot told Yett that he did not want anything to do with the Union.

Michael Yett testified that regardless of the general policy of a verbal reprimand, and two written reprimands before discharge, the policy book also provides that it is the sole discretion of the supervisor to discharge based on the severity of the offense.

Yett testified that Bell was discharged because of the succession of reprimands that involved customer complaints, job performance, and failure to follow company policy.

According to Yett Respondent placed Bell on another run after four customer complaints. Those complaints and that action preceded any knowledge of union activity.

As to the second reprimand awarded Bell, Yett received a report of a customer complaint that Bell had failed to make a delivery. Yett understood that Bell had phoned into the plant and reported he was running too late. Yett felt that Bell should have phoned the customer and given the customer an opportunity to wait for the delivery.

Regarding the third reprimand Yett testified that was for Bell's failure to log in a stop in excess of 15 minutes on April 20, 1995. According to Yett, when Blankenship was called into the office of April 26, Blankenship admitted that he was at Shady's Deli on April 20 for 30 to 40 minutes. Blankenship admitted that his failure to log the stop was an oversight on his part. Yett admitted delaying action on Bell's discharge because of the upcoming May 4 election and Bell's known union activity. Yett did not want to prejudice the election. Additionally, Respondent Counsel advised Yett not to discharge Bell because of some legal ramifications.

Yett denied that Bell's union activity had anything to do with his reprimand or discharge.

Findings

As to the alleged violation of Section 8(a)(1) and (3) by reprimanding and discharging Steve Bell because of his protected activities, I shall first examine whether the General Counsel proved a prima facie case. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 401 (1983), approving *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

In consideration of whether the General Counsel proved a prima facie case the Board has held:

[I]n order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish (1) that the alleged discriminatees engaged in union activities; (2) that the employer had knowledge of such; (3) that the employer's actions were motivated by union animus; and (4) that the discharges had the effect of encouraging or discouraging membership in a labor organization. *Electromedics, Inc.*, 299 NLRB 928, 937, affd. 947 F.2d 953 (10th Cir. 1991).

The evidence is not in dispute that Bell was deeply involved in the union organizing campaign and that Respondent was fully aware of Bell's activity supporting the Union. The evidence shows that Respondent thought that Bell was the principal union supporter. That is shown in the numerous references by Yett in company meetings to Bell becoming the employees' boss if the Union is selected.

The credited testimony of Steve Bell proved that he was involved in the initial meeting with the Union, that he signed a union authorization card on January 20, 1995, and that he solicited cards from other employees. I credit the admission of Michael Yett that he was told that Steve Bell was one of the employees that was trying to get in the Union. Yett was unable to recall any employee initially involved in the Union other than Steve Bell. I credit the testimony of the witnesses

shown above that Yett told employees that Steve Bell would be their boss if the Union was elected.

I also credit Bell's undisputed testimony that Paul Houck told him on February 10, 1995, that Houck knew but could not say why Bell, a good employee, had received a reprimand. Houck made a similar comment after Bell's April 28 warning.

The record included a showing of animus. That was shown through evidence regarding Yett's numerous speeches to employees and his conversations with employees found to constitute 8(a)(1) violations. Perhaps the most revealing incident occurred when Blankenship received a warning on April 26 for stopping at Shady's Deli with Bell. The credited testimony of Blankenship proved that Yett told him that he was seen "at the wrong time with the wrong person." That wrong person was Steve Bell.

There was evidence that Yett felt so strongly against the Union that he threatened to discharge union supporters. Cynthia Glass talked with Michael Yett at the plant in her office, a couple of weeks before the election. During their conversation Yett stated that anyone that would vote yes for the Union would be fired. Glass tried to tell Yett that you need a good reason to fire somebody to avoid law suits. Yett just shook his head.

The record showed that that the discharges of Bell and Blankenship had the effect of encouraging or discouraging membership in a labor organization. As shown above all the employees were told that Bell would become their boss if they selected the Union. Blankenship was associated with Bell in the April 20 incident at Shady's Deli. Yett told Blankenship that he had been caught with the wrong man on that occasion. Yett associated Blankenship with the Union after the election when Blankenship asked for help in loading his truck and in interrogation of employee Mike Epperson.

I am convinced that the General Counsel proved a prima facie case.

