

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

CONTEMPORA FABRICS, INC.

and

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 204

CASES 11-RC-6488
11-CA-19542
11-CA-19576
11-CA-19578
11-CA-19627
11-CA-19668

Jasper C. Brown, Esq., for the General Counsel.
Randall Hadley, International Representative,
for the Charging Party/Petitioner.
John S. Burgin, Esq. and *Robert A. Sar, Esq.*,
for the Company.

DECISION

Statement of the Case

MARGARET G. BRAKEBUSCH, Administrative Law Judge. On January 31, 2003, an Order Consolidating Cases, Complaint and Notice of Hearing issued in Case Nos. 11-CA-19542, 11-CA-19576, 11-CA-19578, 11-CA-19627, and 11-CA-19668 upon charges filed by the United Food and Commercial Workers Union, Local 204, herein called Union, alleging that Contempora Fabrics, Inc., herein called the Company, violated Sections 8(a)(1) and (3) of the Act. Specifically, the Complaint alleges that during a period between June 11,¹ and August 16, 2002,² the Company interrogated employees concerning their union sympathies, promulgated and enforced a no-talking rule, restricted the movement of employees, engaged in surveillance of its employees, prohibited pro-union employees from talking about the Union during work time, while allowing other employees to talk during

¹ Complaint paragraph 8(a) alleged that the Company informed its employees on or about June 11 that they were forbidden to speak about the Union on Company time. General Counsel later withdrew this paragraph at hearing.

² All dates are in 2002 unless otherwise stated.

work time and in work places, and soliciting grievances from its employees in an effort to discourage employees' support for the Union. The Complaint further alleged that the Company threatened employees with loss of business, job loss, discipline, plant closure, denial of employment with future employers, the use of their retirement fund to defend the Company against charges of objectionable conduct related to the Union election, as well as the threat of the futility of selecting the Union as their collective bargaining representative. Finally, the Complaint alleges that the Company issued a verbal warning to employee Johnny Ray Lambert and laid off Michelle Clark, Betty Locklear, and Billy McNair because of their activities in support of the Union. The Company filed a timely answer denying the essential allegations in the consolidated complaint.

Case 11-RC-6488 involves a Board-conducted representation election on August 8, 2002, in which 61 votes were cast for the Union and 81 votes cast against the Union, with 8 challenged ballots. The challenged ballots were not sufficient in number to be determinative. On August 13, 2002, the Union filed timely Objections to the conduct affecting the results of the election. On February 14, 2003, the Regional Director for Region 11 of the National Labor Relations Board, herein the Board, issued a Report on Objections, Order Directing Hearing, and Order Further Consolidating Cases and Notice of Hearing in Case Nos. 11-RC-6488, 11-CA-19542, 11-CA-19576, 11-CA-19578, 11-CA-19627, and 11-CA-19668. Specifically, the Regional Director found that pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the Union's objections raised substantial and material issues of fact, including but not limited to, issues of credibility that would best be resolved on the basis of record testimony at a hearing.

The Union's August 13 objections included 21 specific areas of conduct that were alleged to have affected the August 8 election. The Union later withdrew objections 2, 5, 7, 9, 14, 17, and 18 prior to the close of the hearing in this matter. I heard these consolidated case in Lumberton, North Carolina on May 19, 20, 21 and 22, 2003. The General Counsel and the Company filed briefs, which I have considered. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following:

Findings of Fact

I. Jurisdiction

The Company, a Delaware corporation, is engaged in the manufacture and non-retail sale of knitted textile products at its facility in Lumberton, North Carolina, where it annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside the State of North Carolina. Annually, the Company sold and shipped from its Lumberton, North Carolina, faculty products valued in excess of \$50,000 directly to points outside the State of North Carolina. The Company admits and I find 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.

II. Alleged Unfair Labor Practices

A. Background

5 In its Lumberton, North Carolina facility, the Company operates a circular knit textile
 facility where it manufactures knitted fabric for use in the clothing industry. The plant facility
 contains three knitting rooms and two separate warehouse areas for storage. The Company
 employs approximately 150 production and maintenance employees and the facility operates
 10 on a continuous 24-hour basis, with three work shifts, working six days per week. First shift
 is from 8:00 a.m. to 4:00 p.m., second shift is from 4:00 p.m. to midnight, and third shift is
 from midnight to 8:00 a.m. The Company maintains an Employee Stock Option Plan and is
 owned 100 percent by the employees.

15 In early April 2002, the Union began its organizing campaign at the Company’s
 facility. Over the course of the campaign, the Union held weekly or biweekly employee
 meetings at a local park. The Union also visited employees in their homes, met with
 employees at restaurants, and distributed literature at the facility. Employees Johnny Lambert,
 Michelle Clark, Betty Locklear, and Billy McNair, along with other employees, hand billed
 20 and distributed Union literature at the Company’s facility. On June 27, the Union filed a
 petition with the Board to represent certain production and maintenance employees at the
 Company’s Lumberton, North Carolina facility. Pursuant to a Stipulated Election Agreement
 approved by the Acting Regional Director on July 12, 2002, a secret ballot election was held
 25 on August 8, 2002. The Company and the Union stipulated that the following employees were
 an appropriate collective bargaining unit:

30 All hourly paid full-time production and maintenance employees, including
 mechanics, examiners, shipping and receiving employees, the planner, the
 assistant planner, the converter clerk, the yarn inventory clerk, the shipping
 clerk, and the technical support clerk employed by the Employer at its
 Lumberton, North Carolina facility; excluding all other salaried employees, all
 part-time and temporary employees, technical employees, office clerical
 35 employees, guards, professional employees, and supervisors as defined in the
 Act.

40 The Company admits that during the Union’s campaign period in June, July, and
 August, the following individuals were supervisors within the meaning of the Act: Plant
 Manager Danny Church, Vice President Ronald Roache, Assistant Supervisor Gerald
 Corcelius, Human Resource Director Teresa Johnson, Assistant Supervisor Susan
 Williamson, Shift Supervisor Chris Roberts, Assistant Supervisor Irving Jones, Assistant
 Supervisor Jack Ford, and Quality Manager Arland Hill.

45 **B. Violations Alleged to Occur Before the Election**

1. Ronald Roache’s Speeches to Employees

Beginning on June 3 and continuing until August 6, the Company conducted meetings
 concerning the Union’s organizing campaign with employees on all three shifts. Vice

President Ronald Roache conducted the meetings and was accompanied by management personnel for the respective shifts. Roache recalled giving speeches to employees on June 3, June 27, July 8, July 18, July 25, August 1, and August 6 prior to the election. Because the Company operates three shifts over a 24-hour period, Roache presented the same speech to groups of employees on each existing shift. Thee meetings were held during the respective work shifts for all three shifts and were usually conducted in a conference room with approximately 15 employees in attendance. Employees did not normally attend the meetings with the same group of employees in each scheduled meetings. Human Resources Manager Teresa Johnson testified that she attended every meeting for every shift during this entire period. Roache testified that during his first meeting with employees, he probably read his prepared speech word for word. He explained that as he became more comfortable, he decided that it would make more sense to make eye contact with the employees and he did not read his speeches word for word. General Counsel alleges in complaint paragraphs 8 (b), (c), (j), and (n) that in various meetings with employees, Roache threatened employees with plant closure and loss of business if they selected the Union as their exclusive collective bargaining representative. General Counsel also alleges that Roache threatened employees with job loss in the event of a strike and threatened employees that it would be futile for them to select the Union as their exclusive collective bargaining representative.

**a. Complaint Paragraph 8(b) and Objection 19
Threat of Loss of Business**

The complaint alleges that on various dates between late June and August 8, Ron Roache threatened its employees with loss of business if they selected the Union as their exclusive bargaining representative.³ Michelle Clark testified that during a July meeting, Ron Roache told employees that from the way it looked, the Company only had the money to operate for a year and a half more. Clark recalled that Roache added that the Company couldn't get new customers because of the Union. Regina Cummings testified that Roache told employees in a July meeting that the Company's customers could find out that the plant was being unionized and they might not want to do business with the Company. She recalled that he explained that the customers could learn of the organizing because their truck drivers could observe the hand billing. Diane Hood recalled attending a meeting in July when Roache told employees that if the Union were voted in, the Company could lose customers because customers would not want to do business with a unionized company. James Green recalled that during a meeting approximately two weeks before the election, Roache told employees that he was worried about the possibility of plant closure if the employees voted the union in. Green recalled that Roache explained that other companies would not want to do business with the Company, work would slack off, and there could be layoffs. Betty Locklear testified that Roache told employees in a meeting near to the election date that if the Company loses customers, the plant could possibly close. Johnny Lambert testified that during a meeting on July 9, Roache told employees that if their customers found out that they were unionized, they would not want to do business with the Company.

³ Objection 19 alleges that during the critical period the Company threatened employees with loss of business if the Union is voted in.

