JD–94–03
Atlanta, GA

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

CROWN CORK AND SEAL CO., INC.

and

Case 10–CA–27288

HAZELWOOD A. WOODY, AN INDIVIDUAL

CROWN CORK AND SEAL CO., INC.

Cases 10–CA–29128
10–CA–31231
(Formerly
GR–7–CA–38224)
10-CA-31232
(Formerly 9-CA-33660)
10–CA–31241
(Formerly 12–CA–17196)
10–CA–31242
(Formerly 12–CA–17983)
10–CA–31243
(Formerly12–CA–18009)
10–CA–31244
(Formerly 12–CA–18712)

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Ellen K. Hampton, Kerstin Meyers,
Thomas W. Doerr, Evelyn Korschgen,
and Andy Lang, Esqs., for the General Counsel.
Richard Rouco, Esq., (Whatley Drake LLC),
of Birmingham, AL, for the Charging Party,
United Steelworkers of America, AFL-CIO.
Bradley R. Johnson, Esq., (Haynesworth, Baldwin,
Johnson & Greaves, LLC), of Tampa, Fl. and
Jerome A. Hoffman, Esq., (Dechert, Price & Rhoads),
of Philadelphia, PA, for the Respondent.

DECISION

Statement of the Case

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Atlanta, Georgia, on March 15 and 16, April 19, 20 and 21, May 4, 5, 6, 10,11,12,and 13, 1999, in Orlando, Florida, on June 28, 29 and 30, and July 1, 5, 6, and 7, 1999, in Cincinnati, Ohio, on September 7, 8, 9, 13, 14, 15 and 16, 1999, in St. Joseph, Michigan, on March 28 and 29, 2000, in Atlanta, Georgia, on April 24, 25, 26, and 27, 2000, in Baltimore, Maryland, December 5 and 6, 2000, in Atlanta, Georgia, on March 12, 13,14, and 15, May 21, 22, and 23, August 13 and 14, and October 15, 2001, and on February 26 and 27, and April 10 and 11, 2002.

Upon a charge filed on January 13, 1994, by Hazelwood A. Woody, an Individual, upon Woody's amended charge filed on June 5, 1996, and his second amended charge filed on August 17, 1998, in Case 10–CA–27288, and upon seven charges filed and amended by the United Steelworkers of America, AFL-CIO, (referred to below as the Union), the Regional Director for Region 10 issued an Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing against Respondent, Crown Cork and Seal Co. Inc. (referred to below as Crown), alleging violations of Section 8(a)(1), (3) and (5) of the National Labor Act, as amended (referred to below as the Act). The case numbers, and the filing dates of the Union's seven charges, and their amendments are as follows: Case 10–CA–29128, filed February 28,1996, amended charge filed September 29, 1998, Case 10–CA–31231 (formerly GR–7–CA-38224), filed February 29, 1996, amended charge filed October 2, 1998, Case 10–CA–31232 (formerly 9-CA-33660) filed February 29, 1996, amended charge and second amended charge filed, respectively, October 2 and 8, 1998, Case 10–CA–31241 (formerly 12–CA–17196) filed June 9, 1995, Case 10–CA–31242 (formerly 12–CA–17983) filed April 30, 1996, Case 10–CA–31243 (formerly 12–CA–18009) filed May 10, 1996, and Case 10-CA31244 (formerly 12-CA-18712)[1] filed April 4, 1997[2]. In its timely answer, Crown denied the allegations in the consolidated complaint.

On February 26, 1999, the Regional Director issued his Second Amended Consolidated Complaint and Notice of Hearing in these cases alleging Crown's violations of Section 8(a)(1), (3), and (5).[3] Crown filed a further answer denying the

---

[1] By his order of September 22, 1998, the Acting General Counsel of the National Labor Relations Board (referred to below as the Board), transferred the cases filed in Regions 7, 9 and 12, as shown above, to Region 10 and assigned them case numbers as shown above.

[2] All dates are in 1995 unless otherwise indicated.

[3] The Regional Director for Region 12 issued a consolidated complaint and two amended consolidated complaints in the Region 12 cases shown above, respectively on December 18, 1996, February 24, 1997, and on June 29, 1998. However upon the transfer of those cases to Region 10, they were included in the Amended Consolidated Complaint issued by the Regional Director for Region 10 on October 20, 1998, and in his Second Amended Consolidated Complaint issued on February 26, 1999.

allegations recited in the second amended consolidate complaint. On April 19, 1999, I granted the General Counsel's motion to amend the second amended consolidated complaint by the addition of further allegations of Crown's violations of Section 8(a)(1) of the Act. Finally, on October 15, 2001, I granted the General Counsel's motion to amend the second amended consolidated complaint by the addition of further allegations of Crown's violations of Section 8(a)(1), (3) and (5) of the Act. Crown amended its answer to reflect denials of these additional allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Crown and the Union,[4] I make the following

Findings of Fact

I. Jurisdiction

Crown, a Pennsylvania corporation, with offices and places of business located throughout the United States and in other nations, has been engaged in, and continues to engage in, the manufacture of food and beverage containers at its nationwide and international facilities, including but not limited to its facilities in Atlanta Plant 68, Georgia, Hurlock, and Baltimore, Maryland, St. Louis, Missouri, Shoreham, Michigan, Sharonville, Ohio (referred to below as its Cincinnati plant), and in Orlando, Plymouth and Winter Garden, Florida. During the 12 months ending on February 26, 1999, a representative period, Crown purchased and received at its Winter Garden, Florida, facility goods valued in excess of $50,000 directly from points outside the State of Florida. Also, during the respective twelve month periods preceding its closures of its Atlanta Plant 68, Hurlock, St. Louis, Shoreham, Cincinnati, Orlando and Plymouth facilities, Crown, in conducting its business operations at these facilities, sold and shipped goods valued in excess of $50,000 from each of these facilities directly to customers located outside the respective states where each of these facilities was located. Crown 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 and Issues

Since 1985, International Vice-President Leon Lynch has been the Union's chief negotiator with the container industry. His experience in this role began with contract negotiations in 1986. He has negotiated master agreements and non-master agreements with container industry employers. The non-master agreement is a separate contract with terms and conditions applicable to a single plant. The Union and Lynch prefer a master agreement for the entire container industry, with a standard wage

[4] The parties' joint motion to correct the transcript, dated November 8, 2002, is granted and received in evidence as Joint Exhibit. 11.

policy and standard benefits for all employees of the signatory employers. Historically, the Union's purpose in seeking to negotiate master agreements as opposed to single facility agreements has been the attainment of bargaining leverage at the table. A further benefit to the Union has been the reduction in negotiations.

Lynch chaired the Union's committee in negotiating a master agreement with the major domestic manufacturers in the container industry in 1986. There were four companies represented: American Can, National Can, Continental Can, and Crown. After a sixteen-day strike, the Union obtained and ratified a favorable proposal from National Can. Shortly after the Union's ratification, the three remaining companies agreed to it. This agreement expired in 1989.

The 1989 negotiations went better than those of 1986. Only three companies were represented at these negotiations. National Can had acquired American Can. The surviving company at these negotiations was American National. Crown and Continental were the other participants. The parties' negotiations continued up until the strike deadline. However, there was no strike. The Union and Crown arrived at an agreement that the Union quickly ratified. American National and Continental signed on to the same master agreement.

According to Vice-President Lynch, the Union's objective at the 1989 negotiations was "to hold the line." The Union was aware of economic pressures on the steel and aluminum industries due to imports. Lynch also recognized that the container industry was suffering from over-capacity and that Continental and American National negotiated as if they were in financial difficulties.

The1989 master agreement was more generous to the employees than the Union had expected. Thus, there was a provision for double time and a half after sixty hours' work in a single workweek. Further, the agreement included employer neutrality language that suggested that the Union might organize more plants.

On July 15, 1990, Crown doubled the size of its domestic operations by acquiring the Metal Packaging Operation of Continental Holdings, referred to in the transcript of testimony in these cases and in the parties' briefs as Continental or Continental Can. As of July 15, 1990, Crown had 28 domestic can plants, including 16 beverage can plants,[5] 7 food can plants, and 5 aerosol can plants. Four of the 18 plants were covered by the Union's master agreement as of July 15, 1990. As of July 15, Continental had 35 domestic can plants, including 18 food can plants, 16 beverage can plants, and one general line plant. The Union represented employees at 8 of Continental's food can plants of which 5 were covered by the Union's master agreement. Of the 9 Continental beverage plants organized by the Union, as of July 15, 1990, 7 were covered by the Union's master agreement.

Upon learning of Crown's acquisition of Continental, Vice President Lynch and Union representative David Wilson, who serviced Crown's plants for the Union, met with

[5] One of the beverage plants was at Carolina, Puerto Rico.

Company President and CEO William J. Avery and Company Director of Industrial Relations Gary Burgess to discuss the impact of this event upon the Company's Union represented employees. Lynch asked if Avery was aware of Continental's controversy with the Union over a system called "Bell Backward." Lynch explained that the Union had discovered that Continental had been laying off many of the employees represented by the Union and closing plants. Continuing, Lynch explained that "Bell Backward" was an acronym for: "Let's limit employee benefits."

Lynch told Avery and Burgess that the Union had learned from Continental's written internal notes that the company was violating the master agreement by "systematically closing plants, laying people off, turning down orders and preventing [employees] from qualifying for pension benefits that they otherwise would have qualified for had they not been let go."[6] The Union's Vice-President told Avery and Burgess that the Union had agreed to a settlement of an ERISA[7] lawsuit, based on the Bell Backward scheme, against Continental for $415,000,000.[8] Lynch asserted that some of the Continental managers, whose notes had revealed the "Bell Backward" scheme, were now working for Crown. He sought assurance as to Avery's intentions toward the newly acquired Continental plants.

Avery began his response stating that Crown had bought the Continental plants because Crown had inspected them and found that they were "in pretty good shape." Avery added, "With a little bit of investment in some of them, we will have a good operation."

Lynch and his negotiating committee met with their counterparts from Crown and American National early in 1993 to draw up a new master agreement. Lynch spoke for the American National's employees and David Wilson negotiated for Crown's employees. Gary Burgess negotiated on Crown's behalf. Jack Schemm spoke for American National. There was no lead contract. The two employers and the Union reached a single master agreement. However, there were some accommodations to the particular needs of the two companies, respectively. The resulting master agreement with Crown was effective from February 22, 1993, through February 22, 1998.

Lynch was careful to avoid inflationary economic provisions. The Crown agreement included a $500 signing bonus for the employees. There would be no wage increase for Crown's employees for 2 years. Crown's employees would receive a 1% wage increase effective February 20 and a second 1% increase effective February 19, 1996.

---

[6] My findings of fact regarding Lynch's conversation with Avery and Burgess are based upon his uncontradicted testimony. Neither Avery nor Burgess testified in the hearing in these cases.

[7] Section 510 of the Employee Retirement Income Security Act of 1974, 29 U.S.C.1140. (1982).

[8] The settlement was judicially approved in *Cecil McLendon et al v. The Continental Group,* 802 F. Supp 1216 (D.N.J. 1992), *aff'd.* 972 F2d 1331 (3rd Cir. 1992), *cert. denied* 506 U.S. (1993).

The Union sought and obtained other understandings with Crown in the 1993 negotiations. Among these was a contract provision and a letter of understanding appended to its agreement, in which Crown adopted language of neutrality toward Union organizing.

In the course of the 1993 negotiations, Gary Burgess, Crown's spokesman, mentioned that Crown was contemplating closing its plant at Milwaukee and moving its Chicago operations to a plant at Alsip, Illinois because of economic pressure. Lynch responded that the Union would be willing to address the economic problems affecting the two plants after a master agreement had been settled. After Crown and the Union had executed the master agreement, the Union came forward with a plan for saving the two plants.

Under its plan, the Union would make economic concessions after reviewing Crown's books and learning that the plants were either losing money or would lose money if Crown applied the master agreement. The Union's plan also contemplated that after each plant became profitable, Crown would make the plant's employees whole for the money they had relinquished.

Following the execution of the master agreement, Gary Burgess contact Lynch and explained that Crown had given the Chicago plant to the City of Chicago and that it would soon be shut down. Burgess also informed Lynch that Crown was building a new plant at Alsip, Illinois, about 25 miles from Chicago. Burgess said that if the Union wanted the Chicago employees to work at the Alsip plant, some economic concessions were required.

Lynch requested that the Union be given access to Crown's books to see if the Chicago plant was losing money. Burgess agreed. Lynch sent an accountant to study Crown's books. The accountant reported that the Chicago plant was in fact losing money. He also reported that the Chicago plant received insufficient payments for products it sent to other Crown plant as interplant sales.

Lynch reported the accountant's findings to Burgess and suggested that the plant's losses might be attributed to the insufficient payments for interplant sales. However, given the impending closing of the Chicago plant, Lynch said he was willing to negotiate concessions to give the employees someplace to go.

Lynch and Burgess met with all shifts of the Chicago bargaining unit employees and explained the need for economic concessions. The employees accorded Lynch authority to negotiate economic concessions under the 1993 master agreement, and submit the proposed reduction or reductions to them for ratification.

Burgess and Lynch reached agreement on a wage concession of $1.50 per hour, of which 75 cents would be invested in Crown common stock. This concession satisfied Crown. Since 1993, Crown has not availed itself of Lynch's formula for preserving bargaining unit jobs after checking Crown's financial records.

During the 1993 contract negotiations, American National, Crown and the Union agreed to the implementation of an agreement entitled "Partnership and New Directions." This agreement was an appendix of the master agreement. The details of implementation were to be worked out after execution of the master agreement. Section 1 of this appended agreement set forth the purpose and the structure of the partnership, as follows:

"The parties recognize the need to address the numerous challenges facing the industry and renew their commitment to jointly address these issues. The interest and obligation to preserve and strengthen the container industry has lead to this agreement to address mutual concerns through cooperation and innovation.

This Article provides the framework for a new direction in labor management relationships based on a partnership and an alliance to address those issues that confront the industry."

The Union began implementing the partnership agreement in 1994, by hiring a consultant to assist the Joint National Policy Committee established by the partnership agreement. American National and Crown were each to contribute $25,000, annually, to establish the Committee. The consultant, together with Union officials and American National management representatives met and discussed the workings of the Committee and the roles of its participants.

The consultant was unsuccessful in his attempt to work with Crown's management. He reported to Lynch that Crown's management would not cooperate. The consultant said he could not work with Crown's management. He reported that Fred Veil, Crown's Director of Industrial Relations[9] had said that Crown was not ready for this type of program.

In mid-1994, the Union's Vice-President Lynch encountered Crown's Director of Industrial Relations Fred Veil and brought up the partnership agreement. Lynch raised the consultant's report that Veil had said that Crown was not ready for it. Lynch reminded Veil that the partnership was part of the Union's contract with Crown and that the parties were obligated to live up to their agreement.

Veil rebuffed Lynch, saying that Crown did not need a consultant. Veil added that Crown had its own methods and processes and that a consultant was unnecessary. Finally, regarding the partnership agreement, Veil said that Crown was not "ready for it, not now and maybe never."[10] Crown has not implement the partnership agreement.[11]

---

[9] Fred Veil joined Crown as Director of Industrial Relations in June 1994.

[10] My findings regarding Lynch's dealings with Avery, Burgess, and Veil are based upon Lynch's credible testimony. Neither Avery nor Burgess testified before me. Veil's testimony did not contradict Lynch's version of their conversation about the partnership agreement.

[11] My findings regarding Veil's remarks about the partnership are based upon Lynch's undenied testimony.

In the meantime, page 8 of Crown's 1993 Annual Report showed the earnings per average common share had dropped from $1.79 in 1992 to $1.14 in 1993. Crown's Chairman, President and CEO, Avery told its stockholder in the 1993 Annual Report:

"We are continuing to review our operations to determine the correct number, size and location of plants to best service our customers; while giving an acceptable rate of return to our investors." (Crown's 1993 Annual Report, p. 5)

In April 1994, the Company sent William R. Howard, its Senior Vice-President Operations, International Division, to England to meet with Michael Clay, a retired Manufacturing Coordinator of The Crown Cork Company Limited, a wholly owned subsidiary of Crown. Howard met with, and recruited Clay to come to the United States and work on a special project to help Crown reduce its manufacturing costs. Chairman Avery had charged Howard with reviewing Crown's situation and had suggested that Clay might help with this project because of his experience and because Clay had advised Avery of his availability.

Specifically, the project called for reducing "manufacturing costs in North America by whatever means . . . ." In their conversation, Howard and Clay agreed that:

"By looking at plant closures, by looking at improved efficiency in plants, by utilizing equipment that might come available from plant closures to improve efficiency in other plants."[12]

Clay arrived in the United States and, on May 16, began his study of Crown's domestic can production. He assembled his own team of Crown management officials and consulted with a number of Crown officials familiar with its production or accounting. Among those Clay consulted were Pat Szmyt, Director of Manufacturing Accounting, William Leahy, a senior manager of three-piece food production control, and Robert Truitt, Vice-President of Manufacturing. By early August 1994, Clay had submitted his first report on his investigation.[13]

Soon after he had submitted his report, Clay attended a meeting at corporate headquarters in Philadelphia, in a room adjacent to Vice President Burgess's Human Resources Department. Members of Crown's management attended the meeting, including Executive Vice-President McKenna, Senior Vice-President of International Operations William Howard, Senior Vice President of Manufacturing Robert Truitt, Vice-Presidents Pysar and Snell, the Director of Manufacturing Accounting, Patrick Szmyt and Fred Veil, the Director of Industrial Relations. Following opening formalities, Clay presented his report and a discussion of his recommendations followed.

---

[12] I based my findings regarding Clay's recruitment upon his credible testimony and that of Crown's Vice-Chairman Michael j. McKenna, which was uncontradicted.

[13] My findings regarding Clay's arrival in the United States and his activity thereafter are based upon his testimony, which was uncontradicted.

There was little if any dissent as to Clay's recommendations. The group decided that the recommended closing of Crown's Decatur, Illinois plant should be delayed until its Alsip plant became productive. Clay presented his recommendations for closure of plants in a group referred to as "Phase I." He had a second group of plants grouped in "Phase 2" to be considered for closure.

Fred Veil admitted having discussions with Clay regarding the industrial relations and labor law implications of the latter's recommendations. Veil placed his input during the discussions leading to the decisions as to which plants would be closed and which plants would remain open. Veil gave the time frame as August and September 1994.

In April 1995, after Clay had completed his special project, Alan Rutherford, the Company 's Chief Financial Officer, told Patrick Szmyt that the Company needed further cost reductions. By mid-June, Szmyt presented his initial recommendations to Rutherford. After further refinements, and discussions with Rutherford, Szmyt presented his refined recommendations in mid-August, at a meeting in CEO Avery's office. Attending, in addition to Avery, Rutherford and Szmyt were Executive Vice-President McKenna, Michael Clay and Director of Industrial Relations Veil. There were no minutes taken at this meeting. Szmyt testified that he remembered being questioned about his report and his reasons for selecting plants for closing. However, Szmyt testified that he could not remember who said what at this meeting.

The testimony of Rutherford, McKenna, Clay and Veil provided no details of the remarks made at that meeting. Veil admitted that when he attended meetings involving discussions of plant closings, he provided advice and information to the conferees. However, when counsel for the General Counsel questioned him as to the content of his remarks to members of Crown's management on those occasions, I sustained Crown's objection based upon the attorney-client privilege,[14]

The issues raised in these cases are whether Crown, in its efforts to reduce plant costs, violated the Act as follows:

1. Section 8(a)(1), by:[15]

---

[14] Veil admitted that after June 28, 1994, he was the only labor employment lawyer on Crown's staff.

[15] Sec. 8(a)(1) of the Act provides:

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

In pertinent part, sec. 7 of the Act declares:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective-bargaining or other mutual aid or protection.

(a) Threatening employees with plant closure if they joined or engaged in activities on behalf of the Union.

(b) Telling the employees of its Atlanta Plant 68 that it will close its Cheraw, South Carolina plant if its Cheraw employees designated and selected the Union as their collective bargaining representative.

(c) Threatening its employees with reprisals if they joined or engaged in activities on behalf of the Union.

(d) Threatening its employees with loss of jobs because employees had joined or engaged in activities on behalf of the Union.

(e) Threatening its employees with plant closure if they designate and select the Union as their collective-bargaining representative.

(f) Threatening its employees with plant closure if they joined or engaged in activities on behalf of the Union and because they selected the Union as their collective-bargaining representative.

(g) Supervisors Bob Weber, Chuck Jaillet, Ed Sakora, and Merlin Tice, on various dates, telling employees at Orlando Plant 48 that the closure of that plant was related to the employees' involvement in Union activity.

(h) Supervisors Jimmy Simmons, Otis Dover, Terry O'Donnell, and Rick Dalton in May or June 1996, at its Plymouth Can plant, telling employees that the reason Plymouth Can plant employees were not being transferred to its Winter Garden plant was because the employees were unionized.

(i) Plant Manager Collie Turner and Area Manager Joe Busco interrogating employees at its Winter Garden plant in April 1996, regarding their Union sentiment and support, telling employees not to sign Union cards, and by impliedly promising to resolve employee grievances if they did not support the Union.

(j) Fred Veil telling employees at the Winter Garden plant, in early 1998, that there would never be a union at Winter Garden.[16]

2. Section 8(a)(3), by:[17]

---

[16] In his post-hearing brief, the General Counsel moved to amend the second amended consolidated complaint in these cases by withdrawal of alleged violations of Section 8(a)(1) of the Act, as follows: Paragraph 15(e) by Production Manager Tom Lundin, Paragraph 15(f) by Supervisor Carl Maglitto, and in Paragraph 15(g) by Plant Manager Ronald VanSant. I approve these amendments and grant the motion to amend.

[17] Sec. 8(a)(3) of the Act, in pertinent part, protects employees as follows:

(a) It shall be an unfair labor practice for an employer—

. . . .

Continued

(a) Discriminating against 42 Union-represented hourly production and maintenance employees of Orlando Plant 48 by requiring them to resign their employment at Orlando Plant 48 in order to be hired at Crown's Winter Garden plant.

(b) Discriminating against 45 Union-represented hourly production and maintenance employees of Orlando Plant 48 by terminating their employment at Orlando Plant 48 and refusing to hire them at Winter Garden because of their represented status.

(c) Underutilizing its Orlando Plant 48; transferring work from its Orlando Plant 48 to other facilities, and closing its Orlando Plant 48.

(d) Underutilizing its Hurlock, Maryland plant; transferring work from its Hurlock plant to other facilities, and closing its Hurlock plant.

(e) Underutilizing its St. Louis, Missouri plant; transferring work from its St. Louis plant to other facilities, and closing its St. Louis plant.

(f) Underutilizing its Shoreham, Michigan plant; transferring work from its Shoreham plant to other facilities, and closing its Shoreham plant.

(g) Laying off employees at its Atlanta Plant 68 in or about and after October 1993.

(h) Changing hours of work at its Atlanta Plant 68 during 1995 and laying off employees in or about and after May 1995.

(i) Underutilizing its Atlanta Plant 68; transferring work from its Atlanta Plant 68 to other facilities and closing its Atlanta Plant 68.

(j) Under utilizing its Cincinnati, Ohio plant; transferring work from its Cincinnati plant to other facilities and closing its Cincinnati plant.

(k) Telling employees and the Union that it intended to close its Pulaski Park, Maryland plant unless the Union agreed to mid-contract modifications and elimination of the master agreement; by laying off employees and commencing closure of the plant in furtherance of this purpose; and by obtaining mid-contract modifications and elimination of the master agreement through the foregoing conduct.

3. Section 8(a)(5) and (1), by:[18]

---

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

[18] The provisions of the Act, as amended, that are relevant to the alleged violations of Section 8(a)(5) are:

Continued

(a) Failing and refusing, since July 1995, to bargain collectively in good faith about the effects of the closure and relocation of the Orlando facility.

(b) Failing and refusing, since on or about January 12, 1996, to recognize and bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the hourly production and maintenance employees at the Orlando Plant 48 and at the Winter Garden plant.

(c) Failing and refusing, since May 1995, to apply the terms of the collective-bargaining agreement covering the Orlando Plant 48 plant unit employees to those same employees as they became employed at the Winter Garden plant.

(d) Failing and refusing, since January 3, 1996, to apply the terms of the collective-bargaining agreement that covered Orlando Plant 48's plant unit employees to those employees subsequently at the Winter Garden plant.

(e) Obtaining mid-contract modifications and withdrawal of the Pulaski Park plant from coverage under the master agreement.

B. Interference, Restraint and Coercion

In or about January 1994, employee William A. Story, an employee at Crown's Atlanta Plant 68 approached Manager Keith Ipok, a supervisor, and began questioning him about the need for the layoff Crown had imposed on the plant in the autumn of 1993. Ipok answered that the layoff was a message to the Union because the employees had been writing "a lot of grievances." Ipok suggested that Story talk to the Union's grievance chairman and persuade him to hold back on the grievances. Ipok warned that because of these grievances the plant would close down.

Sec. 8. (a) It shall be an unfair labor practice for an employer—

…

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a). . . .

.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .

. . . . .

Sec. 9. (a) Representatives designated or selected for the purposes of collective-bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective-bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

Thereafter, until almost September 1994, Ipok spoke to Story nine or ten times about the grievances. Manager Ipok pressed Story to urge the Union's grievance chairman to "back off of the grievances. In each instance, Ipok warned that if the employees did not stop writing grievances, the plant would close.[19]

It is well-settled that, where, as at Crown's Atlanta Plant 68, employees are covered by a collective-bargaining agreement, the filing of grievances by employees is concerted activity protected by Section 7 of the Act. *NLRB v. City Disposal Syste*ms, 465 US 822, 840 (1984). Ipok's warning of plant closure carries with it a threat that Crown will close the Atlanta Plant 28 in reprisal for employee-filed grievances. *NLRB v. Gissell Packing Company*, 395 US 575, 618-619 (1969). I find that, by Manager Ipok's threats of plant closure, Crown violated Section 8(a)(1) of the Act. *Brad Snodgrass, Inc.,* 338 NLRB No.138, (slip dec. p. 7 April 9, 2003).

In December 1993, Plant 68 employee Michael Thomas approached Supervisor Cecil Weaver, at the plant, and said that he understood that the laid-off employees would return to work on January 3, 1994. Weaver replied that he had seen the paper work and that all the laid off employees would return to work on that date except for the five interplant job opportunity transfers (IPJO's).[20] Thomas asked why the IPJO's were not returning. Weaver explained that Plant Manager Fulbright did not want IPJO Joyce Hipps back in Plant 68.[21]

At the time of her layoff, in October 1993, Hipps was working at Plant 68, as an IPJO from Crown's Perry, Georgia plant. She began working at Plant 68 on September 24, 1990. In 1991, Hipps was elected the Union local's recording secretary and member of its grievance committee, offices she retained for three years. She attended labor management meetings and participated in second and third step grievance meetings with Crown's management. She attended second step grievance meetings at Plant 68, at which Plant Manager Rusty Fulbright was Crown's spokesman.

Early in her membership on the local's grievance committee, Joyce Hipps participated in a second step meeting with Plant Manager Fulbright, when he became hostile to Hipps and her colleagues. He expressed displeasure over the number and nature of the grievances coming from "trouble makers" and "the Union." Fulbright exclaimed; " I'm not going to have it." Turning to Hipps, he added: " As for you, Joyce, I just want to strangle you." [22]

---

[19] My findings of fact regarding Manager Ipok's remarks are based on Story's uncontradicted testimony. Ipok did not testify in these proceedings.

[20] An "IPJO" refers to an employee, who has used the Union's master agreement's provision permitting laid-off bargaining unit employees to transfer to a job at another master agreement plant.

[21] My findings of fact regarding Weaver's remarks to Thomas are based on Thomas's uncontradicted testimony. Weaver did not testify at the hearing in these cases.

[22] I based my findings regarding Hipps' employment, union activity, and her encounter with Fulbright on Hipps' uncontradicted testimony.

Weaver's remarks regarding Plant Manager Fulbright's intention to keep Hipps out of Plant 68 must be examined in light of her leading role in the local's processing of employee grievances and Fulbright's attitude toward her union activity. Fulbright's expressed hostility toward her in the context of a second step grievance suggests his motive for barring her return to work at Plant 68. Thomas, who was a Union shop steward from June 1979 until December 1995, was, beyond doubt, aware of Hipps' membership on the local's grievance committee prior to her layoff in October 1993. Thus, I find it likely that he understood from Weaver's remarks that Fulbright intended to punish Hipps for her grievance committee activity on the Union's behalf by depriving her of employment at Plant 68. Thomas, as a shop steward, could reasonably conclude from Weaver's remarks that he, Thomas, might suffer economic reprisal from Fulbright for supporting Union grievances. Accordingly, I find that by Weaver's remarks, Crown impaired Thomas's enjoyment of the rights guaranteed by Section 7 of the Act and thereby violated Section 8(a)(1) of the Act. *Cannon Industries, Inc*., 291 NLRB 632, 637(1988).

In October 1993, Plant 68 employee Larry Horton, who was operating a forklift near Supervisor Weaver's shipping and receiving office, observed Weaver arguing with two employees, Local President Hubert Burns and Ken Thomas, the Local's grievance committee chairman. Horton could not hear what Weaver was saying to the two employees. Nor could Horton hear what Burns or Thomas was saying. The discussion took about twenty minutes. Horton finished loading a truck and went into Weaver's office. While he was in the shipping and receiving office, he heard Weaver say, "This damn union is going to close this place."

In 1994, Supervisor Weaver repeatedly told employee Glennell Albright that as soon as Plant 68 converted from making 206 cans to making 202 cans, the plant's business would increase markedly and the employees would have more overtime than they knew what to do with. In July or August 1995, in Glennell Albright's presence, an employee asked Supervisor Weaver when Plant 68 would convert from making 206 cans to making 202 cans. Weaver answered that the conversion would occur if the Plant 68 employees stopped writing so many grievances.

In October 1995, Crown issued a "WARN" [23] notice, announcing the closing of its Atlanta 68 plant. In the same month, Supervisor Weaver told employee John McNulty that although he did not normally have lunch with the office personnel or management personnel up front, that day he did. Weaver told McNulty that the topic of the conversation at lunch was the plant's closing, and why. According to Weaver, the reasons were "Steelworkers and Joyce Hipps."[24] I find from Joyce Hipps' uncontradicted testimony, that she was President of the Local from July 1994 until March 27.

---

[23] A notice of plant closing as required under the Worker Adjustment and Retraining Notification Act, 29 U.S.C.A. Sec. 2102 (Supp.1998).

[24] My findings regarding Weaver's remarks to McNulty in October 1995 are based on McNulty's uncontradicted testimony.

On the day he reported to employee McNulty on his luncheon with office and management personnel, Weaver also spoke to employee Michael David Johnson, stating that he had just come from eating lunch in the front office. Weaver said he had come away from the front office with word that the plant was closing because of the Steelworkers.[25] I find from Johnson's testimony that managers and supervisors regularly lunched in the front office, at Atlanta Plant 68.

By telling employees that the Union would cause the Atlanta Plant 68 to close and that Crown was closing that plant because of Joyce Hipps and because of the Union, Supervisor Weaver was threatening the employees with economic reprisals because they supported the Union ad its local. These threats interfered with, restrained and coerced employees in the exercise of their Section 7 rights to engage in union activity or otherwise support the Union. Accordingly, I find that, by Weaver's threats of economic reprisals, Crown violated Section 8(a)(1) of the Act.

Crown closed its Perry, Georgia plant in 1991, after acquiring it from Continental in 1990. Perry's plant employees were covered by the Union's 1989 master agreement.

In 1993 and 1994, Production Supervisor Billy Heard, conversed several times with employee Glennell Albright, at Atlanta Plant 68 about the closing of the Perry plant. In one conversation, Heard told Albright that he knew that the Perry plant was capable of running good quality cans, but that it was the grievances and the Union that put them out of business. Heard warned that the same thing could happen at Atlanta.

In early 1994, after the October 1993 layoff had ended, Supervisor Heard approached employee Albright at Crown's Atlanta Plant 68 and asked her to talk to Joyce Hipps about filing so many grievances.[26] Heard continued, asserting that the reason for Crown's closing of its Perry plant was that the Perry employees "filed so many crazy grievances." Heard also warned Albright that "they didn't like grievances in Philadelphia."[27]

In 1994 and 1995, Supervisor Heard repeatedly told Albright that Atlanta Plant 68 had to convert to 202 cans. Heard warned that If Plant 68 did not convert it would be shut down for lack of customers. In the spring or summer of 1995, a customer's driver asked Heard when Plant 68 would convert to 202 cans and said that the customer was

---

[25] My findings regarding Weaver's remarks to employee Johnson are based upon Johnson's uncontradicted testimony.

[26] Billy Heard did not testify in these proceedings. My findings of fact regarding his remarks to employee Albright are based upon her uncontradicted testimony. I noted that in her testimony regarding Heard's remarks to her about Joyce Hipps, Albright first asserted that it occurred after the 1993 layoff. However, when Counsel for the General Counsel asked if it occurred: " after the '92 layoff," Albright answered yes. The credited testimony, above, shows that there was no layoff at Plant 68 in 1992 and that the layoff of October 1993 ended in January 1994. Accordingly, I have not credited Albright's answer to Counsel for the General Counsel's leading question.

[27] The record shows that at all times material to this case, Crown's corporate offices have been located in Philadelphia, Pennsylvania.

waiting for Plant 68 to convert so that the customer could follow suit. Heard answered that the driver's guess was as good as Heard's. When the driver left, Albright asked Heard to explain his answer. Heard responded:

> "[B]e real, if they can get tooling for Batesville, why can't they get tooling for us."[28]

Heard's remarks to Albright that she caution Hipps about filing so many grievances were accompanied by an implied threat that Crown (referred to as "Philadelphia") would close Atlanta Plant 68 unless Hipps was cautious and reduced the number of filed grievances. That implied threat was likely to restrain and coerce Albright and other employees in violation of Section 7 of the Act. I find that, by Heard's implied threat, Crown violated Section 8(a)(1) of the Act.

Equally unlawful was Heard's implied warning that Crown was withholding tooling for conversion to 202 cans because Atlanta 68's employee adhered to the Union and filed grievances. His suggestion that Albright "be real" was designed to remind her of his harangues about Crown's retaliation against its Perry employees for filing grievances and because of their affiliation with the Union. I find that by Heard's implied warning that Crown was hobbling Plant 68 so that it could not supply customers with 202 cans, Crown was threatening its employees with loss of employment because of their union activity and thereby violated Section 8(a)(1) of the Act.