I shall now consider whether the evidence proved that Respondent would have reprimanded and discharged Bell in the absence of the union activities.

Respondent argued that Bell was discharged for various reasons but most notably because of his receipt of several warnings including a warning on April 28. Respondent failed to offer any probative evidence that Bell or Blankenship stopped at Shady's Deli on April 20 for more than 15 minutes. I find that Bell's April 28 warning was illegal and pretextual. Respondent did not rely on any evidence available to it showing that Bell had violated any rule, regulation or company policy by stopping at Shady's Deli on April 20, 1995. Respondent failed to show through any credited evidence that it would have discharged Steven Bell in the absence of his union activity.

I find that Respondent failed to prove that it would have warned and discharged Steve Bell in the absence of union activity.

Here the General Counsel also contends that Respondent engaged in pretext. The Eleventh Circuit Court of Appeals has found:

First, the General Counsel must show by a preponderance of the evidence that protected activity was a motivating factor in the employer's decision to discharge an employee. Such a showing establishes a section 8(a)(3)

violation unless the employer can show as an affirmative defense that it would have discharged the employee for legitimate reason regardless of the protected activity. The General Counsel may then offer evidence that the employer's proffered "legitimate" explanation is pretextual—that the reason either did not exist or was in fact relied upon—thereby conclusively restore the inference of unlawful motivation. *NLRB v. United Sanitation Service*, 737 F.2d 936, 939 (11th Cir. 1984); also quoted in *Northport Health Services, Inc. v. NLRB*, 961 F.2d 1547, 1550 (11th Cir. 1992).

The evidence shows that the stated reasons for the warnings issued to Bell and Blankenship for the April 20 incident were pretextual. The reasons alleged by the Respondent "were not in fact relied upon" in view of the record proof that no evidence supported Respondent's contention that Bell and Blankenship stopped for 30 to 40 minutes and the record proved that Bell and Blankenship did nothing for which employees had ever been disciplined. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enf. sub nom. 705 F.2d 799 (6th Cir. 1982).

I find that the credited testimony of Bell and Gary Blankenship proved that neither Bell nor Blankenship broke any of Respondent's rules or policies when they stopped at Shady's Deli on April 20, 1995, and the stop there did not last 30 or more minutes as alleged by Respondent. I specifically discredit Yett's testimony that he relied on an admission by Blankenship in determining how long the trucks were stopped at the deli. I credit Blankenship's testimony proving that his reprimand had been completed before he was interviewed on April 26. In view of the fact that the reprimand already stated that the trucks had been at Shady's Deli from 30 to 40 minutes, it is obvious that Yett did not rely on anything Blankenship said in the interview. Obviously Yett did not rely on Blankenship saying that he stopped at the deli from 15 to 20 minutes. There was no testimony from anyone from Respondent that witnessed Bell and Blankenship at Shady's Deli and Michael Yett admitted that the witnesses did not report to him as to how long Bell and Blankenship were stopped at the deli.

Yett falsified first Blankenship's then Bell's April warning. During the hearing Yett admitted that before Blankenship was reprimanded on April 26, no one had reported to him on the length of time Bell and Blankenship had stopped at Shady's Deli. Nevertheless, as shown above both Blankenship and Bell's reprimands stated:

On Thursday, April 20, 1995, Approximately 3:00-3:30 pm your truck was seen located at an Amoco Station in Lovingson, Va. This was witnessed by two Adam Wholesale employees. Your drivers log was not noted as such.

Bell's uncontradicted testimony proved that after he received the April 28, 1995, reprimand, Operations Manager Paul Houck told him that he knew what it was about and wished he could say something but he had a boss too. Bell's credited testimony also proved that after he responded to a question from Yett that Blankenship had just happened to show up at Shady's Deli while Bell was there, Yett replied "Right." I find that response by Yett illustrated that he believed that Bell was being untruthful as to why the two

trucks were at Shady's Deli. In view of Yett's strong belief that Bell was the principal union supporter and the proximity to the May 4 election, I am convinced that Yett suspected that Bell and Blankenship had stopped because of the Union.

