

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

PHALANX FURNITURE, INC.

and

Case Nos. 29-RC-9944
29-CA-25320
29-CA-25397

LOCAL 621, UNITED WORKERS
OF AMERICA

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For the Charging Party – Petitioner
Irving Liebman
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For the Respondent-Employer.

DECISION

Statement of the Case

STEVEN FISH, Administrative Law Judge. Pursuant to charges filed by Local 621 United Workers of America, herein called Local 621, in Case Nos. 29-CA-25320 and 29-CA-25397, on December 17, 2002,¹ and January 28, 2003 respectively, the Director for Region 29, issued an Order Consolidating Cases and Consolidated Complaint on February 13, 2003, alleging that Phalanx Furniture, Inc. herein called Respondent or the Employer, violated Sections 8(a)(1) and (2) of the Act.

On November 6, Local 621, filed a petition seeking to represent certain employees of Respondent. On November 20, the Director approved a Stipulated Election Agreement, executed by Local 621 and the Employer.² On December 5, an election was conducted. The results were 31 voters, 14 votes for Petitioner, 14 votes against, and 1 determinative challenge.

¹ All dates hereinafter referred to are in 2002, unless otherwise indicated.

² New York City District Council of Carpenters, herein called the Carpenters initially intervened in the representation case, based on a card showing of interest. However, on November 19, the Carpenters withdrew their intervention and did not participate in the election. The Carpenters were initially named as a Party in Interest in this proceeding, based on allegations in the objections filed by Local 621 and the Complaint, which alleged certain acts of assistance by Respondent to the Carpenters. However, on March 5, 2003, The Director issued an Amendment to Complaint, which deleted the Carpenters as Party in Interest and from the Caption.

5 Thereafter, on December 9, the Petitioner filed timely objections to conduct affecting the election. After an investigation, the Director issued Report on Objections and Challenges and Order Consolidating Cases on February 26, 2003. The Report recommended that the one challenge be sustained. With respect to the objections filed, since they raised the same issues as the ULP complaint which had already been issued, the Director consolidated the representation case with said ULP cases, which was heard before me on April 1, 2003. On March 26, 2003, during a conference call with another judge, all parties reached agreement on an informal settlement agreement. Respondent was informed that the hearing would proceed as scheduled, unless the agreement was signed. Respondent's counsel assured General Counsel that his client (who was out of town) would sign the agreement as agreed to previously.

15 On Monday, March 31, 2003 (the day before the hearing), at 4:20 p.m., General Counsel received a fax, from Respondent's Counsel requesting an adjournment due to health matters of the wife of Respondent's president. General Counsel informed Respondent's counsel that the matter would not be put off at this late hour. At 5:31 p.m. another fax was received from Respondent's counsel, indicating that his client does not wish to continue to be represented by the firm in the matter scheduled for April 1, 2003. This fax did not renew the request for an adjournment, or make any reference to the fact that Respondent intended to seek new counsel.

20 On the date set for trial, April 1, 2003, no one from Respondent appeared. At my suggestion, Counsel for General Counsel telephoned Irving Liebman, Respondent's president. He informed Liebman that the trial was going forward, as Liebman had been previously informed. Liebman told General Counsel that he would not be able to attend, and made no assertion that he intended to obtain new counsel. At my request, General Counsel informed Liebman that after the trial, a date would be set for briefs, and he will be given an opportunity to submit a brief, based on the transcript at the trial, which would be made available to him.

30 General Counsel notified Liebman in writing of the date set for the submission of briefs, as well as the address where the briefs are to be sent. The letter did not inform Liebman that it was necessary to serve copies of the brief on all parties.

35 On April 28, 2003, a brief from Respondent, prepared by Liebman was received at the office of the Division of Judges. Copies were not served on General Counsel or Charging Party.