The Company called Karen Tyner, John McCall, Ruby Humphrey, Norris Bullard, Lois Helen Locklear, Joanna Lambert, Mollie Brooks, and Marilyn Britt to testify concerning their recall of Roache’s speeches to employees. Bullard recalled that Roache told employees that if the Company could not get their product out, they could lose customers. 5 McCall testified that in all of his meetings with employees Roache mentioned business conditions. Tyner and Humphrey did not recall any specific references to customers during Roache’s speeches, however they recalled that Roache talked about how the economy was affecting their work and about the decline in the textile industry. Humphrey recalled only that 10 Roache said that he was unable to get out to find customers because he had to deal with the Union issues. Brooks recalled that Roache stated that “conditions were slow” and talked about other companies in the area that had closed. Brooks also recalled that Roache told employees that if the Union came in, customers might leave, however he was planning to “keeping the Company going.” Britt recalled that Roache stated that the Company was losing customers 15 because people weren’t doing their jobs and he wasn’t able to go out to visit customers because he had to stay and “fight against this.” Brooks did not recall Roache stating that customers would leave if the Union won the election. Joanna Lambert recalled that Roache told employees that customers would leave the Company if the Union came in. She also 20 recalled that Roache told employees that if they didn’t let the Union pass, they would lose customers and everything else. Roache had also added that he hoped that business would be better after “the Union would pass.” Both Britt and Lois Helen Locklear denied that Roache ever said that the Company would lose customers if the Union were voted in.

25 The script for Roache’s June 3 meeting with employees includes:

In the past 4-5 weeks I have been out looking for business 2 days as compared to the previous 4 months of over half my time. We have got to return our focus to our company and its business and do it quickly or we will not make it. 30 Unless we fix our problems and fix them quickly there won’t need to be a union election because we will end up closing due to lack of business, quality, etc.

35 The script from Roaches’ June 27 meeting contains the following in reference to one of the Union’s handouts:

I think I also read something about we have contracts with our customers, why not with the employees. These are real live economic conditions going on. 40 There are no contracts with our customers. Every customer can leave us whenever they chose to. If we lose our customers it does not matter how many contracts we have with a union if the doors close. Any additional costs associated with fighting this union will come directly from the Company which affects all of us. 45

Roache acknowledged that he had also included a statement that he had been in the business a long time and he believed that a union could put the Company at risk.

During the speech on August 6, Roache told employees that his decisions and

judgment were focused on getting new customers and keeping the customers that they had and keeping their business in operation. Roache explained that as of that day, the Company only had operating capital to keep their doors open for a little more than a year. He went on to explain that he felt that with the employees help, they could reverse the situation.

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Roache denied that he ever told employees that if customers found out that the Company was union they would not want to do business with the Company. Teresa Johnson testified that Roache never stated or implied that the Company would lose customers “simply because the Union came in.” She recalled that he did talk with employees about losing customers because of quality problems. She also recalled that he had stated that in the event of an economic strike, the Company could possibly lose customers because of their not getting out the product. Joanna Lambert specifically recalled Roache’s telling employees that in the event of a strike, the plant would not run and they wouldn’t have any customers. The script for Roache’s June 27 meeting with employees includes:

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In the event of a strike, I believe that a number of our customers, if faced with, this would in my opinion seek an alternative supplier. If that were to happen, it is possible that we would never get them back.

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**b. Complaint Paragraph 8(c) and Objections 12 and 20
Threat of Job Loss in the Event of a Strike**

The complaint alleges that in early August, Roache threatened employees with job loss in the event of a strike.⁴ Regina Cummings testified concerning a meeting that she attended with approximately 8 to 10 employees in mid July. Cummings recalled that Roache talked about what would happen if the Union came in and if the plant were to go on strike. She recalled that Roache stated that the employees would lose their health insurance benefits and the employees could lose their jobs and the Company could replace the employees with “somebody else.” Employee Diane Hood recalled that during a meeting approximately a week before the election, Roache stated that if there were a strike, the Company would possibly bring in other employees to fill their jobs. On cross-examination, she further remembered that Roache talked about the Company’s right to hire permanent replacements for strikers.

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Bullard and Britt, testifying for the Company, recalled that Roache spoke about the Company’s right to hire employees to replace striking employees. While Britt recalled that Roache told employees that if there were later openings the strikers would have the right to come back, Humphrey did not recall this additional comment. Bullard, Britt, and Humphrey all denied that Roache ever threatened to close the plant in the event of a strike. The text of Roache’s August 1 speech to employees includes the following concerning strikes:

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If the strike is over more money, better benefits or other economic items,

⁴ Objection 12 alleges that during the critical period the Company threatened employees with loss of jobs. Objection 20 alleges that during the critical period the Company threatened employees with loss of health insurance.

Contempora has the legal right to hire permanent replacements to fill the positions of all strikers to keep our operation going. Strikers whose positions are filled by permanent replacements have no right to return after the strike is over. The strikers have to sit around and wait for available jobs to open up which could take months or even years.

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**c. Complaint Paragraph 8(j)
Threat of futility of selecting the Union**

The complaint alleges that in late June, Roache threatened employees that it would be futile for them to select the Union as their collective bargaining representative. Counsel for the General Counsel presented only one witness to testify concerning this allegation. Employee Johnny Lambert recalled that in June, Roache spoke with the entire first shift in the warehouse. He recalled that supervisors Williamson and Jones were also present. Lambert testified that during the speech, Roache stated that the NLRB has passed a new law and that the Company “did not have to negotiate with the Union and certainly didn’t have to negotiate under good faith.” Lambert further testified that in a later meeting Roache said that the Company would have to negotiate in good faith with the Union, if the Union won the election. Roache’s script for his meeting with employees on July 25 reflects that Roache’s primary topic was collective bargaining. Roache discussed not only the language of Section 8(d) of the Act, but also language from Supreme Court and Board decisions concerning bargaining. The script includes the statement that if the Union got in, the Company would meet their obligations to bargain in good faith, however the Company would bargain hard and bargain tough. The Company would say “No” to any and every union demand they disagreed with.

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**d. Complaint Paragraph 8(n) and Objections 8 and 13
Threat of plant closure**

The complaint alleges that in early August, Roache threatened employees with plant closure if they selected the Union as their collective bargaining representative.⁵ Cummings did not provide any specific or approximate date, but recalled that Roache told employees in a meeting that the Union could close the plant down if it “came in.” While she did not provide a date, Betty Locklear testified that she attended a meeting in which Roache told employees that if the Union came in, the Company could lose business and possibly close. Third shift employee Diane Hood testified: “He said that if the plant did close that there was a possibility that they could lose a whole lot of customers because of the closures, because if the Union did come in that we could lose a whole lot of customers and the customers wouldn’t want to do business with them when they’re unionized.” Hood also confirmed that she could not recall Roache’s exact words and acknowledged that often third shift employees fell asleep during the meetings.

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Bullard, Britt, and Tyner, called as witnesses for the Company, denied that Roache told employees that the plant would close if the Union were voted in by the employees.

⁵ Objections 8 and 13 have identical wording and allege that during the critical period the Company and through its agents threatened employees with plant closure.

2. Violations Alleged with Respect to Supervisors Other Than Roache

a. Complaint Paragraph 8(e)

Promulgation and Enforcement of a No-Talking Rule

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The complaint alleges that on various dates in July and August, the Company, acting through supervisors Anthony Smith,⁶ Irving Jones, and Chris Roberts, promulgated and enforced a no-talking rule in order to discourage union activity. Cummings recalled a day in mid to late July, when she spoke with Blanche Lambert, the employee who worked next to her. Cummings recalled that they were discussing a defect in the fabric. During her conversation with Lambert, Supervisor Jones approached her and told her not to let Knitting Manager Anthony Smith catch them talking. Cummings testified that no supervisor had ever made this kind of statement to her before the election. Jones testified that if he sees employees talking and not working, he tells them to go back to work. Cummings and Lambert are both examiners and work about five to six feet apart. Jones did not recall any specific date in July when he had spoken with Lambert and Cummings about talking. He added however, that he usually had to break them up from talking on a daily basis because they “love to talk.” He maintained that he continues to do so in 2003.

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Employee Howard Jacobs recalled that in late July, he was talking with fellow employee, Kenny Butler in his work area. After Butler walked away from Jacobs, Supervisor Roberts told Jacobs that he couldn’t talk with fellow workers. Jacobs testified that Roberts did not explain why he could not. The Company’s records reflect that Jacobs received a verbal warning in April 2000 for numerous occasions when he was observed on the knitting floor, talking with employees concerning non-work related matters. On August 2, 2000, the Company issued a written warning to Jacobs for “leaning on a machine talking to a mechanic.” The warning included reference to Jacobs’ having received prior warnings for this same conduct on April 11, 2000 and June 28, 2000.

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Johnny Lambert testified that on August 5, he was returning from the parts department and stopped to talk with his cousin, John Hunt. Supervisor Jones approached him and told him to watch himself and added that Lambert had already been “told on once for talking that morning.” Jones had not explained what he meant by that statement. Jones testified that he did not recall this conversation with Lambert.

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Michelle Clark testified that during the Union campaign, Supervisor Roberts told employees that they could not talk and they were to be at their machines at all times. She could not remember the date when Roberts made this statement. She further testified that she had been talking with another employee when Roberts made the statement to her. On cross-examination, Clark admitted that when she provided a sworn affidavit to the NLRB on September 6, 2002, she had testified that no supervisor had told her that she could not talk in

⁶ Paragraph 8(e) specifically alleges that the Company promulgated and enforced a no-talking rule through the actions of Supervisor Anthony Smith in July. The record contains no evidence of Smith’s action in this regard.

the plant.

