Dutch Boy, Inc., Glow-Lite Division *and* International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC. Cases 16-CA-7039, 16-CA-7373, and 16-RC-7472

June 8, 1982

DECISION, ORDER, AND DIRECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 10, 1981, Administrative Law Judge Arthur G. Lanker issued the attached Decision in this proceeding.[1] Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs,[2] the Charging Party filed cross-exceptions and a supporting brief, Respondent filed an answering brief to the General Counsel's and the Charging Party's exceptions, and the Charging Party filed an answering brief to Respondent's exceptions.

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,[3] and conclusions[4] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[5]

1. The Administrative Law Judge found, and we agree, that Respondent violated Section 8(a)(3) and (1) by laying off 55 employees on February 11, 1977, in response to the commencement of the Union's organizational campaign. The Administrative Law Judge concluded that the General Counsel had established the elements of a *prima facie* case of discriminatory motivation, citing the timing of the layoff, Respondent's proven deep hostility to the Union, and Respondent's knowledge of the union campaign at the time of the layoff. In drawing the inference from the record that Respondent knew of the union campaign at the time of the layoff, the Administrative Law Judge relied on application of the Board's small-plant doctrine.[6] Contrary to the Administrative Law Judge, we find this doctrine inapplicable to Respondent's plant, where approximately 200 employees work. For the reasons stated below, however, we find that Respondent did have knowledge of the union campaign as of the time it decided to effect the February 11, 1977, layoff.

The evidence reveals that in late November 1976 employee Carl Whitefield telephoned Edward Gaskill, International representative of the Union, to discuss the possibility of an organizational campaign among Respondent's employees. Over the next 2 months, Whitefield and Gaskill had several meetings and telephone conversations, and Gaskill informed Whitefield that it was crucial for the Union to obtain an accurate list of the employees' names, addresses, and telephone numbers. Because Whitefield was having difficulty gathering such information, he and employee Steve Hinkle decided in mid-January 1977[7] to conduct a contest among the employees whereby the employee who came closest to guessing the number of beans in a jar would win $10. In order to enter the contest, each employee had to write down his name, address, and phone number. Approximately 170 employees entered the contest.

Respondent's agents perceived the connection between the bean contest and the Union. Manufacturing Foreman Garland Fuller testified that he "figured out" that the Union was using the bean contest as a means of obtaining the employees' names and addresses and that he was not "fooled" by the contest. Fuller also testified that he talked to Manufacturing Manager Homer Rinehart about the contest. Further, employee Hinkle testified, without contradiction, that in a meeting with Fuller on February 16 Fuller said that he knew Hinkle was "one of the instigators of the Union campaign" and that Hinkle had his mind "already made up how [Hinkle] was going to vote in the election whenever the bean contest was still going [sic]."

[1] The hearing originally commenced before Administrative Law Judge Benjamin K. Blackburn, who died before the hearing concluded. The remainder of the hearing was conducted before Administrative Law Judge Lanker.

[2] Respondent has requested oral argument. This request is hereby denied, as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] 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.

[4] In regard to the Administrative Law Judge's sustaining of the Union's Objection 18 concerning the challenged ballot of Linda Mitchell, we note that the Board agent's mistaken placement of Mitchell's ballot in the ballot box occurred at the ballot count after the polls were closed rather than during the election, which is the impression left by the Administrative Law Judge in his Decision. Although no exceptions were filed in this regard, we have clarified this matter to avoid confusion.

[5] The Administrative Law Judge's recommended Order is modified to provide an appropriate remedy, inadvertently omitted by the Administrative Law Judge, for Respondent's unlawful unilateral actions with regard to terms and conditions of employment.

The Administrative Law Judge also inadvertently failed to cite *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), for the rationale for interest payments.

[6] See *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959).

[7] All dates are in 1977 unless otherwise noted.

On January 28, Whitefield turned over the employees' names and addresses to the Union, and Gaskill instructed him to begin asking employees he could trust to serve on the Union's organizing committee. On February 2, Whitefield met with Gaskill and union organizer Jerry Smith, and the three scheduled an initial organizational meeting with employees for February 10 after work. Whitefield and Gaskill met again on February 8, and Whitefield told him that there were probably going to be many more employees in attendance at the meeting than originally had been planned since employees whom Whitefield had contacted had in turn contacted other employees. At work on February 9, numerous employees whom Whitefield had not told about the union meeting came to Whitefield and asked about the meeting. Whitefield observed many employees all over the plant talking about the meeting, and Whitefield testified, without contradiction, that the plant was "in kind of a turmoil about the meeting." Whitefield called Gaskill and told him that there were going to be many more employees at the meeting than expected and that word of the meeting had gotten "completely out of hand."

On the morning of February 9, Rinehart encountered Whitefield and informed him that he had been watching Whitefield and that there had been a number of employees approaching Whitefield, talking to him, and disturbing his work. Rinehart told Whitefield to stop talking so much and to stop letting employees disturb his work.

At or about 3:30 p.m. on February 9, General Manager Robert Parkey gave office employee Debra Warren a notice to type, which informed employees that there would be a temporary layoff on February 11 and that those employees who would be laid off would be notified on February 10. Parkey instructed Warren to date the notice on the back and not to put the date on the front. The typed notice was posted at or about 3:30 p.m., which is the time the day shift ends.[8]

Upon this record, we conclude that Respondent knew of its employees' union activities on February 9, the date it decided to lay off 55 employees on February 11.[9]

The record discloses that Respondent first learned in mid-January when the bean contest was held that a union campaign was in the offing. Thus, Fuller admitted that he "figured out" the true purpose behind the contest and that he had not been "fooled." Moreover, his subsequent remark to Hinkle that he knew Hinkle was one of the union instigators and that he thought Hinkle had made up his mind to support the Union at the time of the bean contest further evidences Fuller's linkage of the contest to the Union.

Respondent's knowledge of this linkage was not limited to Fuller. Fuller admitted that he had discussed the contest with Rinehart. Also, Rinehart's unexplained observation and reprimand of union activist Whitefield for talking to employees on February 9 indicates that Rinehart knew of Whitefield's involvement with the Union and was watching for signs that employee support for the Union was escalating.

From Respondent's viewpoint, the events of February 9 revealed that employee support for the Union had spread throughout the plant to a critical level. The record shows that the February 10 union meeting was a matter of common knowledge and discussion among the employees throughout the plant by the morning of February 9, creating "turmoil" in the plant. Respondent clearly understood the cause of the turmoil, i.e., union activity, as evidenced by Rinehart's observation of employees talking to Whitefield and his instruction to Whitefield not to talk to employees.

Respondent offered no credible explanation for its precipitant decision to lay off so many employees so quickly. Further, Respondent offered no credible explanation for concealing the date of the February 9 layoff notice on its back, contrary to past practice. Thus, in light of Respondent's awareness of the union campaign from its incipiency in mid-January, Respondent's actions on February 9, the timing of the layoff notice, and the absence of a legitimate justification for the layoff, we draw the only reasonable inference: Respondent had knowledge of its employees' union activities as of the time it made its decision to lay off employees on February 11. Accordingly, we find that Respond-

[8] The Administrative Law Judge found that the notice was posted "at least by February 10, 1977." We conclude that the notice was posted at or about 3:30 p.m. on February 9 as testified to by Debra Warren, whose testimony was credited by the Administrative Law Judge. Although some employees testified that the notice was not posted until February 10, this discrepancy can be explained. Since the notice was not posted on February 9 until after the day-shift employees had finished working, these employees might not have seen the notice until they arrived at work on February 10, thereby leading them to believe that the notice was actually posted on February 10.

[9] Respondent contends in its brief in support of its exceptions that the decision to lay off employees on February 11 was made at a management meeting on February 7. The record evidence, however, does not support this contention. At the hearing, Respondent did not call as a witness General Manager Robert Parkey, who effectuated the layoff decision, nor did it produce any testimony from any management official who had actually participated in the decision, or any records to establish that the decision had actually been made on February 7. Further, if such decision were made on February 7, Respondent offered no explanation as to why notification to the employees of the layoff was delayed until late afternoon on February 9, leaving only one working day before the layoff would begin. In light of the above, we conclude that, although management officials may have previously discussed the possibility of a layoff, the decision to lay off employees on February 11 was made on February 9, the same date it was announced to the employees.

ent, satisfied that the Union had generated employee interest and support, decided to act quickly and decisively to destroy employee support for the Union by laying off one-fourth of the employees in the appropriate unit.[10]

2. The Administrative Law Judge found that Respondent's promulgation of a no-talking, no-fraternization rule on February 16 did not violate Section 8(a)(1) of the Act. Although finding that the timing of the rule made the rule suspect, the Administrative Law Judge concluded that since the thrust of the rule, which required work during worktime, was valid, the rule was not violative of the Act. The Union excepts to this finding and contends that the rule, although valid on its face, was discriminatorily imposed and applied by Respondent to interfere with the employees' union activities. We agree with the Union.

By letter to all employees dated February 16, General Manager Robert Parkey promulgated a no-talking, no-fraternization rule.[11] Even prior to this date, however, Respondent had sought to restrict contacts between Carl Whitefield, the leading union activist, and his fellow employees. On February 9, as discussed in the preceding section, Manufacturing Manager Rinehart instructed Whitefield to stop talking to employees. On February 10, Manufacturing Foreman Fuller instructed Whitefield that he "was going to have to stay on [his] units and, [he] couldn't talk to any people other than the ones that [he] needed to talk [to] do [his] job." Fuller further stated "that the Union was bad for the company and he didn't think the Union ought to come in there—that it would be bad for the employees." On February 11 employee Debby Wyatt approached Whitefield at Whitefield's machine and started a conversation with him. At that point Fuller grabbed Wyatt and told her that she had to leave and that she could not talk to Whitefield. Fuller told Whitefield that he "wasn't allowed to talk to anybody, but just the immediate people that [he] worked with." Finally, on February 18, Respondent refused to allow Whitefield, who was laid off on February 11, to "mingle with the employees" when he returned to the plant to pick up his paycheck.

We conclude that the no-talking, no-fraternization rule, although valid on its face,[12] was promulgated solely to curtail employees' union activities and not for any legitimate purpose. There was no evidence that Respondent had promulgated such a rule at any time prior to the commencement of the union campaign. Whitefield testified, without contradiction, that Respondent's past practice had been to allow employees to talk and fraternize with each other. In addition, Respondent offered no business justification for promulgation of the rule. Contrary to the statement in the February 16 posting, there was no evidence that any employee complained to management about other employees interfering with their work. Nor was there evidence that any supervisor complained to Parkey about employee discussions interfering with production.

Absent any legitimate justification for the rule, Respondent's actions immediately preceding and following its promulgation reveal that the rule was really designed to thwart the employees' union activities. On three occasions in the week prior to promulgation of the rule, and again on February 18, Respondent sought to stop Whitefield, the leading union adherent, from talking and fraternizing with employees. In fact, Whitefield was the only employee to whom Respondent ever applied a no-talking, no-fraternization rule. In addition, Fuller's remarks to Whitefield on February 10 linking the no-talking, no-fraternization rule and the union campaign provide direct evidence of Respondent's unlawful motivation in promulgating the rule.

Accordingly, for the above reasons and in light of Respondent's course of unfair labor practices committed during the union campaign, we find that the February 16 no-talking, no-fraternization rule was designed to interfere with the employees' right to self-organization in violation of Section 8(a)(1) of the Act. *Hedison Manufacturing Company*, 249 NLRB 791, 810 (1980); *Montgomery Ward & Co., Incorporated*, 189 NLRB 80, 82 (1971).

