Semi-Alloys, Inc. ***and*** **Local 1783, International Brotherhood of Electrical Workers, AFL-CIO** ***and*** **Jorge Colon.** Cases 2-CA-16191, 2-CA-16192, 2-CA-16986, 2-RC-18196, and 2-CA-16913

March 17, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 27, 1981, Administrative Law Judge James F. Morton issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Semi-Alloys, Inc., Mount Vernon, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(d):

"(d) In any like or related manner interfering with, restraining, or coercing employees as to their rights under Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Offer to Natividad Escudero, Jorge Colon, and Antonio Lado immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole, with interest, for any loss of benefits suffered by reason of their discharge in the manner set forth in the section of this Decision entitled 'The Remedy.'"

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT question any of our employees, or any applicant for employment, as to their support or sympathies for, or membership in, Local 1783, International Brotherhood of Electrical Workers, AFL-CIO, or any other union.

WE WILL NOT warn our employees that our plant will be closed if our employees vote to select Local 1783, International Brotherhood of Electrical Workers, AFL-CIO, as their collective-bargaining representative.

WE WILL NOT discharge or make discriminatory work assignments to employees to discourage them from joining or supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL offer to Natividad Escudero, Jorge Colon, and Antonio Lado immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make each

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In par. 1(d) of his recommended Order the Administrative Law Judge used the broad injunctive language "in any other manner." Respondent herein has neither demonstrated a proclivity to violate the Act, nor engaged in conduct so widespread as to demonstrate a general disregard for the employees' fundamental statutory rights. Thus, in our opinion, the broad injunctive language is not appropriate, and we have modified the recommended Order accordingly. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

The General Counsel has excepted to the Administrative Law Judge's failure to conform the notice with the provision in his recommended Order requiring Respondent to cease and desist from making discriminatory work assignments. Accordingly, we shall amend the recommended notice to conform to the recommended Order in both respects noted herein.

Further, in the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's recommendation that Case 2-RC-18196 be severed from the unfair labor practice cases and the Certification of Results of the Election held on January 10, 1979, be reissued. Based on this finding, it is unnecessary to reach the issue of the merits of the objections filed in Case 2-RC-18196.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

whole for any loss of benefits suffered by reason of their discharge, with interest.

SEMI-ALLOYS, INC.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge: The first issue to be considered is whether the original unfair labor practice charge in this case, on which the General Counsel had initially refused to issue a complaint, can be activated a year after it was filed. Related to that issue is the reopening of a connected representation case.

On December 12, 1978, Local 1783, International Brotherhood of Electrical Workers, AFL-CIO (herein called the Union), filed the petition in Case 2-RC-18196 seeking to represent a unit of all production and maintenance employees employed by Semi-Alloys, Inc. (herein called Respondent), at its plant in Mount Vernon, New York. Respondent and the Union executed a Stipulation for Certification Upon Consent Election which was approved on December 22, 1978, by the then Acting Regional Director for Region 2 of the Board. The Union lost the election held on January 10, 1979, pursuant to that stipulation. On January 15, 1979, it filed 8 objections to conduct affecting the results of that election which raised issues, *inter alia*, as to whether Respondent influenced the election improperly by having (a) interrogated employees as to the identity of those who signed union cards, (b) coerced employees into rejecting the Union by statements made in speeches to them by officials of Respondent, (c) canceled a scheduled Christmas vacation period for its employees, or (d) discharged a group of 10 employees because of their support for the Union. On June 13, 1979, the then Acting Regional Director issued his Report on Objections and Challenged Ballots which recommended, *inter alia*, that the Union's objections be overruled in their entirety and that certain challenged ballots be opened and counted. In the absence of exceptions, those recommendations were adopted, as noted in an order issued on July 10, 1979, by direction of the Board. On July 31, 1979, the Regional Director issued her Certification of Results of the Election. In its brief, Respondent related that, upon the opening and counting of the challenged ballots, the revised tally disclosed that 100 votes were cast against the Union and 73 votes were cast in its favor. As the remaining challenged ballots could not have affected the result, a certification issued to the effect that the Union had not been selected by a majority of the valid votes cast. The representation case thus was closed on July 31, 1979.

On February 5, 1979, less than a month after the election was held as set out above, the Union filed the first unfair labor practice charge, Case 2-CA-16191. That charge alleged that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act), by (a) interrogating employees on and since December 1, 1978, respecting their support for the Union, (b) threatening plant closure, and (c) discharging 10 employees because of their union activity. It is apparent that those allegations essentially paralleled certain of the assertions the Union had made in the objections it filed to the conduct of the January 10, 1979, election, discussed above. Based on the administrative investigation, the Regional Director for Region 2 notified the Union on April 30, 1979, that she was refusing to issue a complaint respecting the allegations that Respondent unlawfully discharged 10 employees or that it threatened employees. The Regional Director further advised that she was processing the case further respecting the Union's allegations of unlawful interrogation. The Union filed an appeal respecting the Regional Director's partial refusal to issue a complaint. On August 16, 1979, the Regional Director advised the Union that the evidence developed in the investigation of the charge filed in that case, 2-CA-16191, failed to establish that Respondent violated the Act in any manner encompassed by the charge and that she was therefore refusing to issue a complaint. On September 11, 1979, the Acting Director of the General Counsel's Office of Appeals notified the Union that its appeal from the Regional Director's refusal to issue a complaint in Case 2-CA-16191 was denied substantially for the reasons set forth in the Regional Director's letters of April 30 and August 16, 1979.[1]

On November 23, 1979, the Union filed the unfair labor practice charge in Case 2-CA-16912 alleging that Respondent unlawfully discriminated against Natividad Escudero. Also, on November 23, an individual, Jorge Colon, filed the charge in Case 2-CA-16913 alleging that Respondent discharged him because he attempted to join the Union. By letters respectively dated January 15 and 16, 1980, the Regional Director for Region 2 advised the Union and Colon that she was refusing to issue a complaint in either of these cases because of insufficient evidence of a violation.

The Union filed an appeal from the Regional Director's refusal to issue a complaint in Case 2-CA-16912; Colon filed no appeal.

On January 7, 1980, the Union filed the unfair labor practice in Case 2-CA-16986 which alleged that Respondent, in violation of Section 8(a)(1) and (3) of the Act, discharged Antonio Lado because of his activities on behalf of the Union. On January 23, 1981, the Union wrote the Regional Director under a caption for Cases 2-CA-16191, 2-CA-16912, and 2-CA-16193[2] to request that the investigations in those cases be reopened. Its letter noted that it had, on January 23, produced evidence warranting such action. On February 28, 1980, the Regional Director wrote Respondent that she revoked the dismissal letters issued on April 30, 1979, and January 15 and 16, 1980, in Cases 2-CA-16191, 2-CA-16912, and 2-CA-16913, respectively, and that she reopened those cases pursuant to the authority recognized by the Board in *California Pacific Signs, Inc.*, 233 NLRB 450

[1] The letter written by the Office of Appeals refers to the Regional Director's "partial refusal to issue complaint" whereas the Regional Director's letter of August 16 stated that she was refusing to issue complaint in the case. I assume that her earlier decision to process the case further respecting the Union's allegations of unlawful interrogation was modified by some intervening event.

[2] The latter two case numbers on the Union's letter had two numbers inadvertently transposed.

(1977). Also on February 28, the Regional Director issued an order consolidating Cases 2-CA-16191, 2-CA-16912, 2-CA-16913, and 2-CA-16986, a consolidated complaint and a notice of hearing.[3] The complaint alleges *inter alia*, that Respondent discriminatorily discharged 10 employees on or about December 8, 1978, unlawfully interrogated employees in December 1978, and that Respondent discriminatorily discharged 3 employees after the election.

On March 14, 1980, the Regional Director issued an order revoking her Certification of Results of the Election in Case 2-RC-18196 and ordered that a hearing be held respecting Objections 1 and 8 that the Union had filed to the conduct of the election held on January 10, 1979. Objections 1 and 8 pertained to matters of alleged unlawful interrogation and of the alleged unlawful discharge of 10 employees in December 1978—the same allegations involved, *inter alia*, in the consolidated complaint previously issued. The representation case was therefore consolidated for hearing with the unfair labor practices.[4]

At the hearing, the General Counsel moved to amend the order directing a hearing on the objections in order to reinstate Objections 3 and 6. As that matter was solely within the province of the Board, the hearing was adjourned without date to afford the Regional Director an opportunity to issue a Supplemental Report on Objections to the Board and to enable Respondent to file exceptions thereto. On July 15, 1980, the Regional Director issued her Second Report on Objections wherein she recommended that a hearing be held respecting the issues raised by Objections 1, 3, 6, and 8 filed by the Union on January 15, 1979, in Case 2-RC-18196 and that the hearing thereon be consolidated before me in connection with the related matters in Cases 2-CA-16191, 2-CA-16912, 2-CA-16913, and 2-CA-16986. Respondent filed exceptions to that Second Report on Objections. On August 18, 1980, an order was issued by direction of the Board. It related that Respondent's exceptions were denied without prejudice to its right to renew its contentions by filing appropriate exceptions upon issuance of a decision in the consolidated proceeding. Thereafter, the hearing in this case resumed.