40 Thereafter, both General Counsel and Charging Party, sent letters to the undersigned, requesting that I reject Respondent's brief, because it was not served all parties, as required by the Board's Rules and Regulations.³ In that regard, Section 102.42, provides that copies of the brief to the Administrative Law Judge "shall be served on the other parties." However, the Board does not always insist on strict compliance with all its procedural rules and regulations, and frequent cite Section 102.121 of the Rules, which states, "that the rules and regulations . . . shall be liberally construed to effectuate the purposes and provisions of the Act;" where it deems it appropriate to overlook strict compliance with various sections of the Rules. *Avatar Inc. d/b/a Downtown Motor Inn*, 262 NLRB 1058, Fn.1 (1982) (Board accepts late-filed brief) *Otis Elevator Co.* 255 NLRB 235, 241 (1981) (Board accepts brief, although not in strict compliance with Section 102.46 (d).) The Board characterizes these matters as procedural steps and within the discretion of the Board to accept or reject.

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³ I note however, that neither Charging Party nor General Counsel filed a brief of their own. Nor did either of them make closing arguments at the end of the trial.

Based on all the circumstances here, I in the exercise of my discretion believe that it is appropriate to accept Respondent's brief, and deny the requests of General Counsel and Charging Party to reject the brief. I rely initially on the fact that Respondent was not represented by counsel, as well as the fact that the hearing was conducted without Respondent's presence. The Board does permit the Administrative Law Judge to be flexible in allowing non-attorneys some deviation from the Board's Rules. *Serendipity – UN Ltd*, 263 NLRB 768 Fn.2 (1982); *P.J. Gear & Sons, Inc.*, 252 NLRB 147, 148 (1980) (Administrative Law Judge does not strike letter brief, not served on all parties, filed by non-attorney, but considers arguments raised and finds no merit to them).

Further I note that General Counsel failed to inform Respondent that it was required to serve a copy of the brief on all parties. In such circumstances, where a non-attorney is involved, I believe it would be unfair to expect that Respondent would be aware of the service requirement, and to penalize Respondent for failure to comply with same.

Additionally, I note that neither Charging Party nor General Counsel filed a brief of their own, and a reply brief is not contemplated by the Board's Rules. Thus, no prejudice has been demonstrated to Charging Party or General Counsel, by virtue of the failure of Respondent to serve them with copies of the brief. *Royal Development Co.*, 257 NLRB 1168, 1169 (1981) (Administrative Law Judge accepts brief filed by Respondent, but not served timely on Charging Party primarily for these reasons).

I recognize that had copies of the brief been served by Respondent as required, General Counsel or Charging Party, might after reading same, have made a motion to strike portions of the brief, as containing matters not in the record. In fact, the brief does contain some assertions by Respondent that do not appear in the record. However, I shall not rely on any such statements, and shall consider the brief only to the extent that it contains argument, based on record testimony, or where it can be construed as an admission against Respondent. Thus, in these circumstances, I find no prejudice to General Counsel or Charging Party by accepting the brief, and in the interest of judicial economy and in the exercise of my discretion, I shall deny the motions to strike and shall accept and consider the brief filed by Respondent. See also *JHP & Associates*, 338 NLRB No. 161 (April 30, 2003) (Board denies General Counsel's motion to reject Respondent's exceptions and brief for not complying with the Board's Rules, even though motion was not opposed by Respondent. Board observes that although it would be justified in disregarding the documents, because of non-compliance with the Rules..."in the interest of judicial economy", it denies General Counsel's motion and considered the documents.)

Based upon the entire record, including my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with its office and principal place of business, located at 3009 Burns Avenue, Wantagh, New York, where it is engaged in the manufacture and sale of kitchen and bath cabinets. During the past year, Respondent purchased and received at its Wantagh facility, goods, products and materials valued in excess of \$50,000 directly from suppliers outside the State of New York.

Respondent admits and I so find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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II. LABOR ORGANIZATION

The record establishes that Local 621 represents employees in dealing with employers concerning wages, hours and other terms and conditions of employment. Local 621 negotiates contracts with employers, files grievances, and permits employees to participate in these actions.