In late 1993 or early 1994, employee John McNulty, a Union member, attended a shift meeting at Crown's Atlanta Plant 68. Plant Manager Rusty Fulbright presided over the meeting. He told the assembled employees that they were accomplishing much; that their productivity was high, but there were things they needed to curtail. Fulbright said they needed to improve their injury record. He also urged them to curtail the writing of grievances to keep the plant open. Thus did Fulbright imply that Crown was likely to close Plant 68 in retaliation for employee efforts to enforce the master agreement by filing grievances.[29] By these remarks, Fulbright interfered with, restrained, and coerced employees in the exercise of their Section 7 right to enforce their Union's collective-bargaining agreement. *NLRB v. City Disposal Systems*, supra. I find that by this implied threat, Crown violated Section 8(a)(1) of the Act. Cannon Industries, Inc., supra.

After Jerry Ackerman became Plant Manager of Atlanta Plant 68 in March 1994, he repeated warned the plant employees about their grievances. During his tenure at Plant 68, in 1994 and 1995, Ackerman held meetings with his employees, at which he would talk about the state of the plant's business. During at least two of these meetings, Ackerman told the employees that their production was good, that they were doing well, but that they "needed to keep the grievance writing down." He warned that

---

[28] Heard did not testify in these proceedings. I based my findings regarding Heard's remarks to employee Albright upon her uncontradicted testimony.

[29] Fulbright testified, but did not deny making these remarks attributed to him by the testimony of employee McNulty. My findings of fact are based upon McNulty's unchallenged account of Fulbright's remarks at the shift meeting.

"the people in Philadelphia weren't too happy" with the Plant 68 employees.[30]

At second step grievance meetings with Plant 68 employees, who were members of the Union's grievance committee, Ackerman often commented about employee grievances. He remarked that Philadelphia had "their eye on Plant 68." He also said that "they," referring to Philadelphia, were unhappy about the grievances they were receiving. Frequently, Ackerman cautioned the employees that Philadelphia reviewed the grievances and that he had to send reports on grievances to Philadelphia. He also routinely warned the employees on the Union's grievance committee that Philadelphia reviewed these grievances and this had a direct affect on which plants they would close.[31] In one incident, Ackerman told the grievance committee that Philadelphia was reviewing Plant 68's grievances that the grievances affected Philadelphia's decisions as to which plants to close, and that their plant was hard to get along with. Ackerman warned the employees that Plant 68 was getting to be "just like the Perry Plant and we know what happened to the Perry Plant."[32]

In a letter dated August 12, 1994, addressed to "All Supervisors Atlanta #68" from J.M. Ackerman that was posted throughout Plant 68, Plant Manager Ackerman stated, in pertinent part:

Tom Becker got a grievance after signing for a package after the storeroom attendant went home sick.

If that's what some people call cooperation, I'm surprised. Just be aware of sniping. Bounty hunters are out there looking for the easy buck. I saw the same behavior at Perry. We all know what happened to Perry. This type of grievance demonstrated too (sic) Philadelphia the behavior they compare to confrontational plants.[33]

---

[30] When Crown's counsel asked Ackerman if he recalled ever saying that Philadelphia was unhappy with the grievances they were receiving, Ackerman did not give a direct answer. He testified, " That wouldn't be something I would do." Ackerman did not provide a detailed account of what he said to his employees at the meetings he held with them. In contrast, Michael David Johnson seemed to be giving his best recollection of Ackerman's remarks. As Johnson impressed me as being a frank and forthright witness, I have credited his testimony in this regard.

[31] My findings of fact regarding Ackerman's routine warnings are based on the testimony of employees Joyce Hipps, William Hightower, and Michael Thomas, all of whom impressed me as being frank and forthright witnesses. For the reasons set forth above, in footnote 27, I did not credit Ackerman's testimony regarding his remarks to Plant 68 employees.

[32] My findings regarding Ackerman's remarks comparing Plant 68 with the Perry Plant are based on employee Michael Thomas's credible testimony.

[33] Ackerman testified that he had no recollection of writing the quoted notice. However, he did not deny that it was posted at Plant 68 on August 12, 1994, and that he was aware of its posting. He admitted that it contained "a lot of thoughts in here that I have." I based my findings regarding the quoted notice on employee Hightower's frank testimony.

I find that Ackerman, by his warnings to the employees regarding the affect of grievances upon Crown's decisions to close plants and his remarks and posted notice implying that Plant 68 would meet the same fate as did the Perry plant because of grievances trespassed upon his employees' Section 7 right to file grievances to enforce their collective-bargaining agreement against Crown. I also find that, by Ackerman's implied threats of reprisal for the filing of grievances, Crown violated Section 8(a)(1) of the Act.

In 1994, after becoming manager of Plant 68, Jerry Ackerman conducted a can conference meeting between a committee of six members of the plant's management, including Ackerman, and four employees, as provided in a letter of understanding reached with the Union along with the Master Agreement of 1993. The purpose of such meetings was to increase plant efficiency and prevent problems. One of the topics discussed was the plant's recreational budget.

One of the meeting's participants asked Ackerman what had happened to the plant's recreational budget. His answer was, "well if we were to stop writing so many two-cent grievances maybe Crown would reactivate our recreational budget." Ackerman's answer carried the message that Crown was punishing Plant 68's employees for filing grievances. Thus did Ackerman impair his employees' enjoyment of their Section 7 right to enforce their collective-bargaining agreement with Crown. Accordingly, I find that, by Ackerman's answer, Crown violated Section 8(a)(1) of the Act.[34]

In 1994 and in 1995, Crown's Corporate Manager of Industrial Relations James Deaver dealt with third-step grievances at Plant 68. In October 1994, Deaver met at Plant 68 with Local Union President Joyce Hipps and the Local Union's grievance committee, consisting of employees Jimmy Hightower, Hubert Burns, and Kim Thomas. The purpose of the meeting was to deal with third-step grievances arising from the collective-bargaining agreement covering Plant 68's employees. As the discussion of grievances progressed, Deaver interrupted and warned the grievance committee; "If you guys don't stop writing all these grievances, we're going to close the plant down."[35]

I find from employee Hightower's uncontradicted testimony that at a third step grievance discussion, in 1994 or 1995, Deaver warned grievance committee members how Philadelphia viewed Plant 68. Deaver declared," if you have a thorn in your side you pluck it out." I also find from Hightower's testimony that Deaver said that Plant 68 was "a confrontational plant."

---

[34] I based my findings of fact upon employee Glennell Albright's uncontradicted testimony.

[35] My findings regarding Deaver's threat to close Plant 68 if the employees continued to file grievances are based upon Joyce Hipps' testimony. Hipps gave detailed testimony candidly. Deaver 's testimony regarding his remarks to the grievance committee was short denial in response to a leading question on direct examination by Crown's counsel. Deaver did not provide his version of his remarks at any of the grievance meetings he participated in at Plant 68 in 1994 or 1995. Accordingly, I have credited Hipps testimony in this regard.

I find from the uncontradicted testimony of employee Michael Thomas that at a third step grievance meeting at Plant 68, in the fall of 1994, Deaver warned members of the grievance committee about Crown's attitude toward the plant employees' grievances. Thomas 's credited testimony described Deaver's conduct as follows:

His face was red and he pointed at the grievance committee and told us that we were nothing but a bunch of troublemakers and that this was a waste of his time and that Philadelphia looked at these grievances. We were hard to get along with and they were going to shut this plant down.

I find that Deaver's warnings that Crown would close Plant 68 because of the employees' grievances and his implied threat of reprisal when he spoke of plucking a thorn out of your side were likely to restrain or coerce employees in the exercise of their Section 7 right to fill grievances. I further find that by Deaver's warnings and implied threat of economic reprisal, Crown violated Section 8(a)(1) of the Act.

During part of 1995, Atlanta Plant 68 went from two 12-hour shifts to two 8-hour shifts, daily. While the plant was on the reduced work schedule, employee Glennell Albright, Supervisor Pat Brennan and a few other employees were in the plant's production office, when an employee asked when the continuous schedule would resume. Supervisor Brennan answered, "When you all stop filing so many grievances." Brennan's answer implied that Crown would continue to impose an economic reprisal upon its Plant 68 employees because they engaged in their Section 7 right to file grievances. I find that by Brennan's answer, Crown violated Section 8(a)(1) of the Act.[36]

In 1995, after Crown had issued a WARN notice at Plant 68, Supervisor Brennan told employee Michael David Johnson how well the plant had operated and the fact that the employees were Union must have been the reason the plant was being closed.[37]

During 1995, before the WARN notice Supervisor Pat Brennan often talked about grievances to Plant 68 employees. I find from employee Albright's uncontradicted testimony that Brennan warned them that Philadelphia did not like the number of grievances being filed, that they made Plant 68 look bad, that Philadelphia was aware of every grievance that was filed, and that the Atlanta Plant 68 employees should stop filing grievances before "they close our plant like they did Perry."

I find that Brennan's remarks warning that Crown would close Atlanta Plant 68 if the employees continued to file grievances and his assertion that Crown closed its Perry Plant because the employee adhered to the Union, all, were likely to interfere with, restrain, and coerce listening employees in the exercise of their Section 7 rights to adhere to the Union and file grievances seeking enforcement of their collective-

[36] My findings regarding the incident in the Plant68 production office are based upon employee Albright's uncontradicted testimony.

[37] My findings regarding Supervisor Brennan's remarks to employees Johnson are based upon Johnson's uncontradicted testimony.

bargaining agreement.[38] I further find, therefore, that by these remarks, Crown violated Section 8a(1) of the Act.

After Crown issued a WARN notice on October 3 to Plant 68's employees, Supervisor John Sunglow, on three or four occasions, told employee Michael David Johnson that the plant's numbers were "real good" and that Sunglow could not understand why Plant 68 was closing. The only reason Sunglow could come up with the only reason was that Plant 68's employees were Union, that they were Steelworkers. After October 3, Supervisor Sunglow also told Plant 68 employee William A. Story and other employees standing with Story, at work, that the plant was being closed because of the Union. Here again, Crown did not show that Supervisor Sunglow was speaking without knowledge of Crown's motive for closing Atlanta Plant 68. I find that that Sunglow's statements, respectively, that Crown was closing the plant because the employees adhered to the Union and because of the Union, carried the implication that Crown would use economic reprisals to punish them because they supported the Union.[39] I further find that by Supervisor Sunglow's warnings Crown violated Section 8(a)(1) of the Act. *Marshall Durbin Poultry Co.,* 310 NLRB 68, 69 (1993).

I find from employee Wayne Camp's undenied testimony that in early 1995, Supervisor Keith Toff was ordering tooling for the new 202 can production line at Atlanta Plant 68. I also find from employee Camp's uncontradicted testimony that by this time, some of Atlanta 68's customers were converting their plants from 206 cans to 202 cans. Plant Manager Ackerman admitted, and I find, that Atlanta 68 came within eight hours of completing its conversion to 202 cans in 1995.

In August or September 1995, employee Glennell Allbright, while working at Plant 68, was present with employee Phyllis Clemons, when employee Willy Williams asked Supervisor Toff when the 202 conversion would be completed. Toff answered," We will convert to 202 when you all stop being Steelworkers."[40] By his answer, Toff was warning the employees that their employment was in jeopardy because they adhered to the Union. Thus, I find, that Toff trespassed upon the employees' Section 7 right to support the Union. I further find that by Toff's response, Crown violated Section 8(a)(1) of the Act.

In the summer of 1994, at Plant 68, Robert (Bob) W. Kelly, Vice-President of Crown's North American Division, entered the break room to get a soft drink. An employee called out to him, asking what he thought about the Union organizing Crown's Cheraw, South Carolina plant. Kelly answered that if that happened, Crown would shut

---

[38] As Crown has not shown that Brennan's remark about the reason for Plant 68's closing was not based upon his knowledge of Crown's motive for that action, Board policy permits reliance on that remark in finding that Crown thereby violated the Act. *Pinkerton's Inc.*,295 NLRB 538 (1989).

[39] My findings regarding Supervisor Sunglow's remarks are based upon the undenied testimony of employees Johnson and Story. Sunglow did not testify in these proceedings.

[40] I based my findings regarding Supervisor Toff's response to employee Williams question upon employee Albright's undenied testimony.

the Cheraw plant down.[41]

Vice-President Kelly's response to the question regarding the fate of the Cheraw plant, if the Union organized it, was a threat of economic reprisal by the Company. Such a threat interferes with, restrains and coerces employees in the exercise of their right under Section 7 of the Act to engage in union activity. I further find that by Vice President Kelly's threat to close the Cheraw plant if the Union organized that plant, Crown violated Section 8 (a)(1) of the Act.

I also find that Crown violated the Act when Vice-President Kelly warned employees about grievances. In an incident early in the fall of 1995, at Atlanta 68, employee Daniel Copeland heard Kelly warning employees about Philadelphia's attitude about grievances. Kelly said, in substance that there had been quite a few grievances filed at Plant 68 and that Philadelphia would not be pleased with the grievances coming out of Atlanta 68. Kelly went on to say, in substance, that Crown's management was looking at this situation and that, if the employees continued to file grievances, Crown's management would close the plant. Here again, Vice-President Kelly threatened economic reprisal in response to the employees' exercise of a Section 7 right, the right to file grievances under their collective-bargaining agreement with their employer. I find that by this threat, Crown violated Section 8(a)(1) of the Act.[42]

The record shows further instances of Crown management's willingness to violate the Act to encourage employees to abandon the Union. Thus, on August 8, 1997, at Crown's Atlanta Plant 28, with support from fellow Plant 28 employees, Daniel J. Curl filed a petition at the Board's Region 10 office, in Atlanta, to decertify Laborers Local No. 438 as bargaining representative of the production and maintenance employees at that plant. Curl and other Plant 28 employees were unhappy with Local No. 438.

On a workday, while the decertification petition was pending, Curl and employee Dennis Harmon were in the supervisors' office at Plant 28, conversing with some supervisors, including Supervisor Bill Glavis. Curl and Harmon were joking about bringing the Union in to replace the Laborers at Plant 28. Supervisor Barry Curry entered the office and asked the two employees what union they intended to bring in after decertifying the Laborers. Curl and Harmon said, "the Steelworkers."

Supervisor Curry looked at Curl and Harmon as he warned that if they brought the Union in, Crown would close Plant 28. Curry added that Crown did not like the Union and reminded the two employees what Crown had done to all the other plants represented by the Union. Curry mentioned his family and said he did not want to

---

[41] My findings regarding Kelly's exchange with an employee in Plant 68's break room, in the summer of 1994, are based upon former Crown employees Michael David Johnson and Hazelwood A. Woody's testimony.

[42] My findings regarding Vice-President Kelly's warning regarding grievances are based upon employee Daniel Copeland's undenied testimony.

move.[43]

Curry's warning that Crown would close the plant if Plant 28's selected the Union as their collective bargaining representative interfered with, restrained and coerced employees Curl and Harmon in the exercise of their Section 7 right to make that selection. I further find that by Curry's threat, Crown violated Section 8(a)(1) of the Act. *NLRB v. Gissell Packing Company*, 395 US 575, 618-619 (1969).

Supervisor Pat Brennan expressed a similar warning in conversation with Curl, while the decertification petition was pending. Curl told Brennan that Curl and other Plant 28 employees were considering the Union as replacement for the Laborers. Supervisor Brennan cautioned against that idea. He said he would not advise the employees to do that. Then, Brennan told of his experience in two Crown shutdowns with the Union, at Perry and at Atlanta Plant 68. He said he did not "feel like going through another one here."[44]

In 1995, after Crown had closed Atlanta Plant 68, employee Curl was in Plant Manager Ackerman's Plant 28 office discussing that event. Curl remarked that Plant 68 had been 'a good running plant" and that he had read in the *Crown Chronicle*[45] that Plant 68 had produced over a billion cans, quite a feat for a two-line plant. Continuing, Curl said that, in view of Plant 68's good production, he could not understand why Crown had shut it down. Ackerman replied, in substance, that Crown shut Plant 68 down because it was a Union plant, and Crown did not like the Union. [46]

In 1997, after the filing of the desertification petition, Curl and Ackerman discussed the planned switch from the Laborers to the Union. The Plant Manager advised Curl that he had "better think twice about going with the Union, because if the Plant 28 employees did so, their future would be "down the drain."[47]

On another occasion in 1997, Curl and Ackerman discussed the Union's campaign at Crown's Cheraw, South Carolina plant. Curl had heard that Crown's anti-

---

[43] I based my findings regarding Supervisor Curry's conversation with Curl and Harmon upon the two employees' undenied testimony. Curry did not testify in these proceedings.

[44] My findings of fact regarding Supervisor Brennan's warning to Curl are based upon the employee's undenied testimony..

[45] *Crown Chronicles* was a quarterly newspaper issued by Crown, in Philadelphia, Pennsylvania.

[46] Ackerman testified first that he never had a conversation with employee Curl. A little later in his testimony before me, Ackerman denied having "any private meetings or discussions with him, other than business." Ackerman never explained what he meant by "business." However, he did not deny discussing the closing of Plant 68 with Curl. I have credited Curl's testimony regarding his conversations with Ackerman regarding the Union and Crown's hostility toward the Union. Curl seemed to be giving his recollection, without embellishment, in a frank manner. He impressed me as being a reliable witness.

[47] For the reasons stated in footnote 46, I have based my findings regarding Ackerman's remarks about the future of Plant 28's employees if they supported the Union upon Curl's credible testimony.

Union campaign at Cheraw included giving steak dinners, shirts and caps to the plant employees. Curl went to Ackerman's office and chided him about what was happening at Cheraw. Curl said he had heard that management was giving steak dinners, caps and shirts to the Cheraw employees and wanted to know where those gifts were for the Plant 28 employees. Ackerman did not answer. Curl addressed Ackerman again saying that the Cheraw plant was rated only 10 or 11 in the Corporation and Plant 28 was "No. 3," so where was Plant 28's steak dinner? Ackerman's reply included a warning that the Cheraw employees had better not go for the Union. Continuing, Ackerman said that if the Cheraw employees went with the Union, they would not have a future.[48]

I find that Plant Manager Ackerman's assertion to Curl that Crown closed Plant 68 because the Union had organized that plant and Crown did not like the Union suggested that Plant 28 would suffer the same fate if its employees supported the Union. I also find that by this coercive remark Crown violated Section 8(a)(1) of the Act. I also find that Crown violated Section 8(a)(1) of the Act by Ackerman's coercive warnings that Plant 28 and the Cheraw plant would suffer the same fate, if their respective employees chose the Union to represent them for purposes of collective bargaining.

During 1993 and continuing until shortly before he went to another plant on November 8, 1994, Plant Manager Ronald VanSant had monthly meetings where he discussed grievances with Union members, at Crown's Shoreham, Michigan plant. During arguments at these meetings, VanSant would complain that the number of grievances had risen, that Philadelphia would note this, conclude that the Shoreham plant was having labor problems and the plant would be closed. In some instances, VanSant told the employees that there were "entirely too many grievances" and if it did not stop Shoreham would be closed.[49]

Some of the Shoreham grievances arose from changes in overtime rules in the Union's 1993 Master Agreement. I find from the undenied testimony of employee Del Mariani that during 1993, and in 1994, prior to his departure, he repeatedly warned Union members to "stop with this petty stuff, you're going to get us shut down." I also find from Del Mariani's undenied testimony that in responses to these grievances, he often warned of "a padlock on the door."

On a workday in August 1994, employee Joseph C. Oliver distributed paperwork in the Shoreham plant's front office. He next went to make distribution in the Plant Manager's office. As Oliver arrived at his destination, VanSant emerged with a stack of papers. VanSant slammed the papers down on his secretary's desk and said, "These damn grievances are going to get this place closed."[50]

---

[48] For the reasons stated in footnote 45, I based my findings regarding the discussion between Curl and Ackerman about the Cheraw plant employees upon Curl's testimony.

[49] My findings regarding VanSant's remarks to Union members at grievance meetings are based upon the undenied testimony of employee Shari Del Mariani.

[50] My findings regarding VanSant's remarks about grievances outside of his office in August 1994, are based upon employee Oliver's undenied testimony.

As previously recited in this decision, the Board has recognized that a supervisor's warning to employees that their employer will terminate their employment in reprisal for their filing grievances to enforce a collective bargaining agreement, unlawfully trespasses upon the employees' Section 7 right to file grievances. Brad Snodgrass, Inc., 338 NLRB No.138, (slip dec. p. 7 April 9, 2003). As shown above, Plant Manager VanSant made such threats at least monthly from August 1993, until his departure from Shoreham, in November 1994. I further find, therefore, that by those threats, Crown violated Section 8(a)(1) of the Act.

Employee Rick Monroe began working at Crown's St. Louis plant in 1986, when Continental Can owned it. Crown acquired St. Louis Plant 73 in July 1990. Monroe worked at the St. Louis plant until Crown laid him off in June 1995. During the last six months of his employment at St. Louis Crown employed him to assist in preparing equipment for shipment from plant 73.

From about 1991, until Crown shut the St. Louis plant down on December 31, 1994, Monroe was President of the Union's Local 1120 and a member of the Local's grievance committee. His union activity brought him into almost daily contact with the St. Louis plant's Personnel Manager Jim Cant, an admitted agent of Crown. During 1993 and until late1994, in the course of discussing grievances with Monroe, Cant would warn him that there were two strikes against the Plant 73 employees in dealing with Crown, one, they were members of the Union and two, they were under the Master agreement. Can't also remarked, "See what writing all the grievances (sic) have done for this building?"

On September 26, 1994, Crown issued a WARN notice to the Union. Soon after the WARN notice's arrival, Cant reminded Monroe. "See, I told you. You've had strike three."[51]

I find that from August 1993, until late 1994, Cant's warnings about two strikes against the Plant 73 employees in their dealings with Crown because of their support for the Union and the Master Agreement warned that these employees would suffer economic reprisal at Crown's hands. Thereafter, when Crown announced the closing of Plant 73, Cant's remarks that the employees now had "strike three" linked the employees' impending loss of employment to their adherence to the Union and the master agreement. I find that Cant's threats that Plant 73's employees would lose their jobs because of their union activity coerced and restrained them in the exercise of their Section 7 rights to support a union and bargaining collectively through the Union and Local 1120. I further find that by Cant's threats, Crown violated Section 8(a)(1) of the Act. *Hall of Mississippi, Inc*., 249 NLRB 775, 780-781 (1980).

In late 1993 or early 1994, Monroe wanted to advance some work transfer grievances to arbitration. He took the matter up with St. Louis Plant Manager James H.

[51] My findings of fact regarding Monroe's employment, his union activity and his encounters with Personnel Manager James Cant are based upon Monroe's undenied testimony.

Meyman. Monroe complained to Meyman that Crown was moving work out of the St. Louis plant to non-Master Agreement plants, in violation of the current collective bargaining agreement with the Union. Monroe asserted that Crown, by moving this work out of the St Louis plant, was raising the plant's production costs. Monroe insisted that he needed Meyman's help to move this grievance along and was not getting it.

Meyman answered, "Well, we're already known as a troublesome plant. All these grievances and stuff send red flags to them that you're putting in there and we're going to end up on the list to be closed."

During the first quarter of 1994, Monroe, as President of Local 1120, attended a meeting of managers and employees called a "QIP" meeting (Quality Improvement Through People), where he discussed the quality of steel plate Crown was shipping to the St. Louis plant and trouble with production lines. Monroe told the QIP group that he had spoken to other local presidents, whose plants were under the Master Agreement. He told the QIP group that these talks showed that some other plants under the Master Agreement were having the same experience and some were not. Monroe told the group that the same thing was happening with parts and other "stuff." He said that after "checking things out, I believe we're being treated different."

After Monroe returned to the St. Louis plant from the QIP meeting, Meyman summoned him to the Plant Manager's office. When Monroe arrived in the office, Meyman scolded him, saying, "Rick, you should not say all that kind of stuff in a QIP meeting. . . it puts out the wrong impression." Continuing, Meyman said," Another thing, we're considered a troublesome plant because of your union activities of talking to all these other people around the country. I know you do it. You should cut that out because it just sends the wrong message to Corporate."[52]

I find that Meyman's warning that Monroe's continued filing of grievances would result in Crown putting St. Louis on its list of plants to be closed was a threat of economic reprisal. I also find that this threat unlawfully impaired Monroe's enjoyment of his Section 7 right to file and pursue grievances. Finally, I find that by Meyman's threat, Crown violated Section 8(a))(1) of the Act. Dresser Industries, 281 NLRB 132, 135 (1986).

Monroe's discussions of matters of concern to the St Louis bargaining unit employees, with other employees sharing the same concerns, including other local presidents, was also activity protected by Section 7 of the Act. For that section of the Act afforded Monroe the right to engage in "concerted activities for the purpose of . . .mutual aid or protection." The quoted language covered Monroe, at QIP meetings and elsewhere, when he discussed with other employees, including local presidents, his observation that Crown was sending lower quality steel plate to its St. Louis plant, and his opinion as to Crown's motive for doing so. Telling Monroe that his discussions at

[52] My findings of fact regarding Monroe's encounters with Meyman about pushing grievances to arbitration and Monroe's conduct at a QIP and his contacts with "other people around the country," are based upon Monroe's undenied testimony.

the QIP meeting were putting out ”the wrong impression” and that his discussions with “all these other people around the country,” meaning local presidents, sent the wrong message to Corporate” suggested that Crown would impose an unspecified economic reprisal on the St Louis plant. I find that by this implied threat, Crown again violated Section 8(a)(1) of the Act.

C. Orlando

1. Independent Violations of Section 8(a)(1) of the Act at Orlando, Plymouth Can and Winter Garden

Between September 14, 1994, and her layoff on July 29, Darlene Ewing, while filling out an accident report at Crown’s Orlando, Florida plant, conversed with her supervisor, Bob Weber. She asked Supervisor Weber why Crown was closing down the Orlando plant. Before he answered, Ewing expressed her understanding that the Orlando plant had made money for Crown and that she and her fellow employees were “doing good.” [53]

Weber gave three reasons for Crown’s decision. They were, the light bill for the plant was high, the property value, and the Union. By blaming the Union in part for Crown’s decision to close down its Orlando, Supervisor Weber impliedly warned Ewing that if she obtained further employment at another Crown plant, she would suffer further economic harm if she supported the Union. Thus, I further find that Weber restrained and coerced Ewing in the exercise of her Section 7 right to support a labor organization. Accordingly, I find that, by Weber’s response to the employee’s question, Crown violated Section 8(a)(1) of the Act. *Purolator Armored, Inc*., 268 NLRB 1268, 1278 (1984).

I find from her undenied testimony that Mary Alice Wareham worked at the Orlando plant from January 24, 1973, until Crown laid her off on March 2, 1997, when it closed the warehouse at that plant site. During 1996 and 1997, while working at the warehouse, truck drivers, shuttling between the Orlando warehouse and the Wintergarden plant, occasionally approached Wareham’s desk and asked her why Crown had shut the Orlando plant down. She referred the inquiring drivers to her supervisor, Chuck Jaillet. When a driver asked why Crown had not moved its Wintergarden plant to the Orlando plant, Supervisor Jaillet told him to” read the union label” and added that it was “to eliminate the Union.”

In March or April 1996, Wareham had asked Supervisor Jaillet why Crown had closed Orlando Plant 48. Jaillet told her to read the union label and asserted that Crown’s motive was “to eliminate the Union, pure and simple.”

Wareham argued, “Unions can be good things.” In response, Jaillet pulled a copy of the current Union–Crown contract out of his desk. He announced that in June

[53] My findings regarding Ewing’s encounter with Supervisor Weber are based upon her undenied testimony.

1996, when the contract expired, he intended to build a "F---'ing fireplace and . . . burn every one of them." [54]

By telling Wareham and other employees that Crown shut down the Orlando plant to get rid of the Union, Supervisor Jaillet restrained and coerced employees in the exercise of Section 7 rights to adhere to the Union and engage in collective bargaining. I further find that by Jaillet's remarks to the employees, Crown violated Section 8(a)(1) of the Act.

Benny Gibson worked at Orlando Plant 48 from November 1969 until February 1997. Crown shut down the Orlando plant on December 29. Crown employed Gibson in the warehouse at that location until February 1997, when Crown laid him off.[55]

I find from Gibson's undenied testimony, that in September or October 1995, Supervisor Merlin Tice told employee Gibson that if the Union did not have "so much - - all the trouble with [Crown], they wouldn't be shutting down." I also find from Gibson's testimony, that Tice said this two or three times.

On two occasions, during his last two months at Orlando, Gibson was the target of expressions of anti-Union sentiment by Supervisor Jaillet. I find from Gibson's undenied testimony that Jaillet complained that, because of the Union, Crown could not exercise its discretion to discipline employees, who did not want to work. In substance, Jaillet said that if Crown could have disciplined the offenders as it wanted to, they would not be going through a plant closure.

I find that Supervisors Tice and Jaillet unlawfully coerced and restrained employee Gibson by telling them each, in essence, that Crown shut down its Orlando plant because of the Union. Accordingly, I find that by Tice and Jaillet's remarks to Gibson, Crown violated Section 8(a)(1) of the Act.

Billie Nelson had worked at Orlando Plant 48 for 22 years, when Crown laid him off on December 29. He was president of the Union's local from 1990 until April or May 1994. As local president, in the spring of 1994, employee Nelson attended a second step grievance meeting involving numerous grievances. Supervisors Ed Sakora and Al Wellman attended for management.

When the meeting began, Supervisor Sakora threw the grievance papers down on the table and asked Nelson what they were. Nelson answered that they were grievances. Sakora became irate. He said they were "nothing but harassment grievances." Sakora said that Crown did not like these grievances. He warned, "They'll close these Union plants if we continue to file these harassment grievances."[56]

---

[54] My findings regarding Supervisor Jaillet's remarks about the Union and the contract are based upon employee Wareham's undenied testimony.

[55] My findings regarding Gibson's employment history at the Orlando plant are based upon his undenied testimony.

[56] My findings of fact regarding Nelson's employment history, union activity, and his

Continued

Sakora's warning, that Crown would close its Union plants in reprisal for the Union's filing of harassment grievances, ran afoul of Section 7 of the Act. In *NLRB v City Disposal Systems*, 465 U.S. 822 (1984), the Court endorsed the Board's *Interboro* doctrine[57] which recognizes that an employee's "honest and reasonable invocation of a collectively bargained right constitutes concerted activity, regardless of whether the employee turns out to have been correct in his belief that his right was violated." *Id*. at 840.

In view of the Court's holding quoted above, an employee who files a grievance under the contract because he or she honestly and reasonably believes his employer has violated a right ground in a governing collective bargaining agreement is engaged in concerted, protected activity even if his belief is incorrect. *First Western Building Services, Inc*., 309 NLRB 591, 605 (1992). I find that Sakora' threat of plant closure because of "harassment grievances could reasonably be understood to include employee grievances honestly and reasonably raising perceived violations of the collective bargaining agreement which have no merit. The filing of such grievances would constitute concerted activity entitled to Section 7's protection.

In sum, I find that Sakora's warning was a threat of economic reprisal likely to restrain and coerce Nelson and other listening employees in the exercise of their Section 7 right to file grievances. I further find that by this threat, Crown violated Section 8(a)(1) of the Act.

Employee Tommy West worked at Crown's Plymouth Can plant located in the vicinity of Crown's Winter Garden and Orlando plants. West worked at Plymouth Can for about twenty-seven and a half years before Crown laid him off on August 7, 1996. During his employment at Plymouth, West was a member of the Union and covered by a non-Master Agreement collective bargaining agreement.

In around September 1995, Crown announced that it would close the Plymouth Can plant. The Plymouth plant closed on August 2, 1996. West applied for employment at Crown's Winter Garden plant. He heard rumors that the Plymouth plant employees would each have an opportunity to gain employment at Winter Garden. However, West was never interviewed for a position at Crown's Winter Garden plant.

Plymouth supervisors' remarks cast serious doubt upon West's prospects for employment at Crown's non-union Winter Garden plant. Supervisor Rick Dalton said he believed that Crown would not hire the Plymouth employees at Winter Garden because they were "union." West heard the same comment from Plymouth Can Supervisors Terry O'Donnell, Otis Dover, and Jimmy Simmons.[58]

---

encounter with Sakora, at the second step grievance meeting in the spring of 1994, are based upon Nelson's undenied testimony.

[57] *Interboro Contractors*, 157 NLRB 1295 (1966).

[58] My findings regarding West's employment history and the remarks of the 4 supervisors to him are based upon his undenied testimony.

I find that each of the 4 supervisors restrained and coerced employee West in the exercise of his Section 7 right to belong to or support a union by each telling West that he, the supervisor, believed Crown did not hire Plymouth Can employees at Winter Garden because the employees were "union." *Pinkerton's Inc*., 295 NLRB 538, 541 (1989). Crown has not shown that the statements of the four supervisors were not based on their knowledge of Crown's motive for refusing to hire Plymouth Can employees at its Winter Garden plant. In the absence of such a showing, Board policy authorizes me to rely on those statements as evidence of Crown's unlawful conduct. *Id*. at 538. I further find, therefore, that by those remarks to West, Crown violated Section 8(a)(1) of the Act.

On or about March 12, 1996, the Union sent individual letters to Crown's Winter Garden plant employees urging them to organize and select the Union as their collective bargaining representative. The Union attached an authorization card to each copy of the letter. The card, when signed by an employee, authorized the Union to represent the signatory in collective bargaining. Winter Garden employee Adell Harrell received one of these letters in March 1996.

Harrell had been a line tender at the Orlando plant since April 1974. After Crown announced the closing of Orlando, Harrell applied for employment at Winter Garden. She worked at Crown's Orlando plant until December 4, when she began working at Crown's Winter Garden plant as a line tender, on the evening shift.[59]

While she was at work on or about March 12, 1996, Harrell received the Union's organizing letter, in her mailbox, at home. On the same day, at the beginning of the evening shift, Crown's Area Manager Joseph Busco and Winter Garden's Plant Manager Collie Turner held a meeting at the plant with all the Winter Garden employees. Busco and Turner asked the employees if they had received a letter from the Union. Turner asked the employees not to sign the authorization card because they did not need a union. Plant Manager Turner asserted that he had an open door policy. He invited the employees to come to his office at any time they had a problem and he would handle it.

There was no showing that Turner's open-door policy was an innovation adopted in response to the Union's organizing effort. Indeed, I find from the unchallenged testimony of retired Winter Garden employee Austin B.Henderson, that Turner had an open door policy, which Henderson learned about in late 1995, soon after Crown transferred Henderson from Orlando to Winter Garden.