Even though nothing occurred which contributed to Bell's discharge after his April 28 warning, Yett added to the reasons for discharge in his discharge letter to Bell and in his testimony as to why Bell was discharged. In the letter Yett added his dissatisfaction with Bell because of Bell's attitude toward the Company, his job assignments, his fellow employees and his immediate supervisor. At the hearing after being called by Respondent Yett testified that Bell was "terminated on the succession of reprimands that involved customer complaints, and job performance and failure to follow Company policy." A finding of pretext may be based in part on a respondent employer adding to reasons for discharge. *Sawyer of Napa, Inc.*, 300 NLRB 131 (1990).

In view of the above and the full record, I find that Respondent engaged in activity in violation of Section 8(a)(1) and (3) by warning and discharging Steven Bell.

Gary Blankenship

Blankenship worked for Respondent as a truckdriver from February 20 to September 20, 1995. Blankenship testified that he signed a union authorization card.

On April 26 Blankenship was awarded a reprimand showing:

On Thursday, April 20, 1995, Approximately 3-3:30 p.m. your truck was seen located at an Amoco station in Lovingson VA. This was witnessed by two Adam Wholesale employees. Your drivers log was not notated as such.

Blankenship testified that he pulled off at Shady's Deli on April 20 to buy a sandwich. As he approached he noticed another of Respondent's trucks at the Amoco station. He pulled in and Steve Bell was getting out of that truck. He and Bell went into the station where Blankenship ordered a sandwich and used the bathroom. Blankenship waited while Bell used the pay phone. He then drove back to the plant. He noticed that Bell pulled off at Ryder's where the drivers get fuel. Blankenship heard nothing else about the incident until Paul Houck called him into Mike Yett's office on April 26. Yett said this had to do with the incident at Shady's Deli where two Adams employees had seen "us sitting up there for about thirty (30) to forty (40) minutes." Blankenship replied, "Mr. Yett, no, sir. We was there fifteen (15) or twenty (20) at the maximum." Yett leaned back and snickered and said, "Well, you were with the wrong person at the wrong time." Blankenship was given the warning which had been filled out before the meeting. Blankenship signed the reprimand and wrote in "Driver on Lunch." Blankenship testified that he had not taken a lunchbreak that day before arriving at Shady's Deli. Blankenship testified that he did not mark his log because he did not stay past 15 minutes at Shady's and the rules indicate it is not necessary to mark the log for a 15-minute stop.

Yett testified that Blankenship and Bell were awarded reprimands for failure to log in a stop in excess of 15 minutes on April 20, 1995. According to Yett, when Blankenship was

called into the office of April 26, Blankenship admitted that he was at Shady's Deli on April 20 for 30 to 40 minutes.

Yett was asked if Thurner timed Blankenship and Bell at Shady's Deli. He testified:

No, he said that they stopped and looked at the trucks and there was no one in the trucks, or no one visible on the parking lot. They stayed a few minutes and then left. But they called me from their mobile phone and said, you know, we need to find out why our two (2) trucks were sitting there at a truck stop. Was it a scheduled stop or why are our two (2) trucks—It's just a very unlikely event that any two (2) Adam trucks would be in any one place. And that's a suspicious nature.

Gary Blankenship testified that he had not received a warning before the April 26 reprimand even though the handbook indicates that he should have received a verbal warning before receiving that written warning.

On a Friday after the election, Blankenship phoned the office and told Michael Yett that he could not get anyone to help load his truck. Yett said, "It might have something to do with that Union thing." Blankenship asked what that had to do with it. Yett replied, "Well, I don't reckon it had anything."

On August 11, 1995, Blankenship was called into a meeting with Paul Houck and Pete Mobley. Houck told Blankenship that he had left early on his run. Blankenship responded that he did know there was a set time to leave but he admitted leaving a window screen at his first stop in Essex, Maryland, before they opened.

Houck said he wanted to talk about Blankenship's attitude in the plant. Blankenship said that he did not have an attitude in the plant and Houck struck through something on the reprimand. Houck said the third thing he wanted to discuss was Blankenship "bad mouthing somebody at Regional." Blankenship denied that he had bad-mouthed anyone at Regional Contractors in Fredericksburg, Virginia.

Houck gave Blankenship a written warning showing an infraction date of July 3, 1995, and giving the following details of infraction:

1. Driver left too early to go on his run. 1 hour early.
2. XXXXXXXX attitude.
3. Saying things to our customers that do not need to be said. Getting smart mouth with Regional Contractors in Fredericksb. Steve at Regional Contractors said that if Gary Blankenship could not watch his mouth that he doesn't have to come back there.