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Further, the Respondent and Local 621 entered into a Stipulated Election Agreement dated November 29, signed by Liebman on behalf of Respondent, which provides that Local 621 is a labor organization with the meaning of Section 2(5) of the Act.

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Accordingly, based on the undisputed testimony of record, plus the admission against Respondent by its executing the Election Agreement conceding labor organization status, I conclude that Local 621 is a labor organization within the meaning of Section 2(5) of the Act.

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III. FACTS

Sometime in late 2000 or early 2001, Local 26 New York City District Counsel of the Carpenters Union, filed a petition seeking to represent Respondent's employees. An election was held, on March 27, 2001 and a majority of votes were cast against representation by the Carpenters.

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As noted above, Local 621 filed a petition to represent Respondent's employees in Case No. 29-RC-9944, on November 6, 2002. The Carpenters subsequently intervened based on a showing of interest, but withdrew its intervention prior to the signing of the stipulation and did not participate in the election.

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Local 621 began its organizing campaign in October of 2002. A few days after the campaign began, the Union's president Stephen Sombrotto was speaking to employees outside, in front of Respondent's premises. He was approached by Respondent's president, Irving Liebman. Liebman asked Sombrotto what he was doing in front of the company. Sombrotto gave Liebman his business card, introduced himself, and explained that he was organizing Respondent's employees, and signing the employees up to be in the Union. He added that if Local 621 obtained enough authorization cards, Respondent would have the opportunity to recognize the Union and negotiate a contract, or he would go to the NLRB to file a petition.

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Liebman replied that it was Sombrotto's right to do, but added that Sombrotto should not be on Respondent's property, and if he saw Sombrotto on the property, he would call the police.⁴

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On November 9, employee Frederick Payne signed a card for Local 621, along with another employee named Frankie _____. Later on that same day, while working in the marble section of the plant, Liebman approached Payne. Liebman asked Payne if he signed a card for the Union. Payne replied yes, me and Frankie signed cards together, the very last two.

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⁴ At the time Sombrotto was on the sidewalk, in front of Respondent's property. At no time did Sombrotto enter the facility, in order to organize.

5 Liebman made no reply to Payne's response, and immediately went to a different section of the plant. A few minutes later, Liebman returned to Payne's work area. Liebman instructed Payne to go outside, tell the Union man to give Payne back his card, and then tear it up. Payne said okay and went outside to speak with Sombrotto. Payne informed Sombrotto that Liebman has ordered him to retrieve his card and tear it up. Sombrotto replied okay but told Payne that he did not have Payne's card with him. Payne answered "do your job".

10 Payne then returned to work, Liebman approached him and asked if Payne had gotten the card. Payne replied no, the Union representative did not have the card on him. Liebman repeated his earlier instruction that Payne should tear the card up.

15 Employee Boris Khalef also signed a card for Local 621 in early November. About a week later, Liebman approached Khalef, while Khalef was punching his time card. Liebman asked Khalef if he signed a card for the Union. Khalef replied, "you know my position Mr. Liebman,"⁵ Liebman responded, "you did a very bad thing for me."

20 On or about November 14, Khalef observed Liebman walking inside the facility with Martin Szabunio, a business agent for Local 26 of the Carpenters Union.⁶ They approached Khalef, and Liebman said to Khalef, "you know this guy, he wants to speak to you." Liebman walked about 10 feet away, and observed the conversation between Khalef and Szabunio. Szabunio asked Khalef what was going on with the company. Khalef replied there is another Union coming in.⁷ Szabunio informed Khalef that Liebman had called the Carpenters in to help fix the situation with Respondent's deliveries. In that regard, Respondent had been having problems with some deliveries at jobsites, which were not permitted, because Respondent was non-Union. Szabunio told Khalef that it would be a big mistake to vote for another Union, and that only a Union like the Carpenters can represent the employees. Szabunio repeated that Liebman had called him in to help fix the situation and to speak to employees.