After the meeting, as Harrell was returning to work, she met Plant Manager Turner, who asked her if she had received a card about the Union. She answered no, and that she had not checked her mailbox yet, that day. Turner asked Harrell if she received the Union card, would she consider not signing it. She assured him that she

[59] My findings regarding Harrell's employment and her receipt of the Union's letter and attached card are based upon her undenied testimony.

would not sign, adding: "My Heavenly Father fights my battles." Turner thanked her and said that his office was open at any time. He invited Harrell to bring any problem she might have, to him.[60]

In determining whether Busco and Turner's interrogation of the assembled employees and Turner's questioning of employee Harrell violated Section 8(a)(1) of the Act, as alleged, I have examined the surrounding circumstances as required by Board's policy. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), enf'd sub nom. *Hotel & Restaurant Employees Local 11* v. *NLRB*, 760 F. 2d 1006, 1007-1008 (9th Cir. 1985). Accord: *W. C. McQuaide, Inc*., 319 NLRB 756, 760-761 (1995) enf'd in pertinent part, 133 F. 3d 47, 49 (D.C. Cir. 1998). I have found from employee Harrell's testimony that at the meeting, Busco and Turner asked the employees if they had received a card from the Union. However, I cannot tell whether it was a rhetorical question not requiring an answer, or a question, directed at individual employees, seeking an answer. If the question were rhetorical, none of the assembled employees was compelled to respond. In that case, there would be no ground for finding the question unlawful. As the General Counsel has not shown that the Busco or Turner directed their question at any individual employees, I find that the evidence fails to support his contention that this question violated Section 8(a)(1) of the Act.

Turner's questions directed at Harrell after the meeting concerned whether she had received a Union authorization card and her sentiment toward the Union. Turner pressed Harrell to tell him whether she had received such a card and if she had, would she consider not signing it because "we don't need a union." By his last remark, and his remarks at the meeting encouraging employees to refrain from supporting the Union, Turner made clear his opposition to the Union.

As Turner was the highest-ranking supervisor, at her place of employment, his stated opposition to the Union was likely to make Harrell pause before answering these questions. A further consideration was the absence from Turner's questioning of any assurance that Harrell would not suffer any reprisal at Crown's hands if she signed the authorization card and returned it to the Union.

The atmosphere in which Harrell pondered her answers was another factor in my assessment. The abundant evidence of Crown's union animus, as reflected by its unfair labor practices prior to Turner's encounter with Harrell made his questions particularly

---

[60] Turner testified that he held a meeting with his employees on the same day he learned of the union's organizing letter and authorization card. He admitted telling several individual employees that he preferred that they not sign the cards and send them back to the Union. He also testified that he expressed the same sentiment at the meeting with his plant employees on the same day. He qualified his testimony regarding what he said at the meeting with "and that's basically what I told them." The quoted language suggests that Turner was not telling everything he said at the meeting. I also noted that he did not deny Harrell's testimony about his remarks to her after the meeting. Busco did not testify.

As Harrell seemed to be giving her full recollection in an objective manner, I have credited her version of Busco and Turner's remarks at the meeting. I have also credited her undenied version of Turner's remarks to her after the meeting, on the same day.

coercive. These unfair labor practices included the infliction of economic reprisals against employees who were Union adherents. These reprisals included plant closings and refusals to transfer employees. In sum, I find that the surrounding circumstances rendered Turner's questioning of Harrell coercive in violation of Section 8(a)(1) of the Act.

Under Board law, Turner's open-door policy to handle employee problems, if newly coined to counter the Union's organizing effort, would have violated Section 8(a)(1) of the Act. *Matheson Fast Freight, Inc*., 297 NLRB 63, 69 (1989). However, the record shows that Turner's open-door policy was in effect well before his meeting with the Winter Garden employees in March 1996. I shall recommend dismissal of the allegation that he impliedly promised to resolve employee grievances if the employees withheld support for the Union.

On May 14, 1997, Crown's Director of Industrial Relations, Fred Veil spoke to a meeting of employees and supervisors at Crown's Winter Garden plant. Plant Manager Collie Turner introduced Veil to the meeting.

At the hearing, Veil gave a detailed account of what he told the audience at Turner's meeting. In summary, Veil's testimony showed that he explained that the Board's General Counsel had issued a complaint against Crown based upon a Union unfair labor practice charge. Veil expressed his opinion that the General Counsel acted out of pro-union bias. Veil also testified that he assured his listeners that there was no merit to the complaint. He ended by declaring "That when all was said and done, that we would not have a union at the Winter Garden plant."

The testimony of employee Tony Robinson strongly suggests that Veil's remark that there would not be a union at Winter Garden was made in the context of a report on a new complaint against Crown, issued by the Board's General Counsel. The remark follows upon a pledge to use all of Crown's resources to fight the charges that had been filed against it. When pressed to recall exactly what Veil said, Robinson could not do so because: "It was such a long time ago . . . . "

Retired Crown employee Austin Henderson's testimony revealed a vague, fragmentary recollection of Fred Veil's remarks about no union at Winter Garden, at a meeting at the Winter Garden plant. However, Henderson also testified that he did not pay much attention to Veil's remarks.

Of the three witnesses, Veil presented the fullest recollection in a logical sequence. He also testified in a sincere manner. Accordingly, I find that his remarks at the May 14, 1997, meeting at Winter Garden were as he testified. I also find, therefore, that the evidence does not support the General Counsel's contention that, in early 1998, Veil said there would never be a union at Winter Garden. As I see it, he told the meeting that the Union would not achieve representative status as a result of the new complaint. I find no suggestion here that Crown was willing to resort to unlawful

conduct to maintain an open shop at Winter Garden.[61] Nor did Veil foreclose the possibility that the Union might find another opportunity to organize the Winter Garden employees. I shall recommend dismissal of the allegation that Veil violated Section 8(a)(1) of the Act by making that remark.

2. The Alleged Unlawful Underutilization and Closing Of Orlando

a. The Facts

In 1991,Crown acquired Winter Garden Plant 47, Orlando Plant 48, Plymouth Can Plant 49, and Plymouth Metals Plant 50 from Citrus Central. The Winter Garden plant is approximately 15 miles from the Plymouth plants and 12 miles from the Orlando plant. At the time Crown acquired the four plants, the Union represented the Orlando plant and the two Plymouth plants under non-Master agreements. The Winter Garden plant was non-union. Following its acquisition of the Orlando and Plymouth plants, Crown recognized and bargained with the Union and Union Local 6206 for the Orlando plant's production and maintenance employees. The last collective bargaining agreement, a non-Master agreement, covering the Orlando plant, was effective on June 28, 1992, and expired on June 29, 1996. During the same period, Crown recognized and bargained with the Union and Union Local 7565 for the two Plymouth plants' production and maintenance employees. The last collective bargaining agreement covering the Plymouth plants expired on August 27. On September 14, 1994, Crown announced its intention to close Orlando by September 30. Crown actually shut down Orlando on December 29.

I find from Winter Garden Plant Manager Collier's testimony that as of July 1994, the Winter Garden plant manufactured open top welded steel cans. It operated four production lines and 5 Goldco palletizers. Crown's records show, and I find, that as of July 5, 1994, Winter Garden employed 38 production and maintenance employees.

As of July 1994, Orlando manufactured steel ends and composite cans. The composite cans were mostly for citrus industry customers. The composite cans had steel ends and cardboard bodies. Orlando operated 9 composite can lines. Orlando also operated 7 multi-die presses to produce a variety of steel ends for use on the composite cans it produced, on steel cans produced at Winter Garden, and on a Plymouth Can product. Orlando's production lines included 4 strip feed presses and 3 re-scrolls. As of July 1994, Orlando employed 96 production and maintenance employees.

There was some fluctuation in the number of plant employees at Orlando from 1992 until the end of 1994. In July of 1992 the Orlando plant employees numbered 83. In November of that year that number grew to 96. In 1993, the number for January was 94 and it fluctuated to as high as 103 in September and as low as 87 in December. In

[61] Compare *JHP & Associates, LLC d/b/a Metta Electric*, 338 NLRB No. 161 (slip Decision and Order p.1) (April 20, 2003).

July 1993, Orlando had 98 plant employees. Looking at 1994, I find 84 in January, 101 in February 94 in July and 96 plant employees at Orlando in December 1994. In the first 6 months of 1995, the plant employees' population at Orlando was as low as 80 and as high as 95.

There were no layoffs at Orlando in 1992, 1993, and 1994. Crown's records show a gradual reduction in plant employees from 87 in July 1995 to 26 when Crown closed the plant at the end of December 1995.

As found above, Crown hired Fred Veil as its Director of Industrial Relations on June 28, 1994. During the first day of his two days of pre-hire interviews, Veil met with CEO and Board Chairman William J. Avery, Executive Vice-President and President, North American Division, Michael McKenna, Vice-President Human Resources, Gary L. Burgess, and Executive Vice President, Secretary and General Counsel, Richard Krzyzanowski. Veil met each of the four executives individually, at Crown's corporate office, in Philadelphia. In the course of these discussions, Veil learned that Crown's acquisition of Continental's plants had resulted in redundancy and that Crown intended to consolidate its plants to eliminate redundancies.

The second session of interviews took place a few weeks later, at Crown's Philadelphia office. In the space of an hour, Veil, met with Avery and McKenna, individually. McKenna offered the position of Director of Industrial Relations to Veil and discussed Veil's duties in that position. Veil's testimony does not disclose the details of McKenna's description of Veil's role in the pending consolidation. According to Veil, his meeting with Avery involved Veil's compensation.

When Veil began his employment at Crown, he had a dual reporting relationship. Organizationally, he reported to Vice-President of Human Resources Gary L. Burgess. Functionally, Veil reported to Michael J. McKenna, Executive Vice-President and President North American Division. Veil's Industrial Relations Department was and continued to be a component of Burgess's Human Resources. Industrial relations were and continued to be part of Burgess's responsibility during the years involved in these cases. However, Veil continued to report his industrial relations activities to Mc Kenna during the same period. At all times material to these cases, McKenna and Burgess reported to Chairman of the Board and CEO William J. Avery.[62]

His first encounter with the Union's Vice-President, Leon Lynch in the summer of 1994, strongly suggested that Veil was hostile to the Union. Lynch approached Veil at a labor-management meeting in Pittsburgh, Pennsylvania and raised the matter of the partnership supplement to the Master Agreement. In its effort to implement the partnership agreement, the Union had sent a consultant to Crown. The consultant had reported to the Union that Fred Veil had rejected his assistance and the partnership program. Lynch reminded Veil that Crown had agreed to the partnership arrangement and that the parties were obligated to live up to it.

---

[62] My findings regarding Veil's relationships with McKenna and Burgess, and McKenna and Burgess's relationship with Avery are based upon Fred Veil's uncontradicted testimony.

Veil responded negatively. He said Crown did not need a consultant, that it had its own methods and processes and a consultant was unnecessary. Veil declared that Crown was not ready for the partnership agreement," not now and maybe never."[63]

During his employment at Crown, Veil recognized the control its Philadelphia corporate leadership exercised over the fortunes of its plants. Late in 1996, after the arbitration proceedings involving the closing of Crown's Hurlock plant, Union Vice-President Lynch sounded Veil out on Crown's policy in this regard. Lynch addressed Veil: "[Y] ou have centralized scheduling and with centralized scheduling you can make or break a plant. You can determine who the winners and losers are." Veil answered, "[T] hat's right." [64]

I find from the testimony of Ted Kellermann, who has been Crown's Production Planning Manager for beer and beverage since October 1990, that Philadelphia has controlled the allocation of customers' orders to Crown's plants. Kellerman testimony shows that cost per thousand cans is only one factor in the decisional process. Other factors are geography, the plant's capability, and the cost of transporting the finished products to the customer. Kellermann's testimony also shows that manufacturing vice-presidents in Philadelphia control plant work schedules.

From 1992 through 1995, the management group responsible for allocating customers to Crown beverage and beer can plants included Vice-President Robert Kelly. The group also included Kellermann. [65] Kellermann admitted that the cost per thousand cans produced depends in part upon how much work the producing plant receives.

---

[63] My findings regarding Veil's remarks about the partnership agreement are based upon Lynch's undenied testimony.

[64] Veil provided his recollection of his conversation with Lynch about centralized scheduling. Veil testified that he told Lynch that the plants did the scheduling and that Crown "allocated on the basis of a centralized process." Veil explained that the "centralized process" was based on economic factors. In his testimony, he seemed to be trying to show me how Philadelphia makes the determination. However, it was not clear to me that he was testifying about what he actually told Lynch. In any event, Veil's testimony shows that Philadelphia makes the determination as to which plants survive and which will be shut down. Veil seemed more interested in explaining Crown's motive for shutting down plants than in recalling what he told Lynch. As Lynch seemed to be giving his best recollection in a candid manner, II have credited his version of this conversation.

[65] Referring to its 1995 Annual Report, Crown, in its post-hearing brief, asserts that Robert Kelly was no longer Vice-President of Two-Piece Manufacturing in 1995, but was on special projects. However, I find from the testimony of Crown's Vice-President Patrick Szmyt that Kelly was Vice-President of Two-Piece Manufacturing until "sometime in 1995." I also find from, Kellerman's uncontradicted testimony, that he attended allocation meetings in 1995, at which Kelly was present. Accordingly, I have based my findings of fact regarding the identity of the participants in those meetings upon Kellermann's testimony.

I have found, above, that Crown's middle and senior management were hostile to the Union and used threats of economic reprisal to express that sentiment to their employees. In August or September 1995, at Atlanta Plant 68, Supervisor Toff violated Section 8(a)(1) of the Act when he responded to an employee's question about when the plant would convert to 202 can production. Toff answered," We will convert to 202 when you all stop being Steelworkers." After Crown's WARN notice of October 3, announcing the closing of Atlanta Plant 68, Supervisor John Sunglow also violated the Act when he told Plant 68 employee David Johnson that Crown was closing the plant because of the Union.

From about 1991, until Crown shut the St. Louis Plant 73 down on December 31, 1994, Monroe was President of the Union's Local 1120 and a member of the Local's grievance committee. His union activity brought him into almost daily contact with the St. Louis plant's Personnel Manager Jim Cant, an admitted agent of Crown. During 1993 and until late1994, in the course of discussing grievances with Monroe, Cant would warn him that there were two strikes against the Plant 73 employees in dealing with Crown, one, they were members of the Union and two, they were under the Master agreement.

Vice-President Bob Kelly also expressed Crown's hostility toward the Union. In the summer of 1994, at Plant 68, Kelly entered the break room to get a soft drink. An employee called out to him, asking what he thought about the Union organizing Crown's Cheraw, South Carolina plant. Kelly answered that if that happened, Crown would shut the Cheraw plant down.

At the end of 1995, after Crown had shut down the Atlanta Plant 68, Dan Curl, an employee at Crown's Atlanta Plant 28, discussed the closure with his Plant Manager Jerry Ackerman. Curl expressed astonishment at the closing of a plant with such a good production record, one that exceeded Plant 28's productivity. Ackerman did not dispute Curl's assertions. Instead he declared that Crown had shut Plant 68 down because the employees there were members of the Union and Crown did not like the Union.

A further instance of Crown management's willingness to violate the Act to encourage employees to abandon the Union occurred in late 1997, at Crown's Atlanta Plant 28, while a decertification petition seeking to decertify the Laborers at Plant 28 was pending at the Board's regional office in Atlanta. On a workday, employees Dan Curl and Dennis Harmon were in the supervisors' office at Plant 28, conversing with some supervisors, including Supervisor Bill Glavis. Curl and Harmon were joking about bringing the Union in to replace the Laborers at Plant 28. Supervisor Barry Curry entered the office and asked the two employees what union they intended to bring in to replace the Laborers. Curl and Harmon said, "the Steelworkers." Curry looked at Curl and Harmon as he warned that if they brought the Union in, Crown would close Plant 28. Curry added that Crown did not like the Union and reminded the two employees what Crown had done to all the other plants represented by the Union.

On another occasion, while the decertification petition was pending, and the Plant 28 employees were considering replacing the Laborers with the Union as their bargaining representative, a second supervisor voiced a similar warning. Employee

Curl mentioned the Union as a replacement for the Laborers in the presence of Plant 28 Supervisor Pat Brennan. Brennan. Brennan warned against such a move, saying that he had been through two other shutdowns with the Union, one at Perry and one in Atlanta and that he did not feel like going through one at Plant 28.

While the 1997 decertification petition was pending, Plant Manager Ackerman warned employee Dan Curl of the consequences of bring in the Union at Plant 28. Ackerman told Curl to "think twice" because if the employees selected the Union, their future would "be down the drain."

During 1997, employee Curl learned that Crown was providing its Cheraw plant employees with steak dinners, shirts and caps in response to the Union's organizing campaign at that plant. Curl approached Plant Manager Ackerman at Plant 28 and, during remarks about the Cheraw plant, asked him where the steak dinner was for Plant 28's employees. Ackerman answered that the Cheraw employees would not "have a future" if they supported the Steelworkers.

In early 1996, Crown acquired Carnaud Metal Box Enterprises. In the same year, the Union filed a representation petition in Case 5-RC-14390 seeking to represent a unit of Carnaud's employees. The Regional Director for Region 5 conducted the election on September 25 and 26,1996, at Carnaud's plant, located at Belcamp, Maryland.

During the pre-election campaign, plant and corporate management members spoke to the employees attending anti-Union meetings at Carnaud. There were three shifts. Crown conducted separate meetings for each shift. The General Counsel has not alleged that any of the management's remarks at these meetings violated the Act. After the Union lost the election, it filed objections alleging that certain of these remarks affected the election's outcome. However, in November 1996, the Regional Director approved the Union's request to withdraw its objections and certified the results of the election. Notwithstanding that I have not found the remarks recited below violations of the Act, I find that they show the hostility of Crown's management to the Union.[66]

At the first anti-Union meeting attended by Carnaud Metal's employees, on September 6, 1996, Crown's Manager of Employee Relations, Jerry Gunderson was a speaker. Gunderson's immediate superior at that time was Fred Veil. In his remarks, Gunderson warned the employees that they could lose benefits. He showed them a graph portraying the closing of Union-represented Crown plants. The graph showed that the number of Union-represented Crown plants had gone from 42 to 4.

---

[66] My findings of fact regarding the remarks of Crown officials at the pre-election meetings with Carnaud's employees are based upon employee Lance Cassell's testimony and his recorded recollection reflected in an affidavit he gave on October 4, 1996. At the hearing, Cassell credibly testified that he could not presently recall the remarks of Crown officials at the preelection meetings he attended in September 1996. I also find from his testimony that he gave his affidavit when the content of those remarks were fresh in his memory. As these circumstances satisfied Rule 803(5) of the Federal Rules of Evidence, I have credited his uncontradicted affidavit.

Fred Veil spoke to Carnaud's employees at a meeting on September 12, 1996. He warned them that if they voted the Union in they would lose business and benefits. Veil also clearly warned that: "they could shut the plant down."

The final management meeting with the Carnaud employees was on September 19, 1996. In attendance were Robert J. Truitt, Senior Vice-President Manufacturing USA, Gary L. Burgess, Vice-President Human Resources, Plant Manager Richard Tonkyn and Jerry Gunderson, Manager of Employee Relations. Tonkyn and Truitt spoke to the assembled employees. Plant Manager Tonkyn warned the employees that the plant would lose business if they voted "yes."

Truitt's remarks to the employees included a warning that Crown "can be your best friend or your worst enemy." Truitt told the employees that Crown would not give in to anything they asked for during collective bargaining. He asserted that the factory building's lease expired in 1997, which facilitate the closing of the plant if the employees voted the Union in.

Orlando Plant 48 was one of the plants Michael Clay considered in his study of Crown's options for consolidation. He began with the premise that Crown had four plants in a compact area of Florida and wanted to reduce that number. Indeed, the four plants were within a 20-mile circle. Plymouth Metal did lithographic work. It cut metal from coils and printed decoration on it. At the time of Clay's testimony, May 1999, Plymouth Metal was doing the same work and was too small to consolidate the operations of the other three Florida plants within its building. Plymouth Can also was too small to house the manufacturing equipment from Orlando and Winter Garden. Clay also concluded that the plant's structure together with a railroad and road bordering Plymouth Can's site made that site unsuitable for consolidation. He saw either Orlando or Winter Garden as the survivor of the contemplated consolidation.

Crown wholly owned the Orlando and Winter Garden plants. The two plants' had comparable floor space. Winter Garden had 127,000 square feet. Orlando had 136,000 square feet. Clay noted that the amount of land in which the Orlando plant stood provided little or no possibility of expanding the plant's operation. In contrast Clay saw that Winter Garden's 19-acre site offered sufficient space to expand the plant to twice its size.

Another factor was the difference in layouts between Orlando and Winter Garden. The latter had basically a rectangular shape suitable for added production lines. Clay found Orlando's shape unsuitable for that purpose. He also saw the Orlando plant, wholly owned by Crown, as a "very sellable building."

Clay saw a further advantage in moving Orlando's production line equipment to Winter Garden. From his considerable experience in the can production business, Clay recognized that it would be more expensive, and riskier to the equipment, to transfer the steel can-making equipment from Winter Garden to Orlando, than it would be to move

the composite can-making equipment from Orlando to Winter Garden.[67]

On September 14, 1994 Crown issued a news release announcing that it intended to close Orlando Plant 48.within one year. At about the same time, Fred Veil notified Union officials Fred Lynch and David Wilson of Crown's planned closing of Orlando.

Winter Garden Manager Collier Turner received the added responsibility of managing the Orlando plant from August 21 until its shutdown. In addition, Crown transferred two Orlando production supervisors to Winter Garden effective August 21. Crown transferred Supervisor Ed Sikora because of his expertise on composite cans. Sikora would oversee the installation of the transferred composite equipment and manage that department at Winter Garden The other transferred supervisor, Kim Money, was familiar with the press line equipment. He was to assist in the press line installations and train employees in that department.[68]

The parties stipulated and I find that when Crown closed down its Orlando plant in December 1995, it transferred the composite can and its end press work and associated equipment to its Winter Garden plant. The parties also stipulated, and I find, that Crown hired some of its Orlando plant employees onto its Winter Garden payroll and assigned some of them to perform composite can and end press work and assigned other Orlando plant employees to perform metal can assembly, conversion press, tab end press, and general plant work.

On August 21, Orlando's major customers included Citrus World, Golden Gem, Winter Garden Citrus, Silver Springs Citrus, Seneca Foods, Citrus Belle and McCain Citrus. By the time Orlando ceased production on December 29, Winter Garden had inherited Orlando's business with these customers. In the process of shutting down Orlando, Crown transferred approximately fifty-per cent of Orlando's composite can manufacturing equipment and seventy-five per cent of its pressroom equipment to Winter Garden. In total, sixty to sixty-five per cent of Orlando's equipment wound up at Winter Garden. Orlando operated as many as ten composite can lines. After the consolidation, Winter Garden operated only 5 composite can lines.

By early January 1996, Crown had converted Orlando into a warehouse. Orlando plant employees, Benjamin Gibson, Mary Alice Wareham, and William Woodson operated the warehouse under Supervisor Charles (Chuck) Guillette. Crown used the Orlando warehouse to store and ship the remaining Orlando products and Winter Garden's products. The last day of work for the three employees was February 28, 1997. By that time Crown had completed construction of a warehouse at Winter Garden.

---

[67] My findings regarding Clay's reasons for retaining Winter Garden and closing Orlando and moving equipment into Winter Garden are based upon his uncontradicted testimony.

[68] My findings of fact regarding the consolidation of Orlando's business with Winter Garden's operations are based upon Crown's documents and Plant Manager Collier Turner's uncontradicted testimony.

To meet the need for space to accommodate the plant equipment inherited from Orlando, the additional employees and supervisors needed to operate that equipment and the necessary warehousing, Crown decided that expansion of Winter Garden's facilities was necessary. Construction and renovation at Winter Garden began in late 1995 and were completed 1996. Crown built an 80,000 sq. ft. warehouse. The initial authorized expenditure for this project was $ 2.12 million. In addition, Crown authorized expenditures of $375,000 for offices, cafeteria and restrooms, a supplement of $388,000 for the warehouse, and $200,000 for a tank farm. Thus, the total authorized expenditure for the warehouse was $2,508,000.

The proposal to close the Orlando plant approved by Crown on September 19, 1994, showed the net cost of closing Orlando and the net cost reduction annually. The cost was $5, 424,000 and the annual savings were projected to be $3,753,000.

In a memorandum to Senior Vice-President Truitt, seeking approval of the building work at Winter Garden, Michael Clay reviewed these expenditures and their necessity, in detail. Clay also advised Truitt that this work would "conclude the process of the transfer of manufacturing and warehousing activity from Orlando and Plymouth." Finally, Clay assured Truitt that: "All directly concerned with this project believe that the resolution of these outstanding matters will materially contribute to making Winter Garden a cost effective manufacturing plant of which we can be proud."

b. Analysis and Conclusions

The General Counsel contends that Crown violated Section 8(a)(3) and (1) of the Act by underutilizing its Orlando plant, transferring work from its Orlando plant, and by closing that plant, all because the Orlando employees supported the Union. Crown urges dismissal of these allegations on the ground that the General Counsel has failed to show the alleged violations. I find merit in Crown's position.

Under Board policy, if the record shows that Crown's hostility toward its employees' adherence to the Union was a motivating factor in its decisions, respectively, to reduce, and later terminate, its employees' work, those actions, respectively, will be found unlawful unless Crown shows, as an affirmative defense, that it would have taken those adverse actions even if the employees had not embraced the Union as their collective bargaining representative. *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 402-403 (1983) affg. *Wright Line, a Div. of Wright Line, Inc*., 251 NLRB 1083 (1980), enfd. on other grounds, 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Where it is shown that the reason or reasons given by Crown for its adverse action were perpetual—that is that the reason or reasons either do not exist or were not if fact relied upon—it necessarily follows that Crown has not met its burden and the inquiry is logically at an end. *Wright Line*, 251 NLRB at 1083.

Motive is a question of fact, and as an employer rarely admits unlawful motivation, circumstantial evidence alone can be sufficient to support an inference of unlawful motivation. Limestone Apparel Corp., 255 NLRB 722, 735 (1981). Circumstantial evidence supporting an inference of unlawful antiunion motivation

includes the employer's knowledge of the employees' union activity,[69] the employer's antiunion sentiment as demonstrated by its willingness to engage in unfair labor practices,[70] the employer's expressed hostility toward unionization,[71] and the disparate treatment of employees, who support a union compared to employees, who do not.[72]

I find no evidence that Crown underutilized the Orlando plant in 1994 or thereafter. The numbers of plant employees at Orlando in 1994 and the first half of 1995 fluctuated between 80 and 101. Also, there was no layoff from 1992 until the implementation, in 1995, of the decision to shut the plant down.

The Union had represented the Orlando plant employees under Citrus Central under a non-Master agreement and continued to do so after Crown acquired that plant in 1991. Crown recognized and bargained with the Union and its Local 6206 for the Orlando plant's production and maintenance employees since 1991. The last collective bargaining agreement between the Union, Local 6206 and Crown was effective from June 28, 1992 until June 28, 1996.

Early in his tenure as Crown's Director of Industrial Relations, Fred Veil showed he did not relish an amicable relationship with the Union. This attitude surfaced when Veil rejected the Union's efforts to implement the economic partnership agreement in the 1993 Master Agreement. Veil rebuffed the Union, saying that Crown did not need it and had its own methods and processes for handling its problems. Veil also rejected the partnership agreement, saying that Crown was not "ready for it, not now and maybe never." Later in this decision, revelations of Veil involvement as architect and engineer of unfair labor practices will make clear the meaning of Veil's references to Crown's "methods and processes for handling problems." Veil's unlawful conduct provided significant evidence of Crown's hostility toward the Union and the employees, who supported it. Given his high position in its corporate structure, I find that Veil's anti-Union conduct and statements reflected Crown's policy toward the Union, its locals and the employees these labor organizations represented at Crown's plants. The remarks of other members of Crown's management showed the same Union sentiment.

I have shown above evidence of Crown's management's hostility toward the Union and its supporters at other Crown plants involved in these cases. At Atlanta Plant 68, Supervisor Toff told employees that their plant would convert to the new 202 can production when they abandoned the Union. At the same plant, Supervisor Sunglow told an employee that Crown was closing the plant because of the Union. Plant Manager Ackerman told an employee that Crown had closed Plant 68 because the employees there were Union members and Crown did not like the Union. Ackerman also told a Plant 28 employee that the Cheraw plant employees would not "have a future" if they embraced the Union as their bargaining representative. At Plant 68, Vice-

---

[69] *NLRB v. E.I. DuPont De Nemours*, 750 F.2d 524, 529 (6th Cir. 1984).

[70] *NLRB v. DBM, Inc.,* 987 F.2d 543 (8th Cir. 1993)..

[71] *E.I. DuPont*, 750 F.2d at 529.

[72] *Turnbull Cone Baking Co.*, *v. NLRB*, 778 F.2d 292, 297 (6th Cir. 1985), *cert. denied*, 476 U.S. 1159 (1986).

President Kelly warned that if the Cheraw plant went for the Union, Crown would shut it down. At Crown's St. Louis plant, Personnel Manager Cant continually warned employee Monroe that supporting the Union was one strike against the plant in Crown's eyes, and the Master Agreement covering that plant was the second strike.

Crown's management showed its anti-Union attitude during a decertification campaign at Atlanta Plant 28 in 1997. Supervisors Curry and Brennan warned Atlanta plant 28 employees that Crown would shut that plant down if the employees brought in the Union to replace the Laborers. Curry told employees that Crown did not like the Union and reminded them of the fate of other plants represented by the Union. Plant Manager Ackerman told an employee to "think twice" about bringing in the Union at Plant 28. Continuing, Ackerman warned that if the Union came in, the employees' future would be "down the drain.'

Crown demonstrated its great concern for defeating the Union at its Carnaud Box plant in 1996 by dispatching its Manager of Industrial Relations Gunderson, his supervisor, Fred Veil, Vice-President of Human Resources Gary L. Burgess, and Robert Truitt, Senior Vice-President Manufacturing USA to participate in anti-Union meetings with the Carnaud plant employees. In light of Veil's description of his and Burgess's relationships with each other and with Executive Vice-President McKenna and CEO Avery, I find that during this anti-Union campaign, Burgess and Veil were acting with the approval of their superiors in Philadelphia.

At the first meeting, Gunderson warned the employees that they could lose benefits. He also showed a graph portraying the closing of Union-represented Crown plants. The graph showed that the number of such plants had gone from 42 to 4.

Fred Veil spoke at one of Carnaud's anti-Union meetings. He warned that if the Carnaud employees supported the Union they would lose business and benefits. He also threatened closure of their plant.

The last management meeting with the Carnaud employees attracted members of Crown senior management, Senior Vice-President USA Truitt and Vice-President Burgess. Truitt cautioned the employees that Crown "can be your best friend or your worst enemy." He then went on to illustrate Crown's "worst enemy" aspect. He threatened that bargaining with Crown would be futile. Crown would not give in to anything the employees sought at the bargaining table. He also threatened closure of Carnaud if the Union won the election.

In addition to the foregoing manifestations of hostility toward the Union, I have found additional incidents showing Crown's willingness to use unlawful conduct to discourage Orlando, Plymouth Can and Winter Garden's employees, respectively, from supporting the Union. Among these incidents were remarks blaming the Union for Crown's decision to close Orlando. I have found that Orlando Supervisor Weber violated the Act when he threatened employee Ewing with economic reprisal at Crown's hands if she supported the Union. Similarly, Orlando Supervisors Tice and Jaillet repeatedly violated the Act by telling employees that Crown had decided to close the Orlando plant because of the Union. Plant Manager Sakora unlawfully threatened that

Crown would close the Orlando Plant because the employee filed grievances under the collective-bargaining agreement. Plymouth Can supervisors violated the Act when they warned an employee that Crown would not hire him at Winter Garden because of his Union affiliation. Finally, I have found that Winter Garden's Plant Manager Turner attempted to thwart an employee's support for the Union by unlawfully interrogating her about her sentiment toward the Union.

In sum, the General Counsel has presented sufficient evidence to show that Crown's hostility toward the Union was a factor in the decision to close Orlando and shift some of its equipment to Winter Garden. In addition to the extensive evidence of hostility toward the Union is the fact that Crown retained a non-union plant at Winter Garden and closed to union-represented plants at Orlando and Plymouth. However, Wright Line requires that I consider whether Crown would have retained Winter Garden and closed Orlando even if the employees at the latter plant had not embraced the Union as their collective bargaining representative.

In September 1994, Clay recommended the closing of Orlando. Crown's top management officers, CEO Avery, Executive Vice-President McKenna, and CFO Allen Rutherford accepted Clay's recommendation and signed off on a proposal to close the plant. The expected cost of closing the plant was $5,424,000. The expected annual cost reduction due to this closing was $3,753,000.

Clay 's reasoning began with the premise that Crown wanted to consolidate the four Florida plants located in a fairly compact area. He wanted to reduce the number of plants. Clay noted that Winter Garden, alone, of the four had the capacity to expand to twice its size. Orlando's site did not have room for expansion. He also saw that unlike the Orlando plant, the Winter Garden plant's rectangular shape was suitable for adding production lines. Another reason for moving out of Orlando was the outstanding salability of salability of Orlando. Clay also realized that shipping composite can-producing equipment from Orlando to Winter Garden was considerably less costly and risky than moving steel can-making equipment from Winter Garden to Orlando.

Clay's enthusiasm for his recommendations that Winter Garden be expanded and Orlando closed surfaced in his memorandum to Vice-President Truitt, when he asserted: "All directly concerned with this project believe that the resolution of these outstanding matters will materially contribute to making Winter Garden a cost effective manufacturing plant of which we can be proud."

Neither the General Counsel nor the Charging Parties presented any expert testimony to challenge the validity of Clay's argument in support of his recommendations regarding Winter Garden and Orlando. I also note that the consolidated complaint in these cases did not contend that Crown's 1995 decision to close the Plymouth Can plant, whose plant employees the Union represented, violated the Act. Clay had recommended the closing of Plymouth Can.

I find from Clay's testimony and related documents received in evidence, that there was ample economic justification for Crown's 1994 decision to close Orlando. I also find that Clay's economic grounds for his recommendation constituted the

dominant factor in that decision. Finally, I find that Crown would have rendered the same decision even if there had been no union presence at Orlando.

In sum, I find that the General Counsel has not shown by a preponderance of the evidence that Crown decided to transfer work and equipment to its Winter Garden Plant 47 and shut down its Orlando Plant 48 because its Orlando plant employees belonged to, or otherwise assisted or supported, the Union. Therefore, I further find that the record does not adequately support the contention that Crown's decision regarding the disposition of its Orlando plant violated Section 8(a)(3) and (1) of the Act. I shall recommend dismissal of these allegations and the allegation that Crown underutilized its Orlando plant.

3. The Alleged Discrimination Against Former Orlando Employees And The Alleged Unlawful Failure to Bargain With the Union

a. The Facts

(1) Global Negotiations

On January 11, at Pittsburgh, PA, Crown's Gary Burgess and Fred Veil met the Union's Leon Lynch, Homer Wilson, David Wilson and two other Union officials to begin discussions of the closures of Union-represented Crown plants. Thus began the global negotiations including the Orlando plant, scheduled for closing later in 1995. The Union questioned the decision to close Orlando and suggested that Winter Garden was a better choice. Homer Wilson said that if Crown closed Orlando, it should recognize the Union at Winter Garden. Fred Veil replied that he had no reason to believe that the Union represented a majority of the Winter Garden employees.