Blankenship signed the reprimand and wrote, "I did not bad mouth anyone at Regional." Blankenship denied that he checked that he generally agreed with the details of the reprimand.

On September 21, 1995, Houck called Blankenship into the office where Pete Mobley was present. Blankenship was given a warning and terminated. The warning gave the following details of infraction dated September 18, 1995:

1. Left door off Truck for our customer *Jim Carpenter*. Price of Door mistake \$1237.77

2. Left one Patio screen off truck. Price of screen \$41.54 *Quality Window & Door*

3. Left 7 screens off truck for Marvin Window & Door Showplace Price \$259

On his termination form the two above-mentioned reprimands were noted as past reprimands. In addition to the matters noted in his discharge documents, Yett considered two incidents on the loading docks in August involving Blankenship, a shipping foreman and some other coworkers. According to Yett, he understood that the incidents that were reported to him, almost resulted in physical contact. Yett testified that Blankenship's feelings toward the Union had nothing to do with his reprimands or his termination.

Findings

3. Reprimands—April 26

As to the alleged violation of Section 8(a)(1) and (3) by reprimanding Gary Blankenship because of protected activities, I shall first examine whether the General Counsel proved a prima facie case. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 401 (1983), approving *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

As shown above, the evidence is not in dispute that Steve Bell who was at Shady's Deli with Blankenship, was deeply involved in the union organizing campaign and Respondent was fully aware of Bell's activity. The evidence shows that Respondent thought that Bell was the principal union supporter.

The record shows animus. Yett revealed his feelings about the Union in the numerous speeches to employees and his conversations with numerous employees found to constitute 8(a)(1) violations. Perhaps the most revealing incident occurred during Blankenship's April 26 interview for stopping at Shady's Deli with Bell. The credited testimony of Blankenship proved that Yett told him that he was seen "at the wrong time with the wrong person." Blankenship was with Steve Bell.

As shown above under Steve Bell, the record showed that that the discharges of Bell and Blankenship had the effect of encouraging or discouraging membership in a labor organization. As shown above all the employees were told that Bell would become their boss if they selected the Union. Blankenship was associated with Bell in the April 20 incident at Shady's Deli. Yett told Blankenship that he had been caught with the wrong man on that occasion. Yett clearly associated Blankenship with the Union after the election when Blankenship asked for help in loading his truck and in interrogation of employee Mike Epperson.

The evidence shows that the stated reasons for the warnings issued to Bell and Blankenship for the April 20 incident were pretextual. The reasons alleged by the Respondent "were not in fact relied upon" in view of the record proof that no evidence supported Respondent's contention that Bell and Blankenship stopped for 30 to 40 minutes and the record proved that Bell and Blankenship did nothing for which employees had ever been disciplined. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. sub nom. 705 F.2d 799 (6th Cir. 1982). See *Flexsteel Industries*, 316 NLRB 745 (1995).

I find that the General Counsel proved a prima facie case that Respondent reprimanded Gary Blankenship on April 26 in violation of Section 8(a)(1) and (3).

In view of my determination that Respondent's alleged reason for Blankenship's April 26 reprimand was pretextual, it is apparent and I find that Respondent failed to prove that Blankenship would have received a warning on April 26 in the absence of the employees' union activities. I find that Respondent engaged in activity in violation of Section 8(a)(1) and (3) by warning Blankenship on April 26, 1995.

4. August 11 warning

Again as to the alleged violation of Section 8(a)(1) and (3) by reprimanding Gary Blankenship because of protected activities, I shall first examine whether the General Counsel proved a prima facie case.

Blankenship's August 11 warning was based on his leaving on his run early one morning (before that time there was no set time for leaving on a run); Blankenship's attitude in the plant even though during the interview Operations Manager struck through the word that preceded the word "attitude" and did not continue to discuss attitude; and for bad-mouthing a customer even though Blankenship credibly testified that he did not say or do anything wrong with the customer and his testimony was not disputed by probative evidence.

As shown above the record evidence established that Respondent associated Blankenship with Steve Bell because of the April 20 incident at Shady's Deli.