30 Shortly after noon, all the employees were summoned to attend a meeting and were paid for this time. During this time, Liebman was standing 10 feet away in his office. While the door was closed, it is a glass door, and Liebman could and did observe the meeting, and was able to hear what was said through a crease in the door.

35 Szabunio spoke to the employees in English, and employee Miguel translated for the other workers. Szabunio informed the employees that Liebman had brought him in and wanted the employees to sign cards for the Carpenters. He added that he was going to fix the situation that Respondent was having with its deliveries. Szabunio distributed cards for Local 26 of the Carpenters, and all of the employees signed. After the meeting ended, Szabunio took the cards, and went inside the office to speak to Liebman.⁸ However, for reasons not disclosed on this record, the Carpenters withdrew its intervention prior to the signing of the stipulation, and prior to the election.

45 Subsequently, to the signing of the Stipulation, and before the election, Liebman conducted several meetings amongst its employees to discuss the election. One of the

⁵ Khalef had previously been a supporter of the Carpenters in the prior election.

⁶ Szabunio had been involved in the prior election among Respondent's employees.

50 ⁷ Khalef as noted above, had been a supporter of Local 26 of the Carpenters in the prior election.

⁸ As noted above, the Carpenters intervened in the representation proceeding, apparently using the cards obtained at this meeting as a showing of interest.

meetings about a week and a half before the election, was attended by about 10 employees, and was conducted by Liebman. The financial officer of Respondent, Nancy _____ was present, and she wrote down the names of each employee present. Liebman began the meeting by asking Khalef why he signed a card for Local 621. Khalef replied that Local 621 is the right decision for us. Liebman responded "bullshit", and added that he did not like Local 621. Liebman informed the employees that Respondent was having problems with deliveries, which were affected by Local 621. Liebman added why would you sign a card for this Union, that is doing this to Respondent.

Liebman also informed the employees that they should vote No in the upcoming election. Khalef asked what will happen if the employees vote No. Liebman replied that employees first should do what he asked them to do (vote No.). After that, "we will talk to you".

Liebman also informed the employees that if Local 621 won the election, he would "probably close the business."

Liebman conducted another meeting the day before the election, where all the employees were present. Again Liebman asked the employees to vote No in the upcoming election. Liebman also told the employees that if they voted for Local 621, business "would go down". Later on in the meeting, Liebman repeated to employees what he had said at the prior meeting that if Local 621 won the election, the Company would "probably close." Liebman also brought up again the problem with the stopping of Respondent's deliveries, and told employees that if they wanted to fix the situation with the stopping of Respondent's deliveries, they need to vote No. Additionally, Liebman noted that Local 621 is not a Carpenters' Union, and the employees need to find a better Union to represent them.

Furthermore, Khalef was informed by several other employees, such as "Vincano" and others, that Liebman has spoken to them individually, and informed them that if the employees vote for Local 621, Liebman will "try to close our company."

On the day before the December 5 election, at approximately 4:05 p.m., employee Shawn Matthews was walking around the shop with the time cards of employees in his hands. This was the first time that employees had ever seen Matthews with timecards of other employees. However, in the past only Liebman or someone else authorized by Liebman would be in possession of employee timecards.

Matthews approached Khalef at that time, and asked Khalef how he was going to vote in the election? Khalef replied that it was illegal for Matthews to ask that question. The next day, Khalef looked at his timecard, and saw the word yes written on the card.

Matthews also asked Payne who he was voting for? Payne replied that he was voting No. Matthews wrote No on Payne's card. The next morning, Payne looked at the time cards and observed on the words "No" written on a lot of the cards.

The above findings of fact are based on a compilation of the credited testimony of Payne, Khalef and Sombrotto, which testimony is unrefuted. To the extent that Liebman's brief disputes certain facts, such as whether he threatened to close the business, I do not credit such assertions because (1) Liebman's testimony is not on the record, and (2), I found the testimony of the employees credible and mutually corroborative. Moreover, both employees are still employed by Respondent. Therefore, their testimony, where adverse to their employer is considered more worthy of belief. *Stanford Realty*, 306 NLRB 1001, 10064 (1992); *Molded Accoustical Products*, 280 NLRB 1394, 1398 (1986).