The hearing had opened initially on June 9, 1980. It continued through June 13 before being adjourned indefinitely. It resumed on November 12 and after further hearing dates it concluded on December 9, 1980, in New York City.

In the answer it filed to the consolidated complaint in Cases 2-CA-16191, 2-CA-16912, 2-CA-16913, and 2-CA-16986, Respondent pleaded no special or affirmative defenses. At the hearing, it asserted that Section 10(b) should bar the matters involved in Cases 2-CA-16191, 2-CA-16912, and 2-CA-16913 as the Regional Director had determined not to proceed further with them and as those determinations were either not appealed or the appeals were denied. I view Respondent's contentions respecting the applicability of Section 10(b) of the Act as a motion to dismiss the matters involved in Cases 2-CA-16191, 2-CA-16912 and 2-CA-16913. As the Board's holding in *California Pacific Signs, supra*, is controlling, that motion is denied.

The procedural issues posed in the related representation case will be considered later in this Decision. It is appropriate first to consider the factual issues and the alleged unfair labor practices.

Upon the entire record,[5] including my observations of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, by Respondent, and by the Union, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The pleadings establish and I find that Respondent, which manufactures components for integrated circuits in the electronics industry, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act, as amended (herein called the Act), and that the Union is a labor organization as defined in Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Questioning of Applicants for Employment as to Their Union Membership or Union Sympathies*

The complaint alleges that Respondent, by means of polygraph tests, interrogated its employees regarding their union sympathies. The uncontroverted evidence establishes the following.

In its manufacturing process, Respondent uses gold and other precious metals. From about 1975 until March 31, 1979, it required applicants for employment to go to the office of Industrial Security Analysts, Inc., to be examined for security reasons, especially as to whether they used drugs or had previously been discharged from employment. In particular, each applicant was told by an examiner employed by Industrial Security Analysts, Inc., that he or she would be given a lie detector test and was given a separate job application form to fill out. The examiner asked the applicant to consent to undergo the lie detector test. The applicant was also asked whether he or she was a member of any union. If the answer was in the affirmative, the applicant was asked the name of that union. If the applicant stated that he or she was not a union member, the examiner asked how the applicant felt about unions. The examiner made notes during the pretest interview. Thereupon, the lie detector test was given. Upon the completion of the test, Respondent's officials were called by telephone by the president of Industrial Security Analysts to report on the results of

[3] On May 20, 1980, the Office of Appeals of the General Counsel wrote the parties that the February 28 letter rendered the appeal in Case 22-CA-16912 moot and remanded that case to the Regional Director.

[4] Respondent filed a complaint in the United States District Court in an attempt to enjoin the Regional Director or her agents from participating further in these cases. The parties have informed me that the court declined to issue an injunction and that Respondent's appeal from that determination was denied by the U.S. Court of Appeals for the Second Circuit.

[5] Respondent's motion to correct the transcript is granted, except for the several modifications thereto urged in the General Counsel's response to that motion. The modifications urged by the General Counsel are in order and the transcripts have been corrected accordingly.

the interview and test. A written report was mailed to Respondent as soon thereafter as was feasible. Copies of some of these reports were received in evidence. These show that Industrial Security Analysts, Inc., had routinely reported to Respondent the sympathies of job applicants towards unions as revealed by the questioning during the pretest interviews.

The Board has held that an employer's asking a job applicant about union membership or union sympathies violates the Act.[6] Thus, the questioning of applicants for employment with Respondent was violative of the Act.

B. *Alleged Unlawful Layoff of 10 Employees on December 8, 1978*

It will be helpful, at the outset of the discussion of this allegation and for use also in the succeeding subsection, to describe briefly the operations of Respondent's plant and to identify now the officers, managers, supervisors, former supervisors, and alleged discriminatees who were involved in the events from late November 1978, to late 1979—the period relevant to the issues in this case. As noted above, Respondent makes parts used in electronic circuitry. Its president is Norman Haskoe; John J. Paschall was its production manager and vice president for manufacturing in the relevant period; and Jose Formoso was then the assistant production manager and, as of the hearing, had been promoted to production manager.

Eliot Feldman was in 1978-79 supervisor of the "combo room" whose operations are described below; Thomas Nani had been supervisor of the toolroom until he was replaced by Richard Heinzer in June 1979; Fernando Agostinho was the plating supervisor; Walter Caudle was the supervisor of the stamping department; and Jerry Prusan was the supervisor of the cladding department.

The alleged discriminatees are (1) Natividad Escudero who worked with about 65 other operators in the combo room under Eliot Feldman's supervision, (2) 10 other combo room operators of Portuguese extraction who are named in the complaint, (3) Antonio Lado, a machinist in the toolroom who had been supervised by Nani and then by Heinzer, and (4) Jorge Colon who worked under Agostinho in the plating department.

Three of Respondent's supervisors in 1978-79 had left its employ and testified for the General Counsel. They are Walter Caudle, Thomas, Nani, and Fernando Agostinho. Apparently, it was on the basis of the information they furnished to the Regional Director for Region 2 in early 1980 that the Regional Director reopened the closed unfair labor practice cases and the representation case too.

To complete the background discussion, a brief description of the welding procedures utilized by the approximately 65 combo room operators follows. Those operators inserted pieces (each from about one-tenth of an inch by one-tenth of an inch in size to a size slightly larger than a half inch square) into a device which pressed the parts together into a single unit. A piece one-fourth of an inch by one fourth of an inch in size was designated as 250; the smallest size was designated "120 x 095" (120 indicates that the long sides of the rectangular unit were each 120/1000 of an inch in length or slightly over one-tenth of an inch; 095 indicates that the short sides of the rectangle were each slightly less than one-tenth of an inch.

Discussed in this subsection, as indicated by the caption, is the alleged discriminatory layoff of 10 combo room employees early in the Union's organizing campaign. Originally, the consolidated complaint in this case alleges that Respondent has discharged 10 named employees on December 8, 1978, and refused to reinstate them until March 6, 1979, because they supported the Union. At the hearing, the General Counsel moved to amend the complaint and add the names of 6 more employees to that allegation and that motion was granted as it was represented that all 16 employees were terminated in "one action." Respondent had objected to that amendment on the ground that it would be able to demonstrate that the six newly named employees had, in fact, left Respondent's employ on dates earlier than December 8, 1978. Just before the hearing ended, the General Counsel withdrew the contention that those six additional employees had been discriminated against by Respondent. The General Counsel, however, continues to assert that the 10 employees, named originally, had been discriminatorily laid off for a 3-month period beginning December 8, 1978. Respondent maintained that it had no knowledge of any union activity by any of its employees until December 10—2 days after those 10 employees were laid off.

The General Counsel called two witnesses, Natividad Escudero, and her daughter, Nancy Fajardo, who testified that they visited the homes of many of Respondent's employees beginning on November 21, 1978, to obtain their signatures or authorization cards for the Union. They obtained such signatures from the 10 employees involved in this section in visits to their homes, for the most part, between December 3 and 7, 1978. Those 10 employees worked in the combo room and were of Portuguese extraction. They were laid off on December 8. Along with about 20 other employees of Respondent, most of those 10 attended the first union meeting which was held on December 11, 1978, at a church hall in Mount Vernon, New York.

Two other witnesses for the General Counsel, Antonio Lado and his wife, Luisa Lado, testified that on Sunday evening, December 10, 1978 (2 days after the 10 employees had been laid off), Respondent's assistant production manager at that time, Jose Formoso, called them at their home. The Formoso family and the Lado family had been longtime acquaintances. Luisa Lado testified that Formoso told her that he wanted to know who were the people who wanted to bring in a union. She testified that she told him she did not know and that Formoso then asked if anybody had approached her to ask her to sign a union card. She told him she knew nothing about any union. That ended that phone conversation, according to her account. She testified also that, in fact, she had signed a card for the Union on December 5, 1978. Jose Formoso, who is now Respondent's production manager,

[6] *Central Transport, Incorporated*, 244 NLRB 656 (1979), *Streamway Division of the Scott & Fetzer Co.*, 249 NLRB 396, 401 (1980).

testified that he had received an anonymous telephone call earlier on Sunday, December 10, in which the caller told him that a union was trying to organize Respondent's employees.[7] Formoso testified that he then called the Lado family as they were friends to find out what they knew about any union activity. His account does not controvert the substance of Luisa Lado's testimony. Whatever friendship may have existed between the Lado and Formoso families appears to have been quickly lost as it is undisputed that Formoso's father, not an employee of Respondent, came to the Lado apartment a few minutes after the phone call and warned Mrs. Lado that she had better tell his son what he wants to know.[8] She informed him that she had told his son all she knew. Mrs. Lado testified that Jose Formoso refused to greet her the following day and in fact turned away from her.

The foregoing events disclose that the Union's organizing efforts were conducted in a secretive manner mostly via visits at night to employees at their homes and that the first time Respondent evidenced to an employee any knowledge of those union activities was after the layoff of the 10 employees. The General Counsel, however, proffered the testimony of three former supervisors to show that Respondent was aware, before the December 8 layoff, of the employees' interest in the Union and that the layoff was based on a discriminatory reason.

