

Cooking Good Division of Perdue Farms, Inc. and Laborers' International Union of North America, AFL-CIO, Local 784. Cases 15-CA-13266, 15-CA-13272, and 15-RC-7905

March 31, 1997

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The issues presented here are whether the judge correctly found that the Respondent committed several violations of Section 8(a)(1) and (3) of the Act and engaged in conduct that interfered with a Board representation election.¹ The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,² and conclusions, and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cooking Good Division of Perdue Farms, Inc., Dothan, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that Case 15-RC-7905 is severed from this consolidated proceeding, that the Petitioner's Objections 6 and 16 to the election held on June 15, 1995, are sustained,³ that the judge's findings that the Respondent engaged in other objectionable conduct also are adopted, and that Case 15-RC-7905 is remanded to the Regional Director for Region 15 for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of a bargaining representative and with a notice of election consistent with the findings of this decision.

[Direction of Second Election omitted from publication.]

¹ On December 5, 1996, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

³ In the absence of exceptions, we adopt pro forma the judge's recommendation to overrule the Petitioner's Objections 1, 2, 3, 5, 7, 8, 13, 19, and 30.

Charles R. Rogers, Esq., for the General Counsel.

Gregory P. McGuire, Esq. and D. Christopher Lauderdale, Esq., for the Respondent.
Ronald B. Ramsey Sr., Esq., for the Union/Petitioner.¹

DECISION

INTRODUCTION

ALBERT A. METZ, Administrative Law Judge. This case was heard at Dothan, Alabama, on June 3-7 and July 15-16, 1996.² The Laborers' International Union of North America, AFL-CIO, Local 784 (the Union or Petitioner) has charged that Cooking Good Division of Perdue Farms, Inc. (the Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

Additionally, by order dated February 14, 1996, the Acting Regional Director ordered that various objections filed by the Union in a related representation case (Case 15-RC-7905) be consolidated for hearing with the unfair labor practice case.

The Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

I. BACKGROUND

The Respondent operates a poultry processing plant in Dothan, Alabama. This facility, along with several other locations, was purchased by the Respondent in January 1995 from Showell Farms, Inc. (Showell). The Respondent immediately began to integrate the newly acquired plants into its larger existing operations. Part of this process involved studying the wages and benefits at the Dothan plant.

In approximately March 1995 the Union began an organizational campaign at the Dothan plant. On April 26 the Union filed a petition for a representation election. A hearing in the representation case was scheduled for May 10 but on that date the parties agreed to a stipulated election in the following unit:

All production and maintenance employees employed by the Employer at its Dothan, Alabama plant, including leadpersons, cafeteria employees, supply employees, truck drivers and maintenance employees, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The election was held in two sessions on June 15. There were approximately 1233 eligible voters of whom 242 voted for representation by the Petitioner, 646 voted against, and there were 142 nondeterminative challenged votes. On June 22 the Union filed objections to the conduct of the election. The objections that were set for hearing overlap much of the 8(a)(1) conduct alleged in the complaint.

¹ The name of the Union/Petitioner appears as corrected at the hearing.

² All subsequent dates refer to 1995 unless otherwise indicated.

II. THE 8(a)(1) ALLEGATIONS

A. Supervisor Tony Williams

Employee Barbara Kirkland testified that she and a friend, Melissa Franklin, were leaving the plant one day in the first week of March. Kirkland recalled that Supervisor Tony Williams asked Franklin if any union representatives had visited her at home. She told him they had not. He then asked Kirkland the same question. Kirkland told him she had not been visited by the Union. Melissa Franklin contradicted her and said that they had. Kirkland retorted that Franklin did not know such a thing as she did not live at Kirkland's house.

Williams recalled having a conversation with Kirkland and Franklin. He stated that Franklin reported to him that union representatives had visited her home as well as Kirkland's. Franklin said he should ask Kirkland if that were not so. Williams recalled that Kirkland had overheard the conversation and she told them that it was no ones business who came to her house. Williams denied asking either employee if the Union had visited their homes. Franklin did not testify.

I found Kirkland's testimony regarding this event to be clouded. Her testimony on direct examination related how Williams had asked her friend, Franklin, if the Union had visited her. On cross-examination she admitted that she had not heard such a conversation but was reciting what she had been told by Franklin. In contrast Williams' demeanor and testimony were that of a witness who was accurately recalling the event. I credit Williams' version of the encounter and find that the Respondent did not violate the Act by his conversation with Kirkland on this occasion.

B. Plant Manager Noel Diaz

Noel Diaz was the the Respondent's Dothan plant manager at the time of the events material to this case. Employee Betty Sue Lanton testified that she and fellow employees Renee Cruise and Ephron "Buster" Reynolds met with Diaz in his office in March 1995. The employees sought the meeting because they wanted some free handouts being distributed as part of a blood drive. Lanton remembered Cruise telling Diaz during the meeting that she was tired of the Union bothering her at home and the plant. Diaz asked Cruise if she had gone to any union meetings and she told him she had gone to one. Diaz then asked Lanton if she had gone to any union meetings. Lanton said she had as she supported the Union. Lanton recalled that Diaz told the employees that he had been in the Teamsters Union at one time but did not like it. Diaz also said that the Respondent could not work with the Union, pay the higher wages demanded by the Union, and stay in business. Neither Cruise nor Reynolds testified.

Diaz testified that Cruise had complained to him about being harassed by the Union. He recalled telling her that she did not have to let them in her home. Cruise said that the Union was claiming that the employees could be making \$12 an hour. Diaz thought he "probably" responded that the industry would not be able to compete paying those kinds of wages. He denied that he interrogated the employees about attending union meetings. Diaz also denied that he threatened the employees that the plant would close if the Union represented the employees.

Diaz' demeanor when discussing this encounter was not totally convincing. Some of his denials were evasive and his recollection of what was said was partially prefaced by his admission of what he "probably" said to the employees. In contrast Lanton's demeanor was persuasive. She was straightforward in her answers and appeared to be relating events as best she could. I further note that Lanton is still employed by the Respondent. This is a consideration when assessing credibility. *NLRB v. Flexsteel Industries*, affd. mem. 83 F.3d 419 (5th Cir. 1996). Whether this interrogation is unlawful is a close question. The employees instituted the meeting by seeking out Diaz in his office. Employee Cruise brought up the subject of the Union harassing her. The conversation was casual. On the other hand Diaz' interrogation of Lanton was not necessarily a natural outgrowth of the conversation. Lanton only acknowledged her union support after Diaz interrogated her about attending union meetings. Diaz first inquiry to Cruise is more understandable as she was complaining about being bothered by union organizers. Nonetheless Diaz gave no assurances to the employees that the response to his questions would not result in reprisals. As plant manager, Diaz was a high-ranking management official and there is no legitimate purpose to his interrogation, especially of Lanton. Under all the circumstances I find that Diaz' interrogation of Lanton about her attending union meetings is a violation of Section 8(a)(1) of the Act. *NLRB v. McCollough Environmental Services*, 5 F.3d 923, 928-929 (5th Cir. 1993). I do credit Diaz' testimony concerning Cruise mentioning the Union's \$12-per-hour prophecy. I do not find that Diaz' prediction that the Respondent could not afford to pay such high wages and stay in business was a violation of the Act.