IV. ANALYSIS

A. Threats to Close

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I have found above that Respondent by its president Irving Liebman, at meetings of its employees shortly before the election, told employees that if Local 621 won the election, he would “probably close the business”, and/or that “business would go down.” These comments constitute clearly unlawful threats to close the shop in violation of Section 8(a)(1) of the Act. *Tricil Environmental Management Inc.*, 308 NLRB 669, 671 (1992) (Statement that another company closed because of Union activity. . . . and “that’s probably gonna happen here”, violative of Section 8(a)(1) of the Act.)

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Additionally, Khalef credibly testified that other employees informed him that Liebman had spoken to them individually, and informed them that if the employees vote for Local 621, Liebman will “try to close our Company.”

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While this testimony is hearsay, such testimony can be relied upon, where as here, no objection was made to the introduction of the evidence. *Local 46 Lathers Union*, 320 NLRB 982, Fn.5 (1990); *Local 705 IBT (Pennsylvania Truck Lines)*, 314 NLRB 95, 98 fn.4 (1994).

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Moreover, the Board has consistently held, even apart from the lack of objection, hearsay evidence is admissible, “if rationally probative in force and is corroborated by something more than the slightest amount of other evidence.” *Dauman Pallet, Inc.*, 314 NLRB 185, 186 (1994); *Local 28 Sheet Metal Workers (Astoria Mechanical Corp.)*, 323 NLRB 204, 209 (1993); *Livermore Joe’s, Inc.*, 285 NLRB 169, fn.3 (1987); *Passaic Daily News v. NLRB*, 736 F.2d 1543, 1554, fn.15 (D.C. Cir. 1984).

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Accordingly, here there is ample corroborative evidence to the hearsay testimony of Khalef, as the comments attributed to Liebman were similar to statements made by Liebman at meetings of employees, which were corroborated by direct testimony of Khalef and Payne. In these circumstances, I find it appropriate to rely on such hearsay testimony, and conclude that Respondent further violated Section 8(a)(1) of the Act by Liebman’s threats to close the business made to employees individually.

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B. The Direction To Retrieve and Destroy Authorization Cards

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On or about November 9, Liebman after ascertaining that employee Payne had signed a card for Local 621, ordered and directed Payne to retrieve his card from the Union representative outside, and then to tear it up. Payne then went outside and informed Sombrotto of Liebman’s instructions, but Sombrotto replied that he did have Payne’s card with him. When Payne returned to work, Liebman asked if he had gotten the card from the Union, and repeated his previous instruction that Payne should tear the card up.

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Liebman’s conduct of ordering and instructing Payne to retrieve and tear up his previously executed authorization card for Local 621 is coercive and violative of Section 8(a)(1) of the Act. *Beverly California*, 326 NLRB 232, 252 (1998); *Kinney Drugs, Inc.*, 314 NLRB 296, 310 (1994); *Goldtex, Inc.*, 309 NLRB 158, 160 (1991); *Lott’s Electric*, 293 NLRB 197, 301 (1989).

Respondent, in its brief does not dispute that Liebman directed employees to retrieve and tear up authorization cards and in fact admits that he engaged in such conduct. However, it is claimed that employees had come to Liebman and informed him that someone had signed their names to authorization cards. Even apart from the fact that the record contains no testimony in support of this assertion, such evidence would not be defense to Respondent's conduct. Thus, even if some employees had indicated to Liebman that someone else had signed their names to authorization cards, this would not privilege Liebman to direct employees, such as Payne, who had signed a card, to retrieve and tear up his card.

Therefore, I find that Respondent has violated Section 8(a)(1) of the Act by Liebman's conduct.

C. The Interrogations and Polling

I have found above that Liebman questioned Payne on or about November 9, as to whether he signed a card for the Union. Several days later Liebman also asked Khalef if he had signed a card for the Union. After questioning Payne, Liebman unlawfully directed him to retrieve and tear up his card. In response to Khalef's implicit admission that he had signed a card, Liebman told him "you did a very bad thing for me."