One of those three, Walter Caudle, had been supervisor of Respondent's stamping department until his discharge on November 14, 1979. Parenthetically, I note that he has instituted a civil action against Respondent respecting the circumstances of his own discharge and that he is seeking substantial monetary damages. Caudle's testimony respecting the December 8 layoff is as follows. In mid-November 1978, he was present in a meeting with about 17 other supervisors (i.e., virtually all of Respondent's supervisors). At that meeting, Respondent's then assistant production manager, Jose Formoso, stated that a union was attempting to organize Respondent's employees, that Respondent might lay off employees because of that effort, that there had been a meeting on the previous night of a group of employees at the "Portuguese Club," and that Natividad Escudero, Jorge Colon, and Antonio Lado were the employees who were the main union organizers.

Three aspects of Caudle's account of such a meeting in mid-November 1978 were controverted by the testimony of other witnesses called by the General Counsel. Thus, two other former supervisors of Respondent placed the earliest such supervisory meeting as having taken place in December. Their detailed accounts are set out separately below. Secondly, the employee who was the Union's principal organizer, Natividad Escudero, testified that there had never been a union meeting of employees at the Portuguese Club and that the first union meeting occurred 3 days *after* the 10 employees named in the complaint were laid off. Finally, the other two employees, Colon and Lado, whom Caudle testified as having been identified by Respondent's assistant plant manager in mid-November as principal union organizers signed cards for the Union in December and, in other respects, were not very active for the Union. In view of the testimony of the General Counsel's other witnesses contradictory of Caudle's account of a mid-November 1978 supervisory meeting, I am compelled to reject Caudle's testimony thereon as unreliable.

The General Counsel called Fernando Agostinho, supervisor of Respondent's plating department until late 1979 when he resigned.[9] He testified that he had a conversation with Respondent's assistant plant manager, Jose Formoso, which he believed took place the day after the layoff of employees on December 8. He was unable to recall where the conversation took place. He testified he asked Formoso why the employees had been laid off and Formoso told him that he, Formoso, thought it was "because of the union uprising or . . . that it was because of the union."[10]

Agostinho testified further that he attended a meeting of supervisors held about a week after the December 8 layoff and that "everybody was puzzled by not knowing sooner" about a union trying to get in and about not knowing "who the people behind the union movement were." Respondent's witnesses testified that the first supervisory meeting respecting the Union's efforts to represent its employees occurred after Respondent received notice on December 13, 1978, that the Union had filed a petition for an election with the Regional Office of the Board. Its assistant production manager, as did all of Respondent witnesses, denied that the December 8 layoff was anything but economically motivated.

While I find that Agostinho's testimony was generally candid, forthright, and accurate, as described in greater detail below with respect to other issues in this case, I am not persuaded as to the accuracy of his recollection of a discussion on December 9 between himself and Formoso. He seemed to me not to be very sure of the date or the substance of such conversation. He could not recall where it occurred. Further, his testimony that a week later the supervisors were puzzled as to not knowing sooner of a union "trying to get in" and as to the employees involved seems to be at variance with the statement that Formoso had said that he, Formoso, thought the layoff was because of the Union. If he had been told on December 9 that 10 employees had been laid off on December 8 because of their union activities, he would not have been puzzled on December 13 as to which employees may have supported the Union. I think Agostinho was trying to give a candid account of his recollection of the events. The problem with his account is that it lacks sufficient precision to persuade me that he

[7] I have my doubts that the informant was anonymous. Formoso testified that he told Respondent's vice president, Jack Paschall, on December 10, of the call. On cross-examination, Formoso said he told Paschall that the anonymous caller spoke to him in English. Paschall, when cross-examined about the event, testified that Formoso told him that the caller had spoken in Spanish.

[8] There is no contention that that warning was violative of the Act.

[9] On several occasions, Respondent has seemed to suggest that there was something inappropriate respecting Agostinho's resignation. If there is such an innuendo, I find it to be of no significance and attach no weight to it.

[10] The transcript incorrectly uses the words, "the source of the union" instead of "because of the union."

was told by Formoso on December 9 that the employees were laid off the preceding day because of their union activities. Rather, in view of the lack of overall clarity in his account and in view of other testimony related below, that there were other layoffs and that Respondent had many meetings in December 1978 in which Respondent planned strategies for resisting the Union's organizing efforts, I am not persuaded that his account should be credited. Instead, I credit Formoso's denial.

A third former supervisor testified for the General Counsel respecting the alleged unlawful layoff on December 8. Thomas Nani had been supervisor of Respondent's tool-and-die department until his discharge in mid-1979. He testified as follows as to the alleged discriminatory layoff. Respondent's production manager, Formoso, called him on a Sunday night in December 1978, and told him that a union was trying to get into Respondent's plant and that a lot of employees had signed union cards. On the following day, Nani met with Respondent's vice president, Jack Paschall, its production manager, Formoso, and its supervisor, Caudle, and was told to remain calm. Formoso said then that he and Paschall had a pretty good idea as to which employees had signed cards. That meeting, according to Nani, took place several days *before* the December 8 layoff. In context with his overall testimony, his account indicates that the meeting occurred on Monday, December 4. Nani also testified that Formoso and Paschall then discussed "alternatives"—one of which was to do nothing and another was to discharge employees. Paschall, according to Nani, said that they "would make it a layoff and give as the reason that business was slow." Nani testified that Paschall told them that he would check with the "owner" before taking any action. Nani testified further that on Friday, December 8, he was present at a meeting in Paschall's office with Supervisors Caudle, Keller, and Prusan at which Paschall and Formoso told them that they "were going to lay the people off . . . for the signing of union cards . . . and [that] they could make it look like they were slow."

Former Supervisor Caudle also testified for the General Counsel respecting a meeting held by Paschall prior to the December 8 layoff. In that regard, Caudle testified that the second supervisory meeting concerning a union took place on the day before the layoff. Assuming this applied to the December 8 layoff, he placed the second supervisory meeting on December 7.[11] Caudle stated that he, Nani, and Supervisor Feldman met with Jose Formoso and Paschall. Paschall, according to Caudle, wanted to know who was involved with the Union and said that there would be a layoff the next day. (Nani did not allude to any such meeting on December 7.) Caudle further testified that, on December 8, Paschall and Formoso reviewed with him the names of employees in his department to get him to state which of them supported the Union and which ones were opposed. Former Supervisors Nani and Agostinho both testified that the supervisors were polled respecting employee sentiment *after* the Union filed its petition on December 12, 1978, for an election.

While Nani impressed me as one who was seeking to recount accurately his recollection of the events, I have some reservations as to how precise his memory is. He testified that there had been other layoffs in December 1978 and that such layoffs are not unusual at that time of year. He also testified that there were other supervisory meetings in December respecting the Union. In that context, a question exists in my mind as to the extent his account is reliable. When I couple that question with the failure of Caudle to corroborate the specifics of Nani's account for the week December 4–8 and with the fact that Caudle's account of a meeting on December 7 (to which Nani did not refer) raises additional questions, I find that the General Counsel has not met his burden of persuading me that Respondent planned and carried out the December 8 layoff because the 10 employees involved had signed cards for the Union. That finding is buttressed by the following observations.

Nani testified he first learned of the Union's organizing effort when Assistant Plant Manager Formoso called him on a Sunday night in December 1978. He could not recall the exact date. Formoso and the General Counsel's witnesses Antonio and Louisa Lado, as related above, testified that it was on Sunday, December 10, that Formoso interrogated Luisa Lado as to what she knew about a union. The evidence is clear that the Formosos and the Lados were on friendly terms then. The evidence is also clear that Formoso was obviously disappointed in the failure of Luisa Lado to be candid with him and the inference is clear that he sent his father around to the Lado apartment to use his influence to get information as to which employees favored the Union. Further, I note that Formoso and Paschall testified that several supervisors were advised on December 11 not to get overwrought over the possibility of a union organizing effort and that Nani in substance stated he was so advised. It is barely possible that Formoso orchestrated that whole scenario to conceal the fact that the December 8 layoff was discriminatorily motivated or to obtain confirmation that the 10 employees laid off 2 days before had in fact been union supporters. It is more likely, however, that it was on that Sunday, December 10, that Formoso and Respondent first received information that a union was engaged in an effort to organize Respondent's employees and that Formoso then proceeded to contact the Lados, Nani, and his superior Paschall thereon.

As the General Counsel has failed to establish by a preponderance of the credible evidence that Respondent knew of the activities of the Union before the December 8 layoff, as it appears that it is not unusual for layoffs to take place several times each December, as Respondent's account respecting the date it first learned of any union efforts is plausible and supported by the circumstantial evidence, as that account indicates that Respondent's knowledge of any union activities of its employees postdated the December 8 layoff, and as the General Counsel also indicated uncertainty respecting the discriminatory allegation by having added 6 employees to the 10 on the basis that the discriminatory layoff of the 16 was done

[11] As discussed earlier, Caudle placed the date of the first supervisory meeting in mid-November at which a union meeting was supposedly held at the Portuguese Club

"in one action" and then later the General Counsel retracted that contention—I find that the evidence is insufficient to support a finding that the December 8 layoff was discriminatorily motivated.