3. The Administrative Law Judge found that statements of Group Vice President Charles McGraw to employees at a May 6 meeting did not violate Section 8(a)(1) of the Act. The General Counsel and the Union except to this finding and contend that McGraw's statements coerced employees in violation of their Section 7 rights. We find merit in this exception.[13]

The record discloses that McGraw held a meeting with employees on May 6 to announce some changes in management personnel. After the announcement, McGraw asked if there were any

[10] The Board has held that the same circumstances may support both an inference of company knowledge and a finding of unlawful motivation. *Sam Tanksley Trucking, Inc.*, 198 NLRB 312, 316 (1972).

[11] The full text of the letter is quoted in par. 28 of the Administrative Law Judge's Decision.

[12] We note that incorporated in the rule is a clear statement that its restrictions do not apply during break, lunch, and quitting times. Such clarification is necessary before we will find such a rule to be valid. *T.R.W. Bearings Division, a division of T.R.W., Inc.*, 257 NLRB 442 (1981).

[13] Member Zimmerman dissents from this finding. In view of the fact that McGraw's statements were made in response to an employee's question and that, as noted by the Administrative Law Judge, there was no evidence that McGraw's statements were not truthful, Member Zimmerman would not find the statements violative of Sec. 8(a)(1) of the Act.

questions. Employee Berta Dodd asked whether McGraw thought the Union would help Respondent if it won the election. McGraw answered by telling employees of his experience with a union at a company for which he had previously worked. McGraw said that that job had been "the best job he had ever had, he had worked there twenty years and the union came in and he made more money but the company went broke so he didn't really care for the union."

We find, contrary to the Administrative Law Judge, that this remark constituted an implicit threat to employees that a union victory in the election would result in Respondent's bankruptcy, leaving the employees without a job. McGraw's statement cannot be viewed in isolation but must be viewed in connection with Respondent's numerous other unfair labor practices during the Union's campaign, including explicit and implicit threats that the plant would close if the Union won the election. We find that McGraw's May 6 remark was yet another instance of Respondent's unlawful campaign to coerce and intimidate employees into voting against the Union, and as such it violated Section 8(a)(1) of the Act.

4. In his recommended Order the Administrative Law Judge provided, *inter alia*, that Respondent recognize and, upon request, bargain collectively with the Union as the exclusive bargaining representative of the employees in the unit found appropriate. The Administrative Law Judge failed, however, to rationalize this extraordinary remedy. For the following reasons, we find that a bargaining order is appropriate to remedy the unfair labor practices committed by Respondent.[14]

The Administrative Law Judge found, and we agree, that at the inception of the Union's organizational campaign among its employees Respondent embarked on a course of retaliatory unfair labor practices. On February 11, only days after it became obvious to Respondent that the union campaign was seriously underway, Respondent unlawfully laid off 55 unit employees in an attempt to eradicate employee support for the Union. In addition, between February 11 and 18, Respondent's various agents engaged in an intense and widespread antiunion campaign. As found in this Decision and the attached Administrative Law Judge's Decision, this campaign entailed 16 separate violations of the Act, including: interrogations; surveillance and creation of the impression of surveillance; threats of plant closure and other dire consequences if the employees chose the Union; threats of discharge or other reprisal if employees did not cease their union activities; and promulgation and enforcement of rules discriminatorily barring union supporters from engaging in conversations with fellow employees.

Despite this unlawful campaign, a majority of employees in the production and maintenance unit found appropriate had signed valid authorization cards by March 10, when the Union requested recognition as the exclusive bargaining representative of the unit employees.[15] Respondent having denied the Union's request, the Union filed a representation petition with the Board, initiating the critical preelection period. Subsequently, on April 25, the Regional Director approved a settlement agreement of charges filed in Case 16-CA-7039. This agreement prohibited Respondent, *inter alia*, from engaging in interrogations and threats of plant closure, discharge, or refusal to rehire, or "in any other manner" interfering with the Section 7 rights of employees.

Rather than honor the settlement agreement and permit the lawful resolution of the representation question through the Board's electoral processes, Respondent renewed its unlawful activities. On May 13, it discriminatorily laid off 73 employees and failed to recall them in another effort to destroy employee support for the Union. Between May 13 and the July 11 election, Respondent's officials also attempted to remove union leaders from the bargaining unit, failed to recall other union leaders from layoff, and threatened employees with loss of wages, plant closure, and other reprisals if they continued their support of the Union.

We find that these unfair labor practices so interfered with the employees' freedom of choice in the representation election as to warrant issuance of a remedial bargaining order regardless of the electoral result to be determined by the revised tally of ballots directed here.

In *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court approved our use of bargaining orders as remedies in cases marked by (1) "outrageous" and "pervasive" employer unfair labor practices which might warrant a bargaining order even though the union never attained majority status, or (2) "less prevasive practices which nonetheless still have the tendency to undermine [the union's] majority strength and impede the election process." We need not decide in this case within which category Respondent's unfair labor practices fall; whichever category applies, a bar-

[14] We further find that the other extraordinary remedies requested by the Union in its cross-exceptions are not warranted to remedy the unfair labor practices found here.

[15] In so finding that the Union had majority support, we do not rely on the authorization card signed by employee Sherrie Smith on February 28.

gaining order is clearly warranted. It cannot be questioned that Respondent has committed serious and pervasive unfair labor practices. Moreover, Respondent did not engage in a single outburst of unfair labor practices; rather, as the election approached, Respondent sought to stifle whatever employee support for the Union remained by engaging in a second wave of massive unfair labor practices.

Respondent twice laid off significant numbers of unit employees and delayed recalling them to work in an effort to thwart the campaign for union representation. The message to employees was clear: If you have a union, you will have no job. Respondent further emphasized this message throughout the campaign by threats delivered in campaign literature and by management officials. Such conduct has long been recognized as being serious unfair labor practices having a substantial impact on employee attitudes and reactions, and thus upon employee free choice.[16] We find the likely effect of this conduct would be to instill in employees a strong fear of loss of employment, such as would continue to be operative even in the event of a second election. We further find that simply requiring Respondent to refrain from repeating such conduct, the traditional remedy, will not erase the effects of this fear of loss employment, and will not enable the employees to participate in a free and uncoerced rerun election.

Moreover, other of Respondent's unfair labor practices would also have long-lasting effects on the employees' freedom of choice. Respondent's failure to recall union leaders from layoff; its attempt to stop the union activities of other union leaders; its unlawful promulgation of a no-talking, no-fraternization rule and a no-distribution rule; and its interrogation, surveillance, and creation of surveillance of employees signaled to employees Respondent's displeasure at union activity and the lengths to which it would go to stifle the employees' right to self-organization. Such conduct would also not be soon forgotten. Nor do we think it likely that a mere cease-and-desist order will successfully eradicate the lingering effects of Respondent's unlawful conduct.

For all of the above reasons, we find the possibility of erasing the effects of Respondent's unfair labor practices and of ensuring a fair rerun election by the use of traditional remedies is slight, and that the employees' representational sentiment once expressed through authorization cards would, on balance, be better protected by our issuance of a bargaining order than by traditional remedies. Accordingly, we hereby adopt the Administrative Law Judge's recommended Order requiring Respondent to bargain with the Union as the duly designated representative of a majority of its employees in a unit appropriate for purposes of collective bargaining, effective March 10, 1977, the day on which the demand for recognition was made.[17]

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, Dutch Boy, Inc., Glow-Lite Division, Pauls Valley, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraphs 1(n) and (o) and reletter the subsequent paragraphs accordingly:

"(n) Unilaterally changing the terms and conditions of its employees in the appropriate unit without first notifying and giving the Union an opportunity to request bargaining; provided, however, that nothing in this Order shall be construed as authorizing or requiring Respondent to withdraw or eliminate any wage increases or other benefits presently enjoyed by Respondent's employees.

"(o) Unilaterally laying off employees in the appropriate unit without first notifying and giving the Union an opportunity to request bargaining."

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

IT IS FURTHER ORDERED that in Case 16–RC–7472 the challenges to the ballots of Ruth Edgar and Linda Mitchell be, and they hereby are, sustained; and the challenges to the ballots of Berta Dodd, Minnie Dulworth, Barabara Howerton, Marilyn Keith, Neva Owens, Jora Robison, Ruby Robinson, Diana Simpson, Barbara Ward, Carl Whitefield, Elaine Reed, Pamela Battles, and Louis Taylor be, and they hereby are, overruled.

DIRECTION

It is hereby directed that the Regional Director for Region 16 shall, within 10 days from the date of this Decision, open and count the 13 ballots, the challenges to which have been overruled in Case 16–RC–7472, and prepare and serve on the parties

[16] *Jim Baker Trucking Company*, 241 NLRB 121, 122 (1979).

[17] The Union has excepted to the Administrative Law Judge's overruling of certain of its objections. In view of our Order that Respondent recognize and upon request bargain collectively with the Union and in view of our agreement with the Administrative Law Judge's sustaining certain other of the Union's objections, we find it unnecessary to consider the Union's exceptions in this regard.

a revised tally of ballots. If the revised tally reveals that the Union has received a majority of the valid ballots cast the Regional Director shall issue a certification of representative.[18] However, if the revised tally shows that the Union has not received a majority of the valid ballots cast, the Regional Director shall set aside the election, dismiss the petition, and vacate the proceedings in Case 16-RC-7472.

[18] In view of our sustaining the Union's Objection 18, the Union to be certified must win by more than a two-vote margin. See sec. II, N, of the Administrative Law Judge's Decision.

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT question employees concerning their or other employees' union membership, activities, sympathies, or desires.

WE WILL NOT threaten our employees with plant closure or cessation of operation if they continue their union activities, or if they select International Union of Electrical Radio & Machine Workers, AFL-CIO-CLC, or any other labor organization, the union as their collective-bargaining representative.

WE WILL NOT threaten our employees with discharge, or refusal to recall or rehire, or with other reprisal, if they engage in union activities.

WE WILL NOT threaten to rescind previously granted wage increases, or to deny employees future wage increases, because they engage in union activities, or because they refuse to accede to our attempt to coercively remove employees from a bargaining unit.

WE WILL NOT threaten impliedly to engage in reprisals against our employees if they refuse our orders to cease their union activities or support.

WE WILL NOT create or give the impression that our employees' union activities are under surveillance.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT prohibit our employees from distributing prounion literature, while permitting distribution of antiunion literature.

WE WILL NOT promulgate, or maintain in effect, rules discriminatorily barring union conversations by union supporters.

WE WILL NOT attempt coercively to remove nonsupervisory union leaders from the bargaining unit.

WE WILL NOT grant wage increases or other benefits in order to induce our employees not to support International Union of Electrical, Radio & Machine Workes, AFL-CIO-CLC, or any other labor organization; provided, however, that nothing herein requires that we vary or abandon any economic benefits or other terms or conditions of employment which we have heretofore established.

WE WILL NOT discourage membership in the Union by laying off employees, by refusing to recall them, by delaying their recall, or by otherwise discriminating in any manner in respect to their tenure of employment for engaging in protected concerted activities or union activities.

WE WILL NOT refuse to bargain collectively with the Union as the duly designated representative of a majority of employees in the following unit found appropriate under Section 9(b) of the Act:

All production and maintenance employees of the employer, including unit men, but excluding, all other employees including office clerical professional and technical employees, guards, watchmen, confidential employees and supervisors as defined in the Act.