At a February 1995 meeting, and at other meetings, Homer Wilson told Veil that the Union wanted Crown to transfer the Orlando employees to Winter Garden as positions opened up due to the consolidation. Wilson wanted the transferred Orlando employees to keep their seniority or be given service credit for purposes of vacations and other benefits. He also wanted Crown to hire the Orlando employees at Winter Garden as new employees.

Veil and Lynch met next at Pittsburgh, on February 9. Fred Veil told Leon Lynch that Crown was prepared to do several things including: paying some money to the employees who would lose their jobs at Orlando, reopening the Milwaukee plant as a new litho center, recognizing the Union as the collective bargaining representative at Milwaukee, negotiating a non-Master Agreement contract at Milwaukee, and, recognizing the Union at Winter Garden after the consolidation was complete on condition that the Union showed its majority status with a card check. Veil said Crown would do these things if the Union agreed to settle the grievances involving plant closures and work transfers, the WARN law suits, and to resolve the dispute over the definition of "transfer of work." Lynch said he believed the parties could work something out along the lines suggested by Veil if the amount of money offered was "right." Lynch said he wanted to talk to David Wilson, the Chairman of the Union's Crown negotiating

committee.

In late February 1995, Veil and Crown Vice-President Bill Snell met for 2 ½ days in Miami, Florida, with the Union's Lynch, David Wilson, Homer Wilson ad Gene Ray. Lynch acted as the Union's spokesman. Of the four, Lynch was the only Union representative, who remained throughout the meeting. Veil and Lynch agreed on the basic terms Veil had set forth at the last meeting. During the negotiations in February 1995, Veil made a commitment on Crown's behalf that "while this process was evolving, we would not hire any additional employees. . ."

Veil and Lynch reached agreement on important parts of Veil's proposal. Crown would pay in the neighborhood of $750,000 to settle the WARN cases. Also, Crown would pay approximately $3500 to each employee, who lost his or her job at Hurlock, Shoreham or at St. Louis. Veil and lynch agreed to the outline of a non-Master Agreement contract for the Milwaukee plant. Crown agreed to recall laid-off Milwaukee employees to jobs they could perform. However, to fill jobs for which the laid-off employees were not qualified, Crown would hire off-the street.

Veil and Lynch agreed that Crown would give former Orlando employee preferential hiring at Winter Garden. Veil said he thought Winter Garden would need about 40 additional employees. It was also agreed, with the concurrence of Homer Wilson, whose district represented Crown's Orlando plant employees, that Crown would hire former Orlando employees on the basis of qualifications provided that there was nothing in their records suggesting that they would not be good employees. Further, Veil and Lynch adopted Homer Wilson's proposal that the Orlando employees hired for Winter Garden would start as new employees in terms of local plant seniority, but they would bring their Orlando service with them for purposes of vacations and other benefits. Homer Wilson was present at all negotiations involving Orlando, during this meeting.

Veil proposed that Crown would recognize the Union as the representative of the Winter Garden plant employees upon a showing that a majority of them supported the Union. Veil said Crown would be neutral and would not engage in any anti-Union campaign. He also told Lynch and Homer Wilson that Crown would accept the authorization cards executed by the employees for dues checkoff at Orlando as proof of support for the Union at Winter Garden.

Veil and Lynch agreed on the outline of a collective bargaining agreement covering the Winter Garden employees. Also, Veil agreed that on issues involving layoffs, and interplant movements of machinery, due to transfers of work, the Union would have input in decisions regarding such transfers. At the end of the 21/2-day session, Veil and Lynch agreed that they had reached "a deal" and shook hands. Veil said he would draft the understandings reached in these negotiations and send it to the Union.

Drafting what he understood to be the agreements he and Lynch had reached in Miami, Veil sent it to the Union in March 1995. Thereafter, the two discussed Veil's draft. Lynch said it was not the deal.

Veil was very upset by Lynch's rejection of what Veil believed was an accurate rendition of the understandings reached at Miami. In later discussion with Lynch, Veil learned that David Wilson had rejected the proposed global agreement because he believed the Union would prevail in the arbitration of its grievances.

Lynch and Veil again met in May and June 1995, twice in Atlanta and twice in Philadelphia. They focused on labor agreements for Milwaukee and Winter Garden, but did not reach any agreement. Their last meeting was on June 20 or 21. [73]

On April 22, 1996, the Union sent a letter to Crown, addressed to Fred Veil, demanding recognition and bargaining on behalf of the production and maintenance employees at Crown's Winter Garden plant. The letter recited that the Union was the certified bargaining representative of the production and maintenance employees at Crown's Orlando plant. Continuing, the letter declared that the relocation of Orlando's equipment and bargaining unit employees to Winter Garden created an obligation upon Crown to recognize, and bargain with the Union as the certified representative of the production and maintenance employees at the latter plant. The letter concluded with notice that the Union's was a continuing demand for recognition and bargaining and invited Veil to contact the Union's representative, Homer Wilson.

By letter dated four days later, Fred Veil, on Crown's behalf, rejected the Union's demand for recognition and bargaining at Winter Garden. In his letter, Veil noted that the Union had not claimed majority support among Winter Garden's employees. He suggested that the Union address its claim of majority status at Winter Garden to the National Labor Relations Board.

(2.) Effects Bargaining

The Union and Crown met on July 18 for the first of five sessions, during which they attempted to reach an agreement on the effects of the closing of Orlando Plant 48 as they impacted on the bargaining unit at that plant. Corporate Manager of Industrial Relations James P. Deaver spoke for Crown. Homer Wilson was the Union's spokesperson. Neither party had a written proposal.

At the outset, Wilson insisted on transfer rights to Winter Garden, based on seniority, for the Orlando bargaining unit employees before Crown could hire off the street. Deaver refused. He said he did not want to be "piecemealed at." Deaver asked the Union for a package proposal.

The Union asked for a seniority roster and sought the names of employees Crown had hired at Winter Garden since the beginning of the year. Crown answered that Winter Garden had hired Orlando employee Doug Mosley and 5 others. The Union wanted to know how many more employees Winter Garden would need. Crown answered 40 less the three Orlando employees, who had started that day at Winter

[73] My findings of fact regarding Veil and Lynch's unsuccessful negotiations in 1995 are based upon Fred Veil's uncontradicted testimony.

Garden. Those three were Guy Jalbert, Paul Vercamen, and David Thomas. The Union asked how Crown would select employees to fill these openings. Crown answered that there were criteria, including ability, skills, prior work records, and ability to work as part of a team.

The Union asked who would make these hiring decisions. Crown answered that there was a committee. Deaver refused to disclose the names of the committee members. Homer Wilson repeated the Union's demand for transfer rights. Deaver rejected it. The meeting adjourned. On July 25, Homer Wilson, on behalf of the Union, sent a written preferential hiring proposal to Deaver.

The Union and Crown resumed local effects bargaining on August 8. Homer Wilson was not present at this and the 3 remaining sessions. Staff representative Judith Fortis was the Union's spokesperson. Deaver headed Crown's negotiating team. Fortis took up the matter of preferential hiring. Deaver wanted a package proposal from the Union before he would consider the preferential hiring issue. He insisted that he needed to see "how deep is the well." However, if the Union was insisting on an answer to its written preferential hiring proposal, it was no. There was no economic proposal from either side. No discussion of any economic issue occurred.

The parties held the third session of their local effects negotiations on September 28. Fortis presented the Union's package including economic proposals. Deaver bargained from the Union's proposals. The first item called for transfer rights for Orlando employees or preferential hiring for them off the waiting list. This had been the Union's position since the beginning of the effects bargaining. Deaver again rejected this proposal. He countered with his original proposal. Crown would consider Orlando employees and offer jobs based on the needs of the Winter Garden plant, the employees' skills and ability and their employment record. After reviewing the Union's proposals, Deaver rejected them. Deaver told Fortis and her colleagues that Crown would agree to some form of severance and some form of transfer rights.

Deaver proposed a separation allowance an employee might request, or an employee not offered employment opportunities at the time of his or her layoff, but in either case no later than December 1, shall be paid within 10 days of his or her last date of work. He also offered a preferential hiring provision excluding Orlando employees who either elected or were paid a separation allowance. Deaver chose December 1 as the cutoff date for entitlement to severance pay to pressure the Union into reaching an agreement on effects and because that was the expected closing date for the Orlando plant.

The next effects bargaining session between Crown and the Union occurred on October 10. The meeting was fairly short. There was no movement on the issue of transfers or preferential hiring. Aside from a possible change in Crown's separation allowance proposal, there was no movement on economic issues. The next meeting was on November 7.

At the last effects bargaining session, Deaver presented Crowns first written proposal. He told the Union negotiators that if not accepted in 24 hours, Crown's written

proposal was gone. Crown's written proposal required withdrawal of both the Union's grievances and its unfair labor practice charges regarding Orlando. Throughout the effects bargaining, Deaver had insisted that withdrawal of the Union's grievances would be required to reach an agreement. Crown's written proposed agreement marked its first mention of the withdrawal of the Union's unfair labor practice charges as a condition of reaching agreement. Fortis told Deave that she intended to have a vote of the bargaining unit on Crown's written proposal.

On November 9, the Union's representative, Fortis, phoned Deaver and asked for a 72-hour extension in his deadline to accommodate the requirements of the local union's constitution. On the same day, Deaver sent a written extension notice stating that the vote must be taken no later than Sunday evening, November 12 and that Fortis must notify Deaver by 5:00 pm on November 9 that she intended to hold a vote. Fortis did not notify Deaver that she intended to hold the vote. Nor did she ever notify him or Crown that such a vote was taken. Crown withdrew its written proposal as of November 12.[74]

(3) The evaluation of Orlando employees

In May 1995, Orlando Plant Manager Ed Sikora issued a notice to his employees advising them that if they wished to be considered for employment at Winter Garden, they should notify Betty Allen of their interest and pick up the appropriate form from their supervisor. Betty Allen was Manager of Employee Relations at Winter Garden. The form referred to in the notice was a Crown application for employment. It is undisputed that Crown did not transfer Orlando employees to Winter Garden during the consolidation of that plant's operations with Winter Garden's. It is also undisputed that Crown treated Orlando employees hired at Winter Garden during the consolidation process as new employees. Thus, Orlando employees were required to resign their employment at one Crown plant as a condition for being considered for employment at another Crown plant. Crown imposed this requirement on the following Orlando employees:

Mary Bailey	Harry Dement	Louis Morin	Sharon Smith
Norman Beier	Ken Ely	Doug Mosley	Don Spangler
Glora Blundell	Clarence Gray	Elliott Myers	Merck Taylor
Jackson Britten	Erika Gray	Bobby Nelson	Chester Thomas
William Britten	Adell Harrell	Charlie Nelson	David Thomas
Tony Bronson	Austin Henderson	Kathy Nelson	John Thunberg
Jimmy Browder	Terry Hill	Oscar Nelson	Paul Vercamen
Randy Burton	M. Louis Hodge	Cliff Pennington	Marian White
Sandra Caraway	Al Hughley	Ron Pollard	
Ralph Chiles	Eric Husselman	Ben Reddick	

[74] My findings regarding the effects bargaining between the Union and Crown are based upon Deaver's testimony and the notes Deaver and Fortis took while attending the bargaining sessions, which II received in evidence.

Jimmy Cobb Shirley Coons Walter Cross	Guy Jalbert Jimmy Kremer Andy Kwiatkowski	Tammie Rhoades Frances Sinclair Arnell Smith	

Article 21 of the collective bargaining agreement between Crown and the Union covering the Orlando plant from June 28, 1992, until June 29, 1996, entitled "Seniority" defines that term as follows: "Seniority for the purpose of this Agreement is defined as the uninterrupted length of service of an employee with [Crown] since the last date of hiring." Later in this Article, the agreement states that one of the ways an employee's seniority shall terminate is by: "Voluntary resignation." Finally, Article 21.11 states that: "Seniority rights granted in this Agreement are expressly limited to the plant located at 1900 West New Hampshire Avenue, Orlando, Florida."

In the spring of 1995, Fred Veil assigned to Crown's Manager of Employee Relations, Jerry Gunderson, and the evaluation of Crown's Orlando employees for employment at its Winter Garden plant. Gunderson had, following other shutdowns or lay-offs, evaluated small groups of employees for reemployment at other Crown plants using an informal process. At Orlando, Gunderson saw the need for a more formal process.

Gunderson researched the problem and devised an evaluation system proposal. He presented it to Veil. After the two made some changes in terminology, Veil approved the resulting procedure. Gunderson developed an employee evaluation form showing the identity of the employee and his or her classification at Orlando. Next, the form had a 5-point scale ranging from 5 for excellent to 1 for poor. Average was 3; 4 was above average, and 2 was below average. There were ten factors listed on the form, in a table. Next to each factor was box for a rating and a brief description of the components of the factor on which the employee was to be rated on the scale of 1 to 5.

Gunderson also developed a weighing process for each factor. He recognized that each factor varied in importance depending on whether the employee under consideration was going into a skilled job such as an electrician or was being considered for a non-skilled job such as general labor. Gunderson developed this understanding after discussions with various managers. Accordingly, he gave more weight to technical evaluations for skilled rankings than for non-skilled rankings.

Another consideration for each applicant was his or her ability to fit in with a team system. Winter Garden's plant employees operated as teams with minimal supervision. Orlando had traditional supervision of its plant employees. Factor 8 designated as "Social Skills" asked the rater to consider the employee's "ability to work with peers in a cooperative, non-antagonistic and teamwork environment."

Gunderson organized an evaluation committee including Winter Garden's Plant Manager, Collie Turner, Area Industrial Relations Manager June Antrim, Betty Allen, Winter Garden's Manager of Employee Relations, and Gunderson. The committee reviewed the ten-factors list on the evaluation form and devised a procedure for

evaluating the Orlando employees who had applied for employment at Winter Garden.

Gunderson's committee met with the Orlando supervisors and explained the evaluation process. Each supervisor would complete an evaluation form on every employee they knew from their present or past working experience at Orlando. Neither Gunderson nor any member of his committee told the supervisors how each factor would be weighed. Gunderson collected the completed evaluation forms, tallied the results and showed them on spreadsheets.

There was a spreadsheet for each employee. It showed the scores collected from each supervisor's evaluation form, the employee's average score, the skill weight assigned, the non-skill weight assigned, the skill total by factor, the non-skill total by factor, a total average score, a weighted rating for skilled positions and a weighted rating for non-skilled positions.

Before undertaking the evaluation process, Gunderson and his committee decided to eliminate from consideration employees who had a consistent 5-year record of disciplinary action or absenteeism. It was their opinion that that they would not hire, as new employees at Winter Garden, applicants with that kind of record at their prior employment.

The committee found 35 employees whose records showed disciplinary action for poor work performance, infractions of company rules, or absenteeism within the last 5 years of their employment at Orlando. On July 12, Gunderson pulled the disciplinary records out each of the 35 files, put them in chronological order and read them in sequence to the committee, without mentioning the name on the file. The committee determined from these records whether the individual's bad conduct remained constant during the 5-year period. If they saw a constant pattern, they concluded that the employee's misconduct would continue and disqualified him or her from employment at Winter Garden. The committee disqualified 10 Orlando employees. On July 20, Gunderson held a telephone conference with his committee, during which they reaffirmed the 10 disqualifications. The 10 disqualified Orlando employees were: James Boykin, Billie Harvell, William Little, Leonard Perine, Robert Pierce, Curtis Roberson, Cindy Rowlette, Gregory White, Merton Wiggins, and James Williams.

Gunderson reviewed the completed evaluation spreadsheets and ranked the employees in two classifications on two spreadsheets, one entitled "Orlando Employees-Qualifications in Skilled Ranking Order," listing employees who presently held or had held skilled positions. The second list, entitled "Orlando Employee-Qualifications in Non-Skilled Ranking Order" ranked all Orlando employees, except the 10 disqualified employees, regardless of whether they were skilled or not.

Following the development of the evaluation rankings, Gunderson and Winter Garden's Plant Manager, Collie Turner worked closely on the hiring of employees from the unskilled list. Gunderson vetted Turner's hiring decisions, i.e. made sure that Turner was following the evaluation process in hiring Orlando employees at Winter Garden.

If the consolidation of Orlando's production with Winter Garden's were progressing ideally, Turner would have followed the evaluation process by hiring off the unskilled list in order from the highest rated employee, down the list to lowest qualified. Fred Veil had established a rating of 3.0 as the cut-off point for considering Orlando employees for employment at Winter Garden. However, the phasing in of 5 of Orlando's composite can lines, its 5 palletizers and 5 multi-die presses at Winter Garden without interrupting the flow of products, made such an orderly process impossible.[75]

(4) The hiring at Winter Garden

On September 14, the date of the announcement of Orlando's consolidation with Winter Garden, Winter Garden employed 38 production and maintenance employees. The 38 employees operated 4 welded metal can lines and 5 Goldco palletizers. On the same date, Orlando was producing composite cans and can ends with a production and maintenance unit of 94 employees.

The transfer of Orlando's production equipment was completed as of January 3, 1996. By that time, Crown had moved 5 composite can lines, 5 palletizers and 5 multi-die presses to Winter Garden. At this point, Winter Garden was employing 104 production and maintenance employees. Orlando's composite can business and its can end business had completely moved to Winter Garden along with its customers for those products. Orlando ended its production operations by December 29.

Without notifying the Orlando plant employees that positions were opening at Winter Garden, and without considering any of them for employment at Winter Garden, Plant Manager Collier Turner hired 11 employees off the street, between September 14, 1994, and May 17. The names of these 11 and the dates of their hires are as follows: Dan Jennings-12/1/94; Joe Marbais-12/5/94; Willie Webb-12/5/94; Richard Akers-1/9; Wayne Shelton-5/11; Helga Goodson-5/11; Daryl Tollett-5/12; Dan Ballinger-5/12; John Jarrett-5/12; Miguel Ramos-5/12; and, Pauline Ings-5/17.[76]

Of the 11 employees Turner hired off the street, between September 14, 1994, and May 17, 7 were hired after Veil had assured the Union, in February 1995, that Crown would do no hiring for Winter Garden until the global negotiations between Crown and the Union had been completed. Veil testified that he had communicated his agreement to stop hiring at Winter Garden "and somehow it got lost in the translation."

The global negotiations continued until June 1995. In a letter dated May 22, Leon Lynch repeated the Union's demand that Crown permit Orlando plant employees to apply for employment at Winter Garden. During a negotiating meeting with Fred Veil in May 1995, Lynch complained that Winter Garden had been hiring new employees off

[75] My findings of fact regarding the development of Crown's evaluation process for Orlando employees are based upon Gunderson's uncontradicted testimony

[76] My findings regarding the hiring of the 11 employees off the street are based upon Crown's records and Collier Turner's admissions.

the street. Veil had instructed Turner not to do any hiring during the negotiations. During the May 1995 negotiations, Veil checked and found support for Lynch's complaint, and instructed Turner to cease hiring off the street.[77] Turner admitted in his testimony in these proceedings that at the time he hired the 6 employees off the street in May 1995, he was aware of the negotiations regarding the employment of Orlando employees at Winter Garden.

I find from Turner's testimony that of the 6 employees he hired off the street in May 1995, only one, Wayne Shelton, had any experience working in the can industry. Turner employed some of the six to clear out Winter Garden plant areas to accommodate equipment coming from the Orlando plant.

Prior to the implementation of Gunderson's evaluation process, and the disqualification of 10 Orlando employees on July 20, Turner hired 4 Orlando employees at Winter Garden. The 4 names and dates of hire are as follows: Doug Mosley-5/22; David Thomas-7/18; Guy Jalbert-7/18; and Paul Vercamen-7/18.

In August 1995, Turner, with help from Gunderson, using the evaluation process, selected 12 Orlando employees to work at Winter Garden. The names and dates of hire of these 12 are as follows: Louis Morin-8/21; Terry Hill-8/21; Ralph Chiles-8/21; Randy Burton-8/21; Tammie Rhoads-8/21; Ken Ely-8/21; Sharon Smith-8/21; Jimmy Cobb-8/21; Frances Sinclair-8/21; Cliff Pennington-8/21; Austin Henderson-8/25; and, Shirley Coons- 8/25.

In October 1995, Turner and Gunderson hired 12 more Orlando employees to work at Winter Garden. Here again, Turner and Gunderson used the evaluation process to select the 12. As of October 30, Crown's records show that Winter Garden employed 77 plant employees, of whom 28 had come from Orlando Plant 48.

James P. Deaver had set November 12 as the deadline for the Union to accept Crown's proposed effects agreement. When that date came and went without that acceptance, Fred Veil admittedly seized upon the Orlando employees' applications for employment at Winter Garden as a bargaining tool to compel the Union to accept Crown's proposed agreement.

In early November 1995, Fred Veil admittedly instructed Plant Manager Turner to stop hiring Orlando employees and hire off the street. Veil's testimony shows that his instruction to Turner was motivated by a desire get the Union to hold a vote among the Orlando employees to accept Crown effects proposal. Veil saw withholding employment from the Orlando employees as an inducement for them to pressure the Union into holding the necessary membership vote on Crown's contract proposal.

Winter Garden needed employees in November 1995. Crown's records show Turner followed Veil's instructions to satisfy that need. On November 17, Turner hired 7

[77] My findings regarding Veil's assurance to the Union, his instructions to Turner and Lynch's complaint, are based upon Veil's

employees off the street. On November 20, he hired one more employee off the street. Turner and Gunderson did not require any of these 8 employees to undergo their evaluation process. Seven of the 8 had no special skill. Turner recruited the 8 for non-skilled work. However during an interview, he learned that one of them had some experience as a millwright and had welding skill.[78]

In December 1995, Turner resumed hiring evaluated Orlando employees. I find from Turner's testimony that between December 4 and December 18, both dates included, he hired 14 Orlando employees for Winter Garden. Among those 14 was C. M. Thomas, whose evaluation skill rating of 2.8. Turner hired Thomas as a composite mechanic. According to Fred Veil, under Gunderson's evaluation process, as approved by Veil, Orlando employees with skill ratings below 3.0 were ineligible for hire at Winter Garden. I also find from Turner's testimony that he hired 5 more evaluated Orlando employees on January 3,1996.

Gunderson selected the last five Orlando employees Turner hired on January 3, 1996. Turner and Gunderson thought that Winter Garden would hire all Orlando employees evaluated 3.0 or higher. However, toward the end of the hiring process, they concluded that Winter Garden did not have that many job openings. Gunderson decided that he would select the last five Orlando employees based upon factors outside the evaluation process. He considered continuous service, age, "and double-check on racial considerations." However, Veil had not yet made his decision to stop hiring Orlando employees. He made that decision in February 1996.

In early 1996, the Union's Vice-President Lynch and Fred Veil conferred in Pittsburgh, PA, about the Florida issues. The discussion focused on effects bargaining for the Plymouth Can plant, which was closing. Veil had expected to discuss an effects agreement for Orlando, but that topic did not surface. Veil was disappointed, again.

According to Veil, he concluded that Winter Garden was not going to hire any more Orlando employees. In pertinent part, Veil's testimony explaining his reason for reaching this decision was as follows:

> Basically Orlando was dead. We had moved. Orlando was a closed plant. It had been closed for several months.
>
> We were in the process of now staffing [Winter Garden] with the Plymouth [Can] equipment and so forth. We were going through a similar process with. . . Plymouth Can and basically—and that's reflected here in GC-51. . . .
>
> I just concluded that we weren't going to hire any more Orlando employees.

---

[78] My findings regarding Turner's hiring of off the street employees in November 1995 are based upon his admissions and Crown's records.

And I did that because – my thought was, why give the Union what they want, which was us to hire Orlando employees when they weren't willing to agree and come to an agreement with us on the closure of that facility.

After January 3, 1996, Turner did not hire any more Orlando employees for Winter Garden. In February 1996, Veil instructed Turner to stop hiring Orlando plant employees at Winter Garden. Crown's records show that in February 1996, Turner hired 6 employees off the street and 3 Plymouth Can employees for Winter Garden. According to Crown's records, from March 4, 1996, until September 16, 1996, Turner hired 34 employees at Winter Garden. Of these, 16 came off the street and 18 came from Plymouth Can. Crown closed its Plymouth Can plant on August 2, 1996.

As of January 3, 1996, Winter Garden employed 47 former Orlando plant employees and 57 employees, who were not former Orlando employees. Of the 57, 38 were working at Winter Garden prior to September 14, 1994, when Crown announced its intent to close Orlando Plant 48. Turner hired the remaining 19 non-Orlando employees off the street after September 14, 1994.

When Fred Veil directed Plant Manager Turner to stop hiring Orlando employees in February 1996, 42 of them, all of whom had applied for jobs at Winter Garden, had been laid off by December 29. After December 29, Crown continued to employ Benjamin Gibson, Mary Alice Wareham and William Woodson at the warehouse established at the Orlando plant site. Crown laid them off, respectively, on March 5, 2, and 6, 1997. In 1995, Gibson, Wareham and Woodson applied for employment at Winter Garden. Crown has not offered them employment at Winter Garden. Also, Crown has not offered employment to the following 42 laid off Orlando employees, who had applied for employment at Winter Garden:[79]

J. H. Albrecht	Paul Early	Robert Murray	Don Smith
C. R. Boothe	D. R. Ewing	Billie Nelson	P. R. Stugaard
J. L. Boykin	B. R. Filmore	D. E. Newton	Delmar Tanner
B. E. Broome	P. D. Funk	Mary Patrick	J. G. Torres
J. L. Browden	D. L. Gregg	L. B. Perine	G. E. White
M. Calhoune	Willie Harrell	Robert Pierce	Melton Wiggins
Joel Chandler	B. G. Harville	C. C. Roberson	(Holly) Olive
Lana Clemons	W. Little	Jesus Roig	Wilbanks
Mark Currin	C. L. Martin	Cindy Rowlette	J. G. Williams
P. Davis	E. J. Matheis	C. E. Sams	B. J. Wright
P. R. DuPre	Ed Metcalf	R. Shelton	

[79] At the hearing, the parties stipulated that employees Benjamin Gibson, Mary Alice Wareham, William Woodson, and the 42 employees named above made application for employment at the Winter Garden plant.

b. Analysis and Conclusions

(1) The Alleged Discrimination
Against Orlando Employees

The General Counsel contends that Crown 's refusal to hire 45 Orlando bargaining unit employees was motivated by hostility toward the Union and thus violated Section 8(a)(3) and (1) of the Act. Crown argues that the record does not support the General Counsel's contention. Instead, Crown contends that the evidence shows that its reason for refusing to hire these employees was economic and had nothing to do with anti-Union sentiment. Analyzing the evidence in accordance with the Board's doctrine in *FES,* 331 NLRB 9, 12, 15 (2000), I find that the record supports the General Counsel's position.

In *FES*, the Board set forth the burdens of proof for refusal to consider and refusal to hire cases. Regarding refusal to hire cases, the Board held that a *Wright Line*[80] analysis applies. Thus, the General Counsel must establish in the refusal to hire allegations in these cases:

> "(1) That [Crown] was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants."

FES, supra, at 12. Once these elements have been established, Crown must prove that it would not have hired the applicants even in the absence of Union affiliation. *Ibid*. If Crown claims that the Orlando employees were not qualified for the positions it was filling, it is Crown's burden to show that that they did not possess the specific qualifications the position required or that others, who were hired had superior qualifications, and that it would not have hired them for that reason even in the absence of Union or affiliation. *Ibid.*

In a refusal to consider case, the General Counsel bears the burden of showing that: (1) the respondent excluded applicants from a hiring process and: (2) union animus contributed to the respondent's decision not to consider the applicants. Once this burden has been met, it shifts to respondent to show that even in the absence of union affiliation it would not have considered the applicants. *Id.* at 15.

During its negotiations with Crown, in the wake of the September 1994 announcement of Orlando's closing, the Union sought the transfer of Orlando

---

[80] 251 NLRB 1083, 1089 (1980), enfd on other grounds, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982). See pp. 38 and 39 above for discussion of the W*right Line* analysis.

employees to Winter Garden. When Crown's negotiators rejected transfers, the Union shifted its position to preferential hiring rights for the Orlando employees at the Winter Garden plant. Also, during the global negotiations the Union sought recognition as the exclusive bargaining agent at Winter Garden. Fred Veil rejected the demand for recognition on the ground that the Union had not shown him that it had the support of a majority of the employees at Winter Garden.

At all times during the negotiations growing out of the closing of the Orlando plant, the Union and Crown were parties to a 4-year collective bargaining agreement covering that plant's production and maintenance employees. The contract was effective from June 28, 1992 until June 29, 1996.

At the global negotiations the Union initially sought transfer rights for the Orlando employees at Winter Garden. However, during those negotiations and the later effects bargaining, the Union was modified its position and insisted on preferential hiring at Winter Garden for the Orlando plant employees. Veil responded to that Union concern by a commitment in February 1995 to refrain from hiring employees off the street during global negotiations. The global negotiations ended in June 1995.

Winter Garden Plant Manager Turner showed Crown's lack of commitment to Veil's assurance to the Union by hiring 7 employees off the street for Winter Garden in May 1995. In his testimony before me, Veil asserted that at the time, he was unaware of the hiring when it happened. He testified that he learned of this hiring after it had happened, sometime around May 22. The source of the information was the Union's representative, Homer Wilson. Later in his testimony, Veil claimed he had communicated his commitment to refrain from hiring off the street, but that "somehow it got lost in the translation." From Veil's explanation, I have concluded that he did not convince Turner that the commitment to refrain from hiring was a matter of serious concern for the Winter Garden Plant Manager.

The considerable evidence of Crown's hostility toward the Union, which I have discussed above suggested the motive for Veil and Deaver's resistance to the Union's demands that Crown give preferential hiring opportunities to the Orlando employees at Winter Garden. The constant theme of the unlawful warnings and other unlawful remarks recited earlier in this decision was that Crown wanted its employees to abandon the Union. Vice-President Truitt warned employees about to vote in a Board-held election that Crown "can be your best friend or your worst enemy," that bargaining with Crown would be futile and that if the Union won the election, Crown would close the plant down. Gunderson, who devised the evaluation test for the Orlando employees, warned the employees that by voting in the Union they stood to lose benefits.

I have also shown that members of Crown's management at Orlando, Plymouth Can, and Winter Garden were willing to engage in unlawful conduct to discourage employees from supporting the Union. Their efforts to impair the Union's employee support included remarks blaming the Union for Crown's decision to close Orlando, threats of economic reprisal for supporting the Union, and by coercively interrogating an employee about her sentiment toward the Union.

Winter Garden Plant Manager Collie Turner provided further evidence to support the General Counsel's *prima facie* showing that hostility toward the Union was a factor in Crown's refusal to hire 45 Orlando employees. After Crown's announcement to the Union in mid-September 1994, that it planned to close Orlando Plant 48, Turner began hiring employees off the street for Winter Garden in December, when he hired 3. He hired one more employee off the street in January 1995, and 7 in May 1995. He made no attempt during December 1994, January 1995 or May 1995 to hire Orlando Plant 48 employees. Nor did he inform the Orlando employees in May 1995 that he was seeking 7 employees for employment at Winter Garden. Turner ignored the Orlando employees even though he was aware of negotiations between the Union and Crown regarding the hiring and transfer of Orlando employees there.

Fred Veil's testimony provided evidence strongly suggesting that hostility toward the Union was a major factor in Crown's decisions not to hire the 42 employees listed in the table above on this page and employees Benjamin Gibson, Mary Alice Wareham and William Woodson. Veil admitted instructing Turner to hire off the street and that he resorted to that expedient as a tactic to cause the Orlando to pressure the Union, and its Local 6206, into accepting Crown's effects agreement proposal of November 7.

Pursuant to Veil's instructions, on November 17,Turner hired 7 employees off the street for employment at Winter Garden. Similarly, Turner hired one more employee off the street for a job at Winter Garden, on November 20. He hired no Orlando employees in November 1995.

In February 1996, Veil decided to stop hiring Orlando employees permanently. Veil's testimony explaining his reason for reaching this decision was as follows:

> Basically Orlando was dead. We had moved. Orlando was a closed plant. It had been closed for several months.
>
> We were in the process of now staffing [Winter Garden] with the Plymouth [Can] equipment and so forth. We were going through a similar process with. . . Plymouth Can and basically—and that's reflected here in GC-51. . . .
>
> I just concluded that we weren't going to hire any more Orlando employees.
>
> And I did that because – my thought was, why give the Union what they want, which was us to hire Orlando employees when they weren't willing to agree and come to an agreement with us on the closure of that facility.

Turner hired 5 Orlando employees in early January 1996. Thereafter, he followed Veil's instructions. Turner did not hire any Orlando plant employee for - employment at Winter Garden after January 3, 1996. From February 19, 1996, until September 16, 1996, Turner hired 22 employees off the street and 21 from Plymouth Can.

In its post-hearing brief, Crown argues that Veil's refusal to hire Orlando employees for jobs at Winter Garden was a bargaining tactic entitled to acceptance in

the same way that an employer's lockout is accepted by the Board as a lawful bargaining tactic. I find no merit in this argument.

The Supreme Court has analyzed the Act and found recognition of the legitimacy of the lockout "as a means of applying economic pressure in support of bargaining positions." *American Shipbuilding Co., v. NLRB,* 380 U.S. 300, 315 (1965). The Board has adopted that position. *Central Illinois Public Service Co.*, 326 NLRB 929, 939 (1998). An essential element in the acceptance of a lockout as a legitimate bargaining tactic is statutory recognition. As the Court pointed out in *American Shipbuilding*, 300 U. S. at 315, Section 8(d) of the Act and other provisions of the Act make reference to the lockout together with the strike and thus "contemplate that lockouts will be used in the bargaining process in some fashion."

I find no such statutory permission to violate Section 8(a)(3) of the Act. In the instant case, Crown refused to hire any of the 45 employees listed above because they adhered to the Union. Section 8(a)(3) makes it an unfair labor practice for an employer- "By discrimination in regard to hire . . .to encourage or discourage membership in any labor organization . . . ." Here, Veil's tactic was to impose economic hardship on employees, who would see that their membership in the Union was depriving them of needed employment. I find it likely that Veil's refusal to hire them would discourage them from remaining members of the Union. There is no language in the Act permitting Crown to punish its employees by imposing economic penalties on them because they belong to the Union. Pressuring a union to change its bargaining position is a valid purpose. However, Section 8(a)(3) of the Act proscribes discrimination against job applicants because they are union adherents. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 185-187 (1941).

Veil's explanations of his refusals to hire Orlando employees did not rebut the General Counsel's *prima facie* showing that hostility toward the Union motivated those refusals. Indeed, they provide further evidence of that sentiment.