On the Friday after the election after Blankenship phoned Yett and asked for someone to help load his truck, Yett replied that Blankenship's failure to get help may have something to do with that "Union thing." That comment shows that Yett was then associating Blankenship with the Union.

Additionally there was more evidence that Yett believed that Blankenship was affiliated with the Union. Michael Epperson was recalled to work for Respondent in August after a July layoff. After returning to work, Michael Yett pulled him off to the side and asked if he had any contact with the Union or the Labor Board. Epperson told Yett that he had no such contact. Later in August Yett pulled Epperson aside and asked him if he had any confrontations with anyone at Adams dealing with the Union. Yett specifically asked Epperson if he had any contact with Gary Blankenship or Earl Bruce.

The record proved knowledge of union activities and animus. Again, as was the case on April 26, Blankenship was warned because of a nonexistent rule. There was no rule against leaving early on a run. In fact, Michael Yett admitted that he was unaware of when drivers were expected to leave on their runs and there was no evidence showing that drivers were expected to leave after a specific time. Although the warning specified attitude as a second reason, that statement was partially stricken when Blankenship disputed Houck's assertion that he had an attitude problem and Houck said nothing else about attitude. As to the third reason given for the August 11 warning, the record contained no evidence to support Respondent's contention that Blankenship smart-mouthed a regional contractor in Fredericksburg. In that regard I credit the testimony of Blankenship showing that he said nothing to the regional contractor that was out of line.

There was no probative evidence disputing Blankenship in that regard.

I find that the General Counsel proved a prima facie violation.

In view of the above, I am convinced that Respondent did not rely on its asserted reasons to warn Blankenship. The evidence shows those reasons were pretextuous. Moreover, Respondent failed to offer any credible evidence that it would have warned Blankenship in the absence of its employees' union activities. I find that Respondent violated Section 8(a)(1) and (3) by warning Blankenship on August 11, 1995.

5. Discharge

As to the alleged violation of Section 8(a)(1) and (3) by discharging Gary Blankenship because of his protected activities, I shall again first examine whether the General Counsel proved a prima facie case.

As shown above, I find that the credited testimony of Blankenship and Steve Bell proved that neither Bell nor Blankenship broke any of Respondent's rules or policies when they stopped at Shady's Deli on April 20, 1995. I find there was no probative evidence offered by Respondent to show that Bell or Blankenship stopped for more than 15 minutes at Shady's Deli on April 20 and I found that Respondent engaged in unfair labor practices by issuing that warning to Blankenship.

In making the above finding, I credited Bell's uncontradicted testimony that after he received a reprimand on April 28, 1995, Operations Manager Paul Houck told him that he knew what it was about and wished he could say something but he had a boss too.

As shown above when interviewed and reprimanded on April 26 Blankenship was told by Yett that he was in the wrong place with the wrong person. That reference to Blankenship being with known union advocate Steve Bell lends additional support to the showing that Respondent associated Blankenship with the Union.

Michael Epperson was recalled to work for Respondent in August after a July layoff. After returning to work, Michael Yett pulled him off to the side and asked if he had any contact with the Union or the Labor Board. Epperson told Yett that he had no such contact. Later in August Yett pulled Epperson aside and asked him if he had any confrontations with anyone at Adams dealing with the Union. Yett specifically asked Epperson if he had any contact with Gary Blankenship or Earl Bruce.

As shown above, I find that Respondent engaged in a violation of Section 8(a)(1) and (3) of the Act by warning Blankenship on April 26 and August 11, 1995. His discharge notice of employee reprimand listed prior reprimands of April 20 (April 26) and July 31 (August 11). Michael Yett testified that Blankenship was discharged because of his accumulation of three warnings. Discharge based on an accumulation of warnings including warnings in violation of Section 8(a)(1) and (3) also constitute an unfair labor practice. *Care Manor of Farmington, Inc.*, 318 NLRB 725 (1995).

There was evidence showing that Yett threatened to discharge all union supporters. Cynthia Glass talked with Michael Yett at the plant in her office, a couple of weeks before the election. During their conversation Yett stated that anyone what would vote yes for the Union would be fired.

Glass tried to tell Yett that "you need a good reason to fire somebody to avoid law suits." Yett just shook his head.