WE WILL NOT unlawfully effect unilateral changes in the terms and conditions of our employees in the appropriate unit, without first notifying and giving the Union an opportunity to request bargaining; provided, however, that nothing herein shall be construed as authorizing or requiring us to withdraw or eliminate any wage increases or other benefits presently enjoyed by our employees.

WE WILL NOT unlawfully effect a layoff of our employees in the appropriate unit without first notifying and giving the Union an opportunity to request bargaining.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer full and immediate reinstatement to those employees laid off on February 11, 1977, those laid off on May 13, 1977, and to Carl Whitefield, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any losses they may have suffered as a result of the discrimination against them, with interest.

WE WILL, upon request, bargain collectively with the above-named Union, as the exclusive representative of all our employees in the unit described above, and, if an agreement is reached, we will embody such agreement in a written, signed contract.

DUTCH BOY, INC., GLOW-LITE DIVISION

DECISION

STATEMENT OF THE CASE

ARTHUR G. LANKER, Administrative Law Judge: The hearing in this consolidated proceeding (which took place at various dates, January 9 through February 16, 1978, before the late Benjamin K. Blackburn, and at various dates, January 8-18, 1980, before me), was based on unfair labor practice charges in a representation petition filed by International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, herein called the Union.[1] The charge in Case 16-CA-7039 was filed on February 17, 1977, and was served on Respondent by registered mail the same day. The original and first amended charges in Case 16-CA-7373 were filed on July 27, 1977, and August 8, 1977, respectively, and copies of said charges were served on Respondent by registered mail on July 27, 1977, and August 8, 1977, respectively.[2] The General Counsel of the National Labor Relations Board, herein called the Board, by the Acting Regional Director for Region 16 of the Board, issued a consolidated complaint in the unfair labor practice proceedings on September 30, 1977, which was amended at the hearing, alleging that Dutch Boy, Inc., Glow-Lite Division, herein called Respondent,[3] had engaged in various unfair labor practices.

On March 18, 1977 (G.C. Exh. 22), the Union filed a representation petition in Case 16-RC-7472, seeking an election in a unit of employees employed at Respondent's Pauls Valley facility. Pursuant to a Decision and Direction of Election, June 14, 1977, an election by secret ballot was conducted on July 11, 1977, among the employees in the unit found appropriate in the said Decision and Direction of Election. Respondent's June 24, 1977, request for review of said Decision and Direction of Election was denied by the Board on July 8, 1977, "as it raises no substantial issues warranting review . . . ." (G.C. Exh. 40.) The tally of ballots shows that there were approximately 109 eligible voters in the unit;[4] that 98 ballots were casts, that 38 ballots were cast for, and 46 against, the Union; and that 14 ballots were challenged. The challenged ballots were sufficient in number to affect the results of the election.

On July 18, 1977, the Union filed timely objections to conduct affecting the results of the election. On October 17, 1977, the Regional Director for Region 16 of the Board issued his Report on Objections and Challenges, finding that Objections 1, 2, 3, 7, 9, 11, and 23 pertained generally to matters alleged in the aforesaid consolidated complaint; that Objections 4, 5, 6, 8, 10-22, and 24 raised substantial and material factual issues best resolved by a hearing; and that the 14 challenges (as well as a nonrecorded challenge to the ballot of another employee, Linda Mitchell) raised substantial and material factual issues best resolved by hearing.

The Regional Director, accordingly, consolidated Case 16-RC-7472 with Cases 16-CA-7039 and 16-CA-7373 for purposes of hearing, ruling, and decision by an administrative law judge.

Upon the entire record, including the record before the late Administrative Law Judge Blackburn, from my observation of the demeanor of the witnesses who testified before me, and having considered the post-hearing briefs, I make the following:

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Setting and Questions To Be Decided*

Respondent manufactures small indicator lights. It has at all times relevant manufactured such lights at its Pauls Valley plant, hereinafter PV. Its EOD plant, herein EOD, located in Northfield, also manufactured indicator lights but, pursuant to policy adopted late in 1976 or early 1977, the latter was to manufacture for foreign and the former for domestic customers.

In late 1976, Carl Whitefield, an enployee at PV contacted a representative of the Union, and thereafter orga-

[1] Respondent admits that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

[2] Respondent's answer denies the validity of service. The return receipts in evidence amply prove that the service was valid.

[3] Respondent admitted, "For purposes of jurisdiction only" that it had direct inflow and direct outflow during a representative period in excess of $50,000. Additionally, the evidence shows that Respondent has foreign commerce. Accordingly, I find that Respondent meets the Board's discretionary jurisdictional standards, and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and that it will effectuate the policies of the Act for the Board to assert its jurisdiction over the unfair labor practices.

[4] The appropriate unit found by the Regional Director was:

Included: All production and maintenance employees at the Employer's Dutch Boy, Glowlite plant in Pauls Valley, Oklahoma, including unit men.

Excluded: All other employees, including office clerical, professional and technical employees, guards, watchmen, confidential employees, and supervisors, as defined in the Act.

nizational efforts were commenced. It is disputed how open these efforts were in early February 1977; however, on February 11, 1977, Carl Whitefield was laid off (his option was to be laid off or to be fired for alleged misconduct warranting discharge according to the Respondent). The General Counsel does not allege that the layoff of Whitefield violated the Act, but asserts that the delay in his recall did. On February 11, 1977, Respondent laid off approximately 55 other employees and the General Counsel alleges that the layoff and delay in their reinstatement violated Section 8(a)(3) and (1) of the Act. In February 1977, according to the General Counsel, Respondent created the impression of surveillance, threatened cessation of business and other reprisals, interrogated employees, improperly forbade union activities, and attempted to remove from the bargaining unit employees (the unit men). The General Counsel asserts that Respondent violated an April 1977 settlement agreement by: threatening that, should the Union become the bargaining agent and make excessive contractual demands, Respondent would or might cease operations; by improperly prohibiting, distribution of union literature; by threatening job security and threatening other reprisals; and by laying off 73 employees on May 13, 1977 (and thereafter unduly delaying their reinstatement), because of the union activities.[5]

The complaint also alleges the *Gissel*-type refusal to bargain as well as other refusals to bargain by unilateral acts (the layoff of May 13, 1977; individual bargaining; unilateral granting of wage increase, wage differentials, and a bonus and thrift plan, as well as a new insurance plan).

Respondent generally denies the commission of any unfair labor practices; asserts that the settlement agreement was improperly set aside and that some of those who were leaders in the union campaign were supervisors; and asserts that the Union is, because of practices which discriminate on an improper basis, disqualified from representing employees for collective-bargaining purposes. (This defense is rejected since no evidence was adduced in support.)

B. *Supervisors at Pauls Valley*

Until about May 6, 1977, Robert Parkey was general manager; James Tompkins, plant manager; Homer Rinehart, manufacturing manager; Floyd Jones, production manager; Phil Matlock, control supervisor; Garland Fuller, manufacturing foreman; James Gobel, second-shift production supervisor; Myrtle Springer, research and development supervisor; Phyllis McKillip, assistant production manager; Jack Utterbeck, equipment manager; Jim Nation, lamp manager; Veroloyne Anderson, cutting supervisor; Cindy Wallace, welding supervisor; Floyd Wells, Ager supervisor; Helen James, rework supervisor; and Robert Smith, mechanical supervisor. Additionally, during the same period, John Morrison was purchasing agent and Randy Hill was treasurer. All these employees previously have been found to be supervisors within the meaning of Section 2(11) of the Act. (G.C. Exh. 11, D&D of Election.) Such findings support the same conclusion in this case (this is an elemental principle of law that an extant situation continues, absent evidence of change).

On May 6, 1977 (G.C. Exh. 8), Charles McGraw, group vice president of Dutch Boy, Inc., notified employees that James Tompkins was promoted to general manager and David Hill to plant manager. Parkey and Rinehart ceased their employment shortly thereafter, and extant supervisors were concomitantly elevated. (Tr. I, 1130.) (Tr. I refers to the transcript before Administrative Law Judge Blackburn; tr. II, to the transcript before me.) The above presumption applies here, that is, absent proof of change, the positions' authority remained unchanged by changes in persons who occupied.

C. *Chronology*

1. *Onset of the union campaign*: Carl Whitefield contacted an official of the Union, Edward Gaskill, in November 1976, and they met on December 3, 1976, at Four Sands East Motel in Pauls Valley. In December 1976 and January 1977, there were telephonic contacts between the two, relative to the campaign. To obtain further employees' addresses, Whitefield and employee Hinkle conducted a "bean count contest" among the employees.[6] That the purpose of this contest was then unknown to Respondent is seen from Robert Parkey's assistance to Whitefield. (Tr. I, 1850.7–1850.9.)

On January 25, 1977, Gaskill arranged with Whitefield that he meet with union organizer Jerry Smith, largely to supply the list of names that came from the bean contest and to supply telephone directories to the same end. The three met on January 20, 1977, at Four Sands West Motel in Pauls Valley. Whitefield was instructed to contact only people "he could trust" to act as additional committee members and not to talk to "blabber mouths." Whitefield indicated that he had theretofore, on a very limited basis, talked to some people and had developed some contacts in other departments.

After some intervening phone conversations, the three met on February 2, 1977 (and on February 8 Gaskill and Whitefield), at Four Sands West Motel, when the meeting with employees of February 10 was arranged to occur in the Garden Inn (a motel in Pauls Valley) meeting room after work. At this latter meeting, Whitefield told Gaskill that more people than originally planned would probably attend the February 10 meeting since some employees that he had contacted had in turn contacted others. Gaskill testified that by this time half the plant knew that a union meeting was being planned for February 10. (However, Whitefield did not identify in his testimony even as many as the quarter of the work force who he personally contacted; hence, the inference would need to be that, as Whitefield proceeded, those he had told of the meeting in turn told others. I find this inference somewhat weakened by the fact that only 25 employees attended the February 10 meeting.)

[5] Because of Respondent's massive postsettlement unfair labor practices, I find that the settlement agreement was properly set aside.

[6] Based on the credible testimony of Gaskill and Whitefield. Unless otherwise indicated herein, there is no dispute concerning testimonial veracity.

2. Whitefield testified (Tr. I, 1859) that on February 9, 1977, a number of employees approached him at his work station, inquiring about the upcoming meeting, and consequently, on the same day, in the morning, Homer Rinehart told Whitefield that he had been standing around watching Whitefield and there had been a number of employees coming over and disturbing Whitefield's work (Tr. I, 1824), that he wanted Whitefield to stop talking so much and to stop having people come over, to have people stop talking to Whitfield so much and disturbing his work. According to Whitefield (Tr. I, 1862) there were numerous employees who contacted him that day asking about the union meeting—people who were not supposed to know about the meeting. Whitefield testified that people were talking to each other, coming to him, and that the whole plant was in kind of a turmoil about the meeting (Tr. I, 1863); that people from two nearby plants knew of the meeting before the evening of February 9, 1977. (Tr. I, 1864.)