Crown's further contention that Veil's use of economic hardship against the Orlando employees was free of union animus falls wide of the mark. As shown above, Veil and his colleagues in Crown's management repeatedly expressed hostility toward the Union and its adherents in remarks to Crown employees. These remarks included threats of economic reprisals and statements blaming the Union's presence for plant closings. Thus, I find that Crown employees were likely to view the refusals to hire Orlando employees as a further manifestation of their employer's anti-Union sentiment.

There is ample evidence that the Orlando employees available for employment at Winter Garden in November 1995 and February 1996 had experience in operating the production equipment that Crown had moved from Orlando to Winter Garden. They had operated that equipment when Orlando was producing composite cans and ends. Also, prior to Veil's November 1995 injunction against hiring Orlando employees, Turner had hired 28 Orlando employees, 9 of whom were skilled and 19 were classified as general labor. I find from Turner's testimony that he hired these Orlando employees to operate the equipment moved from Orlando to Winter Garden and to satisfy customers' needs. Turner also employed some Orlando employees to perform metal can assembly, other

production work and general plant work also performed by Winter Garden employees prior to, and after the consolidation.

Crown made no showing that the Orlando plant employees who had applied for employment at Winter Garden, and who were available for employment there were unqualified for the job openings in November 1995 or for job openings that existed on or after February 19, 1996.

I also find from Turner's testimony that of the 8 employees he hired off the street from November 17 to November 20, for employment at Winter Garden, none was hired because of a special skill. Thus, 8 Orlando employees, who had been laid off, or were about to be laid off, and had applied for employment at Winter Garden, who were classified as general laborers, were available and able to perform the work Crown had assigned to the off street hires.

Neither Turner nor any other member of Crown's management testified that the Orlando applicants seeking employment at Winter Garden at the time of Veil's second decision to refuse to hire Orlando employees were unqualified for the jobs available then or thereafter in 1996. Veil's testimony did not raise their qualifications as the reason for his February 1996 refusal to hire anymore Orlando employees. Nor was there any showing on the record that Veil or Turner based their treatment of the Orlando employees upon a belief that either the 22 employees Turner hired off the street or the 21 Plymouth Can employees had superior qualifications that entitled them to preference over the laid-off Orlando employees.

In its post hearing brief, Crown makes bare assertions about the need for skill in handling Plymouth Can's aluminum can production. However, nowhere in the record did Crown explain what skills are required to operate aluminum production line equipment. There was no showing of the steps in the Plymouth Can production process requiring special training. Crown did not describe the training necessary to qualify an employee to operate Plymouth Can's aluminum can production line.

Indeed, the record shows that some of the Plymouth Can employees Turner hired for Winter Garden were doing the same work assigned to Orlando employees at that plant. Thus, the parties stipulated, and I find, that after Crown closed its Plymouth Can plant in early 1996, Winter Garden hired some of the Plymouth Can employees to perform composite can work, end press, metal can assembly, conversion press, tab end press, and general plant work.

Crown's post hearing brief, for the first time, claims that the transfer of Plymouth Can's aluminum can work motivated the decision in February 1996 to stop hiring Orlando employees. Relying on Gunderson's testimony, Crown asserts that aluminum can production required the special expertise of Plymouth Can employees. Gunderson's uncontradicted testimony shows, and I find, that the skilled Plymouth employees were needed for setup, maintenance, overhaul, and technical running of very complicated aluminum ends. However, there was no support in Veil or Turner's testimony for Crown's assertion that those needs motivated Veil's February 1996 decision to stop hiring Orlando employees. Gunderson did not make the decision to stop hiring Orlando

employees in February 1996. Veil made that decision.

In any event, the claim of special expertise does did not extend to the 22 off the street hires. Instead, Crown's brief asserts that Turner hired them to work on Plymouth's transferred aluminum can production. However, contrary to Crown's post hearing brief, nothing in its records shows that Turner put the off the street employees to work on transferred Plymouth production on and after February 19, 1996. In short, there was no showing on the record that the need's of the aluminum can production motivated Fred Veil's decision to stop hiring anymore Orlando employees. He admitted that he made that decision only to punish the Union by depriving its Orlando adherents of jobs at Winter Garden.[81]

In sum, I find ample evidence to support the allegation that Crown denied employment to the 45 Orlando employees, who had applied for employment at Winter Garden, because they were Union adherents. I further find that by thus discriminating against those employees, Crown violated Section 8(a)(3) and (1) of the Act.

In its post-hearing brief, Crown asserts that only 9 of the 45 rejected Orlando employees were eligible for hire under its evaluation program. Crown, relying upon its records received in evidence in these proceedings, asserts that it recruited, but did not hire Orlando employees L.E. Britten, P. D. Funk and J. G. Torres at Winter Garden for "medical and drug related reasons." Review of the Second Amended Consolidated Complaint shows that L. E. Britten was not one of the 45 alleged discriminates.

However, the Second Amended Consolidated Complaint alleges that P. D. Funk and J. G. Torres were discriminates. There was neither testimony nor written evidence showing that Crown offered them employment at Winter Garden. I accepted the parties' stipulation that Funk and Torres applied for employment at Winter Garden. I have also noted from a document received in evidence that lists Orlando employees not hired at Winter Garden, that Crown did not hire Funk or Torres at Winter Garden.

Crown's qualifications listing states that Funk was disqualified, not because of a low rating, but for medical reasons on September 26, because of arthritis. There was no testimony regarding the extent of Funk's arthritis or its effect on his ability to work at Winter Garden. However, Crown's qualification listing does not support its assertion with respect to G. Torres. The qualification listing gives no explanation for his

[81] In its post-hearing brief, Crown repeatedly relies upon assertions of fact made in a position letter it sent to the Miami District Office of the Equal Employment Opportunity Commission. However, at the hearing, on July 7, 1999, I received that position letter only for the purpose of showing that Crown filed a position letter with the Commission regarding its failure to hire certain Orlando employees at its Winter Garden plant in 1995 and 1996. The General Counsel objected to the receipt of the position letter on the ground that it was hearsay. I sustained the objection to the extent that I refused to admit it for the truth of the assertions of fact it contained.

disqualification. A document attached to a position statement authored by Fred Veil asserts that Crown disqualified Torres for unspecified medical reasons. However, I did not receive the position statement or its attachments for the truth of the assertions of fact in them.

In sum, I find that Crown violated Section 8(a)(3) and (1) of the Act by not offering employment to Funk and Torres because they were adherents to the Union. I also find from my review of the record that there is insufficient evidence to permit me to determine whether Torres and Funk, were employable at Winter Garden in November 1995 or in February 1996, when Fred Veil directed Turner to stop hiring Orlando employees for jobs at Winter Garden. I recommend that the matter of Torres and Funk's medical conditions be considered as issues for determination at the compliance stage of these proceedings.

Crown argues that 33 of the remaining alleged discriminatees did not qualify for employment at Winter Garden because they did not attain a composite rating of 3.0 in its evaluation process. As part of its evaluation process, Crown disqualified 10 of these 33 employees because of disciplinary action reflected in their work records at Orlando. These 10 did not receive any rating. The history and implementation of Crown's evaluation process strongly suggests that its purpose was to limit the migration of Union-represented Crown employees to Winter Garden.

The source of the idea of evaluating was Fred Veil, who was well aware of the Union's quest for attaining majority status at non-union Winter Garden. By late 1995, the Union had shown interest in preferential hiring of Orlando employees at Winter Garden as the production lines moved from Orlando to Winter Garden. The Union was also expressing its intent to obtain recognition as the exclusive bargaining representative of the merged employee complements. The Union insisted upon preferential hiring for Orlando employees during the unsuccessful global negotiations with Veil that continued into June 1995.

In May 1995. Orlando's Plant Manager Ed Sykora invited his employees to file applications for employment at Winter Garden. At about the same time, Fred Veil directed Manager of Employee Relations Ed Gunderson to come up with an evaluation process to be used in considering Orlando's production and maintenance employees for employment at Winter Garden. I find from Veil and Gunderson's testimony that Veil oversaw Gunderson's development of the process and set 3.0 as the minimum acceptable score for Orlando employees applying for work at Winter Garden. Veil enjoyed a supervisory relationship with Gunderson and the evaluation process. From this circumstance, I find it likely that Veil had opportunity to inform, and did inform, both Gunderson and Winter Garden Manager Collier Turner, who was a member of Gunderson's evaluation committee of the global negotiations and the Union's interest in preferential hiring for its adherents at Orlando. Veil also supervised Turner in the hiring of employees for Winter Garden during all times relevant to these proceedings.

Veil's testimony showing his reason for refusing the hire Orlando employees in November 1995, in February 1996 and thereafter reflected his strong hostility toward the Union and its adherents. Further, as I have recited above, there was ample

evidence from other remarks by Veil and other members of management that Crown shared Veil's animus toward the Union.

The timing of Veil's decision to inaugurate an evaluation process to test Orlando employees provides further evidence of discriminatory motive. Veil's decision to set up the evaluation system to screen Orlando employees surfaced in the spring of 1995, after the Union had asked for preferential hiring of its Orlando adherents at Winter Garden.

Veil and Crown's hostility toward the Union and the timing of their decision strongly suggested that the evaluation process had an unlawful objective. Here was a screening procedure that could weed out some of the Orlando employees. Given that Veil and his superiors were anxious to preserve Winter Garden's non-union status, the timing of the decision to have an evaluation process suggested that it was Crown's response to the Union's request for preferential hiring of Orlando employees. Thus, the General Counsel made a *prima facie* showing that Crown's purpose was to reduce the Union's ability to achieve the majority support it needed to win recognition at Winter Garden as the employees' exclusive collective bargaining representative.

Crown contends that the only purpose of its evaluation system was to select suitable employees, skilled and unskilled, for its team-oriented system at Winter Garden. According to Crown, it selected Orlando employees to obtain the best employees for its Winter Garden plant, without concern for keeping that plant non-union. Gunderson's testimony supports Crown's position. However, the record casts serious doubt on Gunderson and Crown's assertions.

According to Gunderson's testimony, in May, March or April 1995, Veil explained that the population at Orlando was diverse and that Crown could not hire them all at Winter Garden. Also, Gunderson testified that he and his colleagues wanted to "pick up the people with the best skills and best work performance, and who could work as members of a team, rather than under the usual supervisor-employee relationship. However, Plant Manager Turner did the hiring. I find from Gunderson's uncontradicted testimony that he only vetted Turner's choices. Turner's testimony shows that after Gunderson installed the evaluation system, not everyone hired for Winter Garden passed through it.

Of the employees Turner hired off the street, none passed through Gunderson's evaluation system. Between September 14, 1994, and May 17, Turner hired eleven employees off the street for jobs at Winter Garden. He interviewed them, but did not evaluate their skills or past work performance. Later, in November 1995, Turner hired 8 employees off the street. He interviewed them and hired them without any evaluation of their skills or past work performance. How did he determine that these 19 were "the best?" How did he determine that each of them would be a good team member? Turner did not provide information on these questions.

Turner hired four Orlando employees for jobs at Winter Garden before July 20, when Crown began its evaluation process by disqualifying 10 employees because of absences and disciplinary incidents. The four were the first Orlando employees Turner

hired during the transfer of production from Orlando to Winter Garden. At the time he hired the following four Orlando employees, Gunderson and his committee had not rated them: Doug Mosley-hired May 22; David Thomas-hired July 18; Guy Jalbert- hired July 18; and, Paul Vercamen-hired July 18.

Unlike employees hired off the street, Gunderson and his committee evaluated these 4 employees after Turner hired them. The 4 achieved the following scores, respectively: Mosley- skilled 4.37; non-skilled 4.35; Thomas, D. L.- non-skilled 4.12; G. G. Jalbert-skilled 3.53; and Paul Vercamen skilled 3.87. I find from Turner's testimony that he hired these 4 employees because they had skills needed at Winter Garden to install equipment transferred from Orlando. Turner's testimony also shows that he discussed hiring decisions with his immediate superior, Area Manager Joe Busco, Jerry Gunderson, and Gunderson's superior, Fred Veil. When Winter Garden needed Orlando employees to deal quickly with the installation of Orlando equipment, Crown's management found it unnecessary to subject them to scrutiny under the evaluation process before hiring them at Winter Garden. Nevertheless, Crown subjected the four Orlando employees hired before July 20 to evaluation. In contrast, when hiring employees off the street, Collie Turner interviewed them. However, Turner and his advisors did not bother to check into their past to evaluate them, before or after hiring them at Winter Garden.

On December 4, Turner departed from Veil's 3.0 minimum requirement, by hiring Orlando employee C.M. Thomas, who had a skilled rating of 2.80. Crown's records show that Turner hired him as a composite mechanic. Turner did not testify about this departure from Veil's standard. However, Turner's explanation for hiring 4 Orlando employees before the completion of the evaluation process seems applicable to Thomas in light of the installation of 5 of Orlando's composite can production lines at Winter Garden.

The disparate application of Crown's evaluation process discriminated against Orlando's Union adherents. Turner hired employees, who had no ties with the Union without checking their employment histories with their former employers. In contrast, Gunderson and his committee carefully scrutinized Union adherents from Orlando. Application of the 3.0 standard resulted in the disqualification of 25 Orlando employees, including mechanic C. M. Thomas, whom Turner hired as a general laborer at Winter Garden on December 4. Thus, the evaluation system reduced the potential flow of Union adherents from Orlando to non-union Winter Garden by 24. Crown's records show that it had employed these 23 employees since acquiring the Orlando plant in 1991. There was no showing that Crown had found any of these 24 employees to be unsatisfactory in their performance or attendance at work. In sum, I find that Crown used Gunderson's evaluation system as a pretext for refusing to hire a substantial number of Union adherents at Winter Garden and thus to diminish the Union's ability to achieve majority support at that plant. I find, therefore, that by its discriminatory use of Gunderson's evaluation system, Crown violated Section 8(a)(3) and (1) of the Act.[82]

---

[82] The Second Amended Complaint did not allege that Crown's use of its evaluation system to discriminate against Union adherents seeking employment at its Winter Garden plant violated

Continued

I also find no merit Crown's further assertion that 10 former Orlando employees were properly disqualified from employment at Winter Garden because of their absenteeism and disciplinary records. In July 1995, before going forward with the evaluation process, Gunderson and his committee considered the records of 35 Orlando employees, paying particular attention to their absences and disciplinary actions against them. Gunderson and his colleagues selected 10 employees out of this group and disqualified from the evaluation process. Consequently, Crown removed the following 10 employees from consideration for employment at Winter Garden: James Boykin, Billie Harvell, William Little, Leonard Perine, Robert Pierce, Curtis Roberson, Cindy Rowlette, Gregory White, Merton Wiggins, and James Williams.

Until Gunderson's evaluation project, Crown had been content to employ all ten of these employees at Orlando. In July 1995, when Fred Veil was responding to the Union's demand for preferential hiring of its Orlando adherents at Winter Garden, these ten employees became undesirables. The ten were Union adherents from Orlando.

Here again, Turner showed less care about the employment histories of the off the street hires for Winter Garden. Turner did not screen employees he hired off the street between September 14, 1994 and May 17 for absenteeism or disciplinary records. Nor did he screen off the street hires for Winter Garden in November 1995, nor after January 3, 1996, for absenteeism or disciplinary records. The Union did not represent these employees. Crown needed employees at Winter Garden and its off the street hires satisfied that need without giving the Union further strength in its campaign to achieve majority support at that plant.

In light of Crown's hostility toward the Union and its adherents, I find that Crown's screening out of employees James Boykin, Billie Harvell, William Little, Leonard Perine, Robert Pierce, Curtis Roberson, Cindy Rowlette, Gregory White, Merton Wiggins, and James Williams was part of its unlawful scheme to diminish the Union's ability to muster majority support at Winter Garden. I find that the screening process Gunderson and his committee used to disqualify these ten employees violated Section 8(a)(3) and (1) of the Act.[83]

Crown contends that Orlando employees Mary Alice Wareham, William Woodson and Benny Gibson were not entitled to employment at Winter Garden because they

---

Section 8(a)(3) and (1) of the Act. However, under Board policy, where, as here, the matter of Crown's evaluation process was closely related to the complaint allegation that it unlawfully refusal to hire 45 Orlando employees, and was fully litigated, I am authorized to find and remedy this additional violation of the Act. *Garage Maintenance Corporation*, 334 NLRB 940 (2001).

[83] Here, again I find that the Second Amended Complaint did not allege that Crown's screening process, which was preliminary to its evaluation system, discriminated against Union adherents seeking employment at its Winter Garden plant and thus violated Section 8(a)(3) and (1) of the Act. However, under Board policy, where, as here, the screening process was closely related to the complaint allegation that it unlawfully refusal to hire 45 Orlando employees, and was fully litigated, I am authorized to find and remedy this additional violation of the Act. *Garage Maintenance Corporation*, 334 NLRB 940 (2001).

worked at the warehouse located at the Orlando plant site until February 28, 1997, when there were no jobs for them at Winter Garden. Further, Crown insists that they were ineligible for employment at Winter Garden because their respective composite ratings were below 3.0. Crown's contentions miss the mark.

Crown employed Wareham, Woodson and Gibson as production employees at Orlando, prior to transferring them to warehouse work in January 1996. Wareham had been an end bagger in Orlando's Press Department and a line tender in the Assembly Department. She filed an application for employment at Winter Garden on May 8. Prior to his transfer to warehouse work, William Woodson had worked in Orlando's Quality Control Department. At the hearing, I accepted the parties' stipulation that Woodson applied for employment at Winter Garden. Crown employed Benny Gibson as a maintenance mechanic prior to transferring him to warehouse work. Crown had on file, prior to December 29, Gibson's application, dated May 9, for a job at Winter Garden. In his application, Gibson wrote under "Position Desired" "Any m/mechanic winder operator winder helper."

The record shows that after Veil's February 1996 decision to stop hiring Orlando employees, Crown hired 21 Winter Garden employees off the street. There was no showing by Crown that any of the positions for which it hired these 21 employees required skill beyond that possessed by Wareham, Woodson and Gibson. Crown knew that Wareham, Woodson and Gibson were applicants for employment at the time it hired the 21 employees off the street. Crown could have easily offered the three general labor positions at Winter Garden. I have included Wareham, Woodson and Gibson in the group of 45 Orlando employees Crown refused to hire at Winter Garden in violation of Section 8(a)(3) and (1) of the Act.

That Wareham, Woodson and Gibson had evaluations below 3.0 did not disqualify them for employment at Winter Garden. For, as I have found above, the process used to produce such evaluations violated Section 8(a)(3) and (1) of the Act.

The General Counsel contends that Crown violated Section 8(a)(3) and (1) of the Act by requiring 42 Orlando employees to resign their employment at Orlando in order to be hired at Winter Garden. The record shows that Crown required that the 42 Orlando employees listed above, at Section II C 3 a (3) of this Decision, seeking employment at Winter Garden, resign their jobs at Crown's Orlando plant by filing an application for such employment as new employees.

The collective bargaining agreement between Crown and the Union, in effect from the June 28, 1992, until June 29, 1996, reflected their understanding that seniority was defined as a bargaining unit employee's uninterrupted service with Crown. The same contract stated that such seniority would terminate when an employee resigned from Crown. Thus, by heeding Crown's requirement that they file an application as a new employee at its Winter Garden, each of the 42 employees was surrendering his or her seniority.

The economic impact of Crown's requirement that the 42 employee-applicants resign was potentially substantial. In its brief, Crown admits, and Appendix B of the

collective-bargaining agreement covering them shows, that by resigning their employment at Orlando, the 42 employees were surrendering the health and welfare benefits they were entitled to following the layoff on December 29.

There was no showing that their loss of seniority attained at Orlando would have had any potential economic impact upon the 42 employees if they accepted employment at the Winter Garden plant. The record does not disclose whether Crown's Winter Garden employees enjoyed any seniority status at any time material to these cases. Further, according to Article 21.11 of the Orlando collective bargaining agreement, the agreement's seniority provisions with Crown would not cover the 42 employees during their employment at Winter Garden even if they did not resign their employment at Orlando. There was no showing that Crown expected the 42 employees to complete a probationary period before becoming permanent employees at Winter Garden. The General Counsel's post-hearing brief does not assert any economic harm to the 42 employees arising out of the requirement that they quit their Orlando jobs and apply for jobs at Winter Garden as new employees.

My findings above include repeated efforts by Crown to discourage Orlando's Union-represented employees from supporting the Union. Those efforts included unlawful refusals to hire them in November 1995 and in and after February 1996, because they were Union adherents. In addition, Crown unlawfully discriminated against the Orlando bargaining unit employees by subjecting them to an evaluation and screening process designed to reduce the flow of Union support from Orlando to Winter Garden. This backdrop of hostility toward Orlando employees supports the allegation that Crown was motivated by animus toward the Union when it required the resignation of the 42 Orlando employees listed above, at Section II C 3 a (3), and their agreement to apply for jobs at Winter Garden as new employees.

Crown admits that the 42 employees gave up the health and welfare benefits they would have enjoyed if they had remained Orlando employees until the layoff of December 29. However, Crown asserts that the 42 received comparable benefits when Crown hired them at Winter Garden. Crown points out that the General Counsel has not shown that the treatment of these 42 was a departure from Crown policy.

However, Crown's suggestion in its brief that it treated the 42 in accordance with an established Crown policy finds no support in the record. There is record testimony from Orlando employee Billie Nelson showing that Crown would not, as a matter of policy, transfer employees from one plant to another. However, there was no showing that Crown policy required its employees to cut ties with Crown and surrender layoff benefits as a condition precedent to changing employment from one Crown plant to another.

The Board has recognized that treating a striking employee seeking reinstatement as a new employee suggests that his or her employment relationship with the employer has been severed and is a form of unlawful discrimination. *Domsey Trading Corp.*, 310 NLRB 777 at 794 (1993), *enfd. 16 F.3rd 517 (2nd Cir. 1994)*. In *Domsey*, 310 NLRB at n. 3, the Board adopted the administrative law judge's holding that the employer in that case could require employment applications from returning

strikers if it could show "that its action was due to a legitimate and substantial business justification." *Id.* at 794-795.

In *Domsey,* the Board applied the principle discussed in the previous paragraph to employees supporting a strike called by a union. In the instant case, I find that same principle apt, where Crown imposed the same requirement on its Orlando employees, who were Union adherents seeking employment at its Winter Garden plant. In each case, the General Counsel showed that union animus was a factor in the employer's decision to treat employees who supported a union as if their employment by the employer had terminated.

I find that the General Counsel has shown that hostility toward the Union and its supporters at Orlando was a factor in Crown's decision to require 42 employees to apply as new employees for jobs at Winter Garden. Thus, absent a showing by Crown that it had a valid business justification for this conduct toward the 42 Orlando employees, that requirement was unlawful.

In its brief, for first time, Crown claims that it needed the information provided by the application forms to acquaint Plant Manager Turner with the applicants. In its brief, Crown does not rely on the record. Indeed, there was no showing that Crown communicated this explanation to the Orlando plant employees in 1994 or 1995. Crown's brief also points out that such information may not be available in the applicant's employment records at Orlando. There is no testimony in the record before me which supports Crown's newly discovered reasons for requiring Orlando employees to resign their employment, give up their layoff benefits, and apply for work at another Crown plant as if they had never worked for Crown. There was no showing that Crown's personnel records at Orlando did not present information essential for Turner's needs in deciding whether or not to hire any of the 42 Orlando employees. Turner's testimony does not include any assertions that he needed the information on the required applications in deciding whether to hire an applicant. On the contrary, his testimony regarding the hiring of off the street applicants does not reflect any reliance on a completed application form in deciding whether to hire such an applicant.

Crown has not shown a legitimate and substantial business justification for requiring the 42 Orlando employees list above at p. 47 to resign their employment, surrender the benefits they were entitled to had Crown laid them off, and apply for employment at Winter Garden as new employees. I find, therefore, that the record shows by a preponderance of the evidence that Crown imposed these requirements on the 42 employees because they were Union adherents. Accordingly, I find that by treating the 42 employees seeking employment at Winter Garden as if their employment relationship with Crown was terminated and causing them to give up possible benefits, Crown violated Section 8(a)(3) and (1) of the Act.

(2) The alleged refusals to bargain with the Union

The General Counsel contends that Crown violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union about the effects of the closure and relocation of the Orlando facility. Specifically, the General Counsel argues that Crown failed to bargain in good faith with Union about the employment of Orlando employees at Crown's Winter Garden plant after September 14, 1994, when Crown announced its intent to close the Orlando plant in 1995. Dwelling upon its bargaining tactics, Crown insists that it bargained in good faith. However, Crown does not deal with either Gunderson's evaluation and screening process, or Turner's conduct of hiring after September 14, 1994. As to this aspect of Crown's conduct, I find that Board policy supports the General Counsel's position.

The Board has recognized that Sections 8(a)(5) and 8(d) of the Act require that an employer partially or completely terminating an operation at one location and relocating it at another is required to negotiate not only the shut down, "but also the bases and conditions on which employees affected by the termination may transfer to the new location and thus continue to be employed." *Westinghouse Electric Corporation*, 174 NLRB 636 (1969). This Board's policy received court approval in *Cooper Thermometer Company v. NLRB*, 376 F.2d 684, 688 (2nd Cir. 1967), where Chief Judge Friendly declared:

> [T]he Board may reasonably interpret Section 8(a)(5), as explicated in Sec. 8(d), as requiring an employee relocating his plant not merely to give reasonable notice to a recognized union and to negotiate the terms of the shutdown, as we held in *NLRB v. Rapid Bindery, Inc.,* 293 F. 2d 170 (1961), but also to discuss with it the basis on which employees may transfer and, in that connection, to give information as to jobs in the new plant essential to the intelligent formulation of the union's requests. The most important interest of workers is in working: the Board may reasonably consider that an employer does not fulfill his obligations under Section 8(a)(5) if he refuses even to discuss with employees' representatives on what basis they may continue to be employed.

Crown's conduct ran afoul of Sections 8(a)(5) and 8(d) of the Act. In February 1995, Crown appeared to be accepting the requirement of those sections of the Act, when Fred Veil, its leading negotiator, said Crown would not hire more employees at Winter Garden until a global agreement had been reached. However, in May 1995, while the Union and Crown were engaged in global negotiations, Crown hired seven employees off the street, and one Orlando employee at Winter Garden, without bargaining with the Union and seeking to reach agreement with the Union on the hiring of Orlando employees and the basis upon which Orlando employees would be selected for these 8 positions. Also in May 1995, Orlando Plant Manager Sykora posted a notice at his plant, inviting Orlando employees to tell Winter Garden's Industrial Relations Manager Allen if they were interested in employment at Winter Garden and to obtain application forms from their supervisors. Crown did not afford the Union opportunity to discuss the notice or the use of application forms before the promulgation of Sykora's notice to the collective-bargaining unit employees.

In the spring of 1995, while the parties were engaged in global negotiations, Crown began the development of evaluation and screening procedures to be used to select Orlando applicants for employment are Winter Garden. The first effects bargaining session between Crown and the Union took place on July 18. On that day, Crown hired three Orlando employees at Winter Garden. Two days later Crown unilaterally decided to disqualify 10 Orlando because of absenteeism or disciplinary history. Thereafter, without affording the Union opportunity to bargain about Gunderson's process, Crown evaluated Orlando applicants and by October 1995 had hired 28 of them at Winter Garden. The Union and Crown had bargaining sessions on August 8, September 28, October 10, and on November 7. However, Crown evaluated, screened and hired Union-represented Orlando employees without giving the Union any opportunity to question these procedures and try to negotiate changes favorable to its Orlando constituents. Crown set a rating of 3.0 as the minimum acceptable score under its unilaterally devised evaluation process and refused to hire Orlando employees rated below 3.0. Crown also unilaterally established a screening process in which it disqualified 10 Orlando employees because of absenteeism and disciplinary records.

Applying the teachings of *Cooper Thermometer,* above, 376 F2d at 688, I find that Crown refused to bargain collectively in good faith with the Union about the basis upon which the Orlando employees might continue their employment as Crown employees at Winter Garden. While ostensibly negotiating an agreement on the effects of the closure of its Orlando plant, Crown unilaterally set standards and applied them in hiring the Union's Orlando constituents. Indeed, I find that in this regard, Crown acted as if the Orlando employees had no recognized collective-bargaining representative. I further find that by this conduct, Crown violated Section 8(a)(5) and (1) of the Act.

The General Counsel argues that as of January 3, 1996, Sections 8(a)(5) and 8(d) of the Act required that Crown recognize the Union as the exclusive collective bargaining representative of the production and maintenance employees at the Winter Garden plant. According to the General Counsel, as of that date, Crown had relocated its Orlando production operations at Winter Garden, where it produced the same products for the same customers as it had at Orlando. Further, the General Counsel asserts that as of January 3, 1996, the Union represented 45 per cent of the Winter Garden plant's workforce. The General Counsel urges that these facts satisfy Board policy set forth in *Harte & Company*, 278 NLRB 947, 948 (1986).

Crown contends that *Harte* does not govern the outcome here. Instead, Crown insists that the Board's holding in C*entral Soya Co.*, 281 NLRB 1308 (1986), *affd.*, 867 F.2d 125(10th Cir. 1989) controls. According to Crown, the rule in *Central Soya* is that when an employer relocates an operation covered by a collective-bargaining agreement and combines it with a non-unionized operation, the union's representation rights will extend to the combined unit only if the non-union group can be deemed an "accretion" to the union-represented group. I find merit in Crown's position that *Central Soya* provides guidance in the instant case. However, I find that Crown did not satisfy the requirements of Sections 8(a)(5) and (d) of the Act.

As the Board stated in *Harte & Co.*, 278 NLRB at 948:

> In relocation cases such as this one, our task is to distinguish situations where the new facility is basically the same operation, simply removed to a new site, from those where the new facility is somehow a different operation from the original. In the former case, a collective-bargaining agreement in effect at the old location is logically applied at the new one. In the latter, the old agreement has no place at the new facility. Given the complexity of modern business transaction, the determination of exactly what relationship the new plant bears to the old is not always easy to make. Nonetheless, we have developed standards in our contract-bar and failure-to-bargain cases to determine when there is a sufficient continuity of operations to justify applying an existing agreement to a new location. These cases hold that an existing contract will remain in effect after a relocation if the operations at the new facility are substantially the same as those at the old and if transferees from the old plant constitute a substantial percentage – approximately 40 percent or more – of the new plant employee complement. (Citations omitted.)

Harte and *Central Soya* do not disagree. Thus, in *Central Soya*, above, at 1309, the Board found there was no substantial change in operation following a "relocation/consolidation" and held that the employer had violated Section 8(a)(5) and (1) of the Act by failing to apply the collective-bargaining agreement at the new location and by withdrawing recognition. The administrative law judge in *Central Soya* had found that the employees who transferred to the new location did the same work they had done at their former location, in the same town. 281 NLRB at 1308-1309. The administrative law judge also noted that both locations produced the same product, using the same manufacturing processes, and that the same customers served at the old location were served at the new, with some additions. *Id at 1308.* He also noted that the transferred employees had the same supervisors at both locations. *Id*. at 1308.

Here, the move of Orlando production equipment and employees, only 12 miles, to Winter Garden, was a relocation/consolidation. However, I find substantial change in the resulting consolidation. Winter Garden manufactured open top welded steel cans and operated 4 production lines and 5 Goldco palletizers. Winter Garden employed 38 employees assembling steel 3-piece cans and performing general labor.[84] The Winter Garden employee had team-based, self-directed work system, without the usual supervision associated with manufacturing plants. The Orlando employees worked under a traditional supervisor-employee system.

Crown moved 5 of Orlando's composite can lines and 5 of its multi-die presses to Winter Garden. Orlando's composite cans consisted of a cylinder of composite material such as heavy gauge paper, with steel ends. Orlando produced the cylinder and the ends. Winter Garden's 3-piece cans were welded steel cylinders with steel ends. Before the consolidation, Winter Garden did not produce steel ends. After consolidation, Winter Garden also produced steel ends.

---

[84] The parties stipulated that prior to the Orlando plants shutdown, Winter Garden 's employees performed only metal can assembly and general plant work.

After the consolidation, Orlando's customers became Winter Garden's customers. Winter Garden had its own customers before the consolidation. Thus, Winter Garden's customer base expanded substantially.

In sum, I find that the consolidation of Orlando with Winter Garden resulted in a different operation from Orlando's. Aside from the differences in product and equipment mixes, Winter Garden's team system, that dispenses with the traditional supervision in force at Orlando, was a major difference in environment for the Orlando employees hired at Winter Garden. Accordingly, I find that the collective-bargaining agreement between the Union and Crown, covering the Orlando plant from June 28, 1992, until June 29, 1996, had no place at the Winter Garden location. *Harte & Co.*, above, 278 NLRB at 948. I further find that Crown's refusal to apply that collective-bargaining agreement at Winter Garden did not violate Section 8(a)(5) and (1) of the Act. I shall recommend dismissal of the allegation that Crown's refusal violated the Act.

Crown's further contention that it had no obligation to recognize and bargain collectively with the Union for the Winter Garden plant as demanded by the Union runs afoul of Board policy. Where it is shown that an employer refused to hire union-represented employees in violation of Section 8(a)(3) and (1) of the Act, in order to evade its bargaining obligation with their union, and the discriminatees would have provided their with union majority status in the bargaining unit, the employer is required to recognize and bargain with the union. *GSX Corp. of Missouri*, 295 NLRB 529, 531-532 (1989).

Here, on January 11, the Union's representative, Homer Wilson, in remarks to Crown's representative, Fred Veil, demanded recognition and bargaining on behalf of the employees at the Winter Garden plant. Veil refused the demand on the ground that he did not believe the Union represented a majority of the employees there. By letter dated April 22, 1996, the Union, by letter to Crown again demanded recognition and bargaining for the Winter Garden plant employees. Again, Fred Veil rejected the demand on the ground that he did not believe that the Union had majority support. However, had Crown hired 8 Orlando employees in November 1995, instead of refusing to hire them in violation of Section 8(a)(3) and (1) of the Act, there would have been 55 Union adherents out of 104 employees working at Winter Garden as of January 3, 1996, after which date Crown did not hire any more Orlando employees at Winter Garden. If Winter Garden had hired only 19 of the 45 discriminatees listed above at p. 52, by April 22, 1996, the Union's majority would have increased by that number. I find that on January 3, 1996, Crown violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union for the production and maintenance employees at its Winter Garden plant. *GSX Corp.*, above, at 532.

D. The Alleged Violations of Section 8(a) (3) and (1) of the Act at Hurlock

1. The Section 10(b) Issue

On May 21, 1999, Crown filed a motion for judgment on the General Counsel's allegations regarding the closing of Crown's Hurlock, St Louis and Shoreham plants on

the ground that they are barred by the six-month limitation in Section 10(b) of the Act.[85] The General Counsel opposed the motion.