C. Vice President Larry Winslow

The Government alleges that Vice President Larry Winslow unlawfully promised employees improved wages and benefits. On March 30 Winslow sent a letter to employees that discussed the Respondent's plans for improving their wages and benefits. The letter also cautions that the employees should not be misled by the Union's efforts to obtain their support.

Employee Betty Sue Lanton testified that in January, prior to the Union's election campaign, the employees were told by Complex Coordinator Jim Slacum that they would be receiving the Respondent's free insurance plans, the plant's attendance bonus would be eliminated, and the employees would get a raise. I find that Winslow's March letter does not unlawfully promise benefits as it is a reflection of the Respondent's intentions formulated and communicated to employees prior to the election campaign. *LRM Packaging*, 308 NLRB 829 (1992); *Kenrich Petrochemicals*, 294 NLRB 519, 529 (1989); *Cartridge Activated Devices*, 282 NLRB 426, 427-428 (1986). The Respondent did not violate Section 8(a)(1) of the Act by Winslow's March 30 letter.

D. Supervisor James Henderson

James Thomas, a stackhouse worker, testified that Supervisor James Henderson called him to the dock area of the plant sometime in the spring of 1995. He was uncertain if the conversation took place before or after the election petition was filed on April 26. Thomas recalled that Henderson

asked him how he felt about the Union. Thomas said that he supported the Union. Henderson related that he knew of the Dorsey Trailer Company in Elba, Alabama, that had closed down when it was organized by a union. He added that the Respondent would probably close this plant if the Union organized their plant. Henderson mentioned that the Respondent would have a picnic for the employees, pay increases and other benefits, including better insurance and the old attendance bonus would be terminated. Henderson told Thomas to give the Respondent a chance.

Henderson testified that it was Thomas who brought up the subject of the pending election. Henderson asked Thomas if he had ever been in a union. Thomas told him he had been in a union when he worked at the correctional facility in Clio, Alabama. Supervisor Henderson testified he then told Thomas, "The union didn't help you save your job [there]." Henderson denied asking Thomas how he felt about the Union, telling him Dorsey Trailer closed because of a union, or that the Respondent would close the Dothan plant if the Union gained representation rights to the employees. Henderson admitted that before this conversation he had heard that the Respondent would eliminate the attendance bonus system, give employees new health insurance and a pay raise. He denied discussing insurance and the attendance bonus with Thomas.

Considering the demeanor of the two participants in this conversation I find Thomas to be more believable and specific in the details of the event. I credit Thomas as relating the most accurate version of what was said. Henderson's interrogation of Thomas' union sympathies and threat that the plant would close are found to be violations of Section 8(a)(1) of the Act. As noted above, certain increased benefits had been mentioned to employees prior to the Union's election campaign. Henderson, however, mentioned a picnic benefit that the record does not reveal was previously discussed with employees. I additionally find that Henderson's mention of this benefit was also coercive and a violation of Section 8(a)(1) of the Act.

The record does not show that this conversation happened within the critical election period between the filing of the petition and the election. *Ideal Electric Mfg. Co.*, 134 NLRB 1275 (1961). I find that the violations set forth in this occurrence do not serve as objectionable conduct which supports the Petitioner's objections, including Objections 1, 3, and 16. *Dollar Rent-A-Car*, 314 NLRB 1089 fn. 4 (1994).³

E. Human Resources Representative Don Carter

1. Conversation with employee Willie Jackson

The Government alleges that the Respondent promised employee Willie Jackson a promotion if he refrained from union organizing activity. Jackson testified that he was called to a meeting in Supervisor Earl Nowling's office. He was uncertain of the date of the meeting but recalled it took place in proximity to company meetings about the Union's election campaign. He was escorted to the meeting by his immediate supervisor, James Henderson. Jackson remembered that present during the meeting were Nowling, Supervisor Mike

Dover, and Night Shift Human Resources Representative Don Carter. Jackson recalled that they discussed problems about how he and fellow employees were being treated and his experience in management working for other employers. They discussed what he thought about his future working for the Respondent. He was told that the Respondent would re-evaluate his resume and if he "stayed clean" he would probably wind up with a "[higher] position with the company." Nowling and Carter said that the Respondent would rather not deal with the Union. Jackson testified that he had informed Carter when the Union had initially contacted him. In this meeting he remembered Carter relating that Jackson had told him about the Union and asking what had changed his mind about the matter. Jackson replied that he did not like the way he was being treated by the Respondent.

Carter testified that he had a meeting with Jackson, Supervisor Michael Dover, and Nowling which he placed in mid-April. By way of background he recited how Jackson had come to him on numerous occasions and volunteered matters about what the Union was doing in the organizational campaign. Carter was suspicious of Jackson's motives and treated him with circumspection. As a result of his apprehension as to Jackson's motives he requested that Nowling and Dover attend the meeting which Jackson had requested. Carter remembered Jackson was complaining about the way he was being treated by his supervisor which Jackson attributed to his prouion sympathies. Carter denied that anything was ever said to Jackson about his possible promotion.

Nowling recalled a meeting with Jackson, Supervisor James Henderson, and Carter. He placed the meeting sometime in June. He arrived after the others and recalled they were already chatting. He denied that anything was said in his presence about promoting Jackson.

Jackson's testimony of this conversation was equivocal and confused. His demeanor was that of an uncertain witness. Nowling and Carter were sure in their testimony and their denials that Jackson was promised a higher position with the Respondent. I do not credit Jackson's version of the conversation. I find that the Respondent did not violate the Act when these supervisors talked to Jackson on this occasion.