3. Whitefield testified (Tr. I, 1825) that about 3:30 p.m. on February 9, 1977, Rinehart called him to his office, and, with Fuller present, said, "I heard you throwed [sic] the papers away." Whitefield responded, "Yes, I throwed [sic] some of the papers away, and I gave some of the papers to Jim Nation [an engineer managerial employee, G.C. Exh. 29] and some to Junior Byrd [a unit "supervisor"] and I rewrote some of the papers and I throwed [sic] those away." Rinehart responded, according to Whitefield (Tr. I, 1826.), "That does it. I'm fed up to here with you, and as far as I'm concerned, I'd just as soon as you didn't return . . . well I didn't want you to throw those papers away." Rinehart gave him 2 weeks' notice to find another job; if it would not put Whitefield in any inconvenience, he would "just as soon" that he looked for another job, but Rinehart did not say he was fired. (Tr. I, 1826.)

Rinehart's affidavit (G.C. Exh. 29) asserts that on February 9, 1977, Jim Nation asked Whitefield for the lamp data sheet for which Whitefield was responsible, and that Whitefield said he had cleaned his toolbox, and thrown the record away, which is what Whitefield said when Rinehart confronted him. The balance of Rinehart's version is essentially according to Whitefield's testimony.

4. According to Debra Warren, an office employee, on February 9, 1977, at or about 3:30 p.m., Parkey handed her for typing the below February 11, 1977, layoff notice, which she typed, but upon his instructions, she typed on the reverse side "Typed 2-9-77, p.m. and posted this same p.m." (Warren testified that she and Parkey posted this notice at or about 3:30 p.m., February 11, 1977, which is the end of the day shift.) (Tr. I, 1567–77.)

Warren admitted that she did not recall typing any other document with the date on the back, rather than the front (Tr. II, 1571), that Parkey instructed her to put the date on the back (Tr. II, 1573), and not to date the front. (Tr. II, 1572.) I find that a permissible inference from this strange behavior by Parkey, which in the absence of any explanation therefor, is drawn, that Parkey knew at this time of the union campaign and that the February 11, 1977, layoff was designed to punish the employees because they sought unionization. This inference is strengthened by the permissible inference, based on the small- plant doctrine, that Respondent became aware of the inplant activities toward unionization.

This notice (G.C. Exh. 32 and Resp. Exh. 40) reads as follows:

> EMPLOYEE BULLETIN
>
> Due to lack of orders, Glow-lite is forced to reduce our manufacturing rate. This slowness has forced us to have a temporary lay-off of some employees in all departments. The lay-off is effective February 11, 1977.
>
> All employees that are going to be temporarily laid off will be notified, Thursday afternoon, February 10, 1977, by their department managers.
>
> Any employee that wishes to take a temporary lay-off, please contact their supervisor as soon as possible.
>
> We are sorry for this lay-off, but due to plant shutdown in the east, because of gas shortage and weather, orders have not materialized.
>
> We hope this slowness is only temporary.
>
> The Management

Parkey was not called as a witness. Rinehart's affidavit (G.C. Exh. 29) avers that the reason for the February 11, 1977, layoff was "declining orders from Neon Glow Lamps, the Company's major product (90%) of what the Company produces."

Tompkins, in his affidavit (G.C. Exh. 20), stated that it was Parkey's, Matlock's, Rinehart's, Jones', and "my" decision "to effect the layoff of February 11, 1977. That decision was based on the following factors: (1) cancellation of some orders (an order from Sylvania Electric at some place in Connecticut, an order from Arkla Switch at a place in New England, an order from General Electric in Portsmith) (2) quality problems, i.e., the lamps were defective causing purchaser not to reorder, (3) lack of bookings. I first considered a layoff about a week or two before February 11, 1977. I met with Mr. Parkey and discussed declining bookings . . . ." (Packing lists 4674, 4859, and 4956 show shipments to Sylvania in February and March 1977, thus eroding Tompkins' claim of cancellation.)

As will be seen below, Tompkins' affidavit not only does not square with the essential thrust of Parkey's notice, but, also, his later testimony is inconsistent with his affidavit.

Jones did not testify, nor did Rinehart. Matlock testified (Tr. I, 807) that he did not remember any decline in the amount of production during the 30-day period before February 11, 1977. He testified that he vaguely remembered some discussions with Tompkins concerning how the February 11 layoff would be affected, but only recalled something about how it should be accomplished; there was a discussion, a planning of some type, exactly how many lamps would be needed to be built and how many machines would be needed, therefore how many people would be needed to run those machines. (Tr. I, 807–809.)

Matlock also testified (Tr. I, 868–869) that before the February 11, 1977, layoff, the PV plant was producing a lot of lamps for which there were no orders, that there were no orders to fill. (I reject this as incredible. Thus there is no documentary evidence that supports this claim, and there is other evidence that shows that there were orders on hand to fill. Indeed there was, at the end of February, a substantial backlog.)

5. According to Whitefield, on February 10, 1977, at or about 10 a.m. he went to Fuller's office and told Rinehart that he had the research papers at home, he had given some to Nation, some to Byrd, had rewritten some, and had thrown the old papers away—offering to bring the papers in to Rinehart. Rinehart responded that the papers did not matter to him anyway. Whitefield asked if his work was alright, and Rinehart said that his work was good, he was doing a good job, but that did not change his mind, he still had 2 weeks' notice to find another job, that Whitefield was going to be laid off in 2 weeks. Whitefield asked, "Do you mean I have the choice of being fired or laid off?" and Rinehart said, "Yes, that's the choice." (Tr. I, 1827–29.)

Whitefield testified that at or about 3 p.m. on February 10, 1977, he asked what reason Rinehart would put out as a reason for discharge, and Rinehart said "destroying Company property," to which Whitefield protested because of the connotation. Rinehart said that he could not put him on layoff on account of his seniority, that Whitefield would have to volunteer for layoff; that Whitefield said, "Do you mean I have a choice of either being fired or being laid off?"; and Rinehart said, "Yes, that's the choice." (Tr. I, 1829–30.)

Rinehart's affidavit (G.C. Exh. 29) recites that on February 10, 1977, Fuller told him that Whitefield said he did not understand whether he was fired or had 2 weeks to find another job; that he told Fuller to tell Whitefield that Rinehart wished Whitefield would leave right then but that he had 2 weeks to find another job. According to Rinehart's affidavit, about 1 p.m. on February 10, while Whitefield was in Fuller's office, Rinehart and Fuller discussed some of Whitfield's deficiencies with him; that about 3 p.m. Rinehart mentioned that Whitefield might find another job by taking the voluntary layoff, but that Whitefield did not respond.

6. It is clear from the discussion of the employees set forth below, item 7, that at least by February 10, the layoff notice had been posted. Hinkle (Tr. I, 2375) conceded the possibility that the notice was posted "within just a few days of the February 10 union meeting." Moreover, Hinkle testified that several weeks before February 11, 1977, there was a rumor of a pending layoff floating around the plant and in a unit man meeting, about a week before February 11, 1977, Rinehart said, "[I]t's a possibility." Hinkle said that what caused him and other employees to think a layoff might be pending was that some supervisors said lamps were being returned for poor quality and customers were being lost, and the second shift had just been terminated, or was in the process of being terminated. (Tr. I, 2375–76.)

7. The first union meeting was held at 5:30 p.m., February 10, 1977, at the Garden Inn, a motel in Pauls Valley. No written notice was given to notify employees, rather word was spread orally. (Tr. I, 1310–11.) Twenty-five employees (G.C. Exh. 41) attended[7] as did Gaskill and Smith, union officials.

Of the 25 above, all of whom (except Jerry Williams, Tr. I, 1324) signed union authorization cards on February 10, 1977, 6 (Carl Whitefield, Hazel Stephens, Judy DeHart, Jerry Williams, Kris Bergsnes, and June McKinley) were laid off on February 11, 1977.

The employees reported at the February 10, 1977, meeting that a layoff notice had been posted, and that fact was discussed. (Tr. I, 1339.)

8. In the afternoon of February 10, 1977, before the union meeting, Fuller admittedly learned that there would be a union meeting that evening. He admitted that he overheard two or three employees talking about it at or about 3 p.m., February 10, 1977. (Tr. I, 650 (e–k).) (Fuller later placed this as occurring at or about 5 p.m. that evening. Tr. I, 760.)

9. In any event, Fuller testified that he telephoned Rinehart, and, as a result, the two men met in Maysville, about 13–14 miles from Pauls Valley about 8 or 9 p.m., the evening of February 10, 1977. Fuller told Rinehart that he heard that "there was going to be a union meeting tonight." (Tr. I, 764–765.)

Rinehart demonstrated his nonveracity, by claiming in his sworn statement (G.C. Exh. 29) "The first knowledge I had of any union activity at the Company's Pauls Valley plant came to me from gossip at 8 a.m. February 11, 1977 that a union meeting had occurred sometime the eveing before." According to the other Respondent witnesses who testified (Matlock and Tompkins), neither admitted knowledge preceding Fuller's on 3 p.m. February 10, 1977.

10. Whitefield testified that during the union meeting on February 10, 1977, and afterwards that evening, he contacted employees, soliciting signatures on union authorization cards. Included in these contacts was Dwayne Fuller, Garland Fuller's brother. (Tr. I, 1895; Tr. I, 1317–18; Tr. I, 1332–33.)

Others who that evening agreed to act as union committeemen commenced that evening to solicit authorization cards. (Tr. I, 1332.)

11. According to Whitefield, at or about 7:10 or 7:20 a.m. on February 11, 1977, Rinehart met him at the front of the production force, "I hear you're the one pushing the Union. We'll just close the company down. I should have fired you before instead of being such a nice guy. I hope you'll be proud of yourself when they close the company doors. Unions are no good. I worked for two different unions before. One of the stewards told one of the girls, if you'll meet me after work, I'll help you with our problem." (Tr. I, 1830–31.)

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[7] *Carl Whitefield*, Judy Hamilton, Hazel Stephens, Junior *Byrd*, Robert *Rollins*, Steve *Hinkle*, Carrie Weatherford, Gloria S. Digby, Jean Robison, Judy *DeHart*, Marilyn Keith (Welch), David DeHart, Jerry *Williams*, Jimmy Monzo, Kitty Lee, Bridget Cearly (Hunt), Kathy Welch, Kris *Bergsnes*, Neal Catlin, Farrel *Gibson*, Lynetta Morton, Debra Wyatt, Jerry *Humphrey*, June McKinley, Elizabeth Gleason. (Those underlined were then employed as unit "supervisors." Of all 16 were from the unit department, 2 from quality control, 2 from candle glow, 4 were agers, and 1 was weigh-wash.)

Rinehart's affidavit (G.C. Exh. 29) placed this conversation at 8:10 a.m. admitting that he told Whitefield he would probably lose his family, he did not like unions because of his personal experiences, and there was always the possibility of a plant shutdown when unions try to organize "when the financial conditions of the company is the way it was."[8] According to Rinehart's affidavit he did not think he told Whitefield during this conversation that he had heard that Whitefield was "the one pushing the Union." Rinehart stated, however, that he did say he should have fired Whitefield before, instead of being a nice guy, and he believed that he told Whitefield that he, Rinehart, believed Whitefield was involved in trying to get the Union started; and that he told Whitefield, "I hope you will be proud of yourself when they close the doors"; and that he did relate an incident involving an indecent proposal, of which he had personal knowledge, which had been made by union steward to a female employee, at a company where Rinehart had worked previously.

I accept the account of Whitefield, which is not significantly controverted. This constitutes interrogation, illegal impression of surveillance, and threats of plant closure and of other reprisals, including discharge.

12. Whitefield testified that between 7 and 8 a.m. on February 11 Garland Fuller approached him on unit one stating "I hear you're the one pushing the union . . . well I've heard you're the one that contacted the Union and brought them in here. I don't think you'll ever get a union in out here. It would be bad for the Company" adding that Fuller did not think Whitefield was right in trying to get the Union in out there. (Tr. I, 1831-32.)