C. *The Campaign Propaganda*

From the period December 13, 1978, the day after the Union filed its petition for an election and until the day before the election on January 10, 1979, Respondent's officials held mass meetings and departmental meetings with its employees at each of which an officer or a departmental head read a speech in English which was then translated respectively into Spanish, Portuguese, and Italian. Respondent also posted campaign material and mailed letters to employees urging them to vote against representation by the Union.

Several of the General Counsel's witnesses testified that they heard Respondent's officials, in these speeches, threaten to reduce overtime, to relocate the plant, and to discontinue distributing hams and turkeys as holiday presents to employees if the Union won the election. Respondent asserts that its officials followed the written texts exactly when making the speeches. One of the General Counsel's witnesses, Fernando Agostinho, was the individual who rendered the Portuguese translations of those speeches. His testimony corroborates that of Respondent's officials. I find that the written speeches were delivered verbatim.

On December 13, 1978, Respondent's president read a speech which (a) reminded its employees that they had many benefits and a friendly place to work at no cost and that they enjoyed those incidents without a strike, (b) informed them that virtually all the employees at a nearby firm, Edwards Door Company, who were represented by the Union were out of work, that the few remaining employees there would soon lose their jobs, and that the Union had failed to save their jobs, (c) informed its employees that there were many companies with similar experiences to the one experienced by that company, (d) told the employees that the union promises benefits but collects dues and fees, (e) stated that in a unionized factory an employee does not discuss a problem with a representative but discusses it with shop stewards who discuss it with the union and perhaps there would be a strike which means the factory would be closed and salaries not paid and, when the factory is closed, it loses customers and it does not need so many employees, (f) expressed the views that it would be wrong to convert the friendly atmosphere at the plant "into a divided hostile place," that the success achieved so far is "easy to lose because of the friction and hostility the union brings in," and that unions do not want overtime for employees as they "want more people for more dues," (g) noted that employees have security "because the company buys more machinery and expands," that "without this the company would get small and many jobs would be lost," and that Respondent helped employees at immigration hearings, and that Respondent is proud of its employees and does not want the Union, (h) reminded the employees that it survived a devastating fire the previous summer and that it could "continue this way without strangers—with the Union here this kind of cooperation perhaps could not be possible and many jobs will be lost," (e) advised them that "it is easy to bring in the Union but almost impossible to chase it out" and urged employees to vote "NO," and (j) concluded with patriotic references and expressions of religious sentiment.

The General Counsel urges that the foregoing statements by Respondent's president on December 13, 1978, especially in the context of the campaign leaflet discussed below, were coercive. The General Counsel contends that a cartoon posted by Respondent about a week before the election and entitled "The Great Fight Promoter" was coercive. Therein, the Union was depicted as inducing an employee to sign a union card and then cheering while the employee and his employer engage in a fistfight after which the Union walks away with a bag of "Union dues" from a factory which has a "closed" sign printed across it. Respondent contends that the General Counsel is taking its campaign material out of context. Respondent asserts that its material stresses the substantial renovations and expansions invested by Respondent in its facility and that the clear inference to be drawn therefrom is that Respondent has no intention of abandoning its operations. Further, its campaign material pointedly observed that its employees have the right to join or not to join a union.

In the initial Report on Objections in the related representation case, it was found that none of the statements in Respondent's speeches and other campaign material were coercive or interfered with the employees' free choice.

The statements made by Respondent's president on December 13, 1978, together with Respondent's campaign leaflet depicting a plant closed after employees brought in a union, present a fact situation about halfway between those considered by the Board in two of its decisions, one in which it found the statements coercive[12] and the other in which it did not.[13] In my judgment, the former case is closer to the facts of the instant case and its holding is controlling. Respondent in the instant case made it clear that with the Union the kind of cooperation it needs to overcome adversity "perhaps would not be possible and *many jobs will be lost.*" (Emphasis supplied.) At the least, its communications hovered on the edge of the permissible and the impermissible and it "is only simple justice that a person who seeks advantage from his elected use of the murky waters of double *entrendre* should be held accountable therefor at the level of his audience rather than that of sophisticated tribunals, law professors, scholars of the niceties of labor law, or 'grammarians' . . . ."[14] The Board has noted that whether a statement constituted a threat or an objectionable misrepresentation warranting the setting aside of the results of an election involves different inquiries and reflects different concerns.[15] I find that Respondent's state-

[12] *Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc.*, 249 NLRB 144 (1980).

[13] *Reliable Manufacturing Corporation*, 240 NLRB 90, 96, 99-100 (1979). See also *Garry Manufacturing Company*, 242 NLRB 539 (1979), for a fact situation involving more egregious conduct than is present in the instant case. Compare *Mohawk Bedding Company*, 204 NLRB 277 (1973); that case, however, was not an unfair labor practice case.

[14] *Georgetown Dress Corporation*, 201 NLRB 102, 116 (1973).

[15] *Robbins & Myers, Inc.*, 241 NLRB 102 at fn. 7 (1979).

ments and campaign propaganda threatened plant closure upon unionization. In its brief, the Union urged that Respondent also had unlawfully solicited grievances directly from its employees. I note that the Union presented that contention only in relation to its objections and does not urge that Respondent committed an independent violation of Section 8(a)(1) by such alleged unlawful solicitation. Further, there is no such allegation in the complaint. In any event, I do not find the statement in Haskoe's speech summarized at subparagraph (e) above as coercive.[16]

The impact of Respondent's campaign material respecting the election held on January 10, 1979, is considered elsewhere herein.

D. *Alleged Independent Violations of the Act*

As noted earlier, Respondent's then assistant production manager, Jose Formoso, in a phone conversation, interrogated employee Luisa Lado on December 10, 1978, as to which employees supported a union.

Natividad Escudero testified for the General Counsel that, shortly after the Union filed its petition for an election, her supervisor, Eliot Feldman, began to talk separately with each employee in his department and that she overheard him asking one of her coworkers if she knew which employees had signed cards for the Union. Escudero states she was passing by when she overheard Feldman's question; she testified that she did not hear the reply. Escudero further testified that, shortly after that incident took place, she went to Feldman and told him to stop harassing her coworkers and that she informed him that she was the one who was trying to get employees to sign cards for the Union. Feldman denied questioning any employees as to their support for the Union and also denied that Escudero informed him of her own union activity or urged him to stop questioning employees. As noted previously, Escudero had been the principal employee supporter for the Union. I am not persuaded that her account respecting the foregoing is accurate. It is possible but not probable that an employee would go to great pains to meet with employees privately and away from work areas to obtain their signed authorization cards, as Escudero had done, and then to later volunteer information respecting those efforts to her supervisor. Further, the information she states she gave him (that she was the key union adherent) was not responsive to the question she states she overheard; i.e., as to the identity of the employees who had signed union cards. Also, Escudero's credibility is suspect on collateral grounds. She testified on cross-examination that the Union had never given her any money for her expenses or otherwise respecting the matters involved in this case; in fact, she and her daughter had been given a considerable amount of expense money by the Union and over a long period. I credit Feldman's denial.

Another employee, Michael Hall, testified that in December 1978, about 3 or 4 weeks before the election, he was summoned to the production office where Assistant Production Manager Formoso asked him if he knew of anyone who was trying to get a union "in the company" and that he told Formoso that he did not. I credit Hall's account as it was detailed and also as the interrogation was consistent with earlier action by Formoso and by Respondent respecting employee support for a union.

Hall also testified that he entered the production office on one occasion sometime before the election and overheard part of a discussion among supervisors which involved an observation that overtime would be cut if the Union won the election. Respondent denies any such threat. I note that, in campaign material it disseminated to employees, Respondent had told them that a union's aim is not only to reduce overtime but also to persuade an employer to hire more employees in order that the union can collect more dues. In that context, I am not persuaded that Hall's testimony that he overheard only part of a discussion reflected accurately the complete statement. I credit the denials of Respondent's supervisors that they had warned that overtime would be cut if the Union won the election as it is more likely that any remarks they made as to overtime relative to the Union's efforts to organize employees would be consistent with Respondent's campaign propaganda.