In an order and memorandum issued on June 2, 1999, I found that, under Board policy expressed in *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988), the allegations of unlawful discrimination contained in the allegations regarding Crown's Hurlock, St. Louis and Shoreham plants were closely related to the alleged violation expressed in Hazelwood A. Woody's original charge in Case 10-CA-27288, filed on January 13, 1994. Accordingly, I found that Section 10(b) of the Act did not bar the additional allegations. I also found that the Regional Director did not abuse his discretion by revoking his letter deferring Woody's original charge to arbitration pursuant to Board policy set forth in *Collyer Insulated Wire*, 192 NLRBB 837 (1971) and in *United Technologies Corp*., 268 NLRB 557 (1984).

On August 3, 1999, the Board, by Order, denied Crown's Request for Special Permission to Appeal my order. The Board's Order also declared that Crown "may raise these issues in any exceptions that it might ultimately file."

In its post-hearing brief, Crown urges me to reconsider my rulings on these issues and dismiss the allegations regarding the Hurlock, St. Louis and Shoreham plants. Upon reconsidering my findings and conclusions, I reaffirm my rulings regarding the allegations regarding those three plants.

2. The *Spielberg* Issue

Invoking the Board's *Spielberg* doctrine,[86] Crown urges me to defer to the arbitration awards on the Union's grievances over the closing of the Hurlock and St. Louis plants. According to Crown, *Spielberg* applies here because the arbitrators addressed the same issues before me: "namely that Crown relocated the work/closed the plants to evade the Master Agreement." Neither the General Counsel, nor the Union discusses in their briefs the application of *Spielberg* here.

The Board will defer to an arbitration award when the arbitration proceedings are fair and regular, all parties agree too be bound, and the decision is not repugnant to the Act. *Spielberg*, above, 112 NLRB at 1082. A further condition for deferral is that the arbitrator must have considered the unfair labor practice issue. *Raytheon Co.*, 140 NLRB 883, 884-885 (1963). The Board will find that an arbitrator has adequately considered the unfair labor practice issue if (1) the contractual issue is factually parallel to the unfair labor practice issue and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice issue. *Olin Corp.*, 268 NLRB 573, 574 (1984). Having duly considered the matter, I find deferral appropriate here.

---

[85] Section 10(b) of the Act provides in pertinent part: "[N]o complaint shall issue based upon an unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . "

[86] See *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

Having reviewed the arbitration awards, I find that the requirements of *Spielberg*, *Raytheon* and *Olin* have been met. Neither the General Counsel nor the Union contend that the arbitration proceedings covering Hurlock and St. Louis, respectively, did not conform to the requirements of *Spielberg.* The proceedings in each instance, as reported in each award, permitted Crown and the Union to present their respective positions and support them with testimony and evidence. I find that neither of the arbitral awards is repugnant to the Act

In each instance, the arbitrator considered evidence offered by the Union to show Crown's hostility to the Master Contract in support of contentions that Crown was removing work and equipment from Hurlock and St. Louis and closing those plants, respectively, to avoid that collective-bargaining agreement. The issues raised before me in the pleadings regarding Hurlock and St. Louis are whether, with respect to each of these plants, Crown underutilized it, and closed it because of hostility toward the Union. In both the arbitrations and the proceedings before me, the issue of motive turned upon evidence of Crown's desire to get rid of the Union.

Each of the arbitrators considered Crown's economic defenses and the testimony supporting its proffered business reasons for removing work and equipment and then closing each plant. Both decided that Crown 's economic explanations had rebutted the Union's contentions that Crown was seeking to avoid the Master Agreement. Arbitrator James J. Sherman, in his opinion, stated: "[B]ased upon a careful evaluation of all the evidence, I had to conclude that the Hurlock Plant was closed for legitimate economic reasons. That is, it would have been closed whether or not it was covered by the Master Contract."

I am deferring to the arbitral awards and shall recommend dismissal of the allegations that Crown violated Section 8(a)(3) and (1) of the Act by underutilizing its Hurlock and Saint Louis plants, by transferring work and equipment from those plants and by closing them.

E. The Alleged Violations of Section 8(a)(3) and (1) of the Act at Crown's Shoreham Plant

1. The Facts

Crown acquired its Shoreham, Michigan food can production plant from Continental Can in 1990. The Union represented the Shoreham plant's production and maintenance employees under the Master Agreement effective for three years from February 22, 1993, and a concurrent local agreement with the Union's Local 6264. The Shoreham plant's complement of production and maintenance employees as of December 1990 was 70. Thereafter, that number fluctuated between a high of 82 and a low of 37.

I find from the uncontradicted testimony of Crown's Senior Vice-President of Finance, Donahue that Crown identified Shorham as one of the newly acquired plants to be shut down in 1991. However, Crown waited until September 14, 1994, to announce

the closing of the Shoreham plant on September 30 of the following year. Crown stopped production at Shoreham on September 30 and reduced its complement of hourly employees from 50 to 15. Crown laid off the last of its employees at that location at the end of December 1995.

Shoreham produced three-piece open top cans for the food industry. The coated ends Shoreham used to complete the cans came from another Crown plant. Shoreham obtained the steel bodies from another Crown plant. Thus, Shoreham was an assembly plant.[87] Crown's records and employee Krieger's testimony show that in 1993, 1994 and 1995, the Shoreham plant operated four production lines, each producing food cans. In 1992, Shoreham produced about 179 million cans. In 1993, production dropped to about 165.9 million cans and in 1994 that figure rose to about 200.4 million. Krieger attributed the increase in 1994's production to overflow from Crown's Oshkosh plant, which could not meet its demands on time.

I find from employee Shari Del Mariani's uncontradicted testimony, that after Crown took over the Shoreham plant, she saw Crown's monthly productivity figures for its Shoreham, Oshkosh and Perrysburg plants. Marian noted that Shoreham 's productivity, as a rule, was better than that of Oshkosh and Perrysburg, respectively. However, when she spoke to Shoreham's plant manager, Ronald Van Sant about Shoreham's better productivity, he answered that the other plants could afford to run less productively because their labor and benefit costs were lower than Shoreham's.

I find from the uncontradicted testimony of Production Planner William Leahy that during its operation of the Shoreham plant, Crown's management considered it to be a reliable, highly productive plant. However, Crown considered it to be extremely high in cost. In 1993, Shoreham produced a 404x700 can for $33.20 per thousand. Crown's Perrysburg plant produced the same can for $25.63 per thousand. In the same year, the overall variable line hour cost for all products at Shoreham was $418.31. The 1993 figure for the overall line hour cost for all products at Perrysburg was $246.06. In 1993, Crown's Oshkosh plant produced a 300x407 can for $10.31 per thousand. Cost per thousand for the same can at Shoreham in 1993 was $17.21. The overall variable line hour cost for all products at Oshkosh in 1993 was $199.07.

Vice President Production Planning John M. Gahan agreed with the decision to close Hurlock, but wanted to keep Shoreham open. In discussions with Michael Clay, Gahan said that Shoreham was an efficient plant. He based this assertion upon his knowledge of efficiency records. Gahan rated Shoreham higher than Perrysburg.[88] Gahan did not say anything about costs at Shoreham.

---

[87] I based my findings as to Shoreham's function in the production of three-piece steel food cans are based upon employee Andrew J. Krieger's testimony and Michael Clay's report to Crown.

[88] My findings regarding Gahan's opinion are based upon Michael Clay's uncontradicted testimony.

The General Counsel asserts in his post-hearing brief that from 1991 until 1994, both years inclusive, Shoreham's operating profits were "significantly better" than those of Crown's Oshkosh and Perrysburg plants. The plant income statements for the three plants, covering 1991 through 1994, show that each suffered an operating loss in each of the 4 years. However, of the three, Shoreham's income statements show that its losses were less severe than those of Oshkosh and Perrysburg in each of the 4 years.

I find from the uncontradicted testimony of Robert Smallwood, Crown's manufacturing comptroller for its Americas Division, that the annual plant income statements referred to by the General Counsel are not reliable records of profit or loss from operations. According to Smallwood, Crown uses the valuation of steel to show a loss, when, in fact, the plant may have enjoyed a profit for the year. Crown follows this procedure so that its competitors cannot learn how profitable its steel can business is. Smallwood's explanation convinced me that the income statements relied on by the General Counsel do not reflect the actual annual income or losses realized by the plants they covered.

As found above, in Section II B. above, during 1993, and in 1994, until he left Shoreham on November 8, Plant Manager VanSant repeatedly warned his employees that Crown's corporate management would take note of the increased number of grievances coming from Shoreham and respond by closing it down. VanSant also warned that there were too many grievances at Shoreham and if they did not stop, Crown would close the plant down. During the same period, Van Sant warned his employees against filing grievances regarding overtime because Crown would close the plant as a reprisal. In similar context he warned of "a padlock on the door." In August 1994, in the presence of a Shoreham plant employee, exclaimed: "These damned grievances are going to get this place closed."

In November or December 1994, after Crown had announced its intention to close Shoreham, Engineer Mel Geschetter approached Shoreham employee Joseph Oliver and other Shoreham employees, who were discussing the contemplated closing of their plant. Geschetter told the employees, in substance, that if they wanted the Shoreham plant to remain open, they should decertify the Union.[89] The parties stipulated, and I find, that at all times during the employees' employment at the Shoreham plant, Mel Geschetter was an agent of Crown within the meaning of Section 2(13) of the Act.[90]

Geschetter's advice implied to the listening employees that Crown was closing Shoreham and ending their employment because they and their colleagues were

---

[89] My findings regarding Geschetter's remarks are based upon the uncontradicted testimony of Joseph Oliver. Crown did not call Geschetter as a witness and did not assert that he was unavailable.

[90] Section 2(13) of the Act provides:

"In determining whether any person is acting as an 'agent' of another person so as to make such person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

supporting the Union. Clearly, Geschetter held out the prospect of reversing Crown's decision if the employees abandoned the Union. I find that Geschetter's remarks interfered with, restrained and coerced the listening employees in the exercise of their rights to join or assist the Union. I further find that by Geschetter's remarks, Crown violated Section 8(a)(1) of the Act.[91]

2. Analysis and Conclusions

The General Counsel contends that Crown violated Section 8(a)(3) and (1) of the Act by underutilizing its Shoreham, Michigan plant, transferring work from that plant to other facilities, and closing the plant to get rid of the Union. Crown urges dismissal of these allegations on the ground that it ceased operations at Shoreham, transferred work from that plant to other plants, and closed Shoreham in December 1995 only for economic reasons.

Here, again, I shall apply a *Wright Line* analysis,[92] as explained above, in Section II C. 2. b.. The General Counsel has shown that the Union's Master Agreement covered Crown's Shoreham plant. Crown's management at Atlanta Plant 68, Cheraw, and St. Louis and its corporate management, as represented by Fred Veil, and Vice-Presidents Truitt and Burgess, has repeatedly expressed hostility toward the Union and the Master Contract.

Further, by his unlawful refusals to hire Orlando employees at Winter Garden in November 1995 and February 1996, Fred Veil showed his willingness to violate Sections 8(a)(3) and (1) of the Act to eradicate support for the Union among Crown's employees.

The record also shows that Crown's management at Shoreham expressed hostility toward the Union and the employees' resort to grievances to solve their problems. The warnings of closure voiced by Shoreham's Plant Manager turned out to be prophetic. During 1993, and 1994, Plant Manager VanSant repeatedly warned his employees that Crown's corporate leaders would retaliate against the increase in grievances by shutting the plant. VanSant warned of a padlock if the employee persisted in grieving about changes in overtime rules. Crown's announcement of its planned closing of Shoreham came on September 15, 1994. After Crown announced its intent to close Shoreham, Mel Geschetter warned the employees that decertifying the Union was the only way to reverse that decision.

I find that the General Counsel has made a prima facie showing that Crown's hostility toward the Union and the Master Agreement motivated the decisions to under

---

[91] Where, as here, Geschetter's remarks have been fully litigated, and are closely connected to other coercive remarks by Crown's management violative of Section 8(a)(1) of the Act, Board policy authorizes me to find that they violated Section 8(a)(1) of the Act. *Williams Pipeline Co.*, 315 NLRB 630 (1994).

[92] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Approved in *Transportation Management Corp.*, 462 U.S. 393 (1983).

utilize the Shoreham, Michigan plant, transfer work from that plant to other Crown plants and to close it on December 29. The timing of the announcement, three months after Fred Veil joined Crown and began management of its dealings with the Union, Crown's demonstrated and expressed hostility toward the Union and the Master Agreement, and local management's warnings that the Shoreham plant employees' grievances and support for the Union would provoke Crown to close the plant add up to a strong suggestion that Shoreham's downfall was the product of anti-Union sentiment in Philadelphia.

Crown argues that Michael Clay's recommendation that Crown close Shoreham and his reasons for doing so rebut the General Counsel's prima facie showing. Clay testified that one of his reasons for recommending the closing of Shoreham was that Crown was using fifty percent of its capacity. As he gave this testimony, Clay discounted its accuracy, saying that he was speaking from memory. He added that the figure might be less than fifty percent. His report to Crown's senior officials showed that in 1994, only 34.7 percent of Shoreham's production capacity was used. Clay went on to testify that Shoreham was producing a three-piece 300 diameter can that was losing ground to a two-piece can of the same dimension produced at Crown's Owatonna, Minnesota plant, which was coming on-stream. According to Clay, Crown's switch to the two-piece can was in response to a changed market and technology.

Clay testified that Shoreham was "an expensive plant", in part because of decreasing volume of production. He asserted that excluding the Omaha plant, Shoreham had the highest cost structure of any plant in Crown's North American operations. Clay cited high fixed costs and high variable costs as the causes of Shoreham's plight.

Turning to Shoreham's function, Clay testified that "it was a can assembly plant only, so all metal had to be processed elsewhere." He also asserted that: "All the ends were made elsewhere, and for that reason it was a relatively easy plant to close." Clay saw no room for expansion at Shoreham. Clay's view was that there was no room for more production lines, but there was capacity to turn out more production.

Clay testified in substance that, as far as he knew, the only factors he and the Crown officials, who accepted his recommendation, considered were those recited in his testimony. As Clay impressed me as being a frank witness, I have credited his explanation of his reasons for recommending the closing of Shoreham.

William J. Avery, Crown's Chairman, CEO and President, Michael J. McKenna, Crown's Executive Vice-President, and President of its North American Division, and Alan W. Rutherford, Crown's Chief Financial Officer and Executive Vice-President accepted Clay's recommendation. On September 14, 1994, they signed a proposal to close the Shoreham plant. The proposal reported, inter alia, that the closing would reduce Crown work force by 9 salaried and 61 hourly employees. The proposal also reported that the cost of closing the plant would be $13,475,000. The expected annual saving attributable to the closing was $4,515,000.

The record shows that as early as 1991, a Crown financial senior vice-president considered Shoreham as a candidate for closure. In 1994, when according to Clay's credited testimony, Crown embarked upon its effort to reduce its costs through plant closures and efficiency, Shoreham came up as Clay's nominee for closure. His explanation of his reasons for recommending Shoreham's closing stand unrebutted. I heard nothing in his testimony nor in the testimony of others to suggest that he had any anti-Union sentiment while engaged either in the study of Crown's American plants or in the drafting of his report.

I find that Crown has shown, by Clay's testimony, that even if there were no union present at any time material to the decisions to stop production at Shoreham, transfer its operations elsewhere, and shut it down at the end of December 1995, Crown would have made the same decisions. I find, therefore, that Crown has successfully rebutted the General Counsel's prima facie case. I further find that the General Counsel has not shown by a preponderance of the evidence on the record that Crown's treatment of its Shoreham plant violated Section 8(a)(3) and (1) of the Act. I shall recommend dismissal of those allegations regarding this plant.

F. The Alleged Violations of Section 8(a)(3) and (1) of the Act at Crown's Cincinnati Plant[93]

1. The Facts

Crown acquired its Cincinnati 2-piece beverage can plant from Continental Can in 1990. The plant had two production lines with a total annual capacity of 950 million cans. Cincinnati employed as many as 96 plant employees as of December 31, 1992, and as few as 73 in September 1993. Usually, the Cincinnati plant employed about 85 hourly paid plant employees out of a total complement of 105 salaried and hourly paid employees. At all times material to Crown's operation of its Cincinnati plant, the Union's Master Agreement covered the plant's production and maintenance employees.[94] In 1994, the Cincinnati plant produced approximately 775 million cans.

Until 1995, Cincinnati Coca Cola annually purchased a large volume of its soda cans needs from Crown's Cincinnati plant. Crown's records and its counsel's letters show that Cincinnati Coca Cola was the Cincinnati plant's major customer in 1994 and 1995. Crown's records and its counsel's letter to a Board agent show that the Cincinnati plant sold 657,673,000 cans to Cincinnati Coca Cola in 1994. In 1995, the Cincinnati plant sold 684 million soda cans to Cincinnati Coca Cola,[95] located 14.7 miles from Crown's plant.

---

[93] The Cincinnati plant, formally known as "Crown Cincinnati Plant Number 67", is also referred to in the record as " the Sharonville plant."

[94] I based my findings regarding the history, capacity, bargaining history and employee complement of the Cincinnati plant upon Crown's records, Fred Veil's affidavit of October 2, 1997, received in evidence.

[95] Fred Veil's affidavit of October 2, 1997, shows that the Cincinnati plant supplied Cincinnati Coke with 684-million soda cans ion 1995.

Crown obtained the Cincinnati Coke business annually after submitting a bid to Coca Cola Enterprises. In November of each year, the Cincinnati plant manager would announce to his employees that Coca Cola Enterprises had accepted the bid and allocated the needs of its Cincinnati Coke plant to Crown's Cincinnati plant for the coming calendar year.[96]

Crown's Cincinnati plant had other soft drink producers as customers. Until 1993, Cincinnati's customer included G. and J. Pepsi Cola's canning plants at Winchester, Kentucky and at Franklin Furnace, Ohio. In 1993, a competitor displaced Crown as G and J's soda can supplier. Crown's records show that Coca Cola of Cleveland, Tennessee was a customer of the Cincinnati plant in 1992. Cleveland Coke was also a customer at the Cincinnati plant in 1994, when Crown began producing 202 [97] soda cans there.[98] Crown's records show that Cott Beverages was a Cincinnati plant customer for 35 million cans in 1992 and 25.4 million cans in 1993. I find from employee Lawhorn's testimony that in 1995, the Cincinnati plant began producing 202 cans for a Pepsi Cola plant at Corbin, Kentucky. I find from Lawhorn and Plant Manager Galberaith's testimony, that Kroger, in Cincinnati, was a customer of the Cincinnati plant.

From time to time, prior to June 1995, Crown would ship cans from its plants at Kankakee, Illinois, LaCrosse, Wisconsin, Lakeville, Minnesota, or Batesville, Mississippi to Cincinnati Coke to qualify those plants as backup suppliers for that customer. Crown sent cans from these plants to show that they were interchangeable and compatible with the customer's equipment. In June 1995, Crown began shipping cans from Kankakee, LaCrosse, Batesville and Lakeville when the Cincinnati plant's production was insufficient to meet Cincinnati Coca Cola's needs.[99]

Annually, the Cincinnati plant shut down for two or three weeks for an overhaul. During that break in production, Cincinnati supplied Cincinnati Coke's needs from warehoused stock, or from one of the other qualified Crown plants. In early 1994, Crown converted its Cincinnati plant from the 206 can to the 202 can. Crown invested over $16,000,000 in this project. During some of the downtime required for this conversion, the plant supplied Cincinnati Coke's needs out of its warehouse. These needs ceased while Cincinnati Coke stopped production to convert its plant to

---

[96] My findings regarding the process by which Crown obtained its supply arrangement with Cincinnati Coke are based upon the uncontradicted testimony of employee Lowell Lawhorn.

[97] "202" translates into 2 and 2/16 inches and refers to the diameter of the can's top. This can replaced the 206 (2 and 6/16 inches), whose top diameter required more aluminum than does the 202.

A financial statement issued by Crown in December 1993 shows a projected cost of over $16,000,000 to convert Crown plants at Atlanta, Batesville, Cincinnati, LaCrosse and Lakeville from 206 cans to 202 cans.

[98] My findings regarding G. and J. Pepsi, and 202 can customer Cleveland, Tennessee Coca Cola are based upon the testimony of Kenneth Galberaith and Lowell Lawhorn.

[99] My findings regarding the production of cans for Cincinnati Coke at Kankakee, LaCrosse, Batesville and Lakeville are based upon employee Lawhorn's uncontradicted testimony.

accommodate 202 cans.[100]

Crown made the 202 can conversion at Cincinnati to satisfy Cincinnati Coke, the "customer for 675 million cans a year." Cincinnati was the first of Crown's plants to convert from the 206 can to the 202 can to satisfy a customer. Crown provided technical expertise from its Alsip, Illinois technical center to make the change. The conversion was "a mess" and an "engineering nightmare." The conversion began over the 1993 Christmas holiday and continued into the spring of 1994.

The Cincinnati plant's 202 can production increased very slowly, with considerable spoilage of cans. By September, the Cincinnati plant achieved 90 to 95 per cent of its capacity. The Cincinnati plant worked through the project, with many engineering changes and "a lot of hard work on everybody's part."[101]

In his affidavit of October 2, 1997, Veil stated: "The Cincinnati plant's major customer in 1995 was Coke Cincinnati (actually Coca Cola Enterprises ('CCE')), accounting for 684 million cans. This business was lost when the plant closed. Coke Cincinnati is currently supplied by ANC." However, at the hearing before me, in Cincinnati, on September 7, 1999, a stipulation that I accepted provided a different account of how Crown "lost" Cincinnati Coke's business. The stipulation recited on the record states: "Respondent did not seek to obtain or retain any of the Cincinnati Coke business, previously serviced by the Crown Cincinnati Plant Number 67, for the period after the closure of that plant in December 1995."

On September 19, Fred Veil called the Union's Vice President, Leon Lynch, and advised him that Crown was considering the closure of its Atlanta and Cincinnati plants. After describing the economic conditions at the Cincinnati plant, Veil said that high operating costs and the small size of the plant were the factors causing Crown to consider that plant for closure. Veil said the decision would be made by October 1. On September 29, Crown publicly announced its decision to close or restructure certain of its plants, including Cincinnati.

Fred Veil sent a WARN notice to the Union on October 9, announcing that Crown would cease manufacturing operations at the Cincinnati plant on December 8, and close it by December 15. Veil's affidavit shows that the Cincinnati plant ceased production on or about December 15. I also find from Veil's affidavit, that Crown moved the Cincinnati plant's equipment out by March or April 1996 and thereafter sold the building. In his affidavit, Veil asserted that he "was directly involved in matters relating to the shutdown of the [Cincinnati plant]. . . ."

---

[100] My findings of fact about qualification of Crown plants as suppliers for Cincinnati Coke, and the supplying of those needs during the conversions to the 202 cans are based upon Galberaith and Lawhorn's testimony.

[101] My findings regarding the 202 conversion are based upon Plant Manager Galberaith's uncontradicted testimony. Galberaith was Plant Manager at Cincinnati from September 1989 until April 1996

Crown's records show that on October 13, its Chief Financial Officer Rutherford, and CEO and Chairman Avery approved the proposal to close the Cincinnati plant. According to the proposal, the net cost of closing Cincinnati would be $21,562,000 and the annual cost reduction resulting from the closing would be $8,128,000. The proposal announced that the employee reduction due to the closing would be 87 hourly employees and 18 salaried employees.

2. Analysis and Conclusions

The General Counsel contends that Crown underutilized its Cincinnati plant, transferred work from that plant, and closed it, because the employees at that plant supported the Union and because the Union represented them for purposes of collective bargaining. Crown seeks dismissal of these allegations on the ground that the record shows that economic reasons, not hostility toward the Union, motivated the decision to close Cincinnati. I find merit in the General Counsel's position.

The teachings of *Wright Line*[102] apply here. The testimony of Vice-President Patrick Szmyt, who recommended the closure of Crown's Cincinnati plant, shows that in August 1995 he presented his recommendations at a decisional meeting including CEO Avery, Executive Vice-President McKenna, CFO Rutherford, Michael Clay, and Corporate Director of Labor Relations Fred Veil. The record does not include any minutes or notes of this meeting. Those of the participants who testified, McKenna, Rutherford, Clay, Szmyt and Veil did not shed light on who said what, or on the reasons the decision makers gave for closing the Cincinnati plant. That Fred Veil was there raises the possibility that the Union and its Master Agreement at Cincinnati entered into the discussion.

As discussed above in the section of this decision dealing with the closing of the Orlando plant, in 1994, soon after his arrival at Crown, Fred Veil showed an aversion to dealing with the Union. He rebuffed the Union's attempt to effectuate the partnership supplement to the Master Agreement. When pressed by the Union's Vice-President Leon Lynch, Veil rejected the partnership saying that Crown had no need for the partnership approach. He added that Crown had its own method and processes for dealing with problems.

By August 1995, Fred Veil had shown Crown's hostility toward the Union. He had already launched a screening program at Winter Garden designed to limit the flow of Orlando's Union supporters to the non-union Winter Garden plant. By July 20, Veil's program had disqualified 10 Orlando bargaining unit employees for employment at Winter Garden. Under Veil's program, Crown refused to hire a total of 45 Orlando employees at Winter Garden, all in violation of Section 8(a)(3) and (1) of the Act.

In his haste to punish the Union for refusing Crown's proposed effects agreement, Veil vented his hostility on Orlando employees by refusing to hire 8 of them in

---

proved in *Transportation Management* [102]proved in *Transportation Management Corp.*, 462 U.S. 393 (1983).

November 1995 and another 21 in February 1996. Veil's treatment of the Union and Crown's Union-represented employees continued with the tacit approval of his superiors, Executive-Vice President McKenna, and Vice-President Human Resources Burgess.

The timing of Crown's decision to close Cincinnati suggests that it was part of an effort to get rid of the Union and its Master Agreement. Crown announced its decision regarding Cincinnati on September 29. On the same date, Crown announced the closing of its Atlanta 68 plant. Fred Veil sent the WARN notice for Atlanta 68 to the Union on October 3. He mailed a similar notice to the Union on behalf of the Cincinnati plant on October 9. The Union's Master Agreement covered both plants.

I find from the foregoing that the General Counsel has made a prima facie showing that Crown shut down its Cincinnati plant to rid itself of the Union and the Master Agreement. To avoid a finding that its treatment of the Cincinnati plant and its employees was unlawful, Crown seeks to rebut the General Counsel's evidence by showing that economic reasons motivated the decision to close Cincinnati.

In his affidavit of October 2, 1997, provided to the Board's agent in Region 9, Fred Veil asserted: "Crown closed the Cincinnati plant because it did not need the production from that plant to meet its then current and projected sales requirements." He then goes on to state:

> The plant had less capacity than the other mid-western plants and had the highest manufacturing costs of Crown's two-piece beverage can plants. The Company lost money on every can that it produced at Cincinnati. The decision to close the Cincinnati plant was clearly economically, not union, motivated.

When asked why he recommended the closing of Cincinnati, Patrick Szmyt testified as follows, at the hearing before me on May 6, 1999:

> Cincinnati . . .was a very high cost plant that was not very profitable. The business in Cincinnati could be serviced either from Batesville, a very low cost plant, and/or Kankakee, another low cost plant.

Veil and Szmyt agreed that Crown did not need Cincinnati's production. However, to support that opinion, Crown had to abandon its 684 million-can business with CCE's Cincinnati Coke. Veil's affidavit does not disclose the abandonment. Veil, under oath, declared that Crown "lost the business when the plant closed."

The fact is that Crown abandoned the Cincinnati Coke business well before the closing of the Cincinnati plant on or about December 15. CCE usually made its award to Crown in time for the Cincinnati plant manager to announce it to his employees in November. In any event, Crown made no effort to win that business for Batesville, Kankakee, Lakeville, LaCrosse or any other of its plants. This circumstance strongly suggests that Szmyt's opinion of Batesville and Kankakee's as plants capable of filling Cincinnati's shoes was not shared by the decision makers at Philadelphia.

At another point in his affidavit, Veil asserts that when the decision to close Cincinnati was made in September 1995, "Crown did not know whether it would be supplying the CCE facility in Cincinnati in 1996 or thereafter." Apparently, Crown abandoned the Cincinnati Coke business because Crown Cincinnati was the only Crown plant that could accommodate it. Crown was determined to close that plant even if it meant opening the door for one of its competitors.

Crown's records further belie Veil and Szmyt's assertions that the Cincinnati plant was not needed. The minutes of a production-planning meeting attended by 8 Crown executives, including Vice-President John Gahan, on January 24, 1996, show an expected shortfall in North American production of 700 million cans in the calendar year 1996. Had Cincinnati been in production, its 950 million-can capacity or some of it, would have been available to avoid the shortfall.

According to Veil's affidavit, "The Company [Crown] lost money on every can it produced at Cincinnati." Szmyt's testimony did not agree with Veil on this point. Szmyt did not claim a loss on each can. Instead, he testified that Cincinnati was "a very high cost plant that was not very profitable." This difference in the two explanations suggests that Veil wanted to strengthen what he perceived to be an inadequate excuse.

Veil did not provide any financial data to support his claim. Szmyt did not present the financial data he assertedly used to support his recommendation that Crown close its Cincinnati plant. He testified that he drew up a spreadsheet showing plants, costs and the savings to be realized by closings. However, he did not have it with him when he testified. Nor did Crown present it as evidence of its motive. Instead, Szmyt testified referring to extensive data showing plant income statements, and closing costs and savings for Cincinnati and other plants. He examined these records and testified that in preparing his spreadsheet, he referred to them.

Szmyt did not identify the specific data he used on his spreadsheet. He did not show how he derived his determination that Cincinnati made little profit. Nor did Szmyt explain away the uncontradicted testimony of Robert Smallwood, Crown's Manufacturing Comptroller for its Americas Division, that the annual plant income statements referred to by Szmyt in drafting his spreadsheet are not reliable records of profit or loss from operations. The disagreement between Veil and Szmyt and the absences of Szmyt's spread sheet and financial data to back up his claim of low profit and Veil's claim of loss on each can produced at Cincinnati seriously weaken Crown's already damaged defense.

I find from employee Lawhorn's uncontradicted testimony that Plant Manager Galberaith, while at Cincinnati, repeatedly warned that the plant was under pressure to keep costs down and that the Master Agreement made it difficult to do so. Lawhorn's testimony shows that Robert Hipke, a Crown Human Resources manager, also complained that the Master Agreement was too costly.

Assuming that the Cincinnati plant's labor and fringe benefit costs were high and that its 950 million-can capacity needed improvement, there was no showing in the record that Crown's Szmyt or any other member of management visited the plant and

studied these problems before September 1995. Crown lavished a little over $16,000,000 on the 202- can problem and other millions on closing Cincinnati. Crown's brief admits that about $3,000,000 was spent on converting Cincinnati to the 202 can. Considering the amounts ultimately wasted on conversion and closing at Cincinnati, the importance of that plant in Crown's business warranted an inquiry into the possibility of saving it. Unlike Clay, Szmyt never left Philadelphia to look Cincinnati over to see if, like non-union Winter Garden, some expansion or improvement would improve efficiency.

Instead, Crown hastened to close Cincinnati. In its haste, Crown abandoned a major customer and deprived itself of needed productive capacity. These circumstances, which Crown tried to hide, and the failure to see if Cincinnati's high costs could be remedied, persuade me that its proffered excuses for closing it are pretext. Accordingly, I find that by underutilizing the Cincinnati plant and closing it, I find that Crown has violated Section 8(a)(3) and (1) of the Act. *Vico Products Co.*, 336 NLRB No. 45, (Board slip op. p. 9) (September 30, 2001), enfd 333 F.3rd 198 (DC Cir. June 27, 2003).

G. The Alleged Violations of Section 8(a)(3) and (1) of the Act at Crown's Atlanta Plant 68

1. The Facts

Crown acquired its Atlanta Plant 68 from Continental Can in 1990. In 1990 and thereafter, until Crown closed Plant 68 in 1995, the Union represented Plant 68's production and maintenance employees under the Master Agreement. Atlanta 68 produced aluminum beverage cans, usually employing 80 hourly employees and 17 salaried employees. According to Patrick Szmyt, Atlanta 68's capacity was 800 million cans. However, a letter from Senior Vice President Manufacturing U.S.A. Robert J. Truitt shows that in October 1994, Atlanta set a record by producing 94.8 million cans.

In a Crown Newsletter, Plant Manager, Jerry Ackerman announced that for the year ending December 18, 1994, Atlanta 68 had produced 1 billion and 32 million beverage cans, a company-wide record for plants using basically the same layout and equipment installed in 1978.

For the most part, Atlanta 68's customers produced soft drinks. In 1994, Cott Beverages was one of Atlanta 68's largest customers. In mid-1994, Plant Manager Ackerman posted, at the plant, the following letter addressed to the employees at Plant 68:

> I started in your plant five months ago. Time goes by very quickly when you enjoy what you are doing. I have never worked with a more skilled and dedicated group of employees. Since May our plant has continued to set new quality and production records.
>
> We had a visit from one of our biggest customers, Cott Beverages. They told me how much they were impressed with our plant. In addition, Coke, United Beverage conveyed to me on my visit to their filling location in July how

> impressed they are with our quality and service.
>
> I personally want to thank each of you for your contribution to the continuing success of our plant. And I also want each of you to know how proud I am to work with you at Atlanta #68.

In a memorandum dated March 21, to the Plant 68 employees, Production Manager Lundin remarked "We have plenty of business and we all need to do our best to return to 3 million per day."

The flow of work at Atlanta 68 was not always sufficient to require 80 production and maintenance employees. On September 26, 1993, Crown imposed its first layoff at Atlanta 68. On that day and until 6:00 a.m. January 3, 1994, Crown laid off 18 bargaining unit employees at Atlanta 68. One week later, Crown laid off 16 more bargaining unit employees at Atlanta 68. They returned to work on January 3, 1994.

Plant 68 normally operated on a continuous 7-day, 24-hour schedule. Bargaining unit employees worked 12-hour shifts. During the layoff, Crown operated Atlanta 68 utilizing two 8 and ½ hour shifts of production and 7 hours of maintenance work daily, 5 days per week. Under the continuous shift, the plant normally continued operations 7 days per week, 24 hours per day, with no shut-down. During the layoff, the plant shut down at the end of the workday and for two days over each weekend. The shutdown and start-up procedures detracted from the plant's efficiency.[103]

As found above in Section IIB, sometime in January 1994, employee William A. Story, an employee at Atlanta Plant 68 approached Manager Keith Ipok, a supervisor, and asked him about the need for the layoff Crown had imposed on the plant in the autumn of 1993. Ipok answered that the layoff was a message to the Union because the employees had been writing "a lot of grievances."

At the start of the 1993 layoff, the remaining Atlanta 68 plant employees worked regular shifts with no overtime. However, after the first two weeks, employee William A. Story, a bargaining unit employee, began working 7 days per week and 12 hours per day. I also find from bargaining unit employee Michael Thomas's uncontradicted testimony that the Atlanta 68 plant had overtime during the 1993 layoff.