Fuller essentially was unable to recall, and/or was unable to deny these attributions. I find that Whitefield's testimony is therefore, in effect, uncontradicted, and that this constituted illegal interrogation, giving the impression of surveillance, and threats of reprisals.

Tompkins (Tr. I, 400) testified that at or about 8 a.m. on February 11 Rinehart asked him what he was going to do about the Union, they were circulating cards on the manufacturing floor, there was a drive for signing cards. He, Tompkins, told Parkey, "who was as shocked as I was." (Tompkins thought that it had already been reported to Parkey when he, Tompkins, talked with Parkey.) (Tr. I, 404.) "I think that he was told by Rinehart or someone that morning." (Tr. I, 404.)

13. On several other occasions during the balance of February 11, Fuller, according to Whitefield, told him he was going to have to stay on his units, and could not talk to any people other than the ones that he needed to talk to to do his work adding "the union was bad for the Company," he did not think the union ought to come in there, that it would be bad for the employees, he did not think that the Company needed the Union, and he did not think he would ever be able to get a union in at the Company; he kept saying that Whitefield was wrong in trying to get the Union in. (Tr. I, 1832-33.) I find that these conversations are implied threats of reprisals.

14. Whitefield testified when he was in the breakroom about 2:30 p.m., February 11, 1977, Garland Fuller said, "[G]ive me one of those union cards and I will sign it." When Whitefield replied that Fuller could not sign it, Fuller said, "Well, I would like to see what one looks like any way," and Whitefield handed him one, and Fuller retorted that he did not think the Union would ever get in out there and he did not think it would be good for the Company. (Tr. I, 1889-90.)

15. According to Whitefield, Garland Fuller watched him "real" closely on February 11, 1977. (Tr. I, 2039.) On one occasion when Debbie Wyatt came to talk to Whitefield, Fuller came over, grabbed her by the arm, yanked her back, and told her she could not talk to Whitefield, and that she should get away from Whitefield's units. (Tr. I, 2039; Tr. I, 2066.1.)

This constitutes illegal surveillance of suspected union activities.

16. At 9:45 a.m. on February 11, 1977, according to Whitefield, Rinehart told him: "I've talked to Bob Parkey and Parkey has talked to attorneys in Chicago. I went to get the record straight, what I said to you earlier this morning did not come from Bob Parkey, Jim Tompkins, or the Company, this was my personal opinion." Whitefield said that he was sorry Rinehart felt that way, and Rinehart retorted, "no you're not." (Tr. I., 1834.)

17. Whitefield testified that about 3:30 p.m. on February 11, 1977, he asked Fuller about the meeting he was supposed to have with Parkey, Tompkins, and Rinehart; then Fuller and Whitefield went to Rinehart's office, where Parkey and Rinehart were.

Parkey asked Whitefield what he had decided; Whitefield said, "[W]ell, if I had a choice of either being fired in 2 weeks or taking a lay off, I'll take the lay off." Rinehart told Parkey, "Well, I tried to give him a chance to bow out gracefully and he chose to do the other way. I'd like to put this down on his termination papers (to Parkey: Does Carl Whitfield have to see these—what I put down on his termination papers?) Parkey: No, this is privileged information for the company. Rinehart: Well I would like to put it down as bad as possible. Parkey: I'm sorry. Rinehart to Parkey: 'Don't say anything about the union. I've already received a telegram saying that this was America and not Russia and that I [Rinehart] was going to be sued.'"[9] (Tr. I, 1836-38.)

Then Parkey told Whitefield that he would be laid off and that they were laying him off and that he would be the first one in his department to be called back in line of seniority and that he would be the first one to be called back (Garland Fuller to Parkey): "You mean if I need a unit man that I'm to call Carl?" And Bob Parkey said: "Yes, you are to call Carl." (Tr. I, 1839-41.) Rinehart's affidavit (G.C. Exh. 29) contains the admission that Rine-

[8] Whitefield testified, without contradiction, that in January or February 1977, before the February 11, 1977, layoff, Parkey told the unit "supervisors" that the Company had made money the last 3 months, and everything was looking pretty good. (Tr. I, 1880-81.)

[9] Referring to a telegram Gaskill sent Rinehart on February 11, 1977, based on Whitefield's telephonic advice that Rinehart was calling people into his office individually and interrogating them, and that he had employee Helen Byrd in his office for the last 2 hours. (Tr. I, 1835-36.)

hart told Whitefield on February 11, 1977, that he would be the first one called back.

18. Helen Byrd testified without contradiction that on February 11, 1977, she was called into Rinehart's office, where Supervisors Myrtle Springer and Helen James were also present. Rinehart asked if she knew any reason that the people on the units floor were unhappy. She told him no, he would have to ask them himself if he wanted to know. He asked her if she knew any incidents that he had done or said that would cause the people to be unhappy and she told him about an instance of Jackie Diggs when he had got onto him about his shrinkage (which was 6 percent), which was real good at Glow-Lite, and Rinehart told Helen Byrd that he had only been teasing Diggs. Rinehart asked her about her husband (who also worked at the plant) then asked her: "What do you think about the Union" (and before she responded he related an occasion where he was denied a promotion because of the Union's enforcement of seniority, so he did not care for the Union). He again asked her what she thought about the Union. At the end of the conversation he asked her to go down and talk to the production people for him and tell them that if there was anything that he had done that was making them unhappy, that he was sorry.

The above constitutes illegal interrogation.

19. *The February 11, 1977, layoff*: There is no evidence concerning the identity of the employees who on February 9, 1977, were within Respondent's contemplation as those to be laid off on February 11. Nor was there any evidence adduced whether or not Respondent's supervisors notified the respective departments on February 10, 1977, concerning the identity of those to be laid off. General Counsel's Exhibit 20 shows that there were 55 employees laid off on February 11, 1977, and the consolidated complaint alleges that they were laid off and their reinstatement was unduly delayed for their union assistance, membership, or protected concerted activities. They were laid off essentially by departmental seniority, as the evidence shows was the criterion for the 1974 layoffs (which concededly were not discriminatory).

20. Those laid off by departments on February 11, 1977, are listed below:(G.C. Exh. 20, c.)

DEPARTMENT NAME	*IF CARD SIGNED-DATE*	*DATE RECALLED OR OFFERED* [10]
(Quality Control Dept.)		
Judy DeHart	2/10/77	3/7/77
Margaret Harvey	2/11/77	3/10/77
(Ager Department)		
Helen Morris		"Quit" 3/7/77
Dawn Wilson	2/13/77	"Quit" 3/7/77
Jeannetta S. Scroggins	2/11/77	3/8/77
Mary S. Scott		3/9/77
Linda Bergsnes	2/14/77	3/9/77
Mary J. McKinley	2/10/77	"Quit" 3/11/77
Elizabeth Kirkbridge		"Quit" 3/21/77 ("Was on LOA on 3/77 Call back")
Mary J. Coslick	2/11/77	3/10/77
Norma Ratliff		"Quit" 3/14/77
(Unit Department)		
Carl Whitefield	2/10/77	8/1/77
Hazel Stephens	2/10/77	"Quit" 3/14/77
Jerry Williams	2/10/77	"Quit" 8/26/77 (When called back)
Jimmy Sanders		2/28/77
Kristian Bergsnes	2/10/77	8/24/77
Richard Newton	2/10/77	"Called back as unit 'supervisor' 9/2/77"
Jora V. Robinson		3/9/77
Geneva Smith	2/11/77	3/10/77
(Welding Department)		
Betty Brown		"Quit" 3/28/77
Rosie Dobbins		"Quit" 2/22/77
Vanissa Richey		2/21/77
Kay Biggs	2/11/77	"Quit" 6/30/77
Glenda Hollowell		2/21/77
Cynthia Fields	2/11/77	2/21/77
Linda S. May (Turner)	2/11/77	2/21/77
Judy Steadman		2/21/77
Nancy Matthews	2/10/77	3/1/77
Diana Simpson	3/22/77	3/2/77
Ella M. Springer		2/28/77
Thelma J. Davis		"Quit" 3/3/77
Debra Driskill		2/28/77
Judy Mantooth	2/11/77	2/28/77
Karren Holman	3/25/77	2/28/77
(Cutting Department)		
Claudine Richardson		"Quit" 2/22/77
Carolyn Boils		"Quit" 6/28/77
Patricia Atteberry	2/22/77	"Quit" 2/10/77
Debbie Whalen	2/28/77	2/28/77
Yvonna Logan	2/22/77	2/21/77
Vickie Spencer		2/21/77
Anita Tillery		"Quit" 2/21/77
Barbara Ward	2/15/77	2/21/77
Ida M. Walk	2/22/77	2/21/77
Cathy Cottrell	2/11/77	"Quit" 2/22/77
Minnie Dulworth	2/22/77	
(Rework Department)		
Frankie Koehler		"Quit" 6/28/77
Francis Sise	2/11/77	3/7/77
Rubye Murray		3/7/77
Shirley Simmons	3/16/77	3/8/77
Patricia Russell	2/11/77	3/8/77
Deborah L. Taylor	2/11/77	"Quit" 3/7/77
Hazel P. Estes		3/9/77
Thelma White	2/11/77	3/9/77
(Circuit Component Dept.)		
Clara Nell Gibson	2/11/77	3/7/77
Donna Van Orden	2/11/77	6/20/77
Pamela Arms		"Quit" 3/2/77

Connie Moore was not listed in the complaint but on June 29, 1977, a letter offering recall was sent to her, and

[10] The General Counsel did not litigate whether, as alleged by Respondent, those who allegedly quit when allegedly offered recall indeed were, in accord with Board law, properly offered recall, or whether they quit, rather he took the position that this was a potential compliance issue.

Respondent Exhibit 20 lists her as laid off on February 11, 1977; she did not sign a card.

Counsel for the General Counsel's brief inadvertently listed Frankie Koehler as a card signer. Although there are 33 card signers among the 56 laid off, counting Whitefield laid off on February 11, 1977, only 23 of these signed on or before February 11, 1977. Of those retained, about the same 40 percent signed union authorization cards on or before February 11, 1977, demonstrating that the selection based on those who signed cards was not discriminatory. Nor did the General Counsel establish any significant departure from departmental seniority in the layoff selection.

21. Since a deep recession in 1974 (Tr. I, 71, 79) caused two layoffs that year, Respondent, until February 11, 1977, followed a practice of using attrition—not layoffs—to decrease its work force during periods of slowness in product demand. This was true, notwithstanding the fact that there was a seasonal nature to the demand, whereby in the late months of the year (Tr. II, 709), Hill testified: "Bookings normally started falling off in January. February and March were low, then they climbed in April, May, and June; usually September and October are high and November is average, then they start going down in December; January and February are usually the low months."), and in the month of July, because of vacations of customers and of Respondent, demand was considerably less. (Tr. II, 929.) In none of these seasonal slow periods were layoffs made. The 1976 pattern showed increased hiring in busy months, followed by cessation of hiring about October 1976, with substantial turnover thereafter taking care of excess employees. So deeply ingrained was this practice that, when excess employees were on hand in October 1976, Parkey refused to accept the recommendation by Tompkins that a layoff occur. Instead third-shift employees were moved to the day and second shifts (which resulted in six employees being "laid off" because they could not work such shifts). From its consistent practice, I infer, and find, that Respondent had a policy of retaining (except for calamitous business conditions as in 1974) its employees. Indeed, in view of consistently high turnover (and problems in getting some employees hired to even go to work—see Resp. Exh. 22) and the experience factor described by Tompkins (Tr. II, 1851–52) it would have been inane to pursue any other policy. When Tompkins was asked (Tr. II, 1192) why he did not let attrition take care of the work force, he said he was not aware of that until the records were prepared in this case. However (at Tr. II, 1860), he testified, "I understand that we had a big attrition problem and we had a historical problem of people leaving."