There are two other instances of alleged unlawful acts of interference with the Section 7 rights of employees. Former Supervisor Walter Caudle testified that Respondent's vice president, Paschall, and its assistant production manager, Formoso, had told him to spread a rumor among employees that overtime would be reduced if the Union won the election and that he was told to tell employees that they would get extra holidays and benefits if the Union lost. Caudle testified that he was "indirectly" instructed to relay such information and that he knew what Respondent's officials wanted him to do. Caudle is, in effect, asking me to infer from what he states was said to him by Respondent's officials that he was in fact directed to threaten employees and promise benefits to employees. Some of the "instructions" he referred to seem to be identical with the comments made by Respondent's president in the speech discussed above—especially the reference to overtime work. Caudle also testified that one of the employees in his department, Mary Cobbler, asked him about the "company moving out" and "about overtime" and he then spoke to her about those subjects. He testified further that on another occasion he was riding to work with two employees, John and Lois Cauthen, and that, in response to John's question as to whether "the company is going to move out," he said that Respondent can do that if it wants to. Caudle testified further that John Cauthen also asked if his overtime would be cut and that he responded that he did not think it would because nobody else wanted to do Cauthen's work. The impression I got overall with respect to Caudle's testimony is that he seemed prone to substitute his personal opinion for an account of an incident and that even the manner he expressed those opinions was often vague. In the absence of independent corroboration, I am

[16] *Han-Dee Pak, Inc.*, 232 NLRB 454 (1977). Respondent relies on *PPG Industries, Inc., Shelby Plant, Fiber Glass Division*, 247 NLRB 941 (1980), but the facts in that case disclose that that employer sought to counter the union's propaganda respecting the prospects of a strike whereas, in the instant case, Respondent's aim was to instill the fear of plant closure if the employees voted for the Union.

of the view that Caudle's account is not persuasive. The General Counsel thus has failed to establish affirmatively that Respondent, by Caudle's acts, threatened employees or promised benefits to employees to discourage their support for the Union.

The last allegation in this subsection was based on the testimony of two of the General Counsel's witnesses. One, Jorge Colon, testified that his supervisor, Fernando Agostinho, asked him about 2 weeks after he had signed a union card if there was any truth to the rumor that the Union was trying to get into the plant and that Colon told him there was. Colon testified that Agostinho cautioned him that the employees should watch themselves. Agostinho did not deny this. As the testimony thereon is uncontroverted and as the interrogation follows the pattern previously engaged in by Respondent, I credit Colon's account.

Colon also testified that, a few days before the election, Agostinho told him that one of Respondent's officials, Dr. Levy, was trying to find another location to which Respondent would move if the Union got in. Colon also quoted Agostinho as saying then that, if the Union got in, employees would lose their benefits, Christmas turkey, a ham, and a party. Colon further testified that about 3 weeks after the election Agostinho told him that the employees could not have any conversations about the Union for a year. Agostinho, during his cross-examination by Respondent as to other matters, was asked about the above matters and denied making any of those threats to Colon. I credit Agostinho's denials. He had resigned from Respondent and, had he a bias, it is more likely it would be against Respondent. More importantly, he impressed me as an objective, perceptive witness with fair recall. Colon, on the other hand, seemed to me to have difficulty distinguishing between what was said in campaign speeches and otherwise. I thus find his account unpersuasive.

E. *Alleged Unlawful Discrimination Against Natividad Escudero*

The complaint, as amended at the hearing, alleges that Respondent harassed Natividad Escudero from the outset of the Union's organizing attempt in December 1978 until her discharge on August 15, 1979, by assigning her to perform fine assembly work because of her activities on behalf of the Union. Respondent contends that she was granted a medical leave of absence as she suffered headaches and eye strain in performing normal assembly work; it denies having discriminated against her in making work assignments.

As noted above, Escudero was the moving force behind the Union's organizing efforts and served as the Union's observer of the election on January 10, 1979. The General Counsel contended, and Escudero testified, that, in December 1978, she was isolated in a small room adjacent to the "combo room" where she normally worked alongside other employees and that she was then routinely assigned to the work of assembling electronic components, each measuring less than one-fourth inch square, whereas she had, prior to the Union's appearance, rarely been assigned to such "small work." The production records, as analyzed by the Union's accountant, do not support her testimony that Respondent gave her excessive assignments of fine assembly work beginning in December 1978.

I note, however, that the sizes of the "combos" she worked on in November 1978 and until December 8, 1978, were appreciably larger than the sizes she worked on in the week beginning December 11, 1978 (the day after Respondent learned of the Union's organizing efforts, as noted above). Still, the size she worked on in that week was not small work (i.e., one-fourth inch square or less) as its size was .325 and .260 or about one-third inch by one-fourth inch. At best, it appears suspicious that Escudero was assigned, immediately after Respondent learned that its employees were interested in being represented by a union, to assemble pieces smaller than she had been making in the previous weeks. That smaller work, however, was larger than the sizes referred to in the complaint as "fine assembly work" as that phrase, by the General Counsel's definition, pertains to sizes no larger than one-fourth inch square. The evidence thus does not support the allegation that, beginning on or about December 1, 1978, Respondent discriminatorily assigned Escudero to perform fine assembly work.

The General Counsel further contends that Escudero was discharged by Respondent in August 1979, when she was seeking to be relieved from performing repeated discriminatory assignments to fine assembly work. In support thereof, two former supervisors, Nani and Caudle, testified that Escudero's supervisor in 1979, Eliot Feldman, had said to them that he intended to assign Escudero to small pieces to make her sorry for supporting the Union. Feldman denied making any such comment. Nani further testified that it was common knowledge that Escudero did not like doing small work. Respondent's production records show that, for the first 7 months in 1979, Escudero worked almost exclusively on sizes larger than one-fourth inch square. Beginning on July 23, however, and until August 8, 1979, she was assigned exclusively to combos no larger than one-fourth inch square. The quantity of combos of those small sizes varied from about 6,500 to 8,400 each day and their total for that 2-week period was 90 percent of her overall production of fine assembly work for the period December 1, 1978, to August 15, 1979. Throughout all her previous years of employment with Respondent, she had normally performed such work an hour at a time for at most a few times a week. The intensity of the assignments of fine assembly work to her when it was common knowledge that she disliked such assignments lends considerable support to the testimony given by Caudle and Nani that her supervisor, Feldman, told them that he intended to give her such assignments to make her sorry for supporting the Union. I credit their accounts respecting those statements by Feldman.[17]

[17] Escudero testified that on one occasion Feldman confessed to him that he was assigning her to small work because of the Union. Feldman denied this. I credit Feldman's denial as it is unlikely that he would have openly confessed this to her and as I have found that other testimony she gave was not supported by related documentary evidence.

Escudero was assigned to assemble large size pieces on August 9 and 10. On August 11, a Saturday, she obtained from her doctor a note which recited that she could not perform "fine work (small objects)." Escudero testified that she gave this note to her supervisor, Feldman, on Monday, August 13; Feldman states that she gave it to him late on August 14 when she asked him for a "layoff." It is more probable that Escudero turned that note in to Feldman on Monday, August 13; i.e., immediately upon her return to work after having obtained the note from her doctor. I credit her denial that she asked to be laid off because of her eyes. The note she submitted sought to have her excused from fine assembly work only. There is no evidence that she, at any time in the course of her 6 years' employment with Respondent, had expressed an unwillingness to perform her normal duties.

On August 13 and 14, she was assigned to assemble GKLs—pieces almost one-half inch in diameter; i.e., larger pieces. At or about 9:30 a.m. on April 15, Feldman told her to go to the lunchroom. There, according to Feldman, Respondent's vice president, Paschall, with Formoso translating, told her that Respondent could not give her a layoff because it would be against the law as there was work for her and as he wanted her to stay. Feldman testified that she "insisted" on a layoff and that she objected to not being laid off until Formoso explained to her that she would get the same money by collecting disability insurance as she would have collected for unemployment insurance. From the gestures Feldman made while testifying and his apparent attempt to emulate the actions he attributed to her then, it is clear that Feldman was testifying that Escudero was happy to take a leave of absence "until her eyes got better." Feldman testified that she cleared out her locker and left.

Paschall testified that, when Feldman brought to his attention the doctor's note Escudero had obtained, he talked to her on August 14. Paschall testified that she told him that she "can no longer do small parts" and that he told her that he could not excuse her from such work as that would cut his flexibility in that other combo room employees may bring in similar notes. According to Paschall, she then asked for a layoff, but he offered to transfer her to the glass cutting department or the inspection department. He stated that the employees in these departments were paid at the minimum wage rate. Escudero was earning $3.90 per hour. Paschall did not testify that he told Escudero that her wage rate would be reduced. He did testify that there was plenty of large piece work to be done and that the large majority of combo room employees work the great bulk of their time assembling the large pieces. Paschall testified that, on August 15, he had a nice session with her in which she agreed to be put on disability insurance. Formoso's account of the events respecting Escudero's leaving Respondent on August 15 was terse and corroborated Paschall's.

Escudero's version of her discussion with Paschall and Formoso was as follows. Feldman told her, while she was at work on August 15, to report to the cafeteria. There, Formoso told her that, in view of the doctor's note, she could no longer work there and that she had 10 minutes to leave. She was forced to clean out her locker and was escorted to the door where she was cursed at by Respondent's officials before exiting. She also testified that Paschall had offered to pay for a taxi to take her home.