2. Carter's meeting about revoking authorization cards

Willie Jackson also testified that he attended an employee meeting held by Earl Nowling in the safety building about 2 days after the May 10 representation case hearing was scheduled. Also present were Supervisors Carter and James Henderson. Carter showed the employees a form they could use to revoke their union authorization cards if they had a "change of mind." Carter told them they could "sign, turn in to the company, and your union card would be revoked." Jackson recalled seeing the same forms in the plant's hallways and the break rooms. (G.C. Exh. 6.) The revocation consisted of a cover letter of instruction and a revocation form. The letter described how the Respondent had been questioned by some employees as to how to revoke authorization cards. It also relates that it is the employees' right to revoke and the choice is theirs alone to make. The letter gives the Union's address as well as the address for the Board's Regional Office. The letter stresses that: "Whether or not you decide to cancel a union card is entirely up to you."

³The Union/Petitioner did not argue orally or file a brief stating its position on the objections. The objections are summarized in the concluding section of this decision.

Carter related that several employees had come to the Respondent asking for help on how to retract their authorizations and the revocation form was created to meet that need. Carter denied ever soliciting employees to revoke their union authorization cards. Several revocation forms were mailed to the Union in envelopes that bore the metered mail imprint of the Respondent. Carter admitted that the Respondent did mail about 10 revocations for employees who had come to them and asked that this be done.

An employer may not solicit employees to revoke their union authorization cards. *Uniontown Hospital Assn.*, 277 NLRB 1298, 1307 (1985). An employer may, however, "lawfully assist employees in the revocation of their union authorization cards when employees initiate the idea of withdrawal and have the opportunity to continue or stop the revocation process without the interference or knowledge of the employer." *University of Richmond*, 274 NLRB 1204 (1985); *R. L. White, Inc.*, 262 NLRB 575-576 (1982).

Jackson's testimony as to the meeting does not show that Carter coerced or solicited employees to revoke their authorization cards. The Respondent's accompanying letter of explanation suggests nothing unlawful regarding its participation in the revocation process and makes clear that canceling the card is the employee's choice. I find that Carter did not violate Section 8(a)(1) of the Act by his discussion of the revocation of authorization cards. Additionally, I find that Carter's actions in this instance were not objectionable conduct as alleged in Petitioner's Objection 2.

F. Manager of Human Resources Jimmy Chappell

1. The subpoena issue

Prior to the hearing the Government served a subpoena on Jimmy Chappell, the Respondent's manager of human resources. In part the subpoena requested the production of:

6. Any and all books, records, and documents including, but not limited to, notes, audio or video tapes, and inter and/or intra office memoranda, which reflect the content of meetings between Jimmy Chapel [sic] and employees conducted between May 1, 1995 and June 15, 1995.

The Respondent filed a motion to quash the subpoena and, with regard to paragraph 6, asserted:

Paragraph 6 is overly broad and seeks documents or other materials that relate to matters not alleged or contained in the Complaint or Report on Objections inasmuch as it seeks documents relating to meetings in which no unlawful conduct is alleged to have occurred. The Complaint alleges unlawful conduct by Jimmy Chappell only in meetings conducted about May 11, 1995. Paragraph 6, however, seeks documents relating to meetings conducted at other times.

The Respondent conceded that there were a series of meetings conducted the week of May 11 and asserted that those notes had been produced to the Government. The notes produced did not bear any date. The Respondent conceded that there were other notes for the time period requested. The Respondent refused to produce these other notes. After hearing

argument on the point I ruled that the materials requested in paragraph 6 were relevant and should be produced.

The Federal Rules of Evidence provides significant guidance with respect to relevance:

Rule 401. Definition of "Relevant Evidence."—"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The Respondent too narrowly construes relevance with its argument that materials sought by a subpoena must relate to a specific allegation of an unfair labor practice. The date of the unfair labor practice allegations naming Chappell is phrased as "About May 11." There are six separate unfair labor practice allegations (including an amendment made at the hearing) that name Chappell. As discussed below, witnesses testified to meetings held by Chappell which ranged from March to May 22. Documents can also provide background or lead to other potentially relevant evidence covered by the allegations of the complaint. This complaint alleges unlawful conduct covering a period of March 1 to July 1, 1995. The notes sought could contain admissions relating to other aspects of the case. The Respondent did not claim privilege, ask the judge for an in camera review of the disputed notes, or offer any other reasons for its refusal to produce the documents. The Respondent's special permission to appeal the order concerning paragraph 6 of the subpoena was denied by a Board order dated July 15, 1996.

During the direct examination of certain of the Respondent's witnesses, the Government objected to their being questioned about employee meetings held by Jimmy Chappell in the time period stated in paragraph 6 of the subpoena. Except for permitting a few preliminary questions, I sustained those objections. *Packaging Techniques*, 317 NLRB 1252, 1253 (1995); *Control Services*, 303 NLRB 481, 483 (1991).

2. The unfair labor practice allegations concerning Chappell

Employee David Lee Davis testified that in May he attended employee meetings conducted by Jimmy Chappell. He recalled Chappell stating that the Showell Company's policy of paying employees an attendance bonus of 60 cents per hour for perfect weekly attendance was being discontinued. In lieu of that program the Respondent would be getting pay increases and better insurance benefits.

Employee James Thomas testified about a meeting he attended with his fellow cut-up department employees that was conducted by Chappell in April or May. Chappell said that the Respondent would institute a lower deductible insurance plan for nonunion employees.

Employee Barbara Kirkland testified that Chappell was in attendance at a safety meeting held on May 22. He asked the assembled employees if they had any complaints. Chappell told the assemblage that the Respondent would be getting a pay raise at an unspecified time and the attendance bonus would be eliminated.

Employee Willie Jackson testified about an employee meeting held by Chappell on about May 19. Chappell told the employees that the Respondent's insurance plan would be available to nonunion employees. Chappell also asked which

employees had been visited by union representatives. Jackson acknowledged he had by raising his hand. This later interrogation was amended into the complaint by the Government during the hearing.

Chappell testified that he first visited the Dothan plant on April 26 to head up the Respondent's team "in its fight against unionization." He denied being at the plant in March or conducting any employee meetings in May except "somewhere in [the] range of May 10." Based on the weight of the evidence and the demeanor of the witnesses, I do not credit Chappell in his denial regarding having employee meetings other than around May 10. Jackson, Kirkland, Davis, and Thomas were credible and their demeanor leads me to conclude they accurately related their recollections of the meetings they described.