Tompkins testified there was a constant downturn of orders from about August or September 1976. (Tr. I, 176.) He said that "we" had gone through a period of about 3 months where we had gone into a bookings decline and it was fairly serious at that time; "we" were running a three-shift operation, and I recommended that they lay off enough people to get the plant back in line with orders that we had on the book; instead of that we shut down the third shift, and just moved the people around on first and second shifts, and still had a layoff. (Tr. I, 56; Tr. II, 1138.) (I find that this "lay off" claim is not correct. Thus Resp. Exh. 22 shows that six employees (clock numbers 1318, 1325, 1350, 1436, 1490, and 1570) were "laid off" October 15, 1976, because they "couldn't move to the second shift." Indeed at Tr. I, 166, Tompkins testified that there was no layoff.)

The actual memorandum (Resp. Exh. 47) of Tompkins dated October 8, 1976, reads:

> During the course of this week have tried to determine efficiency of 3*rd* shift. During course of investigation discovered our booking had been declining. Plotted full year bookings (1976) against past 3 years. This present booking decline was the worse ever & also the longest (4 months). Evidently no one had been closely monitoring it. Checked present needs & discovered didn't require but 7–8 million per month. Recommended closing 3*rd* (report to Parkey is in file) seem to come as a surprise. I recommended laying off needed personnel (discovered at this time we had hired nine people this week) decision was made to close 3rd shift & move people around not lay off . . . .

According to Tompkins (Tr. I, 55) the February 11, 1977, layoff decision was made because of lack of business, declining orders, and bookings. (Tr. I, 55.) He testified that he did not recall exactly when the decision to lay off was made, that it was first considered the week before "because we had meetings during the first of the week of the llth concerning the lay off," though he was not certain when he first was consulted about the layoff (Tr. I, 56–59); i.e., whether it was the week before the layoff, or the first part of the week of the layoff.

According to Tompkins, those involved in the decision to lay off were Parkey, Tompkins, probably Hill, Homer Rinehart, Phil Matlock, and John Morrison. (Tr. I, 55) (In his affidavit, G.C. Exh. 20, he said that it was Parkey's, Matlock's, Rinehart's, Jones', and "my" decision to effect the layoff of February 11, 1977.) However, Tompkins testified at transcript II, 1138, that at the time of the February 11, 1977, layoff, he was involved in another hearing, which kept him occupied until Friday before the week of the layoff. At transcript II, 1811, Tompkins testified: "I was not intimately involved in making the actual decision to lay off people 2/77." (This is directly contrary to his affidavit, G.C. Exh. 20, "I first considered a lay off about a week or two before February 11, 1977. I met with Mr. Parkey and discussed declining bookings.")

Tompkins testified that the decision was arrived at by looking at how much business we had at the time, and what the production was; the trend of sales was down (he then indicated that he was not sure whether there was a down or upward trend of sales at that time).[11] Then he testified: "Let's put it this way, the decision that was made was made off of bookings and our bookings were down. It was based on bookings. Our bookings at

[11] Respondent considers a sale to occur when the product is shipped. "Bookings" on the other hand are orders from customers for the product. (Tr. I, 61, 63.)

that time were on a downward trend." (Tr. I, 59–60, 62.) (However, at Tr. II, 1764, Tompkins testified that the 1976 sales was one of the things that could have come up in the February 1977 meeting.) Although Tompkins testified (Tr. II, 1765) that, at the February 7, 1977, meeting, manpower was discussed, and that the supervisors had to prepare a listing of employees needed, Supervisor Fuller, with 50 employees, testified that he was not consulted about which employees would be laid off on February 11.

According to Tompkins, Respondent did consider the possibility of receipt of orders, but no one could give good enough information to forestall a layoff, "we" knew a layoff was necessary because "we had a decline in bookings, and couldn't justify the workforce we had." (Tr. I, 63–64.) He conceded that a layoff did not occur each time there was a decline in orders, that the number of orders fluctuated from time to time at different times of the year, adding "there would have to be a very substantial fluctuation before we would lay some one off. Either that or a trend line of say 3 or 4 months period of time that would show a downward trend in business, we would never lay off employees unless there was some experience of a consistent down trend or a lack of business." (Tr. I, 64–65.)

Tompkins asserted (Tr. I, 460) that there was a constant downturn in business from about October 1976 through mid-1977 except for 1 month. He said (Tr. II, 529) that there is a 3-month "rolling" period on bookings, e.g., January, February, March; that, in January, "We" book lamps to be produced im January, February, and March (and for subsequent months); "these bookings keep accumulating in the respective month that they are to be produced; at the end of January that month is dropped, and you then have February, March, and April, so in January you have January bookings for January, January bookings for February, and January bookings for March (and subsequent months)."

At transcript II, 1810, Tompkins testified that with regard to the February 11, 1977, layoff his best recollection of that layoff was that it was pretty consistent with the recommendations he made in the latter part of 1976, which was a recommendation to lay off due to bookings decline at that period of time. He testified that the number one thing to look for is to maintain ones profitability.

At transcript II, 1901–02, Tompkins testified that between the recommendation he made in October 1976 and the week of February 7, 1977, he was not aware of any changes in circumstances and factors that led him to formulate the opinion and recommendation that he made in October 1976, and that there was no change in the fundamental factors he considered in October 1976.[12] He added (Tr. II, 1845) that in December 1976 there was still a situation where there was a reduction in sales, and it was his continuing contention there needed to be an adjustment in the work force because of this bookings decline that "we" had gone into for the past 3–4 months—based on the similar situation in 1974 when he was general manager, and there was an identical situation (a large bookings decline) that resulted in a large layoff. (Nor can the second portion of this analogy be considered accurate since the employee complement before the 1974 layoff was considerably larger than before the one in February 1977. (G.C. Exh. 17.) See also Resp. Exh. 25 which shows the 1974 employees ranged from about 240–320 in a period from January to October 1974. Additionally C.P. Exh. 28 shows that there were the following numbers of employees in the first 5 weeks of 1977: W/E, January 7, 1977, 238; January 14, 216; January 21, 224; January 28, 219; and February 4, 208.)

I cannot conclude that Respondent has established a credible defense to the strong *prima facie* case established by the General Counsel. (Timing, deep hostility, knowledge.)

First, while Tompkins' testimony sought to portray a long-term problem, i.e., a long decline in bookings, Respondent did not offer its 1976 bookings records or those for January 1977 (while Respondent's brief relies on Government figures regarding decline in domestic production figures in 1977, since Signalite, labeled a major competitor, moved outside the U.S.A. in or about mid-1977, the drop in production is as fairly attributable to that, as to the asserted claim of Respondent) so there is no documentation of the alleged decline in bookings. Charging Party's Exhibits 39–41 show spotty bookings throughout some, but not all, months of 1976, and somewhat for January 1977, as reported by Hill to Emme.[13] For example Charging Party's Exhibit 41 shows (the 1976 bookings reports apparently show both PV and EOD—see C.P. Exh. 41, p. 61):

12/3/76	Dec. bookings to date	$ 43,984
	Nov. backlog	176,424
12/10/76	Dec. bookings	203,825
	Jan. 1977 bookings	235,383
	Feb. 1977 bookings	90,167
12/21/76	Dec. bookings	235,159
	Jan. 1977 bookings	287,347
	Feb. 1977 bookings	154,960
1/4/77	Dec. 1976 order entries	483,968
	Jan. 1977 bookings	293,443
	Feb. 1977 bookings	178,226
	March 1977 bookings	72,000
	Dec. 1976 backlog	94,712
1/7/77	Jan. 1977 order entries	56,698
	Jan. 1977 bookings	302,716

[12] Of course, this contention by Tompkins is not supported by the facts, and is rejected. Thus, as above noted, six employees left in October 1976 because they could not work the shifts offered. Moreover, there were at least 42 other employees who had their employment end after these 6. (Resp. Exh. 22.) (The 42 are those shown by Resp. Exh. 22 as to have quit or to have been terminated in the period November 1976–February 10, 1977, whose hire date was on or after December 12, 1975.) Moreover, C.P. Exh. 41 shows that PV had a shutdown of its plant on December 23, 1976, through January 3, 1977.

[13] Hill testified that "We used to sell about $3 million per year." (Tr. II, 659.) C.P. Exh. 41 shows net sales as of November 1, 1976, as $1,687,032, obviously below the $3 million mark with 2 months remaining. Resp. Exh. 25 shows about $305,000 and about $260,000 in sales for November and December 1976, respectively, accumulating to $2,252,032 for the year. It must be kept in mind that the 1976 sales figures apparently included those for both PV and EOD. (See C.P. Exh. 41, p. 17, and C.P. Exh. 39, p. 4.) With EOD's $500,000 sales, the $3 million mark was about reached in 1976.

	Feb. 1977 bookings	188,451
	March 1977 bookings	89,366
1/21/77	Order entries	186,640
	Jan. 1977 bookings	316,611
	Feb. 1977 bookings	229,292
	March 1977 bookings	97,706
2/1/77	Jan. 1977 order entries (PV only)	247,147
	Feb. 1977 bookings	214,445
	March 1977 bookings	121,104
	April 1977 bookings	75,880

Charging Party's Exhibit 39 shows bookings for various dates in January, February, March, April, May, June, and July 1976, but none thereafter, until the three shown above for December 1976. The bookings in July 1976 were:

July bookings	$ 508,466
August bookings	372,544
September bookings	407,060
October bookings	233,857

From the above incomplete records, it cannot be determined whether Respondent's contention that there was a decline in bookings from August 1976 was established. Respondent's failure to adduce cogent evidence regarding its defense permits the inference, which I draw, that its records would not have sustained its defense. Additionally, assuming, *arguendo*, that there was a reduction of orders, in December 1976 and January, and February 1977, according to Hill, there was a natural seasonal decline during such months. (Tr. II, 709.) And Tompkins testified that there is a downturn traditionally in December and January. (Tr. I, 85.) Fuller (Tr. I, 635, 650) said that the slow season is November through January, that fall is generally slack. The fact remains that even if there were a long-term decline in bookings, as of the end of January 1977, the volume of bookings, whether declining or not, demonstrably was more than the extant work force could produce, since there was a large backlog at the end of January 1977 ($71,333).

(2) The claimed justification of long-term downturn offered by Tompkins sharply conflicts with the essential thrust of the layoff notice (G.C. Exh. 32 and Resp. Exh. 40) posted by Parkey. Parkey stated that the layoff was due to plant shut downs in the east and because of gas shortages and weather, orders have not materialized.[14] "We hope this slowness is only temporary."

(3) According to Hill, the January 1977 bookings were about average and the February bookings were average to above average (Tr. II, 655–658), hence, no reasonable business reason existed for panic in February 1977.