I find it hard to accept *in toto* either the version proffered by Escudero or those given by Respondent's witnesses. It is unlikely that Escudero was rushed out of the plant and cursed at by Respondent when, at the same time, its vice president offered to pay her taxi fare. I thus have reservations as to Escudero's account. Paschall's account is even more improbable. He stated he told Escudero he could not let her perform her normal job (where she rarely did small work) based on her doctor's note as 15 other combo room employees would then get similar notes. There is no evidence that any morale problem existed in the past years when she did relatively little small piece work and no evidence that any existed on August 13 or 14 or 15, when she was working on larger pieces. So far as the record in this case shows, no combo room employee had complaints thereon. Paschall states that he nevertheless offered to transfer her to either the inspection or the glass cutting department, apparently without any reduction in pay. I do not understand Respondent's apparent readiness to pay Escudero $3.90 per hour for performing inspection or glass cutting work which is normally compensated at the minimum wage rate. I do not understand why Respondent would so readily offer to do that for an indefinite period as it seems unlikely that Respondent would risk creating a morale problem among the minimum wage employees in the inspection or glass cutting departments by paying Escudero a much higher rate for the same work. The offer to transfer her to those departments also seems to undercut the very reason on which Respondent contends it could not make normal work assignments to her. Paschall states that he declined to relieve Escudero of fine assembly work assignments because he felt that 15 other combo room employees might obtain doctor's notes to secure the same relief. Instead, he stated, he offered to transfer Escudero to less demanding work, apparently with no reduction in pay. Had such an offer been made and accepted, Paschall could expect to be given doctor's notes from many more of the combo room employees as they would likely be seeking a similar favorable arrangement.

More likely, the truth lies somewhere between the two versions. I find that Escudero presented the note to Feldman on Monday, August 13, that she was called from her work station on the morning of August 15 to the cafeteria, that she was told there in a businesslike but not unfriendly way that Respondent could no longer use her services as she could not do fine assembly work, that she was not offered a transfer elsewhere, that there was no discussion of disability or unemployment insurance, and that she was escorted quietly to her locker and then to the door where she was offered taxi fare for a ride home.[18]

[18] Escudero filed a claim for disability insurance and collected payments thereon for several months. Her claim was cut off when she sought to obtain money from the insurance fund to pay for glasses which she said were needed by her in order to be able to return to work. The fund

Continued

There are two other points that are relevant to the alleged discriminatory discharge of Escudero. One, the evidence is clear that the great majority of the combo room work consists of the assembly of large pieces, the work Escudero had done virtually throughout her 6 years with Respondent. Secondly, as discussed in detail below in the section dealing with the discharge of Jorge Colon, Respondent's witnesses testified that they made repeated and exceptional efforts to keep Colon in its employ despite the alleged abuse and contempt he heaped in public upon Paschall and Formoso.

It is my finding that Respondent assigned Escudero to an extraordinarily high amount of fine assembly work in late July and early August 1979, because of her prior support of the Union and that Respondent seized on the doctor's note she presented to it on August 13 as a pretext to terminate her employment on August 15 to conceal its discriminatory motivation. In making that determination, I note that Escudero was the principal supporter of the Union among Respondent's employees, that there is independent evidence of Respondent's *animus* towards the Union in this case, that the credited testimony is that her supervisor had said he would make such work assignments to punish her for having supported the Union, that the assignments to fine assembly work which he made prior to her discharge were punitive as it was well known that she did not like to be assigned to fine assembly work, and that the reason given by Respondent for not making any effort to accommodate her desire to be relieved of abnormal assignments to fine assembly work was clearly pretextual. That reason was found to be pretextual on the basis of the discussion above. In addition, I note that the summary treatment accorded Escudero was in contrast to the consideration Respondent maintained it showed Colon, as discussed hereinafter, and as there has always been plenty of large piece assembly work in the combo room to which Escudero could have been assigned to perform and which she would normally have performed almost exclusively. The removal of Escudero from Respondent's plant on August 15 in a summary manner was tantamount to a discharge.

F. *Alleged Discriminatory Discharge of Jorge Colon*

Colon had worked for Respondent in its plating department for about 6 years as of the time of his discharge on October 15, 1979. He was then a leadperson under the supervision of Fernando Agostinho. Colon had signed a card for the Union on December 1, 1978, and had been designated by the Union to be one of its observers at the election on January 10, 1979. Respondent had been notified of that designation prior to the election. Colon, however, did not serve as the Union's observer but obtained a replacement to serve in his stead. Colon regularly ate his lunch in the plant cafeteria with Natividad Escudero, discussed in the section above. Colon's supervisor, Agostinho, testified that he had reported to Respondent's vice president, Paschall, during the preelection period, that Colon was prounion. Former Supervisor Nani testified that Plant Manager Formoso had told him that Colon was one of the employees who was working with Escudero to bring the Union in. Paschall and Formoso both testified that they had no knowledge as to whether or not Colon favored the Union until the Union notified Respondent shortly before the election that Colon would be the Union's observer at the election. It is unnecessary to resolve that credibility issue as it is apparent that Respondent, in either event, was aware of Colon's prounion sympathies as of early January 1979.

Colon testified that, shortly after the election, his supervisor, Agostinho, told him that he, Agostinho, had been told that Colon was not returning to work at the end of the scheduled coffeebreak. Colon testified that he told Agostinho that he would follow the schedule for breaks in the future and that he also explained to Agostinho that he had not done so in the past because a previous supervisor had authorized him to delay the start of his break whenever the plating job he was working on required it. Agostinho's testimony corroborates the foregoing and also Colon's further testimony that Colon's working schedule caused no problems.

Colon testified that at or about 2 p.m. on Ocotober 15, 1979, Agostinho told him to stop work and to report to Respondent's vice president, Paschall, and Production Manager Formoso in the cafeteria. Colon went there, unaccompanied by Agostinho. According to Colon, he was informed by Formoso and Paschall that that was his last day of employment and that, when he asked for an explanation, he was told one would be sent in writing to him. Colon's testimony was that subsequently he filed for unemployment compensation and was informed, apparently by someone at the claims section at an office of the agency administering the program, that Respondent had notified the claims office in writing that Colon had been laid off "for arriving late; for [taking] a longer time for breaks and for bad behavior."

Colon's supervisor, Agostinho, who later had resigned his employment by Respondent, testified that he had never been consulted by Paschall or Formoso respecting Colon's discharge. Paschall and Formoso testified that they did not discuss with Agostinho the matter of Colon's asserted attendance problems or his discharge. They said that they had in early 1979 broached the subject of warning Colon with Agostinho and that Agostinho told them then that he did not want to get involved in such discipline as he was afraid that Colon would stab him with the knife Colon usually carried. Agostinho testified that Colon was in the habit of having a large knife on his person. Agostinho also testified that Colon had never threatened him, that he had never told Paschall or Formoso that he was afraid of Colon, and that Colon was always a cooperative, willing, and friendly employee. I credit Agostinho's account and not that of Paschall and Formoso for the following reasons. Colon struck me as a quiet, amiable person. He is appreciably older than Agostinho and did not appear to be nearly as physically fit as Agostinho. Even more significantly, I note that Paschall's overall account appears highly improbable and even contradictory. Thus, he tes-

thereupon determined that she no longer qualified for disability payments. I do not view the foregoing sequence as of great significance. The factors discussed above are entitled to much greater weight.

tified as noted above that Agostinho did not want to be involved in any discipline of Colon because he feared for his life; yet, Paschall further testified that he, Paschall, repeatedly chastised Colon and that Colon each time became angry, abusive, vicious in the use of racial epithets towards him, and on several occasions pushed a table forcefully against Paschall. Throughout all this, Paschall's testimony suggests that he, Paschall, never even considered the prospect that Colon might attack him with a knife. I also note that Paschall appears to be somewhat older than Colon and less physically fit than Agostinho. (In its brief, Respondent observes that Agostinho was afraid to tell the truth when he testified as Colon's wife was sitting in the hearing room. I detected nothing unusual in his demeanor then.) Formoso's testimony tracks Paschall's and indicates that neither he nor Paschall ever felt any apprehension in dealing with Colon. It would seem to me that, if Agostinho had really expressed fear of Colon, Paschall and Formoso would not have had so many confrontations with Colon but would have been much more careful. For that matter, it seems more likely that, had Agostinho told them that he refused to discharge his duty to supervise Colon, as Paschall and Formoso claim, appropriate remedial steps would have been taken thereon against Agostinho without delay. It is also unlikely that Agostinho's asserted fears would have been totally ignored, had they been as genuine as Paschall's and Formoso's testimony maintains.