As noted above, the Respondent mentioned its intent to implement changes in wages and benefits as early as January—before the Union's campaign. I find that Chappell's mention of these subjects in the meetings summarized above was not a violation of the Act. Kirkland's testimony that Chappell asked employees if they had any complaints was dampened by her admission that it was not uncommon for management to ask for employee concerns before the union campaign began. Additionally it is not clear that Chappell in any way promised to remedy any employee complaints. I find that the Government has failed to prove by a preponderance of the evidence that Chappell's conduct in this regard violated the Act. Under all the circumstances, however, I find that Chappell's interrogation of employees by asking them to raise their hands if they had been visited by the Union is a violation of Section 8(a)(1) of the Act. The setting of the interrogation was a general meeting of employees and the record does not reflect that the union sympathies of those present were known to the Respondent. The questioner was a high official of the Respondent who gave no assurances that by asking the question the employees would have nothing to fear. Additionally, Chappell was from the Maryland headquarters and did not have any established friendly relationship with the Alabama workers. There was no apparent legitimate reason for the question, but by seeking this information the Respondent could learn who had been talking to the Union's organizers. I find that the interrogation is also supportive of the Union's Objection 16.

G. Complex Coordinator James Slacum

1. Interrogation and solicitation of grievances

James Slacum, the Respondent's complex coordinator, is alleged to have unlawfully interrogated employees concerning their union activities. No evidence was presented in support of this allegation and I find that Slacum did not engage in such unlawful interrogation. Slacum was alleged to have unlawfully solicited employees' complaints and promised to remedy such grievances. The evidence shows that Slacum had a practice of holding regular employee meetings to keep employees up to date on plant happenings and to discuss their concerns. These meetings started before the election campaign. I find that the record does not support the allegation that Slacum committed any unfair labor practices or objectionable conduct by discussing problems with employees in such meetings.

2. Soliciting the revocation of authorization cards

Employee Betty Sue Lanton testified that at some employee meetings Slacum explained to the workers how they could revoke their union cards "if we didn't want to keep it in there." Slacum explained that there were forms that the employees could fill out to get the cards revoked. Lanton admitted that Slacum said it was up to the employees whether they wanted to revoke their cards. Slacum did not hand out the revocation form to the employees but they were posted and available throughout the plant. The forms state that the choice of revocation is the employee's to make and the Respondent was only advising them of their legal right to revoke.

Slacum confirmed that he mentioned card revocation to employees in meetings when employees asked questions about how they could revoke their cards. He told them that the forms were available if they wished to use them.

The record does not support the allegation that Slacum unlawfully solicited employees to revoke their union authorization cards.⁴ I find that the Respondent did not violate Section 8(a)(1) of the Act by Slacum's card revocation statements. *University of Richmond, supra; R. L. White Co., supra.* To the extent that this allegation is intended to be encompassed by the Petitioner's Objection 2, I find that Slacum's conduct is not objectionable conduct.

H. Chairman of the Board Jim Perdue

On May 19 the Respondent's chairman of the board, Jim Perdue, had a letter distributed to the Dothan employees announcing their coverage by the Perdue Medical Plan and Perdue Basic Life and Accidental Death insurance. The Government alleges that the letter, with its promises of benefits, was a violation of Section 8(a)(1) of the Act. As discussed above, the employees were told in January, before the Union's election campaign started, that they would receive this benefit. As discussed below in the section dealing with benefits, the implementation of these increased benefits is found to be lawful. Perdue's letter is found not to be a violation of Section 8(a)(1) of the Act nor is it objectionable election conduct as alleged in Objections 1 and 2.

I. Safety Trainer's Supervisory and Agency Status

The Government contends that Safety Trainers Blondell Jackson, Donna Nowling, and Rhonda Johnson are supervisors and agents of the Respondent and engaged in unlawful conduct under the Act. The Respondent denies the safety trainers are supervisors or agents within the meaning of the Act. The safety trainers are primarily responsible for showing new employees how to safely perform their jobs, observing employees at work, reporting workers' safety problems to their supervisors for correction, and performing plant safety inspections. They have no employees that report to them and the record does not sustain the conclusion that they meet the

⁴Counsel for the General Counsel offered the testimony of employee Angel McGriff to rebut Slacum's denial of soliciting card revocations. McGriff testified about an incident where she was solicited by her immediate supervisor to revoke her union authorization card. McGriff did not claim that Slacum had any knowledge of this incident. I find that McGriff's testimony does not rebut the testimony of the Government's witness, Lanton, nor that of Slacum as to his remarks about the revocation of authorization cards.

definition of a supervisor as set forth in Section 2(11) of the Act.⁵ *Brown & Root, Inc.*, 314 NLRB 19-20, 23 (1994). The record likewise does not sustain the conclusion that the safety trainers were at any time acting as agents of the Respondent when they engaged in activities concerning the election campaign.

J. Supervisor Alonzo Johnson and Blondell Jackson

The Government alleges that in the third week of May Supervisor Alonzo Johnson and Safety Trainer Blondell Jackson solicited employees to rescind their union authorization cards. Former employee Bryan Smith testified that 2 to 3 weeks before the June 15 election he was in the plant nurse's station receiving first aid treatment. The nurse, Daryl Hall, was engaged in conversation with Blondell Jackson. Smith overheard them discussing signing a form in order to rescind employees' union authorization cards. Smith asked Jackson about the revocation process and she told him to come and talk to her about the matter later.

Smith mentioned his conversation with Jackson to his supervisor, Alonzo Johnson. Smith states that the following evening Johnson came to him and said he should see Blondell Jackson after he finished his break. Johnson testified that it was Smith who came to him and said that he needed to see Blondell Jackson and Smith was allowed to go as she was a safety trainer. Smith met Jackson at the nurse's station and asked her to tell him more about the revocation process. She asked him to accompany her to her office which was in another building. They went to Jackson's office and she explained that he could fill out a paper that requested his union authorization card be returned. Smith ultimately filled out a revocation form and gave it to Jackson. She said she would mail it for him.

Jackson testified that Smith approached her one day in the first aid station and asked her how he would go about revoking his union authorization card. Jackson gave him a form, Smith filled it out, returned it to her and she placed it with the office mail.

Assessing the demeanor of Johnson and Smith, I credit Johnson that Smith asked him for permission to go to see Blondell Jackson. I find that Smith's asking Jackson about the revocation process and voluntarily following through with the matter was not an action initiated or solicited by the Respondent. Based on the weight of the evidence, the demeanor of the witnesses, and Smith's admitted desire to learn about authorization card revocation, I find that Jackson's action was not violative of the Act nor is it objectionable conduct. Jackson was not shown to be acting as an agent of the Respondent when she assisted Smith with the revocation form. Likewise Supervisor Alonzo Johnson's agreeing to allow Smith to go to see Jackson is found not to have violated the Act. Smith mentioned his desire to learn more about the card revocation to Johnson and the supervisor did

nothing to solicit the revocation or discuss the matter further with Smith.