(4) Tompkins sought to establish losses of customers and entry of a new competitor, Xenell (Tr. II, 1818), as a basis for the February 11, 1977, layoff, yet the Parkey's notice contradicts such basis. (Tompkins, Tr. II, 1817, testified that he did not recall specifically that Parkey considered the loss of customers when Parkey made the decision to lay off.) In fact, while Tompkins himself initially attributed the layoff to decline in orders (Tr. II, 1818, 1820), he sought to portray that as only one of the reasons. In this connection I have also considered the fact that Tompkins offered as a possible reason for the February 11, 1977, layoff the loss of the General Electric order ar Portsmouth, which, as shown below in the discussion of the May 13, 1977, layoff, was not canceled until, at the earliest, at least a month after the February 11, 1977, layoff.

(5) Tompkins gave glaringly contradictory testimony about his role in the February 11, 1977, layoff, in that he first testified that he was involved (Tr. I, 55; G.C. Exh. 20), but later conceded (Tr. II, 1811) that he was not intimately involved in making the decision to lay off. Indeed (at Tr. II, 1820), he conceded that Parkey did not tell him why he decided to lay off.

(6) Respondent failed to call Parkey as a witness.[15]

(7) Respondent acted precipitously, in that, even according to Warren, the layoff notice was posted (effectively) only one working day before the layoff, whereas substantially more lead time was involved in the May 1977 layoff notice.

(8) The lack of need for a layoff is also demonstrated by the rapid call back of employees laid off (one on February 15, 1977; eight on February 21; one on February 22; six on February 28; one on March 1; one on March 2; four on March 7; three on March 8; five on March 9; and three on March 10); by the fact that there was a backlog of orders of $71,333 at the end of February 1977; and by the hire of 21 new employees during the period March 16–29, 1977. (Resp. Exh. 22.)

(9) The incredible and shifting explanations offered by Respondent regarding why employees were recalled from lay off so swiftly compels a conclusion that the reasons offered are not true. Thus, Tompkins testified (Tr. I, 62; Tr. II, 1807), "I also recall some people were called back about a week or two later, there was some business that was booked up." (The order entry log, C.P. Exh. 37, shows that on February 11, 1977, a cumulative total of $190,845 had been ordered, compared to $269,513 on February 28, 1977, hardly a significant 17-day increase. For example, from March 1–17, 1977, there was $95,670 accumulated. Also during the 27-day period of recall a total of $144,706 was added, while in the next 27-day period $245,106 was added.)

Tompkins later testified (Tr. II, 1137) that he did not know why there was a need to recall after February 11, 1977, if the bookings continued to decline. Finally, contrary to all previous reliance on bookings offered by Tompkins, he testified that there was an increase in sales from February and March due to product mix entailing the need for more labor to produce the product. Assuming, *arguendo*, that there was a significant change in the ratio of lamps with resistors (clearly they do require significantly more labor than those without resistors) to ones without, the shift from the bookings explanation to

[14] There is no evidence to support the contention that plant shutdowns of customers caused a reduction of orders. No customers' notices to this effect appear in the record.

[15] Tompkins conceded that Parkey quit (Tr. I, 136) and I reject as incredible his attempt to portray that Parkey was forced, upon McGraw's arrival at the plant in response to complaints by Tompkins, to resign. (Tr. II, 1927.)

a newly offered reason suggests, and it is found, that both are untrue.

(10) The conflict between Tompkins and Fuller, concerning whether departmental supervisors were consulted concerning retention of needed employees, demonstrates that Tompkins' contention contrary to Fuller's can not be accepted. (Though the testimony of Fuller did not consistently measure up to the standards of candor, when not evading, his admissions against Respondent's interests are cogent, and binding on Respondent.)

(11) The fact that Respondent hired new employees before offering recall to all those laid off on February 11, 1977, demonstrates a deep animus toward the ongoing union campaign.

(12) Admittedly the past practice was to start eliminating overtime before a layoff, which was not done before the February 11, 1977, layoff. (Tr. I, 1933.)

(13) I rely on the failure of Respondent to explain, through Parkey, why the layoff notice was so strangely dated on the back, and why, on the same day as the layoff, Respondent shipped 9 butt welders (see below, item 35) to EOD, reducing the available butt welders at PV to 11, though the PV order entry log (C.P. Exh. 37) does not show any order by EOD for such butt welders.

22. According to Hazel Ramsey, personnel director, most of those who were laid off on February 11 1977, were telephonically contacted, and asked if they would like to come back at a certain time (Tr. II, 1438), and about a week was given within which to return. (Tr. II, 1441.)

Those laid off on February 11, 1977, who were not recalled or "quit" in March 1977 are listed below:

Employees names	Date of recall
Carl Whitefield	8/1/77
Jerry Williams	8/26/77
Kristian Bergsnes	8/24/77
Richard Newton	9/2/77
Kay Briggs	"Offered R/C 6/28/77 by letter"
Carolyn Boiles	(R-22 shows: "Quit when called back from L/O")
Frankie Koehler	Offered R/C by letter 6/13/77
Donna Van Orden[16]	Offered R/C 6/20, went back to work during week ending 6/24/77

From February 11 to March 20, 1977, when Betty Brown allegedly quit upon offer of recall, 20 new employees (clock numbers 1538–57) were hired. From February 11 to June 13, 1977, when Koehler, and thereafter, others were offered recall, 27 employees were hired. By August 24, 1977, when Kristian Bergsnes was offered recall, 64 new persons had been offered employment. (This is particularly discriminatory, when it is seen that, according to Hazel Ramsey, those called back in June or July 1977 were placed where they were needed to fill vacant positions.) (Tr. II, 1545.) See also Tompkin's admission (at Tr. II, 1846) that after the May 1977 layoff, there was quite a bit of movement from job to job. For example, after the May 13, 1977, layoff, unit "supervisors," Hinkle and Humphrey, were placed on "torlley, circuit component, samples." (G.C. Exh. 9, p. 3.) Also, as can be seen from the pattern above with respect to Biggs, Boiles, Koehler, and Van Orden, Respondent treated them (they were laid off on February 11, 1977) as if they had been laid off on May 13, 1977, and offered recall in accordance with their clock numbers.

23. On February 14, 1977, Respondent, by its agent, Parkey, notified employees by letter (G.C. Exh. 2) (omitted is typical campaign rhetoric in this letter), "think carefully if asked to sign a union card. Don't take a chance that would be disastrous to all of us."

I find that this is coercive, in that it contains an implied threat that unionization would be disastrous to the employees and to Respondent.

24. *Distribution of "supervisor's manual for union prevention campaigns"* (G.C. Exh. 3): On February 15, 1977, unit "supervisors," Robert Rollins, Junior Byrd, Terry Marti Martin, Steve Hinkle, Jackie Biggs, Johnnie Springer, and Jerry Humphrey, were given the above document by Respondent's attorney, Richard Barnes, who told them that Respondent considered them to be supervisors, hence they would not talk to employees about the Union nor could they attend meetings or otherwise participate in union activities. (Tr. I, 2095–2100.)

Two days later, Carrie Weatherford was told by Rinehart, after presentation to her of the same manual, that she could not attend any union meetings. (Tr. I, 1589.2–1589.5.)

While an employer may take positions with respect to the alleged supervisory authority of certain employees, in this particular case, Respondent had knowledge before this incident that this group constituted the leadership in the union campaign. Thus Gaskill testified that they were the core or hub of the union campaign, and, along with Sue Holloway, were responsible for getting the majority of the cards signed. (Tr. I, 1440–42.)

Similarly, Fuller testified that he knew on February 11, 1977, that the unit "supervisors" and Weatherford were the leadership in the union campaign, that he suspected that they were; that he knew that Hinkle, Humphrey, Gibson, and Martin were engaged in union activities; and that after the "bean" contest he later figured out that the contest was a means to obtain employees' names and addresses for the Union, which he then talked to Rinehart about.

Hence, when Respondent laid off, on February 11, 1977, certain of the unit "supervisors" and followed this move the second working day thereafter with confrontation of the other unit "supervisors," and several days later confronted known union leader Weatherford, such actions lead to the inescapable conclusion that they were designed to remove this group of employees from organizational activities. This can also be seen from the fact that, even after the Regional Director of the NLRB ruled on May 14, 1977, that these persons were not su-

[16] Donna Van Orden and Carolyn Boiles were notified by letters dated March 2, 1977, that Respondent was calling back 10 employees. (Resp. Exhs. 33 and 50.)

pervisors, Respondent left in effect the above prohibitions against union activity.

Moreover, pages 19–23 of the above manual are typical employer rhetoric to employees, hence it is inferred, and found, that this constitutes a tacit concession by the inclusion of this rhetoric, that Respondent knew that these persons were not supervisors. Indeed, Hinkle testified (Tr. I, 2265–67) that, on February 16, 1977, Fuller told him that Respondent did not realize that the unit "supervisors" were supervisors, but that Respondent's attorney discovered that they were. Rinehart conceded virtually the same thing to Hinkle. (Tr. I, 2266.) The above orders to employees to cease engaging in union activities were coercive, since they carried an implied threat of reprisal for disobedience.

25. *Fuller's interrogation of Humphrey*: On February 15, 1977, after the distribution of the above manual, Fuller asked Humphrey twice what he thought about the Union. This is clearly illegal interrogation.

26. On February 16, 1977, Rinehart asked Hinkle how he thought the Union would help the employees or Respondent. (Tr. I, 2269.) This is also illegal interrogation.

Rinehart told Hinkle that at the end of 2 weeks, Whitefield would be fired, and as long as Rinehart was there, Whitefield would not be an employee or would not be working at the plant. (Tr. I, 2270.) This constitutes a threat of reprisal that, impliedly, others active for the Union might suffer the same fate.

Rinehart told Hinkle that he knew that Hinkle was one of the union instigators, and, if terminated, would probably not be rehired, because of his attitude toward Respondent. (Tr. I, 2272.) This is also a clear threat of reprisal.

Again, Fuller and Rinehart asked Hinkle how he thought the Union would help the Company, and why he was for the Union. (Tr. I, 2273, 2270.) This is illegal interrogation.

27. On February 16, 1977, Parkey distributed to Respondent's employees a written communication (G.C. Exh. 4):

> I was very disturbed to learn that one of the unionizers, a fellow employee,[17] was fabricating statements he claims were made by me. He apparently wants to "trick" you into supporting his personal campaign to get even with the company. We are not making any profit. We have lost money every month since August 1976. Shrinkage has reached as high as 40 percent. We must stay below 9 percent shrinkage if we are to survive. Productivity must be improved.
>
> Despite this, all of our non-supervisory employees were given at least 17 cent an hour increase in wages last month. We gave the raise on a gamble that we can turn things around.
>
> Now a new problem has become a serious threat. Our competitor down the road, Xenell, apparently will be able to remain in business. As this competitor was started by former key employees of Glowlite, it is in a strong position to steal our business.
>
> Now is not the time to add more uncertainty to the situation by bringing a union into the picture. It could well kill the goose. Don't take the word of these organizers. Get the facts and think twice before you sign a union card . . . .

I find that this letter illegally threatened employees that unionization might force Respondent to cease operations.

28. On February 16, 1977, Bob Parkey caused General Counsel's Exhibit 5 to be distributed to employees:

> We are receiving increasing complaints from employees and supervisors that a few of our fellow employees are leaving their work areas without permission of their supervisor, and, more seriously, are interfering with the work of the other employees.
>
> We regret that these abuses by a few people have reached a point where we must take action. We have tried to keep the plant an informal and easy going place to work. We must remind you that you must inform your supervisor and receive permission before you leave your work area except at regular break times, lunch, and quitting time.
>
> We are having enough problems with production. We also remind you that you are not to interrupt other employees while they're working unless interruption is necessary in order for you to do your work.