Paschall's and Formoso's accounts respecting the discharge of Colon are that Colon willfully ignored their repeated efforts to induce him to return to work at the end of his regularly scheduled lunch period and coffee-break time. They assert that Colon instead frequently remained or returned to the cafeteria after punching back for work and stayed there for 15 minutes or more beyond the time he should have been back at work. Respondent paid Colon for all those periods during which Paschall and Formoso assert he ignored their admonitions. Paschall stated that Colon was paid for those times because it would have been difficult for him to prove that Colon was in the cafeteria on those occasions. Yet, it seems that Respondent relies on the very same contention to justify its discharge of Colon. Perhaps not entirely, as Respondent alludes to two written warnings it asserts had been given to Colon respecting his attendance record. Colon professed no knowledge of those warnings and testified also that he had never had any discussion with any of Respondent's supervisors or managers as to his attendance, other than the discussion he had with Agostinho shortly after the election, as set out above. I credit Colon thereon as Paschall's and Colon's accounts of the incidents in which they gave Colon written disciplinary warnings are most unpersuasive. They testified that, when they disciplined Colon and asked him to sign the written warnings, he told them, in the Spanish equivalent of colloquial English, to shove them up their posteriors and informed them that they were slave drivers, that Formoso was a traitor to his race, that Paschall and Formoso were "bastards," that he, Colon, had a right to take longer lunch and rest periods than the other employees, and that Colon referred to Respondent's officials in Spanish as (a) "feces," (b) gay persons, (c) "jew bastard," and (d) "son-of-bitches." Paschall testified that, at various points in their conversations, he could sense that he was "losing his cool and was getting nowhere." It is unlikely that a vice president, such as Paschall is, in charge of operations in a highly competitive business, would himself repeatedly entreat an employee with so hostile a view to cease delaying his return to work from his breaktimes. I find, based on the foregoing credibility resolutions, that Colon was never warned as to overstaying his break periods, that he was discharged summarily on October 15, 1979, and that the reason given by Respondent was patently a pretext. In view of those findings and as Respondent was aware of Colon's support for the Union, and as it had demonstrated in other ways its *union animus*, I conclude that the General Counsel has made out a clear *prima facie* case respecting the discriminatory discharge of Colon and that Respondent has not rebutted it.[19]

G. *Alleged Discriminatory Discharge of Antonio Lado*

Antonio Lado began working for Respondent in late 1975, in its maintenance department. As of his discharge on October 22, 1979, he was classified as a machinist, 2d class. He and his wife, Luisa, signed authorization cards for the Union in early December 1978. As recounted above, Respondent's assistant production manager, Formoso, was a close family friend of Lado and interrogated Luisa Lado on December 10, 1978, respecting the extent of her union activities and, when she professed that she knew of no such activities, Formoso exhibited hostility towards her.

Antonio Lado's supervisor, Nani, testified that Formoso told him to pick on Lado's work in order to clear the way for Respondent to get rid of him. Nani did nothing toward that end. He, Nani, was discharged by Respondent in June 1979.

Formoso testified that he never discussed Lado's employment status with Nani.[20] I credit Nani as he impressed me as one who was seeking to recount events simply as he recalled them[21] and as the circumstances of Lado's discharge, discussed below, indicate that Respondent contrived the procedures it assertedly relied upon to support the reason it proffered for discharging Lado.

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[19] *Concord Furniture Industries Inc., d/b/a Bradford Furniture Company*, 241 NLRB 643 (1979).

[20] The General Counsel called another former supervisor, Walter Caudle, who testified he was present on one occasion when Formoso told Nani to find a reason to discharge Lado. Caudle's pretrial affidavit contained no reference to such an incident and Nani did not allude to any such discussion at which Caudle was present. I am not persuaded that Caudle's account is correct in view of the above and as Caudle seemed to be confused and vague at times when testifying.

[21] I recognize that I rejected Nani's testimony respecting the allegation above that Respondent had discriminatorily laid off 10 employees on December 8, 1978. Nani testified then that Formoso called him on a Sunday in December and his other testimony indicated that that preceded the day of that layoff. Nani had also testified that in that week he was present at meetings where the Union was discussed as was the layoff and the reason therefor. Although I was impressed with Nani's demeanor, I rejected that testimony as it appeared clear that his recollection of those events was not precise and as the other evidence indicated that the Sunday in question was December 10, 2 days after the layoff.

Nani testified that Lado was a slow and very careful worker and that he had no problems with Lado's work. Nani was replaced in June 1979 by Richard Heinzer[22] who prepared a warning notice dated June 11, which stated that he had verbally warned Lado against working on a project other than the one Heinzer had assigned to him. Lado testified that Heinzer never so warned him.

Heinzer also testified that he spoke to Lado on July 27 and stated then that he was warning Lado for refusing to follow instructions by having worked on an inconsequential job although he had been instructed to work on a rush job. Heinzer testified that Lado refused to sign a written warning notice Heinzer had prepared and that Lado assured him that the problem would not occur again. Lado's testimony thereon is that, when Heinzer indicated that Lado had refused to follow orders, he told Heinzer that his whole background, including his military service in Spain, would not permit him to disregard the orders he is given, that he had never disobeyed any order Heinzer had given him, that he had complied with every order, and that, for those reasons, he could not sign the warning notice. Heinzer had noted on the warning notice that Lado had refused to sign it.

There was a third warning notice proffered by the General Counsel and received in evidence. It was signed by Heinzer and dated October 10, 1979. The notice stated that Lado would not cooperate in instructing a new employee and that Lado would not sign the notice. Lado disclaimed any knowledge of such a discussion with Heinzer, of such a note, and of any refusal on his part to train any employee.

I credit Lado's accounts of the events respecting the warning notes. Lado impressed me as a most truthful witness. On his direct examination, he refused to identify a document shown him by the counsel for the General Counsel as the union card he signed and it was only when he was satisfied that the document in question was a photostatic copy of the actual card he signed that he acknowledged that he had signed such a card. It was apparent to me that, notwithstanding that such evidence was essential to support his case, he was unwilling to offer it until he satisfied himself that his testimony was correct. Heinzer impressed me as a very energetic and ambitious young man. He has since left Respondent's employ but maintains contact with his former colleagues there. It is significant to me that Heinzer did not place any weight on Lado's asserted refusals to sign the warning notices and that leads me to believe that Lado's version is the accurate one. To my mind, Heinzer is not the type of person who would tolerate the willful refusal of a subordinate who had purportedly just disobeyed a direct order to refuse to acknowledge that fact by signing a warning notice thereon. Had Lado willfully disobeyed Heinzer's order and refused to sign a warning thereon, Heinzer would, in my judgment, have taken direct remedial action thereon and would not simply have noted on the warning notices that Lado "refused to sign" or "would not sign." There was one other significant point. In his testimony, Heinzer asserted that on one occasion Lado called Heinzer a "liar." Lado just does not strike me as the type of person who would use such a term and certainly not to his supervisor. For that matter, Heinzer is not the easy going type who would have let such a remark pass without having taken some action immediately. The General Counsel contends that Respondent's "progressive discipline" of Lado set the stage for the following development.

On Saturday, October 20, 1979, Lado was approached by Eliot Feldman, supervisor of the combo room. Their accounts differ as to what was said then. Lado testified that Feldman asked him to work immediately on a part needed in the combo room that day and that he told Feldman that he would have to get Heinzer's approval before he could change his work assignment. Lado testified that Feldman told him that Heinzer was not in the plant and that he, Feldman, would take full responsibility. (Lado's work is related directly to the combo room functions.) Lado thereupon complied with Feldman's request and was discharged on Monday, October 22, purportedly for having a "third" time worked on a job different than the one assigned him.

Feldman testified that he never asked Lado to do a rush job for him on October 20, but that he merely gave Lado a part and requested him to have Heinzer put it in his work schedule sometime in the early part of the next week. I do not credit Feldman. There does not appear to have been any need for Feldman to have made such a request of Lado then and it is unlikely he would have chosen Lado to relay that request to Heinzer as Lado spoke little English then and,[23] as Feldman could more easily have waited until he saw Heinzer or could have asked other tool-and-die employees nearby who spoke fluent English to relay such a request or he could have left a note on Heinzer's desk. It is unlikely, had Lado already been the recipient of prior written warnings for ignoring Heinzer's orders, that Feldman would have made such a strange request of Lado and that Lado purposely seized upon it to flaunt the instructions of Heinzer. Yet, that is Respondent's basic contention respecting its reason for discharging Lado. I find no merit in it and find instead that Lado was effectively "set up" by Feldman's assurances that the job was a rush job and that Feldman would take full responsibility. Coupled with the other credited evidence, i.e., that Formoso wanted Nani to invent a reason to conceal the discharge of Lado because of his support for the Union, I conclude that Lado's discharge was discriminatorily motivated.

III. THE UNION'S OBJECTIONS IN CASE 2-RC-18196

Objections 1, 3, 6, and 8 which had been filed by the Union to the conduct of the election on January 10, 1979, have been reinstated for purposes of a hearing and have been consolidated with the related unfair labor practice issues discussed above.

[22] Walter Caudle testified for the General Counsel that, on the day Heinzer became supervisor, he (Caudle) heard Formoso tell Heinzer to get rid of Lado because of his union activities. In the absence of independent corroboration, I am not persuaded that Caudle's recollection is accurate. My reservations respecting the reliability of Caudle's testimony have been stated previously.

[23] Lado had since been taking English courses in night class.

Objection 1

Objection 1 states:

> 1. The company is charged with coercion prior to the election. The individual was summoned to the personnel office and interrogated as to whether he had signed a card and if not who did sign the cards, and instructed to return with information regarding the signing of the cards. There are two affidavits in support of these charges which we will submit at the proper time.

The original Report on Objections issued on June 13, 1979. It noted that there was some interrogation of employees respecting union activities, that that interrogation had occurred a month before the election, and that there was no evidence that two-thirds of the employees involved were subjected to any unlawful interrogation. Based on these considerations, the report recommended that this objection be overruled. No exception thereto was filed and the Board later adopted that recommendation.