K. Safety Trainers and Other Employees Distributing Antiunion Materials

Paragraphs 16 and 17 of the complaint allege that the Respondent violated the Act by the safety trainers and other employees distributing antiunion materials purportedly on their worktime. The Government's witnesses in support of these allegations were Alfred Hazel, a union international representative, and employees Betty Sue Lanton, Barbara Kirkland, and Willie Jackson. They testified that they saw antiunion employees distributing flyers in the plant parking lot on many occasions. None, however, was able to establish that any of the employees was on their paid worktime when engaged in this activity. The employees work varying shifts and some have two discretionary 30-minute breaks during their shifts. Kirkland testified that she saw a supervisor engaged in this activity as well. She was unable to identify the alleged supervisor.

Maintenance Manager James Walden testified that he discovered two of his employees distributing flyers when they should have been working. He told them to stop the distribution and they immediately returned to work. Other than this one incident he never saw any of his workers handing out literature while on their worktime. Supervisor Don Carter testified that he cautioned the safety trainers not to engage in their antiunion activity while on their worktime. The record does not establish that the Respondent allowed antiunion employees to engage in their activities on paid worktime. I find that the Respondent did not violate Section 8(a)(1) of the Act as alleged in this regard. I further find that the Union's Objection 19 which mentions this same activity is without merit.

L. Burning of Union Materials

The Government alleges that the Respondent violated Section 8(a)(1) of the Act by allowing antiunion employees to burn union literature, video tapes, and union T-shirts on plant premises during working time in the presence of guards. Union Representative Alfred Hazel testified that on June 13 he was at the entrance to the plant handing out union literature. He witnessed antiunion employees take union materials that had been passed out and burn them in the middle of the entrance road to the plant. At least one security guard stationed up the road nearer the plant observed the small fire but did not interfere. Hazel also testified to seeing a person he identified as a white maintenance man come to the entrance road to the plant. The man had a large broom handle with an attached cross piece of electrical conduit. The cross was cloaked with a union T-shirt stuffed with paper. The T-shirt was set on fire as it was leaned against the fence. Again two security guards witnessed the event but did not interfere.

The evidence does not establish that the employees were engaging in the burning of union materials while on their worktime. I find that the fact guards observed these acts without interference was not violative of the Act. The Respondent did not violate Section 8(a)(1) of the Act when the employees burned the union materials. Additionally this conduct is found not to support the Petitioner's Objections 7 and 8.

⁵Sec. 2(11):

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

M. Supervisor John D. Henderson

John D. Henderson is a sanitation supervisor at the Respondent's Dothan plant. The complaint was amended at the hearing to add an allegation that in June he threatened an employee that the plant would close if the Union organized the employees.

Employee Willie Douglas testified that his supervisor, John D. Henderson, spoke to 15 to 20 employees who were assembled in the locker room getting ready for work. Henderson told them that they did not need the Union, that it would just take their money. According to Douglas, Henderson made some remarks about the Respondent closing the plant if the Union represented the employees. John D. Henderson testified that he never told Douglas the plant would close if the Union became the employees' collective-bargaining representative.

Douglas' testimony was rambling and equivocal. In contrast Henderson was definite in his denial that he had threatened a plant closing. His demeanor was also persuasive. None of the other employees who were allegedly present at this conversation testified. Based on the weight of the evidence and the demeanor of the witnesses, I credit Henderson's denial of threatening a plant closure.

N. Confiscation of Union Materials by a Guard

On May 10 a hearing was scheduled in the representation case. The matter was resolved by an election stipulation and the employees who had been at the hearing returned to the plant to go to work. Some of the workers carried union flyers with them and were wearing union stickers on their clothing. Employee Betty Sue Lanton was one such employee. Lanton testified she came to the plant guard station at the plant. At that point she was stopped by a female guard who said she had to surrender her union handbills and sticker. Lanton turned over the literature and removed the sticker as demanded. She observed many other handbills inside the guard shack. The Respondent offered the testimony of former Plant Manager Noel Diaz who stated that the United States Department of Agriculture prohibits the wearing of stickers in the processing areas of the plant. No other justification for the confiscation of the union materials was offered by the Respondent. The female guard was not called to testify.

The Respondent denied the agency status of the unnamed guard. I find that by placing the guard in a position to stop persons entering the plant premises and to confiscate materials the Respondent had cloaked the guard with at least apparent authority as the Respondent's agent. *Harrison Steel Castings Co.*, 262 NLRB 450, 454-455 (1982). The Respondent offered no explanation for the confiscation of the union material that would require prohibiting the material on the plant premises outside of the processing areas. I find that the guard was the Respondent's agent and that she unlawfully confiscated the union material from employees in violation of Section 8(a)(1) of the Act.

O. Assistant Personnel Manager Nancy Hollis

The complaint was amended at the hearing to allege that Nancy Hollis, assistant personnel manager, had unlawfully interrogated employees the night of the June 15 election. The Respondent admitted Hollis' supervisory status.

Employee Sheila Pearson testified that on the night of the June 15 election she was on her way to vote at the training building which is set apart from the main plant building. While she was still in the main plant she was approached by Nancy Hollis who asked her how she was going to vote in the election. Pearson told Hollis that she was going to vote "yes." Hollis said, "Thank you." Pearson also overheard Hollis ask other nearby employees the same question.

Vivian Kay Evans works in the Respondent's portions department. She testified that on the night of the election she was lined up inside a plant hallway with fellow employees waiting to go vote. Nancy Hollis approached the employees and talked to them. Evans recalled Hollis came to her, asked how she was doing, and then asked Evans if she was going to vote for the Respondent. Evans replied that she was going to vote for the Respondent. Evans also heard Hollis ask other employees in the line if they were going to vote for the Respondent.

Hollis admitted being in the plant the night of the election and speaking to various employees. She denied asking any employee how they were going to vote. Pearson and Evans were impressive in their recollection of the events to which they testified. Their demeanors were that of persons recalling these conversations to the best of their abilities. Hollis' testimony was less direct and her demeanor was not persuasive. I do not credit Hollis' general denial that she did not ask employees how they were going to vote. I credit Pearson and Evans as to what Hollis said to them. I find that Hollis' interrogation of employees as to how they intended to vote is a violation of Section 8(a)(1) of the Act. *Manimark Corp.*, 301 NLRB 599 (1991). I additionally find that this conduct supports Petitioner's Objection 16.