Subsequently, as was the case in the discharge of Bell, Yett added to the reasons for Blankenship's discharge. He testified that two incidents on the docks resulted in near physical contact on the docks were also considered in discharging Blankenship. However, there was no documentation as to those incidents and there was no mention of those incidents in the discharge interview of Blankenship. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. sub nom. 705 F.2d 799 (6th Cir. 1982).

I find that the General Counsel proved that Respondent discharged Blankenship because of its employees' union activities and that Respondent failed to prove that it would have fired Blankenship in the absence of the union activities. I find that Respondent violated Section 8(a)(1) and (3) by discharging Gary Blankenship.

D. Section 8(a)(5) Allegations

Respondent admitted that the following employees constitute a unit appropriate for collective bargaining:

All full time and regular part time production and maintenance employees, including drivers, employed by Respondent at its Lynchburg, Virginia facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Respondent denied that the Union has been the exclusive collective-bargaining representative for the above-described unit employees since March 21, 1995.

Steve Bell witnessed and authenticated union authorization cards signed by himself and by employees William Pete Mobley, Timothy S. Bates, Kevin A. Duff, Jeff Ramsey, Kevin Scotty Mobley, L. Bruce Carnell, Douglas Earl Karl, Brian Keith Woody, Joseph W. Quinn Jr., and Gary D. Brown Jr.

David Clegg, who worked for Respondent for about a year including the January through May 1995 period as a machine operator, testified. Clegg identified a union authorization card as one he signed at Bull's Restaurant. Steve Bell gave the card to Clegg. Clegg recalled signing the card in January or February 1995.

Michael Epperson worked for Respondent during the 1995 union organizing campaign. He signed a union authorization card after being given the card by Steve Bell. Epperson recalled that he signed the card in early or mid-March 1995.

Thomas Ray Daniel identified a union authorization card as one he signed. The card was undated but was stamped by the NLRB Regional Office on March 23, 1995.

Larry Kidd identified a union authorization card he signed in Respondent's parking lot. Kidd's card was undated but was stamped by the NLRB on March 23, 1995.

Gary Garrett identified a union authorization card he signed in Respondent's parking lot. Garrett's card was undated but was stamped by the NLRB on March 23, 1995.

Gary Blankenship identified a union authorization card as one he signed on February 26, 1995. The card was undated and was stamped received by the NLRB on March 23, 1995.

Robert Earl Bruce identified a union authorization card that he signed in the first part of March at the Golden Corral.

All the above-listed employees that signed union authorization cards were listed on the *Excelsior* list. That list included the names of 32 employees and, as shown above, 18 had signed union authorization cards.

Findings

I credit the testimony shown above showing that the Union achieved a majority during the 1995 union campaign. The credited record showed that 18 cards for employees in a unit of no more than 32 employees, were turned into the NLRB Regional Office on March 23, 1995.

Having found that a majority was established, I shall consider whether the evidence supports the General Counsel's contention that a bargaining order is warranted.

In *A.P.R.A. Fuel Oil*, 309 NLRB 480 (1992), the Board upheld a bargaining order where the hallmark violations included threats of plant closure and discharge and subsequent discriminatory discharges. The Board considered that most of the violations were committed by individuals at the top of the management hierarchy. The Board considered the small size of the bargaining unit (19 employees). In *Interstate Truck Parts*, 312 NLRB 661 (1993), the Board granted a *Gissel* order where Respondent's president interrogated two of the three employees in the bargaining unit upon receipt of the union demand for recognition, then threatened to cut wages and benefits, and alter the employees' work schedules. He threatened to close the facility and carried out that threat and discharged one of the three employees that was a union supporter. A *Gissel* order was granted in *America's Best Quality Coatings Corp.*, 313 NLRB 470 (1993), where the employer transferred all the bargaining unit employees to another payroll on the day after the union demanded recognition; there were various threats and interrogations; unlawful delays in promised raises and vacations and the president visited employees at their workstations where he interrogated one employee and directed another employee to remove a pronoun sign while permitting an antiunion sign to remain at a nearby workstation. The employer stacked the bargaining unit by hiring new employees. The unfair labor practices continued after the holding of an inconclusive election. There was a mass layoff and delayed recall of employees along with the continued withholding of raises and vacations followed by a sudden grant of benefits after a mass layoff and the discharges of three pronoun employees. In *Airtex*, 308 NLRB 1135 (1992), the Board agreed to a *Gissel* order in a six-employee unit where the president and owner threatened union supporters with loss of their jobs; and that he would close the plant before signing an agreement with the union. He repeated the threats of job loss after the election and discriminatorily changed working conditions, issued a disciplinary notice to and laid off the leading union adherent.