**b. Complaint Paragraph 8(f)
Restriction of Employee Movement**

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The complaint alleges that on July 25, and August 1, respectively, Roberts and Corcelius restricted the movement of employees in order to discourage union activity in the plant. Employee Jacobs testified that it had been his practice for 20 years to take his uniform to a particular area of the plant and no supervisor had ever restricted him from doing so. On 10 July 25, and before the beginning of Jacobs’ shift, Roberts stopped Jacobs as he carried his uniform through the plant. Roberts told him that he could not walk through the plant. Roberts did not recall telling Jacobs that he was not permitted to go through the plant. He explained that if an employee left the plant after their shift and then came back in, it is 15 possible that he would approach the employee and find out what the employee was doing.

**c. Complaint Paragraph 8(g) and Objections 3 and 4
Alleged Surveillance**

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The complaint alleges that on various dates in June, July, and August, the Company acting through supervisors Bridgeman, Corcelius, Roberts, Williamson, and Ford, engaged in surveillance of employees in order to discourage Union activity in the plant.⁷ Cummings, who worked in the inspection area, testified that before the Union campaign, Second Shift 25 Supervisor Ford had a practice of coming to the inspection work floor early to check the area before his shift. After checking the area, he would leave. Cummings recalled that the week before the election, Ford stayed on the work floor and walked back and forth looking at everyone. She estimated that he was in the inspection area for approximately 30 minutes. Cummings testified that she had never seen Ford do this previously. Ford⁸ testified that he 30 usually came into the plant around 3:00 p.m. prior to the beginning of the 4:00 p.m. shift. He estimated that it usually took him approximately 45 minutes to review the turnover sheet from first shift, transfer information to a layout sheet, and make rounds to check each individual knitting machine. A part of his pre-shift preparation involved approximately 15 minutes in 35 the inspection area. He denied that he spent as much as 30 minutes in the inspection area or that he remained in the inspection area, simply watching employees.

Johnny Lambert testified that during the later part of July he saw supervisors Williamson, Johnson, Hill, Jones, and Bridgeman standing at the end of the work aisles 40 during shift change. Johnson testified that as a part of their duties, supervisors were expected to be on the production floor. She explained that during the Union campaign, both she and the other supervisors were out on the floor even more than usual. She explained that the purpose of this additional supervisory presence was to be available to employees and to 45 answer any questions. She denied that supervisors were instructed to stand at the end of the

⁷ Objection 3 alleges that during the critical period, the Company used surveillance through its supervisors\agents whenever the Union was out in front of the plant hand billing. Objection 4 alleges that during the critical period the Company used surveillance at the change of shift.

⁸ Ford retired from the Company in March 2003.

aisles and to watch employees and she observed no supervisors doing so.

**d. Complaint Paragraph 8(h) and Objection No. 11
Disparate Enforcement of the No-Talking Rule**

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The complaint alleges that in July and August, Supervisors Williamson, Roberts, and Corcelius prohibited pro-union employees from talking about the Union during work time, while allowing other employees to talk during work time and in work places.⁹ Betty Locklear testified that prior to the election, supervisors walked the production floor more often and told employees to go back to work when they were talking. Specifically, she recalled that on or about August 1 or 3, she was talking with employee and mechanic James Green next to her machine. Green recalled that when Supervisor Roberts approached them, Locklear moved away from him. Locklear also admitted that she was not working when she was talking with Green. Supervisor Roberts told Locklear that Green had too much work to do for her to talk with him. While she testified that he had never before said that to her, she admitted that she was not working at the time that she was talking with Green. She also acknowledged that the Company has previously warned employees for talking rather than working. Roberts testified that while he did not recall the conversation with Locklear and Green, it is possible that he made such a comment. He explained that if he had noticed their being out of their area, talking in the aisle, or engaged in excessive talking, he would have said something like that. The Company submitted Green’s attendance calendar for 2002. The calendar reflects that on June 26, Roberts spoke with Green about staying busy until his shift ended. Roberts documented that Green had been noted to quit working and to stand around talking during the last 30 minutes of his scheduled shift. Roberts instructed Green that the last 30 minutes of the shift was as important as the first 30 minutes.

Locklear further testified that in July she saw Company supporters Marilyn Britt and Molly Brooks talking together for approximately 20 minutes. Locklear saw Roberts walk past them without saying anything to them. She acknowledged that she did not know what Britt and Brooks were discussing and she did not know if Roberts overheard their conversation. She recalled that it only took a few seconds for Roberts to pass Britt and Brooks. Brooks worked in a job identified as a “creler” and Britt worked as a knitter. Locklear acknowledged that their respective jobs required them to work next to each other and to talk with each other. Roberts testified that he did not remember the incident with Britt and Brooks. He testified that had he seen them talking, he would have treated the incident the same as with Green and Locklear.

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Lambert testified that in early August, he observed Company supporter Grant Ivy talk with John Hunt for as long as twenty minutes. Lambert observed Supervisor Williamson walk past them without stopping to say anything to them. Lambert testified that during the campaign, he also observed Williamson walk past employees Pat Brooks and Ruby Humphrey, who were talking. Williamson did not stop or say anything to them. Williamson neither recalled seeing Ivy and Hunt talk for as long as 20 minutes nor for any long period

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⁹ Objection 11 alleges that during the critical period the Company allowed “vote no” supporters to solicit employees during working hours and did not allow Union supporters the same opportunity.

during the Union campaign. Williamson testified that if she had seen Brooks and Humphrey talking, she would have told them to go back to work.

5 Lambert recalled that he asked Supervisor Arland Hill why non-Union employees could talk and pro-Union employees could not. Lambert recalled that Hill responded” “That’s a good point.” Hill recalled Lambert’s comment and his own response. Hill explained that before he could say any more to Lambert, a page interrupted him.

10 Green recalled that in late July, he was talking with fellow employee Mack Bryant. Supervisor Corcelius approached as they were talking. Green recalled that he and Bryant were not talking about the Union but continued to talk in Corcelius’ presence. Green did not allege that he and Bryant were talking about a work related matter. After Corcelius listened to their conversation for what Green described as “awhile,” he asked Mack to return to his work
15 area. Corcelius did not recall the incident.

**e. Complaint Paragraph 8(k)
Alleged Interrogation**

20 The complaint alleges that in late June, the Company, acting through Anthony Smith, Teresa Johnson, and Arland Hill interrogated employees regarding their union sympathies and desires. Johnny Lambert recalled an incident in which Anthony Smith approached him in the work area he identified as the “200 floor.” Smith asked why he thought that the Company
25 needed a union. Lambert responded, “Because of lies said by Ron Roache.” Lambert did not identify the specific date of this conversation nor did he explain what, if anything, was said before or Smith’s question and his answer. General Counsel presented no witnesses concerning interrogation by Teresa Johnson or Arland Hill in late June. While Smith denied asking Lambert why he thought the employees needed a union, he recalled a conversation in
30 which he had spoken with Lambert about the Union. Smith initiated the conversation by telling Lambert that he had some issues that he wanted to discuss with Lambert. Smith recalls that he stated that he had observed the UFCW and that he didn’t think that having a union would solve the Company’s problems. Smith explained that he had approached Lambert because management heard that there was union activity and he was instructed to talk with
35 employees in one-on-one conversations. Smith explained that he had been given a list of instructions as to what he could and could not say to employees. He stated that he had been told that he could make statements but could not ask questions and he had followed these instructions in talking with Lambert.

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**f. Complaint Paragraph 8(l) and Objection 16
Solicitation of Grievances**

45 The complaint alleges that in late July, the Company, acting through Chris Roberts, solicited grievances from its employees and impliedly promised to remedy their grievances in an effort to discourage employee support for the Union.¹⁰ Locklear testified that on an unspecified date in July, Corcelius asked her if she had problems or questions about the Union

¹⁰ Objection 16 alleges that during the critical period the Company did solicit grievances from employees.

to come and talk with him. She did not provide any additional information as to what, if anything was said before or after Corcelius making this comment to her.

**g. Complaint Paragraph 8(m)
Threat of loss of Future Employment**

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The complaint alleges that in July, the Company, acting through Gerald Corcelius, threatened its employees that they would be denied future employment if they informed a prospective future employer that they previously worked for the Company. Employee Michelle Clarke missed a Company meeting with employees in July. When she returned to work, Corcelius spoke with her and with James Hunt. Corcelius stated that if they went anywhere else to get a job and told the prospective employer about the Union at Contempora, they would not be hired. On cross-examination, Clarke recalled Corcelius stating that if they left to work somewhere else, another plant would not hire them because they came from a unionized plant. Corcelius did not recall any conversation in which he had made such a statement to Clarke and Hunt. He explained that he had been instructed as to what was permissible and not permissible to say to an employee during the campaign and he would not have made such a comment.

C. Violations Alleged to Have Occurred after the Election

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Complaint paragraph 8(i) alleges that the Company, acting through Roache, threatened employees that it would use employee retirement money to defend against charges of objectionable conduct related to the Union election.

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Roache testified that the Company is owned one hundred percent by the employees. Employees have shares that are placed in their account every year and are valued at the end of each fiscal year based upon the actual value of the stock. The value of the stock entails all the assets of the Company, including the value of the building, the machinery, the accounts receivable, and the balance of the bank accounts. Roache testified that there is no formal retirement plan for employees. The value of the stock held by the employees changes from year to year based upon the performance of the Company. When employees leave the Company, they are paid the value of the stock and the stock is redistributed to the remaining employees.