The interrogations of employees Luisa Lado, Hall, and Colon prior to the election, as found above, correspond to the matters set out in that Report on Objections. The only other area of interrogation of employees respecting their feelings towards unions is that disclosed by the evidence concerning the questioning of applicants for employment during their pretest interviews. It is obvious that the interrogations of Lado, Hall, Colon, and the applicants for employment were matters which were considered in the initial Report on Objections or were readily ascertainable then. Every employee in the unit had undergone such examination before they were hired. The procedural issue to be considered now is whether it is appropriate to reopen the representation case investigation as to those matters. The Union might assert that the Board already has reopened the matter and that the merits alone must be considered. Yet, the Board's order adopting the Supplemental Report on Objections overruled Respondent's exceptions without prejudice. The procedural issue thus must be considered.

The Board has had occasion to consider substantially the same procedural issue when it sustained an employer's exceptions which, *inter alia*, contested the propriety of a regional director reopening a closed representation case hearing via a supplemental report on objections where the reopening pertained to matters uncovered during the investigation of unfair labor practice charges filed after the issuance of the first report on objections and notice of hearing.[24] The supplemental report issued after the hearing on the original objections had closed; the supplemental report recommended that that hearing be reopened. The Board overruled that recommendation on the ground that inordinate delays in the determination of representation case matters are not to be encouraged.[25] The Board adopted the Hearing Officer's recommendation, contained in his report which issued after the supplemental report on objections had issued and certified the results of the election in that case. It seems to me that the Certification of Results which issued in the instant case in 1979 is governed by the same principle as that set out in the *Albuquerque Publishing* case; the reasons of policy applicable there also apply here and "with equal, if not greater, force."

The same rationale was used by the Board in a later case where the Board denied a motion to revoke a certification of representative.[26] In that case, the motion was filed 7 months after the election had been held and some 2 months into the certification year. The Board stated in that case that, in the exercise of its discretion, it deemed it unwise to permit a party to file new objections for an indefinite period of time "[f]or to do so would leave open to continued questioning the validity of a Board certification." The Board specifically noted in that case that a valid election must normally be given conclusive effect for a reasonable period of time.

I recommend that the Board sever Case 2-RC-18136 from the unfair labor practices and reissue the Certification of Results of the Election held on January 10, 1979, based on the principles set out in *Albuquerque Publishing* and the other cited cases.[27]

Objection 3

This objection states:

> 3. There were five meetings called by the employer on company time at which speeches were made to the workers about the inadvisability of joining the union.

The initial Report on Objections summarizes Respondent's campaign propaganda and concludes that it did not exceed the limits established in Section 8(c). I have, as noted above, found that the speech of Respondent's president, Haskoe, on December 13, 1978, particularly when considered in context with the "plant closed" cartoon constituted a warning to employees that Respondent would close its plant if they selected the Union as their representative.

[24] *Albuquerque Publishing Company*, 219 NLRB 631 (1975). See also *Hecla Mining Company*, 218 NLRB 860 (1975), cited therein.

[25] *Albuquerque Publishing*, *supra* at 632.

[26] *Reichart Furniture Company*, 236 NLRB 1698 (1978).

[27] This recommendation is obviously inconsistent with the resolution I made earlier respecting the merits of the related unfair labor practices. That earlier recommendation was premised on an entirely different basis—unfair labor practice cases closed by the General Counsel as a result of the administrative investigation may be, according to Board precedent, reopened by the General Counsel under the authority conferred upon him under the Act in issuing complaints. The Union and Respondent have each asserted that the Board should adopt a uniform approach. Respondent would have the Board dismiss the unfair labor practice case so that its result would be in harmony with the representation case; the Union would have the Board direct a new election based on the unfair labor practices found. In its brief, Respondent "urged the Board to enunciate a policy whereby a single standard will be applied in the reopening of unfair labor practice charges and in cases to reopen a concluded unfair labor practice hearing." Respondent recognizes that the Board's holding in *California Pacific Signs Inc.*, *supra*, is binding on me. Obviously, Respondent can pursue its contention by filing an appropriate exception to my order in the unfair labor practice cases and the Union can do the same in the representation case.

Notwithstanding my own recommendation respecting the alleged unfair practices encompassed by Haskoe's speech and the cartoon, I find that the validity of Board certifications, once properly issued, and the need to avoid uncertainty and a lack of finality in the Board's election procedures are paramount considerations.[28] Further, it appears that the Board had considered the very same evidence and found it wanting when it adopted the original Report on Objections. I therefore recommend that Objection 3 also be overruled.

Objection 6

This objection states, "[V]acations were cancelled over New Year's and Christmas."

Presumably, the Union was urging that such action was taken by Respondent to improperly influence the election results. In any event, no probative evidence thereon was proffered and the Union did not pursue this objection in its brief to me. This objection was found to be without merit in the original report, adopted by the Board. I find that this objection raises no substantial issue affecting the election and recommend it be overruled.

Objection 8

Objection 8 recites that "[O]ne whole group of ten was fired prior to the election because of indicated sympathies for the Union."

The original Report on Objections had recommended dismissal of this objection as the evidence thereon was deemed insufficient and that recommendation was adopted by the Board in the absence of exceptions. My factual findings above are to the same effect and, in any event, the December 8 layoff preceded the date of the filing of the petition and thus may not be considered objectionable conduct.[29] Based on the foregoing, I recommend that Objection 8 be overruled.

As I have recommended that all the objections consolidated for hearing be overruled, I further recommend that a Certification of Results of Election be issued that the Union did not obtain a majority of the valid votes cast at the election held on January 10, 1978.

Conclusions of Law

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

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

3. By interrogating applicants for employment as to their membership in, and their sympathies for, labor organizations and by interrogating employees as to their support for the Union, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By implicitly warning its employees in its campaign propaganda that it may close its plant in order to discourage its employees from voting in favor of representation by the Union, Respondent has engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(1) of the Act.

5. By having discharged from employment and by having failed to reinstate to its employ Natividad Escudero, Jorge Colon, and Antonio Lado, and by having assigned Natividad Escudero to perform the work of assembling small units for a protracted period from late July to early August 1979, because these employees joined and supported the Union, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act.

6. Respondent did not violate Section 8(a)(1) and (3) of the Act when it laid off 10 employees on December 8, 1978.

7. Respondent did not, through its former supervisors, Walter Caudle or Fernando Agostinho, threaten employees that its plant would be closed or moved if the employees selected the Union as their collective-bargaining representative and thus the alleged violations of Section 8(a)(1) of the Act thereon must be dismissed.

8. Respondent did not violate Section 8(a)(1) and (3) of the Act in any manner other than as set forth in paragraphs 3, 4, and 5.

9. The unfair labor practices found above in paragraphs 3, 4, and 5 affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. The unfair labor practices committed by Respondent demonstrated that it has a propensity to violate the Act and therefore a broad remedial order is warranted.[30]

11. The unfair labor practices committed by Respondent are not so egregious as to warrant the entry of a bargaining order, as requested by the Union in its brief, particularly in the absence of any showing that the Union represented at any time a majority of Respondent's employees and as the election, upon which a Certification of Results should issue, resulted in a tally of ballots showing that a majority of the unit employees did not select the Union as their representative.

12. It is appropriate to certify the results of the election held on January 10, 1979, in Case 2-RC-18196 and to overrule the Union's Objections 1, 3, 6, and 8 to the conduct of that election.

The Remedy

Having found that Respondent has engaged in, and is engaging in, unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that Respondent discharged Natividad Escudero, Jorge Colon, and Antonio Lado, for reasons which offended the provisions of Section 8(a)(3) of the Act. I shall therefore recommend that the Respondent make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay provided herein with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[31]

[28] *Reichart Furniture Company, supra.*

[29] *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961).

[30] *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[31] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER[32]

The Respondent, Semi-Alloys, Inc., Mt. Vernon, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating applicants for employment as to their membership in, or sympathy for, any labor organization and from interrogating its employees as to their membership in, and support for, Local 1783, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union.

(b) Warning its employees that it may close its plant in order to discourage them from voting in favor of the Union.

(c) Discharging or making discriminatory work assignments to employees to discourage employees from joining or supporting the Union.

(d) In any other manner interfering with, restraining, or coercing employees as to their rights under Section 7 of the Act.

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

(a) Offer to Natividad Escudero, Jorge Colon, and Antonio Lado immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent jobs and make them whole for any loss of pay which they may have suffered as a result of discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records and reports, and all other records necessary to analyze the amounts of backpay due herein.

(c) Post at its Mt. Vernon, New York, plant, copies of the attached notice marked "Appendix."[33] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's authorized representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any materials.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

All alleged violations of Section 8(a)(1) and (3) set out in the amended complaint, except for those referred to above, are dismissed.

Objections 1, 3, 6, and 8 filed by the Union to the election held in Case 2-RC-18196 are overruled and a certification of results shall issue that a majority of the valid votes counted, plus challenged ballots, were not cast in favor of representation by the Union.

[32] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[33] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."