In determining whether a bargaining order is appropriate to protect employees sentiments and to remedy an employer's misconduct, the Board examines the nature and pervasiveness of the Employers practices. In weighting a violation's pervasiveness, relevant considerations include the number of employees directly affected by the violation, the size of the unit, the extent of dissemination among the work force and the identity of the perpetrator of the unfair labor practices. *Holly*

Farms, 311 NLRB 273, 281 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995).

Here the unfair labor practices were pervasive. The entire operations involved 38 to 40 employees. As shown above, numerous 8(a)(1) violations occurred during employee meetings where all unit employees except noted union supporters were invited. All those violations involved comments by Respondent's highest ranking official at its Lynchburg facility. Other violations had pervasive effect.

[T]he Respondent engaged in a pattern of unfair labor practices, several of which the Board has characterized as "hallmark" violations for purposes of evaluating the appropriateness of a *Gissel* order. Of these hallmark unfair labor practices, we particularly note the discriminatory discharge of three employees and the unlawful grant of benefits in the form of wage incentive plans which eventually affected all the unit employees in both the upholstery plant and the wood mill. Those discharges, summarized below, were "complete acts (as distinguished from statements) which may reasonably be calculated to have a coercive effect on employees and to remain in their memories for a long period." . . . *Flexsteel Industries*, 316 NLRB 745, 746 (1995).

As shown above I found that Respondent engaged in 8(a)(1) violations by discriminatorily prohibiting its employees from wearing Teamsters Union baseball caps while opening soliciting its employees to wear vote no buttons; by threatening its employees with unspecified reprisals for wearing Teamsters Union baseball caps; threatening its employees with loss of benefits and jobs if they selected the Union; offering to remedy employee grievances if the employees refrained from selecting the Union; creating the impression that its employees union activities were under surveillance; threatening that if the Union was selected everything would be renegotiated, that Respondent did not have to give anything in negotiations and the employees could lose all their benefits; that the employees' life insurance would be dropped immediately if the Union came in; granted increased wages to its employees to discourage union activity; initiated and granted an employee incentive pay plan to discourage union activity; threatening its employees that everyone that supported the Union would be dealt with; threatening employees that it did not have to bargain with the Union and if the Union came in and anything happened the employees would be on the sidewalk; threatening its employees that if the Union came in they would be on their own as far as benefits; and by threatening not to place a union supporter in a supervisory position.

Also the 8(a)(3) violations were pervasive. The wage increases and bonuses as well as the warnings and discharges had unit wide affect. See *Flexsteel Industries*, 316 NLRB 745 (1995); holding that wage increases in particular have been recognized as having a potential long-lasting effect.

In *Flexsteel Industries*, supra at 759, it was noted that where employer discharged employee that solicited 16 percent of the employees to sign cards, "other employees could not have missed the meaning of the precipitous discharge of that employee nor could they have missed the message of support the union and lose your job."

Objections (11-RC-6083)

The Union filed timely objections alleging that Respondent threatened its employees with loss of jobs, benefits, and unspecified reprisals in order to discourage union activities; threatened the futility of selecting a bargaining representative; promised to remedy employee grievances; promised employees wage, bonus and benefit improvements in order to discourage union activities; interrogated and polled employees concerning the Union; created the impression of surveillance of its employees' union activities; discriminatorily enforced its dress code by refusing to allow employees to wear prounion insignia; issued warnings and discharged an employee because of union activities; and granted pay raises and bonuses in order to discourage union activities.

As found above the Union filed the petition in 11-RC-6083 on March 23, 1995, and the election was held on May 4, 1995. The bargaining unit was described:

All full time and regular part time production and maintenance employees, including drivers, employed by Respondent at its Lynchburg, Virginia facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

In addition to the evidence introduced through witness called by the General Counsel, the Union called Cynthia Glass.