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Hood recalled that during a meeting with employees after the election, Roache stated that he was pleased with the results of the election, however the Union filed charges. Hood recalled Roache’s saying that if it took everybody’s ESOP money to fight the Union, “that is what he would do.” On cross-examination, Hood admitted that she had stated in her sworn statement to the Board on August 17 that she did not remember exactly what Roache said, but he gave her the impression that he would use every bit of the money left from the ESOP to fight the Union. Green recalled that Roache stated that no matter what it took, whether the Company’s money or ESOP money, he would fight the Union. Green acknowledged on cross-examination that he could not recall the exact words that Roache used during this meeting. Cummings recalled Roache telling employees that if he had to do so he would fight the Union’s “petition” with everything that the Company had, “if it meant using employees’

money.” Lambert testified that Roache told employees that he would fight the Union’s objections if it meant taking the employees’ “retirement money into it.”

5 The Company submitted the script for Roache’s August 16 meeting with employees in which he discussed the Union’s filing objections to the August 8 election. The script includes the following:

10 Because the food workers union has decided to file these objections, we will now be forced to spend time, money, and energy addressing these accusations instead of getting back to the work that we need to perform to obtain and keep the customers that we have.

15 Roache’s prepared speech goes on to explain that the Board will conduct an investigation and that the matter might also be set for a hearing with employees subpoenaed to testify. Roache concluded by stating that the Company had an obligation to oppose the objections and they would keep the employees informed of all new developments.

20 Company witnesses Joanna Lambert, Mollie Brooks, Ruby Humphrey, Norris Bullard, Marilyn Britt, and Karen Tyner all testified that Roache had not mentioned either ESOP or their retirement money during his August 16 meeting. Company employee witness John McCall initially testified that while Roache said that he would do whatever he could to keep the Company running, he did not mention anything about using ESOP money to do so.
25 McCall then testified that Roache told employees that he would do whatever he had to do to keep the Union down and that money would come from ESOP. Upon further questioning from the Company’s counsel, McCall then testified that Roache said that he would get the money from “resources” rather than ESOP.

30 **D. Personnel Actions Toward Specific Employees**

**1. Paragraph 9 and Objection 6
The Company’s Verbal Warning to Lambert**

35 Employee Johnny Lambert has been employed as a mechanic at the Company’s plant for over twenty years. Lambert visibly and actively engaged in union activity by hand billing the plant on behalf of the Union during the Union’s campaign. Lambert testified that he also spoke up in favor of the Union during one of Roache’s July 18 meeting with employees.

40 On July 19, supervisor Hill approached Lambert and informed him that he was to receive a warning. Shortly thereafter, Lambert was called to a meeting in Hill’s office where he met with Supervisors Jones, Williamson, and Hill. Hill informed Lambert that he was there because he had threatened someone about the Union. Hill told him that he had a right to
45 support the Union but he could not threaten anyone with it. Lambert asked for the name of the person he was to have threatened. Lambert maintained that he told the supervisors that he wanted to apologize to the person. Although Hill told him that he would tell him if allowed to do so, neither Hill nor any other supervisor told Lambert who he was to have threatened. Hill told him that if this happened again, he would be subject to discipline and/or termination. The

oral warning was reduced to writing and placed on the back of Lambert’s attendance calendar, consistent with the Company’s normal disciplinary procedure. Lambert denied that he threatened anyone and testified that he was unaware of any employee who had indicated feeling threatened.

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The Company asserts that on July 18, a female employee went to the front office to see Human Resources Manager Teresa Johnson. When she was unable to find Johnson, she went to the office of Vice President of Manufacturing and Sales, Gerald Cauthen. Cauthen testified that the woman told him that Johnny Lambert threatened her regarding her vote in the upcoming election. The woman alleged that Lambert told her that she better not vote against the union in the election. Cauthen recalled that the woman seemed upset and she was adamant that she did not want Lambert to know that she had informed management of his threat to her.

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Johnson testified that while she did not talk with the woman on July 18th, she did so a “couple of days later.” Johnson testified that the woman was upset because an employee from another shift approached her. When asked the identity of the person who approached the woman, Johnson replied:

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Johnny Lambert. Of course it took me a bit or two, with her speaking with me, and she told me that he had told her that she’d better not vote for the Union in this plant.

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As Johnson continued to describe the woman’s statement to her, she again repeated that Lambert threatened that she “better not vote for a Union in this plant.”¹¹

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Although Johnson stated that she spoke with the unnamed woman a couple of days after July 18, she participated in the decision to discipline Lambert on July 19. The Company asserts that the unnamed woman could not be identified or presented for testimony because she continued to fear Lambert. The record contains no evidence of any statement that was taken from this woman at the time that she reported the alleged threat. The only statement that is alleged to have been given by this unnamed woman was a written statement dated May 20, 2003, the second day of the trial in this proceeding. This statement was not received into evidence as it appeared to be prepared for trial and could not have been relied upon as a basis for Lambert’s testimony.

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The Company’s Employee Handbook contains a provision that “Abusive or threatening language, fighting or unsafe conduct, will not be allowed on Company premises. An employee will be subject to immediate dismissal.” The Company submitted into evidence records to show that the Company has issued 32 other disciplinary actions to employees for threatening or abusive behavior to supervisors and fellow employees.

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¹¹ Although counsel for the Company states in his brief that Johnson testified that the woman described Lambert’s threat as “She’d better not vote against the union in this plant,” her actual testimony reflects otherwise. Twice Johnson described Lambert’s alleged threat as “she better not vote for the Union in this plant.”

**2. Complaint Paragraph 10 and Objection 10
Temporary Layoff of Employees Michelle Clark, Betty Locklear, and Billy McNair**

5 It is undisputed that based upon business conditions, the Company has a practice of
conducting temporary layoffs or sending employees home for lack of work. Roberts testified
that as third shift supervisor he always follows the Company’s policy to take volunteers first
for the layoffs. If there are not enough volunteers or if no volunteers, he reviews the
10 employee attendance reports. Based on seniority, he selects employees who have not been
laid off recently in order to evenly distribute the temporary layoffs. Roberts testified that if
possible, he attempts to let employees know in advance when they will be laid off to keep
them from having to come to the plant and then turn around and go home. On some occasions
15 he has not been able to give advance notice and he has sent employees home after they arrived
for work.

 At the time of the union election, employees Michelle Clark, Betty Locklear, and Billy
McNair worked on third shift under Roberts’ supervision. Michelle Clark testified that after
20 completing her shift on August 8, Roberts approached her and told her that she would have
the following evening off work. After Betty Locklear completed her work shift on the
morning of August 8, she clocked out and went to the parking lot. Roberts caught her before
leaving and told her that she had the night off. Locklear recalled that she asked Roberts if she
25 had to take the night off and he told her that she did.

 Roberts testified that he could not recall whether Clark or Locklear volunteered for the
layoff or if he designated them for layoff. He did not recall whether he asked for any
30 volunteers for that evening and acknowledged that it was more than likely that he mandated
the August 8 layoff.

 Both Locklear and Clarke testified that they wore union buttons to work on the night
before their temporary layoff and that they hand billed in front of the plant during the week
prior to the election. Although Locklear recalled that McNair had also worn a union button
35 on the night prior to the temporary layoff, McNair did not testify.

 The Company submitted records to show that Clarke, Locklear, and McNair have
repeatedly been sent home for lack of work over the course of several years. Clark was sent
home for lack of work on 16 occasions in 2000, 30 in 2001 and 16 in 2002. Although
40 Locklear was only hired in April, 2002, she had been sent home for lack of work on May 28,
July 30, August 8, September 9-11, September 14, September 18, and September 21. McNair
was sent home for lack of work 14 days in 2000, ten days in 2001, and 12 days in 2002,
including June 5, August 1, August 8, August 13, August 15-17 and November 18-22, 2002.
45 The Company additionally submitted records to show that during the week of the union
election, six third shift employees were sent home for lack of work on August 6, three third
shift employees were sent home for lack of work on August 7, and four third shift employees
were sent home for lack of work on August 8. The Company also submitted records to show
that 36 first shift employees, 34 second shift employees, and 18 third shift employees were
sent home during the week of the election. On the same day that Locklear, McNair, and

Clarke were given a temporary layoff, six first shift employees and 4 second shift employees were sent home for lack of work.

III. Factual and Legal Conclusions

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A. Roache’s Speeches to Employees

1. Roache’s Speeches Prior to the Election

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In complaint paragraphs 8(b), (c), (j), and (n), General Counsel alleges that Roache violated the Act by threatening employees with plant closure and loss of business if they selected the Union as their bargaining representative during his speeches to employees in June, July, and August. The complaint further alleges that in speeches to employees during this same period, Roache threatened employees with job loss in the event of a strike and threatened that it would be futile for employees to select the Union as their collective bargaining representative.

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General Counsel submitted the testimony of six employees in support of the complaint allegations involving Roache’s speeches. The Company presented eight employee witnesses to rebut the complaint allegations. The overall record testimony of these 14 individuals reflects a wide diversity in recall. I have considered their testimony as a whole in conjunction with the Company’s alleged texts of the various speeches given.