III. THE 8(a)(3) ALLEGATIONS

The Government alleges that the Respondent unlawfully instituted a series of changes in pay and benefits immediately before the June 15 election in order to discourage the employees' support for the Union. The Respondent asserts that the changes were the culmination of a lawful integration of the plant into the existing Perdue corporate structure.

A. Background Concerning Wages and Benefits

As set forth above, the Government's witness, Betty Sue Lanton, testified that in January the Respondent promised the employees they would be receiving improved wages, elimination of the attendance bonus, and improved insurance plans. Lanton stated that Slacum said the insurance program would become effective on July 1.

The Union's campaign began in early March and the organizational effort was the subject of the March 30 letter issued by the Respondent to all of its employees. In that letter Larry Winslow, discussed wages, benefits, and the union campaign. The letter reads in part:

I know many of you are very anxious for information regarding Perdue Farms and what changes are planned for wages and benefits in Dothan. I wish I were in a position now to give you a list of details, but because of the large size of the two companies we are merging together, *we do not have an exact timetable for those decisions.*

...

Union representatives are now in Dothan trying to get you to sign cards and join up with their union. These people from the union are making a lot of false statements about Perdue Farms. I would like to set the record straight. Here are the facts:

1. Perdue Farms will not reduce your wages and benefits. As the company has grown in the last 18 years, Perdue has acquired ten companies. Perdue has not reduced wages or benefits for any employee of the companies acquired. In fact, these employees received improved wages and benefits in every case.

3. Perdue Farms will improve your wages and benefits. In the next few months, we fully intend to make improvements in your wage and benefit package. The Perdue philosophy is to pay wages and benefits that are equal to or better than union or non-union poultry plants in the area. You have all been very patient and we greatly appreciate your hard work. *Just as soon as we have the details worked out we will provide those facts to you.* [G.C. Exh. 5, emphasis added.]

Employee Barbara Kirkland testified she attended a March safety committee meeting in the training building. During the meeting she asked the manager of human resources, Jimmy Chappell, when the employees were going to get a pay raise. According to Kirkland, Chappell told her July 1. Kirkland also testified that she attended a departmental meeting on May 22 where she asked Chappell if the employees were still going to get a pay raise in July. Chappell told her that he did not want to promise an exact date of July 1 in case the raise did not happen then.⁶ Employee James Thomas testified that he attended an employee meeting held by Chappell in early May. He recalled Chappell was asked about pay raises. Chappell replied that he could not give the employees any information on a pay increase, but someone was supposed to come later and discuss the matter with employees.

On June 14, the day before the election, the Respondent issued a notice to employees that they were receiving a general wage increase of 20 cents per hour and the 60-cent attendance bonus was being eliminated. Henceforth the attendance bonus money would be paid as part of the employees' regular hourly wage rate. Prior to this change the employees had to maintain perfect attendance for a week payroll period in order to get the 60-cent per hour bonus as part of their pay. The Respondent offered testimony that the June date was selected because it conformed to the practice of granting raises established by the predecessor, Showell.

B. General Wage Increase

The history of wage increases at the Dothan plant, starting in 1991, is summarized in the following chart (G.C. Exh. 4; R. Exhs. 41-44):

<i>Date Increase Announced</i>	<i>Effective Date</i>	<i>Amount (hourly raise/attendance bonus)</i>
6/20/91	6/26/91	.0/.35 bonus
6/29/92	7/01/92	.0/.25 bonus
6/01/93	6/02/93	.25/.60 bonus
6/15/94	6/15/94	.25/.60 bonus
6/14/95	6/14/95	.20/.60 bonus added to hourly rate

C. Analysis of the Pay Increase and the Elimination of the Attendance Bonus

The Board set forth the following standard in *United Airlines Services Corp.*, 290 NLRB 954 (1988), for deciding whether the grant of benefits during the critical preelection period is objectionable conduct:

It is well established that the mere grant of benefits during the critical period is not, per se, grounds for setting aside an election. Rather, the critical inquiry is whether the benefits were granted for the purpose of influencing the employees' vote in the election and were of a type reasonably calculated to have that effect. *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964). As a general rule, an employer's legal duty in deciding whether to grant benefits while a representation proceeding is pending is to decide that question precisely as it would if the union were not on the scene. *R. Dalkin*, supra, quoting *Red Express*, 268 NLRB 1154, 1155 (1984). In determining whether a grant of benefits is objectionable, the Board has drawn the inference that benefits granted during the critical period are coercive, but it has allowed the employer to rebut the inference by coming forward with an explanation, other than a pending election for the timing of the grant or announcement of such benefits. *Uarco, Inc.*, 216 NLRB 1, 2 (1974). See, e.g., *Singer Co.*, 199 NLRB 1195 (1972).

The Board uses this same test in unfair labor practice cases. *Holly Farms Corp.*, 311 NLRB 273, 274 (1993); *Speco Corp.*, 298 NLRB 439 fn. 2 (1990). The Board looks at several factors in determining if a preelection grant of benefits is intended to unlawfully influence the outcome of an election:

(1) The size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. *B & D Plastics*, 302 NLRB 245 (1991).

The record sustains the contention that Showell had given its employees raises in June and July in the preceding 4 years. The Respondent's 1995 hourly raise of 20 cents was not extraordinary. In the previous 2 years employees had received 25-cent-an-hour increases. Adding the 60-cent attendance bonus to the hourly wage rate was not surprising to the employees. They were told in January that the attendance

⁶ Kirkland's testimony varied from her prehearing affidavit as to which meeting Chappell stated that raises would occur on July 1. Kirkland testified that her affidavit was incorrect and I credit her testimony as being the accurate sequence of events. To the extent that Chappell's testimony controverts that of Kirkland I credit Kirkland's version of events.

bonus would be eliminated. On the record as a whole I do not find that the amount of the raise was out of the ordinary.

More troubling is the timing of the raise for the day before the election. The Respondent argues that it intended to follow Showell's practice of granting June wage increases. Although that was the Showell pattern, the employees were never told of the Respondent's alleged intent to follow that practice. Casting further doubt on the Respondent's assertion that it always intended the raises for June is the absence of any supporting documentary evidence to that effect. Rather, Winslow communicated to the workers in his March 30 letter that no specific timetable had been established for putting into effect the wage and benefit increases. Additionally, Chappell told employees in March that the raise would be effective July 1. In May he told them he could not say with certainty when the increase would happen. In light of these pronouncements by the Respondent it would be reasonable for the employees to view the timing of the raise as designed to influence their voting in the election. The Respondent never told employees to expect raises in June. Their first knowledge of when the raises would be received was the day before the election.