Liebman also questioned Khalef about why he signed a card for the Union at an employee meeting. After Khalef responded, Liebman stated "bullshit" and added that he did not like Local 621.

In determining whether these interrogations violate the Act, the Board examines whether under all the circumstances the questioning reasonably tends to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. *Greenfield Die & Mfg. Co.*, 327 NLRB 237 (1998). Here the above facts clearly demonstrate the coerciveness of Liebman's inquiries. Neither Payne nor Khalef had declared themselves to be open advocates of Local 621, *Parts Depot Inc.*, 332 NLRB 670 673, 683 (2000), the questioning was conducted by the highest ranking official of the Company, *Parts Depot* supra, *Greenfield Die*, supra; *M.J. Mechanical Services*, 324 NLRB 812, 815 (1997), and the interrogations were accompanied by conduct which indicates hostility towards union organizational activity. (The direction to retrieve and tear up Payne's card, and the statement's to Khalef, "you did a very bad thing to me." "bullshit" and that he did not like Local 621.) Additionally, these interrogations occurred against background of other unfair labor practices, such as threats to close the shop, which tends to further demonstrate the coerciveness of the inquiry. *Seton Co.*, 332 NLRB 979, 982 (2000); *EDP Computer*, 284 NLRB 1232, 126405 (1987).

Accordingly, I conclude that Respondent violated Section 8(a)(1) of the Act by coercively interrogating Payne and Khalef.

The Complaint also alleges that Respondent, by Shawn Matthews, acting as an agent of Respondent, interrogated employees as to how they would vote in the upcoming election. In that regard, the evidence establishes that Matthews, with time cards in his hand, questioned employees as to how they intended to vote, and marked a Yes or No on each timecard, designating the response of each employee.

The first question to be decided is whether Matthews was acting as an agent for Respondent so as to make it responsible for his conduct. The test is, whether under all the circumstances, the employees would reasonably believe that Matthews was reflecting company policy and acting on behalf of management. *Pitt Ohio Express*, 322 NLRB 867 fn.2 (1997);

Kosher Plaza Supermarket, 313 NLRB 74, 85 (1993); *EDP Computer*, supra at 1265.

5 Here, although Matthews was a rank and file employee, he interrogated employees
 about their election intentions, with their time cards in his hands. Since the record establishes
 that only Liebman or someone authorized by him, handles employee time cards, it is reasonable
 to conclude, which I do, that employees believed that Respondent had permitted or even more
 likely, instructed Matthews to poll employees and mark their responses on the time cards. This
 10 perception is made more reasonable by the evidence that Liebman himself had previously
 coercively interrogated employees about their Union sentiments. Therefore, I conclude that
 employees reasonably believed that Matthews was reflecting company policy and speaking on
 behalf of management when he interrogated them about how they intended to vote, with their
 time cards in his hand. Thus, Matthews was acting as Respondent's agent and is responsible
 for his conduct in this regard. *Pitt Ohio* supra; *Kosher Plaza* supra; *EDP Computer* supra.

15 I conclude that Matthews' conduct on interrogating employees, and marking their
 responses on their time cards, effectively polled employees concerning their Union sentiments.
Allegheny Ludlum Corp., 320 NLRB 484 fn.2 (1995); *Farris Fashion*, 312 NLRB 547, 558
 (1993). *American Tempering Inc.*, 296 NLRB 699, 708 (1989). Such conduct is coercive and
 20 unlawful, since it did not comply with the secret ballot and other requirements of *Struknes*
Construction Co., 165 NLRB 1062 (1967). *Lou's Produce Inc.*, 308 NLRB 1194, 1195 fn.6
 (1992); *American Tempering* supra. Such recording of employees Union sentiments enables
 Respondent to discern the leanings of employees, and to direct pressure on particular
 25 employees in its campaign efforts, and reasonably tended to interfere with employees' free
 choice of a collective bargaining representative, in violation of Section 8(a)(1) of the Act. *House*
of Raeford Farms, 308 NLRB 568, 570 (1992). I so find.