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With respect to complaint paragraph 8(j) and the allegation of Roache’s threat of the futility of selecting the Union as bargaining representative, I do not find the record sufficient to support this allegation. Lambert was the only employee who testified in support of this allegation. Lambert initially testified that Roache told employees that the Board had passed a new law and the Company did not have to negotiate with the Union and did not have to negotiate in good faith. Lambert further testified however, that in a later meeting, Roache gave assurances that the Company would have to negotiate in good faith with the Union if the Union won the election. Lambert’s testimony is uncorroborated and patently incredible with respect to this allegation. Accordingly, I find no merit to Complaint Paragraph 8(j).

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General Counsel alleges in Complaint paragraph 8(c) that Roache threatened its employees with job loss in the event of a strike. I find no merit to this allegation. The text of Roache’s August 1 speech reflects that the majority of the speech was devoted to addressing what happens in the event of a strike. Roache told employees that the Company had the right to hire permanent replacements for striking employees. Company witnesses Britt and Bullard, as well as General Counsel witness Hood, corroborate the written text concerning the hiring of replacements. Additionally, the text reflects that Roache told employees in this same speech that the Company could and would stop payment on strikers’ insurance benefits. The employees would have to pay the weekly premium in order to keep the medical benefits in effect during the strike. Thus, it appears that based upon the record testimony and the Company’s text of the August 1 speech, Roache lawfully advised employees of the Company’s right to hire permanent replacements during a strike and lawfully advised employees of a strike’s effect on their insurance benefits. There is no credible evidence that

Roache unlawfully threatened employees with job loss in the event of a strike or that the Company unlawfully threatened employees with the loss of health insurance benefits. Accordingly, I find no merit to Complaint paragraph 8(c) or Union Objections 12 and 20.

5 The remaining allegations involving Roache’s speeches involve the alleged threat of plant closure and the threat of the loss of business if the employees selected the Union as their collective bargaining representative.

10 The script for Roache’s June 3 speech to employees speaks to the fact that Roache has not been able to solicit business for the previous 4 to 5 months because of the Union’s campaign. In a later section, he also mentions “Unless we fix our problems and fix them quickly there won’t need to be a union election, because we will end up closing due to lack of business, quality, etc.” During the June 27th speech, Roache told employees that in the event
15 of a strike, a number of their customers would seek another supplier and if that occurred, it would be possible that the Company would never get them back. In the same speech, Roache told employees that customers could leave whenever they chose to do so and if the Company lost customers, it would not matter how many contracts they had with a union if the doors closed. Roache further stated that he believed that a union could put the Company at risk and
20 added that any additional costs associated with fighting the union would come directly from the Company, which affects “all of us.” Thus, it is undisputed that through Roache’s speeches, the Company communicated to employees that the Union’s campaign was putting the Company at risk and affecting the loss of new business. Further, Roache warned
25 employees that in the event of a strike, the Company would lose customers and the plant could close.

 Thus, the admitted text of Roache’s speeches on June 3 and 4 and on June 27 and 28 is very similar to the statements recalled by employees. Employees Hood, Green, Cummings
30 and Johnny Lambert all testified that Roache told employees that the Company’s customers would not want to do business with the Company if the Company were unionized. Green and Locklear recalled Roache’s prediction of the plant’s closing in relation to the loss of customers. Company witness Joanna Lambert recalled that Roache told employees that
35 customers would leave if the Union won the election. Company witness Brooks recalled that Roache told employees that customers might leave if the Union came in. She added however, that Roache went on to say that he was planning on “keeping the Company going.” Other Company employee witnesses recalled Roache’s mentioning the effect of the economy and the product quality on their work and customers. Based upon the overall testimony and the
40 text of Roache’s speeches, I do not doubt that Roache mentioned a number of factors that could affect the Company’s business and any potential plant closure. Crediting the testimony of Cummings, Green, Hood, Betty Locklear, Johnny Lambert, and Joanna Lambert, I find that during his June speeches, Roache communicated to employees that if unionized, the Company would lose customers and risk plant closure. Roache admits that he did not follow his script
45 word-for-word when he spoke with employees on all three shifts. While he may not have communicated the alleged threats to all groups of employees, the evidence supports a finding that in some of the mandatory group meetings with employees, he predicted loss of business and possible closure if the facility became unionized.

5 It is well settled that an employer’s predictions of adverse consequences arising from sources outside its control must have an objective basis in order to avoid a violation of Section 8(a)(1) of the Act. *Long-Airdox Co.*, 277 NLRB 1157, 1158 (1985). In its 1969 decision, the Supreme Court outlined the parameters of an employer’s prediction of the effect of unionization. *NLRB. V. Gissel Packing Co.*, 395 U.S. 575 (1969). Under *Gissel*, when an employer makes a prediction as to as to what effects unionization may have on its company, such a prediction is lawful where it is “carefully phrased on the basis of objective facts to convey an employer’s belief as to demonstrably probably consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization.” *NLRB v. Gissel Packing Co.*, 395 U.S. at 618.

10 In *Blaser Tool & Mold Co.*, 196 NLRB 374 (1972), the Board found that an employer’s president stated to employees that its major customer “was free to withdraw its patronage at any time and that he was apprehensive that [the customer] would cease doing business with [the employer] if the employees voted for the Union.” In finding the statement to be unlawful, the Board specifically noted that it is “well established that employer predictions of adverse consequences arising from sources outside his control are required to have an objective factual basis in order to be permissible under 8(a)(1). In a later case, the Board found a violation of the Act when the employer stated that if the union were elected, the employer’s sole customer of steel cans would switch to less costly aluminum cans and the employer would be forced to close down. *Crown Cork & Seal Co.*, 255 NLRB 14 (1981). The Board determined that the employer failed to show on an objective basis that the customer would stop purchasing the employer’s steel cans. In a more recent case, an employer told employees that it was unlikely that the employer’s parent company would view the employer as an appropriate location to invest long-term capital and that the employer’s customers might not view the Company as a secure long-term option to handle their business. The employer argued that such statement was merely an objective prediction of what its parent corporation and customers would likely do in the event of unionization. *Onyx Environmental Services*, 336 NLRB No. 83 (2001). Affirmed by the Board, the judge found the employer’s statement as violative of the Act. Specifically, the judge noted the absence of any corroborative documentary evidence to provide an objective factual basis for the prediction that the employer might lose customers if the union was elected. *id* at p. 14.

15 In a recent case, the Board found that an employer’s statement was both “carefully phrased” and based upon “objective fact.” In speaking with a group of employees, an assistant production supervisor told employees that the employer was losing money and that if the union ever did come in, the store was not making enough money to pay higher wages and that it would be a possibility that everyone would lose their jobs. The majority opinion found that the fact that the supervisor had no knowledge of the employer’s financial situation was irrelevant to her prediction as her prediction was simply that the particular store might have to close if wages were excessive. The Board concluded that employees would reasonably view her remark as indicating that any store closure would be economically driven rather than retaliatory. The Board also noted that the supervisor backed up her statement by showing employees a document that illustrated what the store was making per day. See *TVI, Inc.*, 337 NLRB No. 163 (2002), slip op. at p. 1 and 2. In another recent case also involving an employer’s prediction of loss of business and customers, the Board found the predictions as

violative of the Act. In *Aldworth Co. Inc.*, 338 NLRB No. 22 (2002), the employer told employees that if the employees selected the union and a contract was negotiated that did not allow the employer to be competitive, a contracting business entity (also alleged as a joint employer) could cancel its contract with the employer and give its business to a competitor who did not have to recognize a union. In finding the employer’s statements to be violative of the Act, the Board considered the substance of the employer’s three meetings and found common characteristics and a shared context. The Board found that there was a reiteration of a consistent theme, the threat of plant closure and a repeated association between union contracts and loss of jobs.

On the basis of the entire record evidence, I find that the Company, acting through Ronald Roache, told employees that the Company would lose customers and risk plant closure if employees selected the Union as their collective bargaining representative. While Roache may have presented charts and documentation to show a decline in business, there is no evidence that Roache gave any objective basis for his prediction that the Company would lose customers in the event of unionization. Accordingly, I find merit to Complaint paragraph 8(b) and (n) as well as Objections 13 and 19.

2. Roache’s Speech After the Election

The Company presented the testimony of six employee witnesses who all confirmed that Roache did not mention either ESOP or the employee’s retirement money during his speech following the election. General Counsel witness Cummings initially testified that Roache told employees that he would fight the Union’s “petition” with everything the Company had, if it meant using employee’s money. She later testified: “He would fight the union with everything that the Company had. if it took it.” Cummings testified that because the Company is an employee ownership company, it was her opinion that Roache’s statement meant taking some of her money to fight the objection. She acknowledged that whether Roache talked about the Company’s money or the employees’ money, it meant the same thing to her. She admitted that Roache had not actually said anything about money or pensions in the speech.

Although Hood testified that Roache made the statement that “if it took everyone’s ESOP money to fight the Union, that’s what he would do,” she later admitted she had not recalled Roache’s exact words. She admitted that Roache had simply given her the impression that he would use the ESOP money to fight the Union. Although Lambert testified that Roache told employees that he would fight the objections if it meant taking their retirement into it, his testimony was not fully consistent with his earlier Board affidavit. Overall, I do not find Lambert’s testimony credible with respect to Roache’s post-election speech.