The Respondent has not rebutted the inference that the timing of the increase for the day before the election was intended to influence the employees' choice concerning representation. The Respondent's timing of the increase is found to be a violation of Section 8(a)(1) and (3) of the Act. *Brunswick Food & Drug*, 284 NLRB 663, 675-676 (1987). The timing of the wage increase is also found to be objectionable election conduct as alleged in the Petitioner's Objection 6.

The same conclusion is reached as to the elimination of the attendance bonus and making it a part of the employees' wages. I find that the attendance bonus program was designated for elimination prior to any union activity at the plant. The Respondent did not violate the Act by eliminating the attendance bonus program and incorporating it into the employees' wages. However, I find that the Respondent did violate Section 8(a)(1) and (3) of the Act by timing the elimination of the attendance bonus for the day before the election. As the attendance bonus was part of the raise package, I find that this action also supports the Petitioner's Objection 6.

D. Change in Attendance Policy

Bryan Smith related that on June 13 he attended a meeting where Supervisor Tony Williams discussed employees being late to work. According to Smith the employees were told that if they were late or absent 1 day it would count as half an occurrence or half a day. He compared this to the system before the meeting where employees were "written up" for missing a day. The Government also introduced a memorandum to all employees that was issued on June 30 by Ed Scarborough, senior human resources representative. This document discusses that there is more lateness "since we do not have the attendance bonus and each late is a half of an occurrence." (G.C. Exh. 12.)

Scarborough testified that the Showell attendance policy did not change as related by Smith. Scarborough stated that there was a change but this took place in January 1996. The Respondent offered no documentation which supported the claim that the change first occurred in January 1996. Tony

Williams admitted he held a meeting with employees on June 14 and announced the wage increases and elimination of the attendance bonus. He denied saying anything about a change in the attendance policy.

Smith's testimony as to the June 13 change in attendance policy is corroborated by Scarborough's subsequent June 30 memorandum encouraging employees to improve their attendance. The message in this memo is that the Respondent had made the changes relative to the elimination of the attendance bonus and the calculation of occurrences. I credit Smith's testimony that Williams did announce a change in the attendance system to a less severe method at the June 13 meeting. It is also noted that the record does not support the conclusion that the Respondent had, prior to the June 13 meeting, ever announced its intention to change the attendance policy. I find that this newly announced benefit, like the other contemporary announcements on wages and the attendance bonus, was calculated to discourage the employees support for the Union. I find that the Respondent violated Section 8(a)(1) and (3) by timing its announcement of the changed attendance policy to coincide with the election.

Although the change in the attendance policy was not alleged as objectionable conduct this does not prevent its consideration as to whether employees were permitted to vote in a fair and informed manner. *White Plains Lincoln Mercury*, 288 NLRB 1133, 1136-1139 (1988) ("Simply stated, a 'meritorious objection' is anything that would justify setting aside the election, whether that misconduct was raised by the union in its objections or was discovered subsequently by the Agency's own procedures in resolving the questions raised as to the propriety of the election.") (288 NLRB at 1138.) I find that the change in attendance policy effected every employee and thus is an additional ground for setting aside the election.

E. Insurance Benefits

On July 1 the Respondent instituted a new insurance program at the Dothan plant that gave the employees increased health and life insurance benefits. Again, according to the Government's witness, Betty Sue Lanton, this was something that the Respondent promised to employees in January before the Union's organizational campaign. Lanton specifically recalled that the employees were told in January that the insurance would go into effect on July 1.

The Respondent began the insurance implementation process in November 1994 in anticipation of acquiring the Showell plants. Donna Keener, the Respondent's benefits manager, credibly testified as to the insurance implementation process. Many exhibits were introduced which chronicled the events leading up to granting of the insurance benefits. In a letter to employees dated May 19, Jim Perdue, the Respondent's chairman of the board, announced that the employees would have medical, life, and accidental death insurance benefits starting July 1. (G.C. Exh. 3.)

In sum, the evidence convincing shows that the Respondent had started the insurance transition process much before the Union's organizational drive. The employees were told in January to expect the insurance benefit starting July 1. The Respondent has established that the insurance program was put in place on July 1 as the natural completion of a non-discriminatory business decision. I find that the Respondent did not violate Section 8(a)(1) and (3) of the Act by incor-

porating the Dothan workers into its established insurance programs on July 1. *Churchill's Supermarkets*, 285 NLRB 138, 140 (1987). I also find that the announcement and implementation of the insurance benefit were not objectionable conduct as alleged in the Petitioner's Objection 1.

IV. OBJECTIONS TO ELECTION

One objection, Objection 30, covers conduct not alleged in the complaint as being an unfair labor practice. This objection asserts that during the June 15 election, the Respondent and antiunion employees engaged in electioneering among employees on the voting line. With regard to electioneering of nonparties to the election the Board will examine whether the conduct substantially impaired the exercise of free choice so as to require the holding of a new election. *Certainfeed Corp. v. NLRB*, 714 F.2d 1042, 1062-1063 (11th Cir. 1983). Factors considered are: (1) where the conduct occurred; (2) whether representatives of the parties were present; (3) whether the electioneering is sustained or brief; and (4) whether it is conducted within a designated no-electioneering zone or against the instructions of the Board agent. *South-eastern Mills*, 227 NLRB 57, 58 (1976). With regard to electioneering by parties to the election the Board will set aside elections where it is found that prolonged conversations occurred between representatives of any party to the election and voters waiting to cast ballots, "without inquiry into the nature of the conversation." The Board, however, will not apply the rule to every "chance, isolated, innocuous comment or inquiry" or to similar "trifl[ing] incidents. *Milchem, Inc.*, 170 NLRB 362, 363 (1968).

The setting for the June 15 voting area was the Respondent's training building. This structure is 499 feet distant from the plant where the voters worked. The employees were released to vote in groups. They exited the plant, walked along a dirt roadway to a sidewalk that led them up to the training building. The entrance into the polling place was on the back side of this building away from the plant. Apparently a "no electioneering area" was not established for this election. In such a situation the Board considers the area "at or near the polls" as the zone where electioneering is prohibited. *Bally's Park Place, Inc.*, 265 NLRB 703 (1982).