D. The Direction to Vote No.

30 The Complaint alleges that Respondent by Liebman, directed employees to vote "No" in
 the upcoming election in violation of Section 8(a)(1) of the Act. However, an employer is
 permitted to express its opposition to the employee's choice of a Union to represent them. Such
 statements are protected by Section 8(c) of the Act, unless they constitute implied or express
 35 threats of reprisal or promises of benefit. *Action Mining*, 318 NLRB 652, 654 (1995). The fact
 that Liebman asked or even urged employees to vote "No" in the election, does not in and of
 itself imply a threat or a promise, and is not unlawful. While it is true that Liebman accompanied
 his request for employees to vote "No" with unlawful threats to close and coercive
 40 interrogations, as I have concluded above, this does not serve to make unlawful Liebman's
 urging employees to vote against the Union.

Accordingly, I shall recommend dismissal of this allegation in the Complaint.

**E. The Meeting With An Official
 of the Carpenters**

45 It is not per se unlawful for an employer to grant permission to a Union to address its
 employees on Company premises. *Longchamps*, 205 NLRB 1025 (1973); *Coamo Knitting Mills*,
 150 NLRB 579 (1964). Whether such conduct is unlawful depends on all the circumstances of
 each case. *Vernitron Electrical Components*, 221 NLRB 464, 465 (1975); *Bell Energy*
 50 *Management*, 291 NLRB 168, 178 (1988).

Here the circumstances overwhelmingly demonstrate the coerciveness of Respondent's conduct, and that it rendered unlawful assistance to the Carpenters in violation of Section 8(a)(1) and (2) of the Act.

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First, considerable indirect pressure was placed upon employees by their being directed, and paid, by Respondent to attend the meeting during work time. *Vernitron Electrical* supra at 465; *Kosher Plaza* supra at 85. Second came direct pressure of being solicited to designate the Carpenters as their representatives, while Liebman was watching them execute or refuse to execute the authorization cards. *Vernitron Electrical*, supra, *Famous Castings Co.*, 301 NLRB 404, 407 (1991). Third, the evidence tends to show that Respondent initiated the contact with the Carpenters and sought to make the choice of representatives for the employees. *Bell Energy* supra at 178; *Farmers Energy Corp.*, 266 NLRB 722, 723 (1983).

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In this regard, the Carpenters representatives told the employees at the meeting that Liebman had called the Carpenters in, and after the meeting ended, he immediately went into Liebman's office with the cards. Indeed, Respondent's brief constitutes an implicit admission that he initiated the contact with the Carpenters. Thus the brief details that the Carpenters Union on two jobsites refused to handle Respondent's merchandise without a Union stamp. The brief adds that Respondent "entreated the Carpenters to rise their good offices to help us overcome the problem". It adds that "at this very sensitive time, Local 621 United Workers of America began an organizing drive which did not help a serious problem."

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I therefore conclude that Respondent contacted the Carpenters representative, and requested his help in getting Respondent's deliveries accepted. I further find that it is likely that the Carpenters representative indicated that Respondent needed to recognize the Carpenters in order to get its deliveries accepted, and that the meeting of employees to assist the Carpenters in obtaining authorization cards, in order to intervene in the representation case filed by Local 621, was agreed to by Respondent.

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Accordingly, based on all of the above circumstances, I find that Respondent has unlawfully assisted the Carpenters in violation of Section 8(a)(1) and (2) of the Act.