Based upon the overall testimony of all witnesses, the record does not support a finding that Roache threatened employees that he would use employee retirement money to defend the Union’s objections. Accordingly, I find no merit to Complaint Paragraph 8(i).

B. Violations Alleged with Respect to Supervisors Other than Roache

1. Complaint Paragraph 8(e) and the Alleged No-talking rule

5 The complaint alleges that through the actions of supervisors Smith, Jones, and
 Roberts, the Company promulgated and enforced a no-talking rule in order to discourage
 union activity. No evidence was presented concerning any alleged conduct by Supervisor
 Smith concerning this complaint allegation. Jones did not deny that he might have told
 10 Cummings and Lambert to stop talking on an unspecified day in July. He credibly testified
 that he usually had to break them up from talking on a daily basis because they “love to talk.”
 I find Jones to be a more credible witness and find Cummings’ assertions suspect that no
 supervisor had ever made this kind of statement to her before the election. I credit Jones’
 testimony that if he saw employees talking and not working, he told them to get back to work
 15 and this was his practice before and after the Union’s campaign. In this regard, I find that his
 alleged statement to Lambert was in keeping with this practice.

Employee Jacobs testified that Roberts told him that he couldn’t talk with other
 employees after he was seen talking with fellow employee Kenny Butler. Jacobs did not
 20 allege that his conversation was work related nor did he deny that his talking was in lieu of
 working. Roberts did not recall the incident involving Jacobs, however he testified that he
 will speak with employees if they are out of their work area or engaged in idle talking. The
 record reflects that prior to the Union’s campaign, Jacobs received numerous warnings for
 25 talking with other employees about non-work related matters and not working. The record
 supports a finding that the alleged comments by Roberts to Jacobs in July were consistent
 with the Company’s treatment of Jacobs even prior to any Union activity.

Although Clark testified that Roberts told her that employees couldn’t talk and were to
 30 watch their machines, admittedly she stated in the earlier Board affidavit that no supervisor
 specifically told her that she could not talk during her shift. Additionally, Clark’s March 3,
 2001 Performance Appraisal reflects that she was counseled about her excessive
 communication with co-workers. Clarke also recalled another event where she was talking to
 35 employees Clare Yarbrough and Glen Wilcox. When Roberts approached the three
 employees, Clark informed him that her “machine was down” and Roberts simply walked
 away.

Accordingly, the record does not demonstrate that the Company promulgated and
 40 enforced a no-talking rule in order to discourage union activity and I find no merit to
 Complaint paragraph 8(e).

2. Complaint Paragraph 8(f) and the Alleged Restriction of Employee Movement

45 While it is alleged that supervisor Gerald Corcelius restricted the movement of
 employees on August 1 in order to discourage union activity in the plant, no evidence was
 presented in support of this allegation. The only testimony in support of this allegation was
 introduced through employee Jacobs. Jacobs testified that on July 25, Roberts approached
 him as he carried his uniform to the area where it was to be picked up by the cleaner. Jacobs

testified that Roberts told him that he could not walk through the plant anymore, Jacobs admitted that this occurred at a time other than his scheduled shift. While Roberts did not recall telling Jacobs that he was not permitted to walk through the plant, he explained that if an employee came back to the plant after their regular shift, it is possible that he would stop them to inquire what they were doing. Human Resources Manager Johnson testified that the Company maintains a rule that shift employees cannot enter their production area of the plant until the start of their shifts. The rule provides that employees entering the plant more than 15 minutes before the shift starts are to wait in a non-production area until time for the shift to start. The Company submitted records to demonstrate that other employees have been disciplined for being on the plant floor during a shift other than their own. One employee in particular received an informal counseling, a written warning, and ultimately was terminated for “wandering around on the floor.” Although Roberts does not specifically deny that he restricted Jacobs’ movement in the plant on July 25, I don’t find that the evidence supports that Roberts did so to discourage union activity in the plant. The Company, citing *Ichikoh Mfg., Inc.*, 312 NLRB 1022 (1993), argues that an employer can enforce policies during a union campaign, particularly where it is shown that the Company historically enforced such policies. Accordingly, I do not find that the Company restricted the movement of employees to discourage union activity and I find no merit to complaint paragraph 8(f).

3. Complaint Paragraph 8(g), Objections 3 and 4, and the Alleged Surveillance

General Counsel witness Cummings testified that during the week before the election, Supervisor Ford spent additional time in the inspection area prior to the beginning of the 4:00 p.m. shift. On cross-examination, Cummings admitted that as she had only been on first shift for a short time, Ford may have come to work early on other occasions that she would not have been aware of. Johnny Lambert testified that during the later part of July, he saw supervisors standing at the end of the work aisles during shift change. He admitted that he did not see the supervisors approach any employees and that it was only his “opinion” that the supervisors were trying to see who was talking. There was no evidence of any surveillance conducted outside of the Company’s facilities and the only alleged incidents of surveillance in the record is the claim that various members of management were on the plant floor and “watched” employees, without saying anything to them. It is well settled that where employees are conducting union activities openly or near company premises, open observation of such activities by an employer is not unlawful. *Roadway Package System, Inc.*, 302 NLRB 961 (1991), *Southwire Co.*, 277 NLRB 377, 378 (1985). The test for determining whether an employer engages in unlawful surveillance or whether it creates the impression of surveillance is an objective one and involves the determination of whether the employer’s conduct, under the circumstances, was such as would tend to interfere with, restrain or coerce employees in the exercise of the rights guaranteed under Section 7 of the Act. See *The Broadway*, 267 NLRB 385, 400 (1983) (citing *United States Steel Corp. v. NLRB*, 682 F.2d 89 (3d Cir. 1982)). The Board has determined that management officials may observe public union activity on company premises without risking a Section 8(a)(1) violation unless such officials do something “out of the ordinary,” *Eddyleon Chocolate Company, Inc.*, 301 NLRB 887, 888 (1991), *Metal Industries, Inc.*, 251 NLRB 1523 (1980). It is only when conspicuous surveillance interferes with the lawful activity, then there may be a violation of Section 8(a)(1). See *Carry Cos. of Illinois*, 311 NLRB 1058 (1993).

Neither General Counsel nor the Union presented any evidence that supervisors were engaging in any activities inconsistent with their normal responsibilities or in physical locations other than where they were required to perform those responsibilities. There is no evidence that employees were engaging in lawful Union activity during these periods of alleged surveillance. It is undisputed that these periods of alleged surveillance occurred in the working area and either during working time or at a time when employees were either beginning or ending their working time. Johnson credibly testified that during the Union campaign she and other supervisors were in the production area more than usual. I credit her testimony that supervisors did so in order to be available to employees and to answer any questions. Based upon the evidence as a whole, I do not find that the Company engaged in surveillance as alleged in Complaint Paragraph 8(g) nor do I find merit to Union Objections 3 and 4.

**4. Complaint Paragraph 8(h) and Objection 11
Alleged Disparate Enforcement of the No-Talking Rule**

In support of this allegation, General Counsel presented the testimony of employees Locklear, Green, and Johnny Lambert. Locklear testified about an incident when supervisor Roberts reprimanded her for talking with fellow employee Green. She admitted that she had not been working and acknowledged that the Company has warned employees for talking rather than working. She also testified that she had observed employees Britt and Brooks talking as long as 20 minutes. Although Roberts walked passed them, he had not said anything to them about their talking. Locklear admitted however that Brooks and Britt worked together as a part of their jobs and they had to talk with each other about the machine they were operating. Locklear also admitted that she did not know what Brooks and Britt were discussing when she saw them and she did not know whether Roberts heard what they were talking about. She further admitted that Roberts had only walked by them for a couple of seconds.

Lambert testified that he observed employees Pat Brooks and Ruby Humphrey standing on the plant floor talking. He recalled that supervisor Williamson walked by them without saying anything to them. On cross-examination, Lambert admitted that Brooks and Humphrey work together and would have reason for talking with each other. He also acknowledged that he did not know whether Williamson actually saw them talking or whether she overheard their conversation.

Green testified that Supervisor Corcelius asked fellow employee Mack Bryant to return to his work area after Corcelius observed Bryant’s talking with Green. Although Green did not assert that the conversation was work related, he acknowledged that it had not related to the Union. Admittedly, after Corcelius overheard the content of the conversation, he asked Bryant to return to his work area. Green’s overall testimony would indicate that Corcelius broke up the conversation when he determined that it was not work related, and not because it involved the Union.

I credit the testimony of Supervisors Roberts and Williamson who credibly testified

that they routinely enforce the Company’s policy that prohibits excessive non-work related talking. The overall record evidence does not support a finding that the Company disparately enforced this policy during the Union campaign. Accordingly, I do not find merit to Complaint Paragraph 8(h) and Union Objection 11.

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**5. Complaint paragraph 8(k)
Alleged Interrogation**

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General Counsel alleges that supervisors Smith, Johnson, and Hill interrogated employees regarding their Union sympathies and desires. The record contains no evidence of any alleged interrogation by Hill or Johnson. The only evidence of alleged interrogation involved a conversation between Lambert and Supervisor Smith. Lambert alleges that during a conversation in June, Smith asked him why he thought that the Company needed a union.