Cynthia Glass testified that she and Sandy Daniels worked in a small office in the shop area next to Paul Houck's office. She and Daniels worked with helping with production scheduling, doing the work tickets, the labels for the finished product, and they also loaded tickets into the computer each morning. They also handled customer calls and in-house transfers from one plant division to another.

Glass talked with Michael Yett at the plant in her office, a couple of weeks before the election. During their conversation Yett stated that anyone what would vote yes for the Union would be fired. Glass tried to tell Yett that "you need a good reason to fire somebody to avoid law suits." Yett just shook his head.

Glass testified that Supervisors Paul Houck and William Jennings wore vote no buttons.

Findings

As shown above, the full record supported the Union's objections. Unfair labor practices found herein during the critical period from the time of the filing of the RC petition to the date of the election, proved that Respondent engaged in sufficient objectionable conduct to require setting aside the election.

I find that even though Steven Bell was not actually discharged until after the election on May 5, the evidence shows that he was informed of his likely discharge on April 28. That April 28 interview and warning support the Union's objections. However, it is unnecessary to determine that the discharge occurred during the critical period. The other findings are more than sufficient to support my finding that the election should be set aside.

As found herein, the Union had the support of 18 of 32 unit employees on March 23, 1995. By May 4 the number of union supporters had dissipated and the Union lost the election. The Respondent's pattern of unfair labor practices

set forth above, by their nature and extent, had at the very least a tendency to undermine the Union's majority support and therefore impede the Board's election process. The series of unfair labor practices which characterized the Respondent's election countercampaign was highlighted by unlawful discharges and unlawful grants of benefits which particularly linger in the memories of a large number of employees. There are no mitigating circumstances here which would tend to lessen the impact of the Respondent's misconduct. Traditional Board remedies are unlikely to rectify sufficiently the damage done by the Respondent to the employees' Section 7 rights and unlikely to insure the fairness of a second election. Therefore, to protect the sentiment of a majority of employees in favor of the Union, as demonstrated by their authorization cards on March 23, 1995, a bargaining order is appropriate in this case. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969); *Flexsteel Industries*, 316 NLRB 745 (1995).

CONCLUSIONS OF LAW

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

2. Chauffeurs, Teamsters and Helpers Local Union No. 171 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by discriminatorily prohibiting its employees from wearing Teamsters Union baseball caps while opening soliciting its employees to wear vote no buttons; by threatening its employees with unspecified reprisals for wearing Teamsters Union baseball caps; threatening its employees with loss of benefits and jobs if they selected the Union; offering to remedy employee grievances if the employees refrained from selecting the Union; creating the impression that its employees union activities were under surveillance; threatening that if the Union was selected everything would be renegotiated, that Respondent did not have to give anything in negotiations and the employees could lose all their benefits; that the employees life insurance would be dropped immediately if the Union came in; granted increased wages to its employees to discourage union activity; initiated and granted an employee incentive pay plan to discourage union activity; threatening its employees that everyone that supported the Union would be dealt with; threatening employees that it did not have to bargain with the Union and if the Union came in and anything happened the employees would be on the sidewalk; threatening its employees that if the Union came in they would be on their own as far as benefits; and by threatening not to place a union supporter in a supervisory position has engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent by granting wage increases and incentive bonuses in an effort to discourage its employees' union activities; and by warning and discharging its employees Steve Bell and Gary Blankenship because of their union affiliation and preference has engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

5. The Union is and has been at material times the certified collective-bargaining representative of Respondent's employees in the following appropriate bargaining unit:

All full time and regular part time production and maintenance employees, including drivers, employed by Respondent at its Lynchburg, Virginia facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

6. By refusing to recognize and bargain with the Union as exclusive collective-bargaining representative of the employees in the above-described unit Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

THE REMEDY

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

As I have found that Respondent has illegally reprimanded and discharged Steve Bell and Gary Blankenship in violation of sections of the Act, I shall order Respondent to offer those employees immediate and full employment to their former positions or, if those positions no longer exist, to substantially equivalent positions. I further order Respondent to make those employees whole for any loss of earnings suffered as a result of the discrimination against them. Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1573 (1987).

Having found that the Respondent has unlawfully refused to bargain with the Union, I shall order that it recognize the Union and, on request, bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit.

[Recommended Order omitted from publication.]