In December 1993, employee Michael Thomas approached Supervisor Cecil Weaver and asked him why there was a layoff and why there was overtime. Weaver answered that he did not know why there was a layoff because management had known before laying employees off and reducing operations that Atlanta 68 had 65 million cans to run for the Cincinnati plant plus production its own customers.[104]

---

[103] My findings regarding the 1993 layoff are based upon Crown's records and the uncontradicted testimony of employees Glennell Albright and William Story.

[104] My findings regarding Thomas's encounter with Supervisor Weaver are based upon Thomas's undenied testimony. Weaver did not testify in these proceedings.

Credited testimony shows that during the 1993 layoff, Crown sent Atlanta 68's usual work elsewhere. Employee Hazelwood A. Woody spoke to Supervisor Weaver twice in January 1994 about the 1993 layoff at Atlanta 68. On both occasions, Weaver said Crown had sent Atlanta 68 work to other Crown plants. Weaver also said on both occasions that there had been no need for a layoff.[105] I find from employee Glennell Albright's undenied testimony that Crown sent one of Atlanta 68's customer's business to Atlanta Plant 28 and the business of another Atlanta 68 customer to the Cincinnati plant. Rusty Fulbright, who managed Atlanta 68 during the 1993 layoff, admitted in his testimony before me, that during the 1993 layoff, Crown sent some of Atlanta 68's Huntsville Coca Cola work to Crown's Batesville, Mississippi plant, and some of 68's Johnston Coca Cola work to Crown's Cheraw, South Carolina plant.

At a grievance meeting in May 1994, employee Woody, in the presence of other Atlanta 68 employees, discussed the 1993 layoff at Atlanta with Crown's Area Industrial Relations Manager for the Southeast, June F. Antrim. Antrim asserted that Crown had the right to send business to whichever plant it chose. Woody asked if she meant that Crown could lay the Atlanta 68 employees off and send their work to somewhere else, "and that was alright?" Antrim answered that it was all right for Crown to treat the work that way and that it was a good business decision.[106]

Employee Glennell Albright began hearing from Atlanta Plant 68 supervisors about switching from 206 beverage cans to 202 beverage cans in about 1992. In 1992 or 1993, Albright, along with other shift employees, attended a meeting in the employees' break room at the plant. Plant Manager Rusty Fulbright and Robert Kelly, North American Director of 2-Piece Can Manufacturing, presided at this meeting.

Plant Manager Fulbright told the employees that Atlanta 68 would be the first plant to convert to the 202 can. He said the Atlanta 68 would be first because it had an outstanding track record of working the kinks out of new machinery and because it turned out top quality cans. Fulbright added further praise, saying that the employees at Atlanta 68 tended to work together like a family.

Director Kelly added his praise to Fulbright's remarks. Kelly said that Atlanta 68's quality was superior to that of other plants. He also praised his listeners' tendency to work together as a family and make things work.[107]

Crown's records show that in 1993, its senior management included Atlanta Plant 68 as one of 5 plants scheduled to convert from 206 cans to 202 cans. The others were Cincinnati, Batesville, La Crosse, and Lakeville. The projected total cost of the project was almost $16.5 million. In late October 1993, Crown's Director of 2 Piece

---

[105] My findings regarding Woody's encounters with Supervisor Weaver are based upon Woody's uncontradicted testimony.

[106] My findings regarding employee Woody's encounter with June F. Antrim are based upon Woody's uncontradicted testimony.

[107] My findings regarding the meeting at Atlanta Plant 68, at which Fulbright and Kelly spoke to Albright and the shift employees are based upon Albright's uncontradicted testimony.

Engineering, Joseph Bauder advised his superiors that the cost of conversion at Atlanta 68, among other plants mentioned in his inter-office memo, would be $3,897,000. His memo contemplated delivery of equipment at these plants from January through May 1994. On July 11, 1994, CEO Avery approved the expenditure of $4,000,000 for the 202 conversion at Atlanta 68. In August 1994, that amount increased to $4,400,000.

Jerry Ackerman, who was Plant Manager at Atlanta 68 from March 5,1994, credibly testified about the conversion process. I find from his testimony that the conversion required the installation of a succession of necker on a production line. As the can proceeds from one necker to the next, its neck is compressed until it meets the 2 2/16 inch specification. The smaller end requires less aluminum than the 2 6/16 inch neck.

I also find from Ackerman's testimony that the neckers are expensive machines. Each turret costs about $100,000. The cost per line was about $1.1 million. The conversion at Atlanta 68 involved its two lines. The process incurred other costs for labor and installation. I also find from Ackerman's testimony, that the 202 conversion was customer driven. When Ackerman became manager of Atlanta 68, there was enough business to keep its two lines running.

In a memo to the management of Atlanta 68, dated September 28, 1994, Ackerman stated that the plant had "made significant progress the last five months in our average daily output." He also announced that Atlanta 68 would be changing to 202 in February 1995. He praised the plant's performance, asserting that it could "out perform any plant of our size."

I find from Ackerman's testimony that the actual conversion at Atlanta 68 began with the arrival of some equipment and its installation, all in 1995. During the installation process, Atlanta 68 continued to manufacture 206 cans. I also find from Ackerman's testimony and his affidavit, referred to in his testimony before me, that by the time Crown made its decision in late 1995 to close Atlanta 68, the conversion there was 92% complete. I also find from Ackerman's testimony, 8 hours of work, installing the tooling, would have completed the installation.

The first of three postponements of Atlanta 68's 202 conversion occurred in 1993. Cincinnati replaced Atlanta 68 as the first plant to convert. The non-union Batesville, Mississippi plant also converted in 1993. Supervisor Cecil Weaver told employee Albright that Atlanta 68 could not convert at this juncture because it had to take care of Batesville's and Cheraw's customers while those plants were converting from 206 to 202 cans. Supervisor Billy Heard assured Albright that the conversion of Atlanta would begin as soon Batesville and Cheraw came back on line.

The next postponement of Atlanta 68's conversion occurred in April or May 1994. Supervisor Cecil Weaver told Albright that Atlanta 68 could not convert yet due to its heavy South American business. At that point, Atlanta 68 was producing 206 cans for export to South America.

The last postponement occurred in the first half of 1995. Supervisor Weaver told Albright that the plant would be converting as soon as the necessary tooling arrived.

Production Manager Tom Lundin echoed Weaver's assertion. Lundin told Albright that as soon as the tooling arrived, Atlanta 68 would be up and running.[108]

While Atlanta 68 was waiting for the 202 conversion, member of Crown's management occasionally remarked about the importance of that can to the plant's economic well-being. In 1994, Supervisor Weaver repeatedly assured Albright that once they were making 202 cans, there would be an abundance of overtime. Weaver predicted that Atlanta 68 would get its old customers back and obtain new ones.

In 1994, a representative of former Atlanta 68 customer Buffalo Rock Pepsi Cola telephoned Supervisor Weaver's office. I find from Plant Manager Fulbright's testimony that Atlanta 68 lost Big Rock as a customer in the early 1990's.[109] Weaver spoke to the Buffalo Rock representative, a production manager. After the conversation ended, Weaver announced to Albright that Buffalo Rock would be back as soon as Atlanta 68 converted. During 1994, Weaver also said that with the conversion, Atlanta Coca-Cola, and other former customers, would return. In the latter half of 1994, Bob Kelly, who had risen in Crown's ranks to be a vice-president, said that, if Atlanta 68 did not soon convert to 202 cans, it would not have any customers left.

In 1995, Supervisors Weaver and Heard, became troubled by the postponements of Atlanta 68's conversion to 202 beverage cans. Weaver told Atlanta 68 employees Albright and Phyllis Clemons, in July or August 1995, that the plant would convert if the employees stopped writing so many grievances.[110] On other occasions, after the third postponement, Albright heard Weaver remark that Atlanta 68 was a good plant, and that if it could convert to 202, it would probably have more business than it could handle. He also expressed dismay at the postponement. Supervisor Heard told employee Albright that if Atlanta 68 did not convert, Crown would close it down because the plant did not have any customers.

A customer's driver came to pick up a load and asked Supervisor Heard when Atlanta 68 would convert, adding that the customer, United, was only waiting for Atlanta 68 to do so, and it would follow. Heard told the driver that the driver's guess was as good as Heard's. Albright heard this exchange. After the driver departed, she asked Heard for an explanation of his response to the driver. Heard replied, "Be real. If they can get tooling for Batesville, why can't they get tooling for us?"[111]

In August or September 1995, in the presence of Atlanta 68 employees Albright and Clemons, employee Willy Williams, spoke to Supervisor Keith Toff about the 202 can conversion. Specifically, as found above in Section IIB, Williams asked Toff when

---

[108] My findings regarding the postponements of Atlanta 68's conversion to 202 cans are based upon employee Albright's uncontradicted testimony.

[109] Fulbright managed Crown's Atlanta 68 from 1990 until March 1994.

[110] I have discussed this unlawful remark and credited Albright's account of Weaver's remarks above in Section IIB of this decision.

[111] In Section IIB, above, of this decision, I have discussed Supervisor Heard's unlawful remarks to Albright and have credited her testimony about them.

Atlanta 68 would convert to 202 cans. Toff replied: "We will convert to 202 when you all stop being Steel Workers."

Atlanta 68's business suffered because of its customers' decisions regarding the conversion. Its largest customer, Big Springs Coca Cola, also referred to in the record as "Huntsville," was reluctant to convert its production line to 202 cans, as it could not afford the expense. Crown kept Atlanta 68 producing 206 cans to satisfy Big Springs' needs. [112] The parties stipulated and I find, that after December 1994, Crown lost Atlanta 68's large customer, Johnston Coca Cola of Cleveland, Tennessee after Johnston converted to 202. I find from the testimony of Regional Sales Manager Dennis Anderson that Big Springs converted to 202 cans in December 1995 or January 1996. Crown transferred Johnston Coca Cola to the Batesville plant, when the latter had switched to 202 cans. In remarks overheard by employee Wayne Camp, Plant Manager Ackerman asserted that some of Atlanta 68's customers were being transferred to Batesville to help Batesville.[113]

When Ackerman arrived at Atlanta 68 in March 1994, it had lost most of its large customers and depended upon overflow work from Cheraw, Batesville, and other Crown plants. In March 1994, Atlanta 68's major accounts were Chattanooga Coca Cola, United Beverage and Huntsville. By August 7,1995, when Crown transferred Plant Manager Ackerman to Atlanta Plant 28, Atlanta 68 had lost its core business.[114]

In his affidavit, Ackerman asserted that the cost per can increases with the loss of a secure customer volume. I find from his testimony that Crown's corporate office in Philadelphia assigns customers to its plants. I also find from Ackerman's testimony that Crown's Sales officials decide which plant will service a customer. Each Crown plant has an assigned customer base.

On May 17, Ackerman issued a memo to Atlanta 68's employees announcing a reduction from continuous operations to a conventional schedule of two 8-hour shifts and one 7-hour shift, daily, 5 days per week, effective May 22. On the same day, Production Manager Lundin announced the layoffs of the following 14 hourly employees, effective May 22: James Ricker, Chris Dickinson, Rickey Morris, Jerry Stallings, Stanley Williams, David Beaudet, Keith Liles, Milton Minter, Mike McWhorter, Joyce Hipps, Joe Tripp, Bobby Knight, Roy Hohenstern, James Horne.

In a memo to Atlanta 68's employees, dated May 16, and in his testimony, Ackerman attributed the reduction in hours to a slow-down in business and a high inventory of cans.

---

[112] My findings regarding Big Springs refusal to change to 202 cans are based upon Plant Manager Ackerman's uncontradicted testimony.

[113] My findings regarding Ackerman's remarks about a transfer of customers to Batesville are based upon employee Camp's uncontradicted testimony.

[114] My findings regarding the impact of 202 conversions on Atlanta 68 are based upon Employee Albright and Plant Manager Ackerman's testimony.

On August 3, Production Manager Lundin announced the return to continuous operations effective August 7 and the return to work of all employees. In the same memo, Lundin ordered all employees, except those on vacation, to work on Saturday, August 5. The plant returned to convention shifts and 5-day workweeks on September 4.

Acting Plant Manager Lundin, in a memo, dated September 18, to Atlanta 68 employees, announced that due to an abundance of 206 cans, there would be no production at the plant on Friday, September 22. In the same memo, Lundin reported that new tooling for the 202 conversion "should arrive in 4 to 5 weeks" and that when it arrived, only 2 or 3 days would be required to complete the conversion.

Lundin's prediction about the 202 conversion did not come true. For, as reported earlier, in my recitation of the facts regarding the closing of the Cincinnati plant, Fred Veil telephoned Union Vice-President Leon Lynch on September 19, to advise that Crown was considering the closure of that plant and Atlanta 68. Ten days later, Crown included Atlanta 68 in a public announcement of plant closings.

In a WARN notice to the Union, dated October 3, Fred Veil, on Crown's behalf, announced the schedule for shutting down Atlanta 68. The process would begin on October 5. Soon after the WARN notice Crown's Manager of Industrial Relations James Deaver told Atlanta Plant 68 employees Camp and Thomas, in substance, that Crown could manipulate their plant's costs and statistics to say what it wanted.[115]

Then WARN notice stated that Crown expected the shutdown to be completed and all Atlanta 68 employees separated by December 15. Crown terminated most of the Atlanta 68 hourly employees on December 3. A small number of employees remained working at Atlanta 68 until the last week in December. During that time, they cleaned floors, dismantled and cleaned machinery and readied it for shipment.

2. Analysis and Conclusions

The amended complaint alleges that Crown violated Section 8(a)(3) and (1) of the Act by changing the hours of work of its hourly employees at Atlanta Plant 68 in 1995, by laying off employees in 1993 and 1995, by underutilizing Atlanta Plant 68, transferring work from Plant 68 and closing Plant 68 in 1995, all because the employees of that plant supported the Union and the Master Agreement. Crown seeks dismissal of these allegations on the ground that it has rebutted the General Counsel's attempt to show unlawful motivation. According to Crown, the record shows that its treatment of Atlanta 68 was motivated only by economic considerations. I find that Crown has failed to rebut the General Counsel's prima facie showing that hostility toward the Union and the Master Agreement motivated Crown in its treatment of the employees at Atlanta

[115] My findings regarding Deaver's remark about costs and statistics are based upon the two employees' uncontradicted testimony.

Plant 68.[116]

Atlanta Plant 68 suffered from the same malady that afflicted Crown's Cincinnati plant. The Union represented the hourly employees at Atlanta Plant 68 under the Master Agreement. There was another problem with Atlanta 68, grievances. In Section IIB, above, I have found repeated violations of Section 8(a)(1) of the Act, in 1993 and 1994, in which supervisors warned Atlanta 68 bargaining unit employees that their grievances would provoke Crown into closing their plant. Supervisor Weaver warned Atlanta 68 employee Thomas, a shop steward, of economic reprisal for supporting grievances under the Union's contract. In 1995, after Veil sent the Atlanta 68 WARN notice to the Union, Supervisor Weaver told employee McNulty that Crown was closing the plant because of the Union and the union activity of former Local President Joyce Hipps, an employee at Plant 68.

Atlanta 68 supervisors also warned the hourly employees that their support for the Union and their grievances endangered the conversion to 202 cans. Supervisor Heard repeatedly warned that grievances would provoke Crown into withholding the 202 conversion from Atlanta 68. Vice-President Bob Kelly, Supervisor Heard, Plant Managers Fulbright and Ackerman, and Crown's Corporate Manager of Industrial Relations James Deaver all warned Atlanta 68 employees that Crown would shut their plant down because of their grievances. Supervisor Keith Toff reflected Crown's unlawful motive when he told Atlanta 68 employees that the conversion of their plant to 202 cans would happen when they abandoned the Union.

The repeated postponements of the 202 conversion at Atlanta Plant 68 and the transfer of its work to non-union plants Cheraw and Batesville were the work of Crown's senior management in Philadelphia. Vice-President Kelly's superiors governed the disposition of manufacturing equipment. Production planners under Vice-President Gahan distributed 202 can business to Crown plants equipped to produce those cans, beginning in 1994. At that point, Atlanta 68's fortunes began to worsen. Its customers switched to 202 cans. Production planners transferred those customers to Batesville, first, and later to Cheraw also. Ultimately, Atlanta 68, the celebrated billion-can producer, was left with the South American business, which would soon go entirely to Crown's two new plants on that continent.

Atlanta Plant 68's local management and Vice-President Kelly recognized that conversion to the 202 can was vital to its continued life. Acting Manager Lundin's September 18 memo to his employees reflected his view that conversion to the 202 can would revive Atlanta Plant 68. However, by that date, CEO Avery, Executive Vice-President McKenna and CFO Rutherford, with advice from Fred Veil, had decided to close Atlanta Plant 68.

---

[116] Here, again, I am guided by the doctrine in *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S.989 (1982). Approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

The unlawful closing of its Cincinnati plant, as detailed above, demonstrated Crown's willingness to abandon a major customer in its zeal to get rid of a Union represented plant covered by the Master Agreement. Fred Veil was closely involved with Crown's scheme for accomplishing those objectives. Veil's unlawful treatment of the Union and Crown's Union-represented employees at Winter Garden continued at Cincinnati with the tacit approval of his superiors, Executive-Vice President McKenna, and Vice-President Human Resources Burgess. Crown decided Atlanta 68's fate at the same time it dealt with Cincinnati [117] and with Fred Veil present.

In his affidavit, referred to above in connection with the closing of Cincinnati, Fred Veil admitted that he "was directly involved in matters relating to the shutdown of the Crown Cork & Seal ('CC&S') plant in Cincinnati, Ohio, which ceased production on or about December 15, 1995." Crown's concurrent disposition of Atlanta 68 and Cincinnati and Veil's presence at the August 1995 meeting, when he sat with Rutherford, McKenna and Avery, lead me to find that Veil was also directly involved in matters relating to the shutdown of Crown's Atlanta Plant 68.

The timing of Crown's decision to close both Atlanta and Cincinnati and the concurrence of the implementation of those decisions suggest that Crown's senior management saw them as components of a coordinated effort to get rid of the Union and its Master Agreement. Crown announced its decision regarding Cincinnati on September 29. On the same date, Crown announced the closing of its Atlanta 68 plant. Fred Veil sent the WARN notice for Atlanta 68 to the Union on October 3. He mailed a similar notice to the Union on behalf of the Cincinnati plant on October 9.

The Union's Master Agreement covered both plants. By the end of December 1995, Crown had erased two Union plants and their contracts. From my assessment of the foregoing evidence, I find that the General Counsel has shown that a factor in Crown's decisions to change the hours of work of its hourly employees at Atlanta Plant 68 in 1995, to lay off employees in 1993 and 1995, to underutilize Atlanta Plant 68, transfer work from Plant 68 and to close that plant was its hostility toward the Union and the Plant 68 employees, who supported the Union.

When asked why he recommended the closing of Atlanta Plant 68, Patrick Szmyt testified as follows, at the hearing before me on May 6, 1999: "Well, the Atlanta plant, the geographic area, southeastern US, had three plants, and not enough sales to cover the three plants." When asked to identify the three plants, he answered: "Atlanta 68, and Atlanta 28, and Cheraw, South Carolina." He went on to compare the size of each plant. Szmyt asserted that Cheraw had 4 lines and could produce 1.8 to 1.9 million beverage cans, that Atlanta 28 had capacity to produce 1.2 to 1.3 beverage cans and that Atlanta 68 could produce 800 million cans.

---

[117] Crown's Puerto Rico plant was originally included with Atlanta and Cincinnati on Patrick Szmyt's list of plants recommended for closure. However, I find from Szmyt's testimony that after the August meeting, Crown's senior management removed San Juan from the list and kept it operating. The list included a Canadian plant, which, by stipulation, is irrelevant to the issues raised in these cases.

Szmyt went on to explain that Atlanta 68 had a very limited market over the past 12 months, South America. Crown was building a plant at Buenos Aires, Argentina, and another near Sao Paulo, Brazil. Atlanta 68 was shipping beverage cans into Argentina and Brazil. As soon as the two new plants came on stream, Atlanta 68's market in those countries would dry up. Szmyt did not concern himself with the withholding of 202 conversion at Atlanta.

Another factor in Szmyt's presentation before me was that Cheraw and Atlanta 28 had "quick-change ability." According to Szmyt's testimony, both plants were built for short runs and multiple changeovers. I find from Szmyt's testimony that this capability enabled Cheraw and Atlanta 28 to print Pepsi Cola 's name and other information on beverage cans to fill the needs of a Pepsi Cola producer and then quickly switch to printing cans for a Coca Cola producing customer. He pointed out that Atlanta 28 serviced Cott Beverages and contract fillers requiring short runs, which meant multiple decorations. Szmyt contrasted Cheraw and Atlanta 28's short runs with Atlanta 68's long runs for its Coca Cola customers. He attributed Cheraw and Atlanta 28's speedy changes to decorators manufactured by Crown in the '70's and '80's.

Szmyt's summed up his reasons for recommending the closure of Atlanta 68 to include the income statements, the cost per thousand, the projected sales and the actual sales for the geographic region.

Crown's brief (at page 85) asserts that Szmyt chose Atlanta 68 rather than Atlanta 28 for closure because they were in the same city, serving the same geographic area and "given the production capabilities of both plants, and the cost structures of the remaining Crown short run production business in the Southeast." The brief does not mention Cheraw, income statements or the costs per thousand. These inconsistencies suggest that Szmyt and Crown's counsel cannot agree on why he recommended the closure of Atlanta Plant 68.

Szmyt testified that plant income statements, cost per thousand, projected sales and actual sales for the geographic region were his reasons for recommending closure of Atlanta 68. He did not flesh out his testimony by pointing out the data he relied on to support his reasons. Here, as in his treatment of Cincinnati, Szmyt asserted that he relied upon plant income statements. Again, Szmyt did not explain away the uncontradicted testimony of Robert Smallwood, Crown's Manufacturing Comptroller for its Americas Division, that the annual plant income statements referred to by Szmyt are not reliable records of profit or loss from operations. Szmyt's testimony did not included specification of the cost per thousand figures he relied on. Nor did he present the sales figures he considered. The spreadsheet he used to support his recommendation is not in evidence.

As was true with respect to the decision to close Cincinnati. In August 1995, Szmyt did not make the decision. Instead, he presented his recommendation to close Atlanta, at a meeting attended by CEO Avery, Executive Vice-President McKenna, CFO Rutherford, Michael Clay, and Corporate Director of Labor Relations Fred Veil. The record does not include any notes, minutes, or recollections of the discourse at this

meeting or any other meeting of the Crown executives, who made the decisions, regarding Atlanta 68's fate. Those of the participants who testified, McKenna, Rutherford, Clay, Szmyt and Veil did not shed light on what was said or decided at that meeting or at any other meeting involving the fate of Atlanta Plant 68. Fred Veil's presence at the August meeting raises the possibility that the Union and its Master Agreement at Atlanta entered into the discussion.

I find from the foregoing, that Crown has not succeeded in its attempt to rebut the General Counsel's prima facie showing of unlawful motivation in the decision to under utilize Atlanta 68 by failing to complete the conversion to 202 beverage cans and in the decision to close the plant. Accordingly, I find that by underutilizing Atlanta plant 68 in 1995, and by closing that same plant in December 1995, Crown violated Section 8(a)(3) and (1) of the Act. *Vico Products Co.*, 336 NLRB No. 45, (Board slip op. p. 9) (September 30, 2001), enfd 333 F.3rd 198 (DC Cir. June 27, 2003).

I also find that Crown violated Section 8(a)(3) and (1) of the Act by laying off employees[118] and reducing working hours at Atlanta Plant 68 in May 1995. I find that the layoff and reduced hours resulted from Crown's underutilization of that plant by withholding completion of the work necessary to permit the Atlanta 68 employees to produce 202 cans and thus restore their plant's business. Production Planning Manager Ted Kellermann provided considerable testimony about economic conditions that caused him to reduce Plant 68 from continuous operation to 5-day weeks and 3-shift days. However, when he made that decision, he did not concern himself with Crown's unlawful refusal to afford Atlanta 68 the ability to recover lost business by finishing the installation of 202 tooling.

I have considered Crown's explanations of the 1993 layoff at Atlanta 68 and find that they are sufficient to rebut the prima-facie showing of discriminatory motive for the closing of Atlanta 68. I have reached this result after considering the background of Crown's hostility toward the Union and its adherents.

The General Counsel has shown that during the 1993 layoff, Crown sent Atlanta 68's usual work elsewhere. Employee Hazelwood A. Woody spoke to Supervisor Weaver twice in January 1994 about the 1993 layoff at Atlanta 68. On both occasions, Weaver said Crown had sent Atlanta 68 work to other Crown plants. Weaver also said on both occasions that there had been no need for a layoff.[119] The record also shows that Crown sent one of Atlanta 68's customers to Atlanta Plant 28 and the business of another Atlanta 68 to the Cincinnati plant. Rusty Fulbright, who managed Atlanta 68 during the 1993 layoff, admitted before me, that during the 1993 layoff, Crown sent some of Atlanta 68's Huntsville Coca Cola work to Crown's Batesville, Mississippi plant,

---

[118] Crown laid off the following Atlanta Plant 68 employees, effective May 21: James Ricker, Chris Dickenson, Rickey Morris, Jerry Stallings, Stanley Williams, David Baudet, Keith Liles, Milton Minter, Mike McWhorter, Joyce Hipps, Joe Tripp, Bobby Knight, Roy Hohenstern, and James Horne.

[119] My findings regarding Woody's encounters with Supervisor Weaver are based upon Woody's uncontradicted testimony.

and some of 68's Johnston Coca Cola work to Crown's Cheraw, South Carolina plant. These circumstances and evidence of Crown's hostility against the Union, which I have recited above, in this decision, suggest that this hostility motivated Crown's 1993 layoff of 34 employees at Atlanta Plant 68.

Crown, relying on the testimony of Production Planning Manager Ted Kellermann, argues that slow business conditions motivated the 1993 reduction in hours and layoff at Atlanta Plant 68. I find from Ted Kellermann's uncontradicted testimony that he ordered the management of Atlanta Plant 68 to reduce its operations from continuous to shifts and a 5-day week, starting in October 1993 because its can production had far outstripped its needs. Kellermann maintained this reduced schedule through December 1993.

There was record testimony that there was some unspecified mount of overtime during the period of reduced hours. However, I find from Kellermann's uncontradicted testimony, that during reduced schedules, spikes in business require some overtime.

Crown sent some of Atlanta 68's work to Batesville and Cheraw during the same period. The record did not show how much production was lost to Atlanta 68 during the reduced hours and layoff period in 1993 by some of its work to Batesville and Cheraw. The record did not show whether the loss of that work would have required a change in hours or an increase in employees.

Kellermann's directive at Atlanta 68 resulted in 34 layoffs there. Atlanta 68 resumed continuous operations and called back the laid off employees effective January 3, 1994.

Kellermann noted that Atlanta 28 was having the same experience, excess production, and issued a similar order to that plant for a reduction in hours, starting in October 1993. This reduction in hours resulted in 47 layoffs at Plant 28.

The record shows that during the 1993 layoff, supervisors at Atlanta 68 made remarks suggesting that there was no need for a layoff. I have also found that in January 1994, Supervisor Ipok violated Section 8(a)(1) of the Act when he warned an employee that Crown had used the layoff as a message to the Union to stop filing grievances. However, I find from Kellermann's testimony, as supported by Crown's records, that he would have ordered the reduction in hours, which resulted in the 34 layoffs at Atlanta 68, regardless of the Union's presence or union activity at that plant. Accordingly, I find that Crown has sufficiently rebutted the General Counsel's evidence to sustain its defense regarding the 1993 layoff at Atlanta Plant 68. I shall, therefore, recommend dismissal of the allegation that that the 1993 layoff violated Section 8(a)(3) and (1) of the Act.

H. The Alleged Violations of Sections 8(a)(5), (3), and (1) of the Act

1. The Facts

Crown acquired its Baltimore Plant 13 from Continental Can in 1990. Baltimore Plant 13, referred to in the record and here as the Pulaski Street Plant, employed about 65 hourly employees, covered by the Union's Master Agreement. Until December 1996, the Pulaski Street plant manufactured 2-piece aluminum beverage cans on a single line. On August 16, 1996, Crown's Senior Vice-President Manufacturing, Americas Division Robert Truitt and Vice-President Two-Piece Manufacturing Michael Feldser signed a project authorization request for converting the Pulaski Street plant from 2-piece aluminum to a 2-piece steel food can line. Americas Division President John Conway favored the conversion.

President Conway discussed the proposed Pulaski Street conversion with Crown's Director of Industrial Relations, Fred Veil. Conway explained that it would cost perhaps $20 million to build a new plant to house the single-line steel food can line. Conway said it made no sense to do that. He said that Pulaski Street was the only viable location for the proposed food can line.[120] The project authorization request signed by Truitt and Feldser showed the expected cost of converting the Pulaski Street plant would be $6,520,000.

Conway instructed Veil to contact the Union and try to get out from under the Master Agreement. Conway said he wanted significant concessions to reduce labor costs and a substantial contract term of years. Conway told Veil to get the best deal he could. However, Conway assured Veil that the conversion would go forward at the Pulaski Street plant even if the Union insisted upon retaining the Master Agreement in effect there.

On September 17, 1996, Fred Veil met in Baltimore, Maryland with Union Vice-President Leon Lynch and the Union's Director of its District 8, David Wilson, who serviced the Pulaski Street plant's collective-bargaining unit under the Master Agreement. At the time he met with Lynch and Wilson, Veil knew that Crown intended to convert the Pulaski Street plant to the production of 2-piece steel food can. Yet, admittedly, Veil did not disclose that fact to them.

---

[120] I based my findings regarding Veil's conversation with President Conway on Veil's version of it in his testimony of August 14, 2001. On that date, Veil gave his testimony regarding this conversation in a full and forthright manner. Conway 's lack of recall on cross-examination regarding details of matters portrayed by his testimony on direct examination as important to him when considering the Pulaski conversion suggested that Conway was a reluctant witness when questioned closely on cross-examination. As Veil seemed to be giving his full recollection, when he testified on August 14, 2001, I have credited his version of their conversation about the Pulaski Street plant.

Veil told the Union officials that Crown no longer had need for the Pulaski Street plant's beverage can capacity, but needed an East Coast 2-piece food can plant. Veil told Lynch and Wilson that Crown was willing to expend the capital necessary to convert the Pulaski plant to food can production if the Union was willing to engage in a restructuring of the contract covering the plant. Veil went on to sketch out what Crown was seeking in a new contract. He also announced that regardless of the Union's response to Crown's proposition, operations would cease at the Pulaski Street plant at the end of the calendar year and that a WARN notice would be forthcoming.

The Union's representatives were non-committal. Lynch and Wilson said they would consider Veil's proposition and get back to him.[121]

Fred Veil, on behalf of Crown sent a WARN notice to the Union on October 9, 1996, announcing the shutdown of manufacturing operations at the Pulaski Street plant commencing on or about December 14,1996, and ending by December 31,1996. The notice also stated that layoffs of the plant's employees would begin in December 1996 and be completed by the year's end.

In a letter dated October 10, 1996, David Wilson responded to Veil's proposal of September 17, 1996. Wilson expressed opposition to shutting down the Pulaski Street plant and contended that Veil's proposals would violate Master Agreement. However, Wilson wrote that the Union was "not opposed to bringing in a new operation as long as the contract remains constant." Fred Veil's records show that four days later, in a conversation with him, Wilson reaffirmed his refusal to consider modifying the current collective bargaining agreement's wage and benefits provisions.

Veil replied in writing to Wilson's letter on October 16, 1996, expressing regret at Wilson's refusal to consider changes in the current labor agreement covering the Pulaski Street plant. Veil reminded Wilson that Crown would consider making " a substantial capital investment at Pulaski" conditioned upon changes in the current collective-bargaining agreement.

Veil attached a detailed proposal to his letter calling for a 5-year non-master agreement, reductions in hourly wages, and elimination of fringe benefits such as IPJO, supplemental unemployment benefits, vacation bonus and the short third shift. Veil's proposal also called for modification of overtime and reduced pension benefits for new employees. Toward the close of his letter, Veil cautioned that in light of Wilson's

---

[121] I based my findings regarding the meeting on September 15, 1996, on Fred Veil's testimony, which he gave in a candid manner. Leon Lynch testified that the first contact he had with Crown's decision to close the Pulaski Street plant was the WARN notice announcing the planned termination of the plant's operations on or about December 14, 1996. As he gave this testimony Lynch seemed to be focusing on the unfolding drama after the closing of the plant and the negotiations of an agreement regarding the plant employees. He was not trying to remember anything about September 17, 1996, with Fred Veil. In any event, I find nothing in Lynch's testimony that casts doubt on Veil's credibility as he testified about his meeting on September 17, 1996, with Lynch and Wilson.

position, "it is apparent that Pulaski Park should no longer be considered 'the front runner' for this investment." Veil's letter informed Wilson that Crown had told the Pulaski Street employees that their plant was the first choice for a new East Coast 2-piece food can plant on condition that Crown could obtain the contract modifications it deemed necessary to justify the capital investment.

At about the time of the WARN notice, or shortly thereafter, Crown held two meetings at the Pulaski Street plant for the plant's four crews.[122] Senior Vice-President Truitt, Vice-President Felser, Fred Veil and Plant Manager Tim Regan were present at both meetings. Truitt addressed the employees. He explained that the beverage industry was over saturated with cans and that Crown had not alternative but to close the Pulaski Street plant. Truitt went on to state that Crown wanted to invest $10 million in the Pulaski Street plant to retool it and make it a 2-piece food can line.

Truitt told the employees that Crown was considering their plant for conversion to steel food can production because of its location and the skill of the workforce. He cautioned that cost was an important factor. He warned that Crown would go through with this conversion only if the Pulaski employees made concessions. Truitt mentioned unspecified reductions in wages and benefits. During a question-and-answer period after his talks, employees asked what would happen if Crown did not get the concessions it wanted. Truitt answered that Crown would close the Pulaski Street plant permanently.

By the second week in December 1996, production had ceased at the Pulaski Street plant. Crown laid off all hourly employees at Pulaski Street, except for a skeleton crew of 12 or 13 employees to dismantle the production line.

On December 11, 1996,Veil met with Union Vice-President Lynch and the Local's President, employee Jack Butcher in Baltimore, Maryland to begin negotiations for a new contract to cover the Pulaski Street plant. Veil presented the same proposal he had attached to his letter of October 16, 1996 to David Wilson. The Union presented counter-proposals. The parties did not reach agreement but agreed to meet in January 1997. On January 20, 1997, the parties reached agreement and the Pulaski Street plant employees ratified it two days later.