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Lambert provided no additional information as to the exact date of the conversation or what was discussed before or after this alleged interrogation. Smith credibly testified that he talked with Lambert as well as other employees about the Union. Smith explained that he had been instructed that he could make statements about the Union but could not ask questions and that he had followed these instructions with talking with Lambert. It is apparent that prior to the

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election, supervisors attempted to speak with employees in one-on-one conversations in order to share the Company’s views about the Union and to answer any questions that employees might have. The evidence supports that Smith had such a conversation with Lambert. I find it significant that Lambert is the only employee who alleges supervisor interrogation.

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Interrogation of employees is not unlawful per se. In determining whether or not an interrogation violates Section 8(a)(1) of the Act, the Board looks at whether under all the circumstances the interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of the Section 7 rights. The alleged interrogation must be considered in context of all surrounding circumstances. *Emery Worldwide*, 309 NLRB 185

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(1992). There is no evidence that Smith’s question to Lambert was accompanied by any threat or promise or even an implied threat or promise.

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Lambert testified that he actively supported the Union and participated in hand billing in front of The Company’s facility. Lambert acknowledged that he responded to Smith by pointing out that employees needed a union because of Roache’s lies. The Board has determined that the applicable test for determining whether the questioning of an employee constitutes unlawful interrogation is the totality-of-the-circumstances test. *Rossmore House*, 269 NLRB 1176 (1984). The circumstances of this case are very similar to those considered by the Board in a recent case where the questioning of an employee was not found to be coercive. A low level supervisor on the plant floor conducted the questioning. The employee, who was an open union supporter, was not called away from his work area.

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Additionally, the employee did not hesitate to answer truthfully and there was an exchange of views with the supervisor. See *Cardinal Home Products, Inc.*, 338 NLRB No. 154 (2003), slip op. at p. 9. Accordingly, even if Smith asked the alleged question of Lambert, I do not

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find such questioning to interfere with, restrain, or coerce an employee in violation of Section 8(a)(1). Accordingly, I find no merit to complaint paragraph 8(k).

**6. Complaint Paragraph 8(l) and Objection 16
Alleged Solicitation of grievances**

5 While the complaint alleges that the Company acted through supervisor Chris Roberts
in soliciting employee grievances, no evidence was presented concerning Roberts. Locklear
testified however, that on an unspecified day in July, Corcelius asked if she had problems or
questions to come and talk with him. In *Traction Wholesale Center Co.*, 328 NLRB 1058,
10 1059(1999), the Board noted that when an employer undertakes to solicit employee
grievances during an organizational campaign, there is a “compelling inference” that the
employer is implicitly promising to correct the grievances and thereby influence employees to
vote against union representation. Corcelius did not deny that he had made this statement or
any similar statement to Locklear. Based upon the testimony of Johnson and other
15 supervisors, it is apparent that supervisors engaged in frequent one-on-one conversations with
employees during the campaign period. There being no denial of this allegation, I find that
Corcelius solicited Locklear to come to him if she had any problems or questions. Despite the
fact that Corcelius and Locklear discussed no specific problem, I nevertheless find that
Corcelius’ solicitation of problems implies a promise to remedy such problems during this
20 critical period of the Union campaign. Accordingly, I find that the Company solicited and
impliedly promised to remedy such employee grievances in violation of Section 8(a)(1) of the
Act.

**7. Complaint paragraph 8(m)
Alleged threat of future employment with other employers**

25 Clark testified that Corcelius told her and James Hunt that if they left the Company to
work elsewhere, they would not be hired because they came from a unionized plant. Hunt did
not testify and Corcelius did not recall any conversation in which he had made such a
30 statement. Although Clark’s testimony is uncorroborated by Hunt, Corcelius does not
specifically deny making this statement. Accordingly, I credit Clark’s testimony. I note
however, that there is no evidence that Corcelius or any other supervisor threatened to
“blackball” or to take action to prevent her future employment with another employer. At
35 best, Corcelius appears to express only an opinion as to what he thinks that another employer
may or may not do. I find Cornelius’s alleged comment too vague to constitute a threat in
violation of Section 8(a)(1) of the Act. *Uniontown Hosp. Assn.*, 277 NLRB 1298, 1310
(1985). Accordingly, I find no merit to Complaint Paragraph 8(m).

C. Personnel Actions Toward Specific Employees

1. Lambert’s July 19 Warning

45 Paragraphs 9 and 11 of the Complaint allege that the Company issued a verbal
warning to Lambert on July 19 because of his activity in support of the Union. Paragraph
8(d) relates to Lambert’s verbal warning and involves the alleged threat to Lambert on July 19
to not talk with other employees about the Union. In his brief, Counsel for the Company
argues that the Company issued the verbal warning to Lambert based on its good faith belief
that he had engaged in misconduct. The Company argues that based on the complaint from

the anonymous female employee, management made a decision to issue an oral warning to Lambert. Hill issued the warning to Lambert and informed him that he had a right to support the union but he could not threaten anyone about it. The Company submitted evidence of Lambert's having been disciplined in 1999 for harassing a fellow employee. The Company
5 also submitted evidence to show that Lambert had been demoted from Lead Mechanic in 1997 after a domestic dispute involving an assault on his wife (also an employee of The Company) and a threat to another employee concerning his wife. The Company asserts that it knew of Lambert's previous acts of misconduct toward his wife as well as other employees and based upon this knowledge, it had more than a good faith belief that Lambert was guilty
10 of misconduct toward the employee who complained of the alleged threat. The Company contends that this female employee's complaint against Lambert was entirely plausible and consistent with his past acts of misconduct. In his brief, counsel for the Company cites a number of cases¹² in which the Board has held that disciplinary action based on an employer's
15 reasonable belief that misconduct has occurred does not violate the Act, even if it is later proven that the employer's belief was mistaken.

Certainly, the Company provided evidence of Lambert's past misconduct concerning his ex-wife and other employees at the Company's facility. Johnson however, acknowledged
20 that there had been no problems with Lambert and his ex-wife since their 1997 domestic dispute. She also admitted that Lambert had been reinstated to the lead mechanic position since the 1997 incident. Thus, there is the issue as to whether the Company issued the verbal warning to Lambert based solely on a good faith belief that he had engaged in misconduct or
25 whether the discipline was based upon a discriminatory motive.

Under Board precedent established in *Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1982), cert. denied 455 U.S. 989 (1982) and approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S. 403 (1983), the General
30 Counsel bears the initial burden to establish a *prima facie* showing that (1) the alleged discriminatee engaged in union activity; (2) the employer had knowledge of that activity; and (3) the employer based its discriminatory action upon antiunion animus. Once General Counsel meets its burden of persuasion, the burden shifts to the respondent to show it would
35 have taken the discriminatory action without consideration of the employee's protected activity. *Bardaville Electric, Inc.*, 309 NLRB 337 (1992).

General Counsel has met its burden. The record reflects that Lambert was not only involved in hand billing for the Union but he also spoke up in support of the Union during
40 Roache's July 18 meeting with employees. Thus, General Counsel has established not only his union activity but also the Company's knowledge of such activity. The very wording of Hill's warning to him on July 19, which is alleged as violative in Complaint Paragraph 8(d), involves Lambert's support for the Union and sets the boundary for what he can say to other
45 employees about the Union. The Company cannot deny that it gave Lambert the July 19 warning for activity in support of the Union. The Company contends however, that it was the nature of the conduct that was violative of its Employee Handbook and thus unprotected. I do

¹² *Pepsi Cola Bottling Co.*, 203 NLRB 183 (1973), *General Asbestos and Rubber Div.*, 168 NLRB 396 (1967), *Auto Transit, Inc.*, 134 NLRB 652 (1961), *San-Serv*, 252 NLRB 1336 (1980).

not find however, that the Company has demonstrated that it would have given Lambert the warning without consideration of his protected activity.

5 The Company asserts that management made the decision to issue Lambert the
 warning based upon the complaint made by the female employee. A number of factors
 support a finding that the warning in issue was discriminatorily motivated. While Johnson
 asserts that she participated in the decision to issue the warning to Lambert, she did not even
 speak with the female employee until after the warning was issued. There is no evidence of
 10 any other management official other than Cauthen who spoke with the employee prior to
 Lambert’s discipline. While the Company contends that this employee would not present
 herself as a witness at trial, there is no evidence that any statement was taken from the
 unidentified employee on or about the time of Lambert’s discipline. The only written
 statement that the Company attempted to submit was one that was written and signed by the
 15 anonymous employee on May 20, 2003; the second day of the trial. This document was not
 received into evidence, as the Company had clearly not relied upon it as a basis for the
 disciplinary warning.

20 I also note that while Johnson and Cauthen were the only witnesses who testified that
 they had spoken with the anonymous employee, their description of her comments were
 contradictory. Cauthen testified that the woman told him that Lambert had threatened her that
 she better not vote against the Union. Not once, but twice, Johnson testified that the woman
 told her that Lambert threatened that she better not vote for the Union. There is no dispute
 25 that the warning was issued to Lambert on the day following his speaking out in Roache’s
 meeting with employees. I do not find that the Company has established through the record
 evidence that it would have issued a warning to Lambert in the absence of his union activity.
 Hill’s warning to him that he would be disciplined and/or terminated if he again engaged in
 such conduct is also violative of the Act. Accordingly, I find the Company’s discipline of
 30 Lambert and the threat of further discipline to be violative of Sections 8(a)(3) and (1)
 respectively.