Employee David Davis testified the night of the election Chappell came through the plant and talked to some of the employees. He recalled Chappell saying to "Give Perdue a chance." Davis also related that he saw supervisors along the voting route to the training building but none of them said anything to the voters.

Employee Willie Douglas testified that he was in the locker room getting dressed for work when his supervisor told him and fellow employees they should wait outside to be released to vote. The workers then waited outside the plant locker room. The wait lasted approximately 2 hours as other workers were allowed to vote first. As Douglas waited he observed some of the Respondent's supervisors, including Diaz, Scarborough, and a man he knew to be from management in Maryland (presumably Chappell), converse with employees on their way to vote. Douglas engaged them in conversation and told them "why we were voting for the Union." The supervisors replied by saying he should "Give Perdue a chance" and "You all know how to vote." Chappell admitted telling some employees the night of the election that he said they should give Perdue a chance.

Sheila Pearson testified that on the night of the June 15 election she proceeded to the voting area along the dirt roadway. Along the way she encountered Safety Trainer Blondell Jackson. Jackson was saying to the passing voters, "Vote no." Jackson denied telling employees to vote no on the night of the election. I do not credit Jackson's denial.

No evidence was presented that any employee was subjected to electioneering while standing in line to vote at the training building or inside that building where the voting took place.

Employee Blondell Jackson's simple "Vote no" statement was made to voters some distance from the voting area. I find that the electioneering by this third party was not sufficient to require a new election. *Certainfeed Corp.*, supra. The electioneering remarks of supervisors were not of the type, or in a close enough proximity to the polls, sufficient to mandate that the election be set aside because of such conduct. *National Micronetics*, 277 NLRB 993 (1985); *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982). I find that the evidence does not support the Petitioner's Objection 30 regarding objectionable electioneering affecting employees in the voting area.

In summary, the following objections are found not to be supported by the evidence: (1) promises of benefits; (2) conditioning the grant of benefits on the revocation of authorization cards; (3) promising to eliminate the attendance bonus; (5) promoting employees to lead person status; (7) and (8) employees and employer representatives burned union materials; (13) surveillance of employees; (19) employees were paid to engage in antiunion campaigning; and (30) the Respondent engaged in electioneering of voters standing in line to vote.

The Board holds that 8(a)(1) violations are, a fortiori, conduct that interferes with an election unless the unlawful conduct is so de minimis that it is virtually impossible to conclude that the violations could have affected the results of the election. *Pembrook Management*, 296 NLRB 1226, 1242 (1989). In assessing whether unfair labor practices could have affected the results of the election, the Board considers "the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors." *Enola Super Thrift*, 233 NLRB 409 (1977).

The Petitioner's Objection 16 (interrogation of employees) which is related to violations of Section 8(a)(1) of the Act has been found to be meritorious. The Respondent's timing of its June 14 preelection wage increase, including the elimination of the attendance bonus, has been found to be a violation of Section 8(a)(1) and (3) of the Act and corresponds to Petitioner's Objection 6. Additionally, the change in the attendance policy and the confiscation of union materials, although not alleged as objectionable conduct, have been found to be violations of the Act. I find that these violations are sufficient in number, severity, and were widely disseminated so they could have affected the results of the election. I therefore recommend that the election be set aside.

CONCLUSIONS OF LAW

1. Cooking Good Division of Perdue Farms, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Laborers' International Union of North America, AFL-CIO, Local 784 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit is appropriate for collective-bargaining purposes:

All production and maintenance employees employed by the Employer at its Dothan, Alabama plant, including leadpersons, cafeteria employees, supply employees, truck drivers and maintenance employees, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

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

(a) Interrogating employees about their union activities and sympathies.

(b) Promising increased benefits in order to influence employees' support for the union.

(c) Confiscating union materials from employees entering the plant premises.

(d) Threatening employees that it would close the plant if the employees chose the Union to represent them.

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

(a) Timing increases in wages, including the elimination of the attendance bonus, in order to influence employees regarding their support for the Union.

(b) Changing the attendance policy in order to influence employees regarding their support for the Union.

6. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. The conduct described in paragraphs 4(a) and (c) and 5(a) and (b), above, also constitute objectionable conduct affecting the results of the representation election held in Case 15-RC-7905 on June 15, 1995.

8. The Respondent has not violated the Act except as specified.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist from this conduct.

In addition, having found that the Respondent engaged in objectionable conduct affecting the results of the election in Case 15-RC-7905, I shall recommend that the election held in that case on June 15, 1995, be set aside, that a new election be held at a time to be established in the discretion of the Regional Director, and that the Regional Director include in the notice of election the following *Lufkin Rule*⁷ language:

NOTICE TO ALL VOTERS

The election of June 15, 1995, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this Notice of Election. All eligible voters should un-

derstand that the National Labor Relations Act gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondent, Cooking Good Division of Perdue Farms, Inc., Dothan, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union activities and sympathies.

(b) Promising increased benefits in order to influence employees support for the Union.

(c) Confiscating union materials from employees entering the plant premises.

(d) Threatening employees that it will close the plant if they chose the Union to represent them.

(e) Timing increases in wages, elimination of the attendance bonus, and changing the attendance policy in order to influence employees regarding their support for the Union.⁹

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

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

(a) Within 14 days after service by the Region, post at its facility in Dothan, Alabama, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 June 15, 1995.

(b) 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.

⁸If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁹Nothing in this Order shall be construed as requiring the Respondent to revoke any benefits granted to employees.

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

⁷*Lufkin Rule Co.*, 147 NLRB 341 (1964).

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.¹¹

IT IS FURTHER ORDERED that the election conducted in Case 15-RC-7905 on June 15, 1995, be set aside, and that a new election be held at such time and under such circumstances as the Regional Director shall deem appropriate.

¹¹ This Order also serves as a ruling on the contentions made in the Respondent's motion to dismiss dated July 15, 1996, and the dismissal of certain complaint allegations at the hearing for lack of proof.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize

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

WE WILL NOT interrogate employees about their union activities and sympathies.

WE WILL NOT promise employees increased benefits in order to influence their support for union representation.

WE WILL NOT confiscate union materials from employees entering the plant premises.

WE WILL NOT threaten employees that we will close the plant if the employees chose the Union to represent them.

WE WILL NOT time increases in wages and benefits for our employees in order to influence them regarding their support for the Laborers' International Union of North America, AFL-CIO, Local 784 or any other labor organization.

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

COOKING GOOD DIVISION OF PERDUE FARMS,
INC.