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The Complaint also alleges that Respondent further violated the Act by denying Local 621 the opportunity to meet with its employees at its facility. While such conduct would be a violation of the Act, where as here, Respondent had permitted the Carpenters to conduct meetings, *Kosher Plaza*, supra at 85, I do not believe that the evidence establishes that Respondent denied Local 621 the opportunity to conduct such a meeting. As Respondent correctly points out in its brief, Local 621 never asked for access to address Respondent's employees. Respondent adds in its brief that "we would have welcomed an address by Local 621, to the employees on our premises". While this statement is self serving and not in the record, it does point out the weakness in General Counsel's contention. Perhaps Respondent would have allowed Local 621 to address its employees, if requested, and perhaps not. However, Local 621 never put Respondent to the test, by making such a request, although it was aware that Respondent had allowed the Carpenters to meet with its employees.

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I shall therefore recommend dismissal of this allegation of the Complaint.

V. THE OBJECTIONS

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The objections to the election filed by Local 621 are essentially identical to the Unfair Labor Practice allegations that I have discussed and decided above. Since the violations that I have found all occurred within the critical period, (i.e. after the filing of the petition, and prior to

5 the election), I conclude that these violations, including threats to close the business, coercive interrogations and polling, and unlawful assistance to the Carpenters, are more than sufficient to have affected the outcome of the election, I therefore recommend that the election be set aside and a new election ordered.

CONCLUSIONS OF LAW

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

(2) Local 621 United Workers of America, is a labor organization within the meaning of Section 2(5) of the Act..

15 (3) By coercively interrogating its employees concerning their activities on behalf of or support for Local 621 United Workers of America, (Local 621), polling employees concerning how they intended to vote in an National Labor Relations Board election, threatening its employees with the closing of the facility, if employees voted for or supported Local 621, and directing its employees to retrieve and destroy authorization cards that they signed for Local
20 621, Respondent has violated Section 8(a)(1) of the Act.

(4) By permitting its facilities to be used for meetings and organizing by New York City District Council of Carpenters, (The Carpenters), Respondent has violated Section 8(a)(1) and
25 (2) of the Act.

(5) Respondent has not otherwise violated the Act, as alleged in the Complaint.

(6) The above described unfair labor practices affect commerce within the meaning of Section 2(2), (6) and (7) of the Act.
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(7) The conduct of Respondent described above, is sufficient to affect the results of the election.

THE REMEDY

35 Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (2) of the Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action necessary to effectuate the policies of the Act.

40 On these finding of fact and conclusions of law, I issue the following recommended:⁹

ORDER

45 The Respondent Phalanx Furniture, Inc., Wantagh, New York, its officers, agents, successors and assigns shall

50 ⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

5 (a) Coercively interrogating its employees concerning their activities on behalf or support for Local 621, United Workers of America, (Local 621).

(b) Polling employees concerning how they intend to vote in an National Labor Relations Board election.

10 (c) Threatening its employees with closing of the facility, if its employees supported or voted for Local 621 in an National Labor Relations election.

(d) Directing its employees to retrieve or destroy authorization cards that said employees had signed for Local 621.

15 (e) Permitting its facilities to be used for meetings and organizing by New York City District Council of Carpenters.

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

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

25 (a) Within 14 days after service by the Region, post at it Wantagh, New York facility copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director or Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent ensure that the

30 notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent had gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 2002.

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50 ¹⁰ 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."

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

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IT IS FURTHER ORDERED THAT the Complaint be dismissed insofar as it alleges violations not found herein.

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IT IS FURTHER ORDERED that the election in Case No. 29-RC-9944 be set aside and a new election held.

Dated, Washington, D.C

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Steven Fish
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

**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**

WE WILL NOT coercively interrogate our employees concerning their activities on behalf or support for Local 621, United Workers of America (Local 621).

WE WILL NOT poll our employees concerning how they intend to vote in an National Labor Relations Board election.

WE WILL NOT threaten our employees with closing of the facility, if our employees support or vote for Local 621 in an National Labor Relations Board election.

WE WILL NOT direct our employees to retrieve or destroy authorization cards that our employees had signed for Local 621.

WE WILL NOT permit our facilities to be used for meetings and organizing by New York City District Council of Carpenters.

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

PHALANX FURNITURE, INC.

(Employer)

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.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 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, (718) 330-2862.**