2. Temporary Layoff of Clark, Locklear, and McNair

35 There is no dispute that the Company routinely sends employees home for a daily or
 temporary layoff for lack of work. The evidence demonstrates that these same three
 employees were received temporary layoffs both before and after the week of the union
 election. On the same night that they were placed on temporary layoff, 10 other employees
 40 from first and second shift were also placed on temporary layoff. During the week of the
 election, 36 first shift employees, 34 second shift employees, and 18 third shift employees
 were sent home for lack of work. While General Counsel asserts that all three of these
 individuals wore union buttons on the night before their layoff, there is no evidence that only
 employees who had worn buttons were selected for layoff. Supervisor Roberts acknowledged
 45 that he normally first seeks volunteers before arbitrarily selecting employees for layoff. Both
 Locklear and Clark testified that Roberts did not ask them to volunteer nor did they volunteer
 for the layoff. Roberts credibly testified that he did not recall whether Locklear and Clark
 volunteered or whether he merely designated them for the layoff. There is however, no
 evidence that Roberts made any mention of their wearing union buttons or that he made any

reference to the Union in relation to their temporary layoff. Based upon the record evidence as a whole, I find that the Company has demonstrated that it would have laid off Locklear, Clark and McNair despite their having worn union buttons.

5 Accordingly, I find no merit to Complaint Paragraph 10 and Objection 10.

IV. Report and Recommendations on Objections

10 Pursuant to a Stipulated Election Agreement executed by the Company and the Union, and approved by the Regional Director for Region 11, an election was held on August 8, 2002. Of approximately 155 eligible voters, 61 votes were cast for the Union and 81 votes were cast against the Union. The challenged ballots were not sufficient in number to affect the results of the election. On August 13, the Union filed timely Objections to the conduct affecting the results of the election. Pursuant to Section 102.69 of the Board’s Rules and Regulations, the Regional Director for Region 11 determined that the Objections should be heard by an administrative law judge and set the matter for hearing. The Union withdrew Objections 2, 5, 7, 9, 14, 17, and 18 before the close of the administrative hearing.

20 As discussed above, I have found that the Company has violated Section 8(a)(1) of the act in the following manner: threatening employees with loss of business and plant closure if they selected the Union as their bargaining representative (Objections 8, 13,¹³ and 19); soliciting grievances from its employees and impliedly promising to remedy their grievances in an effort to discourage employee support for the Union (Objection 16); and threatening an employee with discipline if he talked to fellow employees about the Union (Objection 6). I have further found that the Company violated Section 8(a)(3) of the Act by issuing a verbal warning to Johnny Lambert on July 19 because of his activities on behalf of the Union.

30 As also discussed above, I found no merit to Union objections 3, 4, 10, 11, and 12. No specific evidence was presented in support of Union Objections 1, 15, and 20.¹⁴

35 When an employer commits unfair labor practices during an election campaign, and where the unlawful conduct is such that it interferes with the “laboratory conditions” of the election, the Board will order a second election. *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962). The only exception would be where the conduct was *de minimis*; “such that it is virtually impossible to conclude” that the election was affected. *Super Thrift Markets*, 233 NLRB 409 (1977). In determining whether unfair labor practices occurring within the critical period improperly interfered with the conduct of a fair election, the Board has looked to such factors as “the number of violations, their severity, the extent of dissemination and other relevant factors.” *Caron International*, 246 NLRB 1120 (1979).

45 The Company’s solicitation of grievances to one employee in a bargaining unit of 155 employees would certainly appear to be *de minimus* with respect to affecting the outcome of

13 Objections 8 and 13 contain identical wording and appear to be duplicate objections.

14 Objection 29 is a conclusionary objection alleging, “During the critical period the Company engaged in like and related conduct which destroyed the laboratory conditions for the representation election.

the August 8 election. Additionally, the verbal warning given to Lambert on July 19 and the associated threat of future discipline would also appear to be *de minimis*. The unlawful conduct directed to both Lambert and Locklear affected them individually and had no direct significance to or immediate impact on other employees. There is no evidence that these occurrences were disseminated to or known by other employees in the unit. Accordingly, I do not find either of these unfair labor practices to constitute conduct that destroyed the laboratory conditions of the election.

Objections 8, 13, and 19 allege that the Company threatened plant closure and loss of business during the critical period. As discussed above, the evidence reflects that during pre-election meetings with employees, Roache threatened employees with the loss of business and possible plant closure if they selected the Union as their bargaining representative. It is recognized that threats of plant closure are the most flagrant forms of interference with Section 7 rights and are more likely to destroy election conditions for a longer period of time than other unfair labor practices because they tend to reinforce employees' fears that they will lose employment if union activity persists. *Koons Ford of Annapolis*, 282 NLRB 506, 508 (1986), *enfd. mem.* 833 F.2d 310 (4th Cir. 1987), *cert. denied* 485 U.S. 1021 (1988). The severity of threats is even greater when made by individuals at the top of the management hierarchy. *Midland-Ross Corp. v. NLRB*, 617 F.2d 977, 978 (3rd Cir. 1980) *cert. denied* 449 U.S. 871 (1980). Roche testified that when giving his speeches, he initially began by reading the text of his speeches word-for-word. He admitted however, that as he continued to give the speeches, he wanted to have more eye contact with employees and he did not always follow the exact wording of the prepared text. I also note that the scripts for the speeches given in June contain handwritten additions and marked-out deletions. The scripts differed from those speeches given later in July and August, which contained no identifiable editing or changes. Based upon Roache's testimony and the overall record, it is apparent that there was some variation in the speeches given to employees during these June meetings. While Roache may not have communicated the threat of loss of customers and plant closure to all employees in all meetings, evidence indicates that he did so to employees in some of the meetings. Inasmuch as the implied threats of loss of customers and plant closure were made to assembled employees and would likely have been disseminated through the work force, I find such threats to be conduct sufficient to affect the results of the election. Accordingly, I recommend that merit is found to Union Objections 8, 13, and 19.

Based upon my findings above, I therefore recommend that the Board set aside the election of August 8, 2002, and direct that a new election be conducted.

Conclusions of Law

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

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

5 (a) Threatening employees with loss of customers and plant closure if they selected the Union as their collective bargaining representative.

(b) Soliciting grievances from its employees and impliedly promising to remedy their grievances in an effort to discourage employee support for the Union.

10 (c) Threatening its employees with discipline if said employees talked to fellow employees about the Union.

15 4. The Company violated section 8(a)(3) of the Act by engaging in the following conduct:

(a) Disciplining Johnny Lambert because of his activities on behalf of the Union.

20 5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

25 6. The conduct described in paragraph 3(a) above also constitutes objectionable conduct affecting the results of the representation election held on August 8, 2002 in Case 11-RC-6488.

30 7. The Company has not engaged in any unfair labor practices not specifically found herein.

Remedy

35 Having found that the Company has violated Section 8(a)(1) of the Act, I recommend that it be required to cease and desist there from and from any other like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

40 Having found that the Company discriminatorily disciplined Johnny Lambert on July 19, 2002, I shall recommend that the Company expunge from its records all references to its unlawful discipline of Lambert, and inform him that this has been done, and that this discipline will not form the basis of any future discipline for him.

45 Having found that certain of the Union's election objections are meritorious and that the Company's objectionable conduct is sufficient to warrant setting aside the election, I shall recommend that the results of the previous election be set aside and that the representation case be remanded to the Regional Director for the purpose of conducting a rerun election.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:¹⁵

ORDER AND RECOMMENDATION

5

The Company, Contempora Fabrics, Inc., Lumberton, North Carolina, its officers, agents, successors, and assigns, shall:

10

1. Cease and desist from:

(a) Threatening employees with loss of business and plant closure if they select the Union as their collective bargaining representative.

15

(b) Soliciting grievances from its employees and impliedly promising to remedy their grievances in an effort to discourage employee support for the Union.

20

(c) Threatening employees with discipline if the employees talk to fellow employees about the Union.

(d) Disciplining employees because of their activities in support of the Union.

25

(e) 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:

30

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline of Johnny Lambert and within 3 days thereafter notify the employee in writing that this has been done and that the discipline will not be used against him in any way.

35

(b) Within 14 days after service by the Region, post at its facility in Lumberton, North Carolina copies of the attached notice marked "Appendix."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by Company's authorized representative, shall be posted by the Company 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

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45

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁶ If this Order is enforced by a Judgment of the 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.**"

Company 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 Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since early June 2002.

(c) 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 Company has taken to comply.

Dated, Washington, D.C.

Margaret G. Brakebusch
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

5

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

10

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

15

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

20

WE WILL NOT threaten you with loss of customers or plant closure if you select the United Food and Commercial Workers Union, Local 204 or any other union as your collective bargaining representative.

25

WE WILL NOT solicit grievances from you and impliedly promise to remedy those grievances in an effort to discourage your support for the United Food and Commercial Workers Union, Local 204 or any other union, coercively question you about your union support or activities.

30

WE WILL NOT threaten you with discipline if you talk with fellow employees about the United Food and Commercial Workers Union, Local 204 or any other union.

35

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.

40

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the unlawful discipline of Johnny Lambert, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the discipline will not be used against him in any way.

CONTEMPORA FABRICS, INC.

(Employer)

45

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. it conducts secret-ballot elections to determine

whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, NC 27106-3323
(336) 631-5201, Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (336) 631-5244.