As a result of the negotiations, the Pulaski Street employees were covered by a new 6-year non-Master Agreement contract between the Union and Crown. The new contract contained reduced hourly wage rates for current employees ranging from $1.56 for tool room machinists to $2.41 for laborers. The agreement also established a new hourly wage scale for employees hired after the effective date of the agreement, ranging from $10 to $16, which was a reduction in the existing hourly wage scale of from $7.91 for a laborer to $4.31 for a tool room machinist. The new contract reduced overtime

[122] I based my finding regarding the timing of the two meetings upon Fred Veil's letter of October 16, 1996, and the testimony of employees William Beyer and Jack Butcher placing it soon after the WARN notice of October 10, 1996. Employee Taylor seemed uncertain when he testified that the meetings occurred in November.

benefits and reduced accident and health benefits and life insurance coverage for new employees. The new contract provided that current employees would continue to enjoy the existing pension plan, but new employees would have a 401(k) plan under which Crown would contribute $5 per week, if the employee contributes $20 per week. Crown's contribution would increase to $7.50 per week on January 1, 2001 if the employee pays $25 per week into the 401(k) fund. According to the new contract, as of January 1, 2000, SUB benefits would be cut from a maximum of 104 weeks to a maximum of 52 weeks. The contract eliminated other fringe benefits including the income differential allowance, EEP, the short third shift and IPJO. Laid off employees could elect to return to work under the new agreement, or remain on layoff under the terms of the Master Agreement.

On January 23, 1997, John Conway signed the PAR authorizing the conversion of the Pulaski Street plant to steel food can production. Four days later CEO Avery and Executive Vice-President McKenna signed the same PAR. The Pulaski Street plant resumed operations in 1997 as a 2-piece food can plant. By November 1997 the great majority of the laid off Pulaski Street plant's employees had returned to work and Crown was rehiring at that plant.[123]

2. Analysis and Conclusions

The amended complaint alleges that Crown violated Section 8(a)(5)(3) and (1) of the Act by telling its Pulaski Street Plant employees and the Union that unless the Union agreed to mid-contract term modifications and elimination of the Master Agreement, Crown intended to close the Pulaski Street plant, by bargaining in bad faith, and by laying off employees and closing the Pulaski Street Plant in furtherance of its scheme to obtain mid-contract term modifications and elimination of the Master Agreement. Crown contends that it bargained in good and that hostility toward the Union played no part in its efforts to convert the Pulaski street plant from a 2-piece beverage can line to a 2-piece food can line. For the following reasons, I find that Crown failed to bargain in good faith, but that union animus was not a factor in its misconduct.

The Supreme Court has recognized that; "Good faith bargaining requires that claims made by either bargainer should be honest claims." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Consistent with that principle, the Board has found that an employer violated Section 8(a)(5) and (1) of the Act by misrepresenting to a union its intentions and plans regarding plant relocation while engaged in negotiations with the union for a plant closure agreement. *Waymouth Farms, Inc.*, 324 NLRB 960, 961-962 (1987), enfd in pertinent part 173 F.3d 598, 600 (8th Cir. 1999).

In the instant case, Fred Veil repeatedly testified before me on August 14, 2001, that even if the Pulaski Street plant remained under the Master Agreement after his effort to replace it with a contract more favorable to Crown, Crown would have

[123] My findings regarding the resumption of production at the Pulaski Street plant and the return of its employees to work are based upon employee Jack Butcher's uncontradicted testimony.

converted that plant to 2-piece food can production. On cross-examination by the Union, Veil's first admitted that Crown would have converted the Pulaski Street plant regardless of the outcome of his efforts to get rid of the Master Agreement and obtain economic concessions. On redirect examination, Veil explained that Crown's management had told him that the Pulaski Street plant was the only feasible location for a new 2-piece food can production line. Later, on recross examination by the General Counsel, Veil admitted that Americas President Conway and he had frequent discussions. In one of their conferences, Conway said that Pulaski Street was the only "economically feasible" location for the 2-piece can production. Continuing, Veil testified that his superiors directed him to negotiate with the Union and get the best deal he could.

On recross examination by the General Counsel, Veil admitted that on November 22, 1996, when he began discussions with the Union's Vice-President Leon Lynch, he, Veil knew that with or without a non-Master Agreement, Crown intended to convert the Pulaski Street plant from beverage cans to food cans. He did not share that information with Lynch or any other Union representative. Nor did he share that information with any Pulaski Street plant employee. Veil made all the recited admissions without hesitation, frankly and earnestly.

On October 15, 2001, the General Counsel, on motion, amended the consolidated complaint in these cases to allege that Crown violated Section 8(a)(5), (3) and (1) of the Act by falsely telling the Union that unless it agreed to remove the Master Agreement from the Pulaski Street plant and make economic concessions acceptable to Crown, Crown would close that plant and lay off its employees. Thereafter, Crown filed an answer denying those allegations.

At the resumed hearing before me in these cases, on April 10, 2002, Crown, in effort to support its denials, recalled Fred Veil. Crown's counsel showed to him the PAR for the conversion at the Pulaski Street plant, which had been signed by Conway, McKenna and Avery in late January 1997, after the new non-Master Agreement contract with its economic concessions had been executed and ratified, and a memorandum from Conway to Avery and McKenna, dated January 27, 1997, praising that agreement. After viewing these documents, Veil testified that when he testified in August 2001 and when he was negotiating with the Union in 1996 and 1997, he was not aware of managements decision to hold up on the project pending the outcome of negotiations with the Union.

Veil also asserted that he was wrong when he testified that Crown intended to convert Pulaski Street even with a Master Agreement in effect at that plant. Here, Veil's testimony seemed tentative as he said he did not believe he had been aware of Crown's intent when he negotiated with the Union. His use of "I don't believe so. . . ." contrasted with his usual definite responses. Along with his tentative manner, Veil reminded us "this was six years ago."

On the resumed hearing on the next day, Crown presented Conway's testimony in support of its position that the Pulaski Street conversion decision was not made until he and his superiors were satisfied by the outcome of Veil's negotiations. When asked

about Veil's earlier incriminating testimony, Conway testified that he disagreed with it. He added: "We would not have done that." Conway also testified that he told Veil that if the negotiations with the Union did not achieve Crown's desires to get rid of the Master Agreement and obtain economic concession that would equal the cost of the conversion, Crown would close Pulaski Street.

Veil's attempt to impeach his incriminating testimony fell short of the mark. I note that his attempt to cleanse the record came after the General Counsel had shown by new pleadings that the conduct Veil had admitted to might have violated the Act. Veil was concerned as an attorney and as Crown's Director of Industrial Relations.

His testimony, that the fully executed PAR and Conway's memo of January 27, 1997, revealed that Crown's management had reserved their final decision until they had gotten rid of the Master Agreement at the Pulaski Street plant and had obtained sufficient economic concessions to insure the success of the new enterprise, does not withstand scrutiny. There was nothing written on either document to memorialize that reservation. The PAR recites the expected cost of the project, its purpose and a suggestion for saving money. The memo sings the praises of the new 6-year, non-Master Agreement and the savings it will bring to a competitive Pulaski Street plant. Nor did the original PAR bearing only the signatures of Senior Vice President Truitt and Vice-President Felser[124] show that the project was uncertain because Conway and his superiors were waiting for a favorable long-term contract from the Union.

Veils tentative demeanor as he testified on April 10, 2002, the failure of Crown's documentary evidence to show that a decision was pending, not final, when Veil was negotiating with the Union, deprive Crown's defense of credibility. Further, Veil's straightforward manner and his conscientious effort on August 14, 2001 to provide a detailed account of his effort to achieve the best deal he could get for Crown convinced me that he was a reliable witness on that day. Given his inability to recall much of what was said or done in his presence regarding the fate of the Pulaski Street plant after December 1996, and the fact that he did not testify until the General Counsel had amended the complaint as a result of Veil's testimony on August 14, 2001, President Conway did not impress me as a reliable witness. Accordingly, where Veil's testimony differs from Conway's, I have credited Fred Veil.

From Fred Veil's credit testimony, I find that Crown misrepresented its intentions regarding the Pulaski Street plant. By failing to advise the Union that it would convert the Pulaski Street plant to food can production even if the Union insisted upon keeping the Master Agreement in effect, Crown seriously impaired the Union's ability to represent its constituents at that plant. Employee Jack Butcher and Leon Lynch's testimony shows that they feared loss jobs if they did not abandon the Master Agreement that would have remained in effect until1998, and make economic concessions. I find that by this conduct, Crown failed to bargain collectively in good faith and thereby violated Section 8(a)(5) and (1) of the Act.

---

[124] Neither Truitt nor Felser testified in these proceedings.

Applying the *Wright Line* doctrine[125] here, I find that Crown's failure to bargain with the Union in good faith resulted in substantial economic harm to the Union's adherents at the Pulaski Street plant. I also note that Fred Veil in his dealings with the Union and its members had exhibited hostility resulting in findings of unlawful discrimination. My findings of such unlawful conduct at Winter Garden bear witness to his willingness to resort to economic reprisals against the Union's supporters. Crown's unlawful treatment of its Cincinnati and Atlanta Plant 68 employees because of hostility toward the Union and its constituents also suggests the possibility that such animus motivated Veil and Crown when they shut down Pulaski Street and imposed reduced wages and benefits on the employees at that plant.

I find that the General Counsel has failed to show that hostility to the Union motivated, Crown when it closed Pulaski Street and demanded economic concessions from its employees as the price for reopening that plant. Absent from the testimony of the General Counsel's witnesses was any assertion that Pulaski Street's management or Crown's corporate management threatened the Pulaski Street plant's employees with economic reprisals because they supported the Union or the Master Agreement . Instead, Fred Veil's credited testimony shows that his motive throughout his negotiations with the Union regarding Pulaski Street was profit. Unlike his conduct at Winter Garden, Veil at Pulaski Street was not out to punish the Union by discrimination against its supporters. He only wanted to coerce the Union into softening its position on the Master Agreement and the generous wages and benefits its supporters At Pulaski Street were enjoying. There was insufficient evidence here to show by the necessary preponderance that Crown discriminated against its Pulaski Street employees, because of hostility toward the Union, or employees who supported the Union. I shall recommend dismissal of the allegations that Crown violated Section 8(a)(3) of the Act by its treatment of its employees at the Pulaski Street plant.

Conclusions of Law

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

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

3. By threatening employees of its Atlanta Plant 28 with plant closure if they joined or engaged in activities on behalf of the Union; telling employees of its Atlanta Plant 68 that it will close its Cheraw, South Carolina plant if its Cheraw employees selected the Union as their collective-bargaining representative; threatening employees with economic reprisals because they filed, or engaged in the presentation of, grievances on behalf of the Union; threatening employees with economic reprisals because they support the Union and its local; implying that it would close its Atlanta Plant 68 because its employees filed grievances enforcing a collective-bargaining agreement; implying that it was withholding tooling from Atlanta Plant 68 in reprisal

[125] *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S.989 (1982). Approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

for employees filing grievances and other union activity; telling employees that Crown was withholding an economic benefit in retaliation for employee attempts to enforce their collective bargaining agreement by filing grievances; warning that Crown would close Atlanta Plant 68 because employees filed grievances seeking to enforce their collective-bargaining agreement; telling Atlanta Plant 68's employees that Crown was withholding the continuous work schedule as a reprisal for employee grievances; telling Atlanta Plant 68 employees that Crown would close their plant, as it had done to its Perry plant, because they, as did the Perry employees, adhered to the Union; telling employees that Crown was closing their plant because of the Union and their support for the Union; telling employees that Crown had shut down Atlanta Plant 68 because it was a Union plant and Crown did not like the Union; threatening closure of the Shoreham plant because the employees filed grievances; to enforce a collective-bargaining agreement; telling employees of its St. Louis Plant 73 that Crown disfavored them because of their membership in the Union and their support for the Master Agreement; telling employees that they were losing their jobs because of their adherence to the Union and the Master Agreement; warning St Louis Plant 73 employees that their resort to grievances would provoke Crown to close that plant; telling Orlando plant employees that Crown was closing the plant because of the Union; telling Orlando employees that Crown was not merging its Winter Garden operations into the Orlando plant because the Union represented the Orlando plant. Telling employees that Crown had closed the Orlando plant because of the Union; threatening Orlando plant employees with economic reprisal because they support the Union and file grievances in support of the collective-bargaining agreement; telling its Plymouth plant employees that Crown would not hire them at its Winter Garden plant because they were "union;" and by coercively interrogating Winter Garden employee Adell Harrell about her sentiment toward the Union, Respondent Crown has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

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

(a) Requiring 42 Orlando Plant 48 employees to resign their employment at that plant and apply as new employees in order to be hired at Respondent's Winter Garden plant.

(b) Refusing to hire 45 Orlando Plant 48 employees at its Winter Garden plant because they were adherents to the Union, and were represented by the Union for purposes of collective bargaining.

(c) Requiring Orlando Plant 48 employees to satisfy a screening process as a condition precedent to being hired at Winter Garden because they were Union adherents and were represented by the Union for purposes of collective bargaining.

(d) Changing hours of work at its Atlanta Plant 68 and laying off employees at that plant in 1995 because they were Union adherents and were represented by the Union for purposes of collective bargaining.

(e) Disqualifying the following 10 employees from employment at its Winter Garden plant: James Boykin, Billie Harvell, William Little, Leonard Perine, Robert Pierce, Curtis Roberson, Cindy Rowlette, Gregory White, Merton Wiggins, and James Williams.

(f) Underutilizing its Atlanta Plant 68, transferring work from that plant to other plants, and closing its Atlanta Plant 68.

(g) Underutilizing its Cincinnati plant, transferring work from that plant to other facilities, and closing its Cincinnati plant.

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

(a) Since July 1995, failing and refusing to bargain collectively with the union in good faith about the effects of the closure of it Orlando Plant 48 and of the transfer of that plant's manufacturing operations to Respondent's Winter Garden plant.

(b) Failing and refusing to recognize and bargain collectively and in good faith with the Union as the collective bargaining representative of the hourly production and maintenance employees at its Winter Garden plant on and after January 3, 1996.

(c) Obtaining mid-contract term economic concessions, other modifications and the termination of the master agreement at its Pulaski Street Plant by failing and refusing to bargain in good faith with the Union as the collective bargaining representative of the production and maintenance employees at that plant.

4. The Respondent has not violated Section 8(a)(1) of the Act by:

(a) Interrogating employees regarding their union activities and sentiments, at a meeting on March 12, 1996, at its Winter Garden plant;

(b) Industrial Manager Fred Veil telling Winter Garden plant employees on May 14, 1997, in substance, that the union would not achieve representative status at the Winter Garden plant as a result of a pending unfair labor practice complaint.

5. The Respondent has not violated Section 8(a)(3) of the Act by:

(a) Terminating its Orlando Plant 48 employees, when it shut down its manufacturing operations at that plant in 1995;

(b) Underutilizing its Orlando Plant 48, transferring work from its Orlando Plant 48 to other facilities and closing Orlando Plant 48.

(c) Underutilizing its Hurlock, Maryland plant, transferring work from its Hurlock, Maryland plant to other facilities and closing its Hurlock, Maryland plant.

(d) Underutilizing its St. Louis, Missouri plant, transferring work from its St. Louis, Missouri plant to other facilities and closing its St. Louis, Missouri plant.

(e) Underutilizing its Shoreham, Michigan plant, transferring work from its Shoreham, Michigan plant to other facilities and closing its Shoreham, Michigan plant.

(f) Laying off employees at its Atlanta, Georgia Plant 68 from October 1993 until January 3, 1994.

(g) Telling employees and the Union that Crown intended to close its Pulaski Street plant, Baltimore, Maryland unless the Union agreed to mid-contract modifications and elimination of the Master Agreement, by laying off employees and commencing

closure of the Pulaski Street plant in furtherance of this purpose, and by obtaining mid-contract modifications and the elimination of the master agreement at the Pulaski Street plant by misinforming the Union and the employees.

6. The Respondent has not violated Section 8(a)(5) of the Act by:

(a) Failing and refusing, since on or about January 12, 1996, to recognize and bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of the hourly production and maintenance employees employed at the Orlando Plant 48;

(b) Since May 1995, failing and refusing to apply the terms of the collective bargaining agreement which covered the Orlando Plant 48 bargaining unit employees to those employees as they became employed at the Winter Garden plant;

(c) Since January 3, 1996, failing and refusing to apply the terms of the collective bargaining agreement which covered the Orlando Plant 48 bargaining unit employees to all employees then employed at the Winter Garden plant, and thereafter to all employee employed at the Winter Garden plant.

Remedy

Having found that the Respondent Crown has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Because Crown discriminatorily refused to hire the following 45 employees because they were Union adherents, I shall recommend that Crown be ordered to offer each of them immediate employment at its Winter Garden, Florida plant in the respective positions for which they applied, or if any of those positions no longer exist, to substantially equivalent positions to which they would have been entitled absent Crown's discrimination against them, without prejudice to their seniority or any other rights or privileges. Further, I shall recommend that Respondent Crown be ordered to make each of the 45 employees, listed below, whole for any loss of wages and benefits they suffered as a result of Crown's unlawful refusal to hire them, less any interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizon for the Retarded*, 283 NLRB 1173 (1987) The 45 discriminatees are:

J. H. Albrecht	Paul Early	Robert Murray	Don Smith
C.R. Boothe	D. R. Ewing	Billie Nelson	P. R. Stugaard
J. L. Boykin	B. R. Filmore	D. E. Newton	Delmar Tanner
B. E. Broome	P. D. Funk	Mary Patrick	J. G. Torres
J. L. Browden	D. L. Gregg	L. B. Perine	G. E. White
N. Calhoune	Willie Harrell	Robert Pierce	Melton Wiggins
Joel Chandler	B. G. Harville	C. C. Roberson	(Holly) Olive
Lana Clemons	W. Little	Jesus Roig	Wilbanks
Mark Currin	C. L. Martin	Cindy Rowlette	J. G. Williams
P. Davis	E. J. Matheis	C.E. Sams	B. J. Wright
P. R. DuPre	Ed Metcalf	Mary Alice Wareham	William Woodson
Benjamin Gibson		R. Shelton	

I shall recommend that Respondent Crown be required to make whole the employees of the Cincinnati plant for any loss of wage and benefits they suffered as a result of the unlawful reduction they suffered from May 22, 1995, until August 6, 1995, and from September 4,1995 until the plant ended operation on December 3, 1995, whole for any loss of wages and benefits they suffered as a result of Crown's unlawful refusal to hire them, less any interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizon for the Retarded*, 283 NLRB 1173 (1987). I shall further recommend the same make-whole remedy for the following 14 employees discriminatorily laid off effective May 21, 1995, and until August 7, 1995: James Ricker, Chris Dickinson, Rickey Morris, Jerry Stallings, Stanley Williams, David Beaudet, Keith Liles, Milton Minter, Mike McWhorter, Joyce Hipps, Joe Tripp, Bobby Knight, Roy Hohenstern and James Horne.

I shall recommend that Crown be required to expunge from its files any references to the unlawful refusals to hire the 45 employees listed above, as well as any references to the unlawful layoffs of the following Atlanta Plant 68 employees: James Ricker, Chris Dickinson, Rickey Morris, Jerry Stallings, Stanley Williams, David Beaudet, Keith Liles, Milton Minter, Mike McWhorter, Joyce Hipps, Joe Tripp, Bobby Knight, Roy Hohenstern, and James Horne and the unlawful evaluations of Orlando employees.

I shall also recommend that Respondent be required to, upon the Union's request restore the provisions of the Union's master agreement in effect at the Pulaski Street Plant on January 20, 1997, and make the production and maintenance employees, who were covered by that master agreement whole for all losses of wages and other benefits they suffered as a result of Respondent Crown's failure to bargain in good faith with the Union. Respondent shall remit all wages and benefits that it would have paid under the Master Agreement from January 20, 1997, until it negotiates in good faith with the Union to agreement or to impasse. The payment of wages and other benefits due the employees shall be computed as in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as prescribed in *New Horizon for the Retarded,* above.

I shall recommend application of the Board's policy in *Transmarine Navigation Corp.*, 170 NLRB 389, 390 (1968).[126] Accordingly, I shall recommend that Crown be

[126] Under *Transmarine*, Crown is required to pay the Orlando Plant 68 employees employed at the time of the termination of its operations backpay at the rate of their normal wages when last in Crown's employ from 55 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date Crown bargains to agreement with the Union on those subjects pertaining to the discontinuance of the Orlando Plant 68"s operations; (2) a bona fide impasse in bargaining; (3) the failure of the union to request bargaining within 5 days of this decision or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of the employees exceed the amount each would have earned as wages from the time Respondent ceased manufacturing operations at Orlando Plant 48, to the time each secured equivalent employment

Continued

required to bargain with Union about the effects of its decision to close its Orlando Plant 48.

I shall also recommend that Respondent be required to restore its Cincinnati plant and its Atlanta Plant 68, as prescribed by the Board in *Vico Products Company*, 336 NLRB No. 45 (2001), enfd. 333 F.3d 198 (DC Cir. June 27, 2003). Further, I shall recommend that Crown be ordered to offer reinstatement to the employees who Crown terminated when it discriminatorily shut these plants down plus interest as set forth above for the 45 employees unlawfully denied employment at Winter Garden.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[127]

ORDER

The Respondent, Crown Cork and Seal Co. Inc., of Atlanta, Georgia, Orlando, Florida, Cincinnati, Ohio, Winter Garden, Florida, Plymouth, Florida, Shoreham, Michigan, Hurlock, Maryland, St. Louis, Missouri, and Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure if they join or engage in activities on behalf of the Union, United Steel Workers of America, AFL-CIO, or any other labor organization.

(b) Telling employees of one of its plant that it will close another plant if the employees at the other plant select the Union, or any other labor organization, as their collective-bargaining representative;

(c) Threatening employees with economic reprisals because they filed, or engaged in the presentation of, grievances on behalf of the Union, or because they support the Union and its local or any other labor organization.

(d) Telling employees that Crown would close their plant because they filed grievances enforcing a collective-bargaining agreement.

(e) Warning employees that Crown was withholding tooling from their plant in reprisal for employees filing grievances and other union activity.

---

elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs first; provided, however that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Further, the interest on any payments made under this remedy shall be calculated as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[127] 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.

(f) Threatening employees with plant closure, because they adhere to the Union or any other labor organization.

(g) Telling employees that Crown was withholding an economic benefit in retaliation for employee attempts to enforce their collective bargaining agreement by filing grievances.

(h) Telling employees that Crown was withholding days and hours of employment as a reprisal for employee grievances.

(i) Telling employees that Crown was closing their plant because of the Union and their support for the Union or any other labor organization.

(j) Telling employees that Crown had shut down a plant because it was a Union plant and Crown did not like the Union.

(k) Telling employees that Crown disfavored them because of their membership in the Union or any other labor organization and because they support the master Agreement or any other collective bargaining agreement.

(l) Telling employees that they were losing their jobs because of their adherence to the Union and the Master Agreement.

(m) Telling employees that Crown was not keeping their plant in operation or merging another Crown plant into their plant because the Union or any other labor organization represents them.

(n) Telling its Plymouth plant employees that Crown would not hire them at its Winter Garden plant because they were “union.”

(o) Coercively interrogating employees about their sentiment toward the Union or any other labor organization.

(p) Underutilizing union-represented plants, shutting down union-represented plants, transferring work from union-represented plants, refusing to hire employees, laying off employees, requiring its employees seeking employment at one of its plants to resign and file applications as new employees, imposing a screening process on employees, who are seeking employment at one of its plants, disqualifying employees for employment, reducing employees’ working hours, laying employees off or otherwise discriminating against employees because they support United Steelworkers of America, AFL-CIO or any other labor organization.

(q) Failing and refusing to bargain collectively with the Union in good faith about the effects of the closure of it Orlando Plant 48 and of the transfer of that plant’s manufacturing operations to Crown’s Winter Garden plant.

(r) Failing and refusing to recognize and bargain collectively and in good faith with the Union as the collective bargaining representative of the employees at its Winter Garden plant in the following unit appropriate for purposes of collective bargaining:

> All employees of Crown Cork and Seal Co. Inc., at its plant at 851 Maple Street, Winter Garden, Florida, including all production and maintenance employees, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

(s) Refusing to bargain collectively in good faith with the United Steelworkers of America, AFL-CIO as the exclusive bargaining representative of its production and maintenance employees at its Pulaski Street plant, Baltimore, Maryland by failing and refusing to provide the Union with accurate information about its intentions and plan to keep the Pulaski Street plant open as a 2-piece food can facility.

(t) Implementing the collective bargaining agreement reached by Crown and the Union on January 20 1997.

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

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

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees of Crown Cork and Seal Co. Inc., at its plant at 851 Maple Street, Winter Garden, Florida, including all production and maintenance employees, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees of Crown Cork and Seal Co. Inc., at its plant at Pulaski Street, Baltimore, Maryland, including all production and maintenance employees, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act

(c) On request of the Union, restore the wages, hours and conditions of employment in effect at the Pulaski Street, Baltimore plant, under the Master Agreement as of January 20, 1997.

(d) Pay the employees employed at Orlando Plant 48 at the time of the termination of manufacturing operations there their normal wages for the time period as set forth in footnote 125 of this decision.

(e) Remit all wages and benefits that it would have paid to the Pulaski Street plant's production and maintenance employees under the Master Agreement from January 20, 1997, until it negotiates in good faith with the Union to agreement or to impasse plus interest as set forth in the remedy section of this decision.

(f) Within 14 days from the date of this Order, offer to the below listed individuals employment in the positions for which they applied, or if those positions no longer exist to substantially equivalent positions, without prejudice to their seniority, and any other rights and privileges:

J. H. Albrecht	Paul Early	Robert Murray	Don Smith
C.R. Boothe	D. R. Ewing	Billie Nelson	P. R. Stugaard
J. L. Boykin	B. R. Filmore	D. E. Newton	Delmar Tanner
B. E. Broome	P. D. Funk	Mary Patrick	J. G. Torres
J. L. Browden	D. L. Gregg	L. B. Perine	G. E. White
N. Calhoune	Willie Harrell	Robert Pierce	Melton Wiggins
Joel Chandler	B. G. Harville	C. C. Roberson	(Holly) Olive
Lana Clemons	W. Little	Jesus Roig	Wilbanks
Mark Currin	C. L. Martin	Cindy Rowlette	J. G. Williams
P. Davis	E. J. Matheis	C.E. Sams	B. J. Wright
P. R. DuPre	Ed Metcalf	Mary Alice Wareham	William Woodson
Benjamin Gibson		R. Shelton	

(g) Make the individuals listed in paragraph 2(f) above whole for any loss of pay and other benefits suffered by them as a result of the discrimination against them, make the Cincinnati plant employees whole for any loss of pay and other benefits suffered by them as a result of their discriminatory reduction in hours of employment in 1995, and make the following employees whole for any loss of pay and other benefits suffered as a result of their discriminatory layoff in 1995: James Ricker, Chris Dickinson, Rickey Morris, Jerry Stallings, Stanley Williams, David Beaudet, Keith Liles, Milton Minter, Mike McWhorter, Joyce Hipps, Joe Tripp, Bobby Knight, Roy Hohenstern, James Horne. All backpay to be computed in compliance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in Ne*w Horizons for the Retarded*, 283 NLRB 1173 (1987).

(h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, layoffs, disqualifications, and evaluations found above in this decision, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges, layoffs and evaluations will not be used against them in any way.

(i) Restore and resume its Atlanta Plant 68, at Atlanta, Georgia, and its Cincinnati Plant 67, at Cincinnati, Ohio, in a manner consistent with their respective levels of operation that existed before the unit positions were eliminated in 1995; offer to the employees laid off when these plants, respectively, ceased production in 1995, immediate and full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of earnings they may have suffered from the loss of earnings and benefits they may have suffered from the time of their layoff to the date of Crown's offer of reinstatement as set forth in the remedy section of this decision.

(j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its Atlanta Plant 28, Winter Garden, Florida plant, and its Pulaski Street, Baltimore, Maryland plants copies of the attached

notice marked "Appendix A."[128] Copies of the notice, on forms provided by the Regional Director for Region Ten after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the other facilities 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 July 14, 1993.

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

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

Dated, Washington, D.C. September 3, 2003.

Leonard M. Wagman
Administrative Law Judge

[128] 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."

APPENDIX A

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 threaten you with plant closure if you join or engage in activities on behalf of the Union, United Steel Workers of America, AFL-CIO, or any other labor organization.

WE WILL NOT tell you that we intend to close one of our other plants if the employees at that plant select the Union, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT threaten you with economic reprisals because you file, or engage in the presentation of, grievances on behalf of the Union, or because you support the Union, or are represented by, United Steel Workers of America, AFL-CIO, and its local or any other labor organization.

WE WILL NOT tell you that we would close your plant because you filed grievances enforcing a collective-bargaining agreement.

WE WILL NOT warn you that we are withholding tooling from your plant in reprisal for your filing grievances and other union activity.

WE WILL NOT threaten you with plant closure, because you adhere to the Union, or any other labor organization.

WE WILL NOT tell you that we are withholding economic benefits in retaliation for your attempts to enforce your collective bargaining agreement by filing grievances.

WE WILLNOT threaten you with economic reprisals because you file, or engage in the presentation of, grievances on behalf of the Union, or because you support the Union and its local or any other labor organization.

WE WILL NOT tell you that we are withholding days and hours of employment as a reprisal for your grievances.

WE WILL NOT tell you that we are closing your plant because of the Union and your support for the Union or any other labor organization.

WE WILL NOT tell you that we shut down a plant because it was a Union plant and we do not like the Union or any other labor organization.

WE WILL NOT tell you that Crown disfavors you because of your membership in the Union or any other labor organization and because you support the master agreement or any other collective bargaining agreement.

WE WILL NOT tell you that you are losing your jobs because of your adherence to the Union and the master agreement.

WE WILL NOT tell you that we are not keeping your plant in operation or merging another Crown plant into your plant because the Union or any other labor organization represents you.

WE WIILL NOT tell you that Crown would not hire you at another Crown plant because you are “union.”

WE WILL NOT coercively interrogate you about your sentiment toward the Union or any other labor organization.

WE WILL NOT underutilize Union-represented plants, shut down Union-represented plants, transfer work from Union-represented plants, refuse to hire employees, lay off employees, require our employees seeking employment at one of its plants to resign and file applications as new employees, impose a screening process on employees, or disqualify employees, who are seeking employment at one of our plants, reduce employees’ working hours, lay employees off or otherwise discriminate against our employees because they support the Union, United Steelworkers of America, AFL-CIO or any other labor organization.

WE WILL NOT fail and refuse to bargain collectively with the Union in good faith about the effects of the closure of our Orlando Plant 48 and of the transfer of that plant’s manufacturing operations to our Winter Garden plant.

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with the Union as the collective bargaining representative of the employees at our Winter Garden plant in the following unit appropriate for purposes of collective bargaining:

> All employees of Crown Cork and Seal Co. Inc., at its plant at 851 Maple Street, Winter Garden, Florida, including all production and maintenance employees, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act

WE WILL NOT refuse to bargain collectively in good faith with the Union, United Steelworkers of America, AFL-CIO as the exclusive bargaining representative of our production and maintenance employees at our Pulaski Street plant, Baltimore, Maryland by failing and refusing

to provide the Union with accurate information about our intentions and plan to keep the Pulaski Street plant open as a 2-piece food can facility.

WE WILL NOT implement the collective bargaining agreement we obtained from the Union on January 20 1997.

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

WE WILL, on request, bargain with the Union, United Steelworkers of America, as the exclusive representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees of Crown Cork and Seal Co. Inc., at its plant at 851 Maple Street, Winter Garden, Florida, including all production and maintenance employees, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees of Crown Cork and Seal Co. Inc., at its plant at Pulaski Street, Baltimore, Maryland, including all production and maintenance employees, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act

WE WILL, on request of the Union, restore the wages, hours and conditions of employment in effect at the Pulaski Street, Baltimore plant, under the Master Agreement as of January 20, 1997.

WE WILL pay our employees employed at Orlando Plant 48 at the time of the termination of manufacturing operations at that facility, their normal wages for the time period as set forth in the *Transmarine* remedy recommended in this decision.

WE WILL remit all wages and benefits that we would have paid to the Pulaski Street plant's production and maintenance employees under the Master Agreement from January 20, 1997, until we negotiate in good faith with the Union to agreement or to impasse, plus interest .

WE WILL within 14 days from the date of this Order, offer to the individuals, listed below, employment in the positions for which they applied, or if those positions no longer exist to substantially equivalent positions, without prejudice to their seniority, and any other rights and privileges:

J. H. Albrecht	Paul Early	Robert Murray	Don Smith
C.R. Boothe	D. R. Ewing	Billie Nelson	P. R. Stugaard
J. L. Boykin	B. R. Filmore	D. E. Newton	Delmar Tanner
B. E. Broome	P. D. Funk	Mary Patrick	J. G. Torres

J. L. Browden	D. L. Gregg	L. B. Perine	G. E. White
N. Calhoune	Willie Harrell	Robert Pierce	Melton Wiggins
Joel Chandler	B. G. Harville	C. C. Roberson	(Holly) Olive
Lana Clemons	W. Little	Jesus Roig	Wilbanks
Mark Currin	C. L. Martin	Cindy Rowlette	J. G. Williams
P. Davis	E. J. Matheis	C.E. Sams	B. J. Wright
P. R. DuPre	Ed Metcalf	Mary Alice Wareham	William Woodson
Benjamin Gibson		R. Shelton	

WE WILL make the individuals listed above whole for any loss of pay and other benefits suffered by them as a result of the discrimination against them, make the Cincinnati plant employees whole for any loss of pay and other benefits suffered by them as a result of their discriminatory reduction in hours of employment in 1995, and make the following employees whole for any loss of pay and other benefits suffered as a result of their discriminatory layoff in 1995: James Ricker, Chris Dickinson, Rickey Morris, Jerry Stallings, Stanley Williams, David Beaudet, Keith Liles, Milton Minter, Mike McWhorter, Joyce Hipps, Joe Tripp, Bobby Knight, Roy Hohenstern, and James Horne, plus interest.

WE WILL remove from our files any reference to the discharges, layoffs, disqualifications and evaluations found unlawful in these cases, and within 3 days thereafter notify the employees listed above, in writing, that this has been done and that the discharges, layoffs and evaluations will not be used against them in any way.

WE WILL restore and resume our Atlanta Plant 68, at Atlanta, Georgia, and our Cincinnati Plant 67, at Cincinnati, Ohio, in a manner consistent with their respective levels of operation that existed before the unit positions were eliminated in 1995; offer to the employees laid off when these plants, respectively, ceased production in 1995, immediate and full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of earnings they may have suffered from the

loss of earnings and benefits they may have suffered from the time of their layoff to the date of our offer of reinstatement plus interest.

CROWN CORK AND SEAL CO., 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.nlrb.gov.

233 Peachtree Street NE, Harris Tower, Suite 1000, Atlanta, GA 30303-1531

(404) 331-2896, Hours: 8 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, (404) 331-2877.