It is found that, although the timing of this no-talking, nonfraternization rule makes it suspect, the thrust of the rule, requiring work during worktime is not violative of the Act.

29. On February 17, 1977, Fuller asked Hinkle, "What's the union up to . . . what are they planning, and what's going to go on next?" (Tr. I, 2278.) This is illegal interrogation.

30. On February 17, 1977, Fuller was asked by Weatherford what would happen to prounion employees if the Union were unsuccessful. Fuller replied that "You wouldn't want them working for you in your company after they had caused that much trouble." (Tr. I, 1598.7.) This is an implied threat of discharge, posited on past union activities and, hence, coercive.

31. On February 18, 1977, when Whitefield returned to pick up his last check, he went to the production floor. Later in the backroom, Parkey told Whitefield that "I can't let you mingle with the employees." (Tr. I, 1842.)

In the absence of proof by Respondent of a previously promulgated rule barring laid-off employees from fraternization with nonlaid-off employees, I find that Respondent on February 18, 1977, promulgated individually, and discriminatorily (to the prime union leader) a rule designed to curtail Whitefield's organizational rights. Though an employer may, by proper announcement, forbid employees from nonwork-related activities, where, as here, it is promulgated individually to the prime

[17] It is clear, and I find, that the reference was to Whitefield. See fn. 8, *supra*.

leader, in the early stages of the campaign, in an overly broad manner (forbidding all fraternization without regard to area or nonworking time) the rule is found to be patently discriminatory. Note that Parkey conceded tacitly that the laid-off employees had a right to be on the premises, and to be in the breakroom.

General Counsel's Exhibit (b) (G.C. Exh. 31) shows that Respondent, prior to February 18, 1977, had not promulgated any rule such as it promulgated to Whitefield on this occasion.

32. On February 17, 1977, the Union filed a charge in Case 16-CA-7039 (G.C. Exh. 1(a)), alleging violations of Section 8(a)(1) and (3) in that on February 9 and 11 it terminated Whitefield's employment, and refused to employ him.

On April 25, 1977, the Regional Director approved the settlement of the above charge (and the April 7, 1977, amended charge) banning unlawful interrogation, threats of plant closure, discharge, or refusal to rehire. It additionally contained the general undertaking not to in any *other* manner interfere with the Section 7 rights of the employees.

33. *The refusal to timely recall Carl Whitefield*: The above evidence demonstrates overwhelmingly that Carl Whitefield was *the* outstanding employee in the Union's organizational campaign. As noted above, Fuller (Tr. I, 768) conceded that he knew that the unit "supervisors" (and Weatherford) were the leadership in the campaign.

Before the February 11, 1977, layoff, Sanders was a washroom employee. On February 11, 1977, Sanders was laid off, and Terry Martin, a unit "supervisor" (who theretofore also worked part time in the washroom), was transferred to the washroom. (Tr. I, 779-780.)

On February 28 (G.C. Exh. 20, c; G.C. Exh. 28), Sanders was recalled and placed in the washroom, and Martin was transferred back as a unit "supervisor" (Tr. I, 782-784) and remained there until he quit on May 24, 1977, when Steve Hinkle (theretofore temporarily assigned to work in the pressure room) was assigned to run the machine Martin had run until May 24. (G.C. Exh. 28.) Whitefield, the most senior unit "supervisor" (Tr. I, 781) was not recalled until August 1977, notwithstanding that there is no contradiction to Whitefield's testimony that Parkey instructed Fuller on February 11, 1977, that if Fuller needed a unit man he was to call Whitefield back, that he was on temporary layoff. (Tr. I, 1976.)

It is clear, and it is found, that commencing February 28, 1977, Respondent failed to recall unit "Supervisor" Whitefield, because of his union leadership, and notwithstanding that the premise for his recall, as stipulated to by Respondent, became existent at that time.

34. On March 10, 1977, the Union by mailgram (G.C. Exh. 6) requested "recognition as collective bargaining representative for all production and maintenance workers at the Paul's Valley Plant. The union hereby offers to prove its majority representation by an authorization card check by an impartial third party. The IUE further requests that the Company enter into negotiations for contract covering wages, hours and all other conditions of employment concerning bargaining unit members . . . ."

On March 11, 1977, Respondent, by letter, claimed a good-faith doubt of majority status in an appropriate unit, and urged the Union to file representation proceedings.

35. *Majority status on March 10, 1977*: Set forth below are employees who were in the production and maintenance unit (a production and maintenance unit has repeatedly been held by the Board to be appropriate for purposes of collective bargaining).

Employees	*Clock*	*Date card signed*
Allen, Belvie	1280	-
Arms, Pamela[18]	1271	-
Atteberry, Patricia	1269	2/22/77
Baker, Gail	987	-
Barnett, Hazel	532	2/11/77
Battles, Pamela	894	-
Bergsnes, Kristian[18]	1381	2/10/77
Bergsnes, Linda	1478	2/14/77
Biggs, Deborah	202	3/7/77
Biggs, Jackie	844	2/11/77
Biggs, Kay	1281	2/11/77
Bittle, Linda	1215	-
Bittle, Mayrene	1214	-
Boiles, Carolyn	124	-
Bolin, Eva	239	-
Bone, Mary Ellen	1036	-
Box, Donna	851	-
Brown, Faye	14	2/11/77
Brown, Betty	897	-
Brown, Brenda	260	2/11/77
Byrd, Helen	70	2/11/77
Byrd, Junior	28	2/10/77
Cain, Ruby L.	649	2/10/77
Caraway, Jerry	1525	-
Catlin, Terry	1144	2/10/77
Christian, Elizabeth	510	2/13/77
Clement, Vernia	471	-
Conner, Wanda	338	-
Cornell, Carl	1349	2/12/77
Coslick, Mary	1494	2/11/77
Cottrell, Cathy	1488	2/11/77
Cox, June	1019	-
Craig, Berl	74	2/11/77
Crouse, Alta	1153	2/11/77
Cruse, Shr-lynn	1120	-
Cushenberry, Pearlie	1270	2/11/77
Davis, Thelma	1529	-
Deaver, Verla	217	-
Dobbins, Rosie	921	-
DeHart, David	756	2/10/77
DeHart, Judy	1348	2/10/77
DeHart, Stevie	344	-
Digby, Gloria	1319	2/10/77
Dixon, Faye	974	2/11/77
Dixon, Shirley	115	2/11/77
Dodd, Berta	1509	2/11/77
Doudican, Mary	200	2/24/77
Doughty, Nonia	1134	-
Driskill, Debra	1530	-

Employees	*Clock*	*Date card signed*
Driskill, Sophia	389	2/11/77
Dulworth, Minnie	1503	-
Eastwood, Brenda K. (Davis)	1456	2/11/77
Edgar, Ruth	189	2/11/77
Edgar, Darlene	1310	2/11/77
Erwin, Waltena	616	-
Estes, Hazel	1454	-
Evans, Laura	422	-
Fields, Charlene	1207	-
Fields, Cynthia	1404	2/11/77
Fields, Lillie	1095	2/11/77
Flowers, Eloise	1308	2/11/77
Foster, Cindy	1258	2/11/77
Frazee, Tammy	1168	2/11/77
Frias, Phyllis	391	2/11/77
Frost, Linda	496	-
Fuller, Dwayne	668	-
Gibson, Clara	464	2/11/77
Gibson, Debora	1185	2/15/77
Gibson, James	1059	2/10/77
Gibson, Tony	1016	2/11/77
Gilbert, Mollie	1506	-
Gleason, Elizabeth	1051	2/10/77
Glover, Richard	1466	-
Goble, Judy	559	-
Graham, Helen	442	2/15/77
Green, Judy	182	2/11/77
Hackett, Jeannie	1239	2/10/77
Hamilton, Judy	708	2/10/77
Harvey, Margaret	1480	2/11/77
Hatley, Jacklene	1317	2/11/77
Haxton, Zola	936	-
Hickman, Sylvia	896	2/11/77
Hinkle, Steven	1399	2/10/77
Holloway, Glenda	1347	-
Holloway, Sue	1440	-
Holman, Karren	1533	2/28/77
Howerton, Barbara	1513	2/11/77
Hughes, Judy	915	-
Humphrey, Jerry	883	2/10/77
Hunt, Bridgett (Cearley)	1332	2/10/77
Hunt, Marilyn	1170	-
Hutchenson, Dalphia	1241	2/11/77
Ingram, Jane	586	-
Jay, Lena	41	-
Jennings, Myrtle	585	2/11/77
Kile, O. M.[19]		-
Kirby, Ann	165	2/21/77
Kirkbridge, Elizabeth	1492	-
Koehler, Frankie	556	-
Koehler, Grace	352	-
LaMarr, Laquita	1205	2/16/77
Lauderdale, Lawrence	440	-
Lee, Kitty	1190	2/10/77
Lightsey, Theresa	571	2/11/77
Logan, Yvonna	1372	2/22/77
Mantooth, Judy	1531	2/11/77
Martin, Terry	1368	2/11/77
Matthews, Nancy	1443	2/10/77
McBroom, Jonell	940	2/11/77
McClure, Catherine	345	2/15/77
McCurley, Larry	676	-
McDonald, Reba	1470	2/10/77
McGee, Katherine	1296	-
McGregor, James	468	-
McIntyre, Betty	711	3/1/77
McKinley, Mary	1484	2/10/77
McLain, Joy	302	3/1/77
Miller, Beatrice	1194	-
Mitchell, Linda	26	-
Montgomery, Elfreida	306	-
Monzo, Jimmie	613	2/10/77
Moore, Connie	1320	-
Morris, Helen	1233	-
Morse, Virginia	528	2/11/77
Morton, Minnie	1526	2/10/77
Mumford, Neva	631	-
Murray, Rubye	1297	-
Newton, Richard	1407	2/10/77
Pace, Betty	1197	-
Peters, Debra	1151	-
Pickens, Welma	509	2/13/77
Pritchett, Betty	314	-
Ratliff, Norma	1507	-
Reece, Brenda	566	-
Reed, Elaine	632	-
Reynolds, Bobbi	1510	2/14/77
Richardson, Claudine	1126	-
Richey, Vanissia	1198	-
Risenhoover, Brenda	359	2/13/77
Robison, Joan	69	-
Robinson, Jora	1519	-
Robinson, Ruby	1504	2/10/77
Rollins, Robert	1024	2/10/77
Russell, Anita	1082	-
Russell, Nancy	833	2/21/77
Russell, Patricia	1450	2/11/77
Sanders, Billie	45	-
Sanders, Jimmy	1377	-
Sanders, Lenora	624	2/10/77
Scoggins, Alice	1131	-
Scott, Mary	1446	-
Scroggins, Jeanetta	1354	2/11/77
Shaw, Brenda	757	2/21/77
Shults, Marjorie	856	-
Simmons, Shirley	1408	-
Simpson, Diana	1463	-
Sise, Frances	1252	2/11/77
Slaughter, Shirley	1238	2/11/77
Smith, Geneva	1528	2/11/77
Smith, Randy	995	-
Smith, Sandra	315	-
Smith, Sherrie	1418	2/28/77
Snider, Thelma	1329	2/14/77
Spencer, Vickie	1414	-
Springer, (Sledd) Carolyn	1133	2/10/77

Employees	*Clock*	*Date card signed*
Springer, Ella	1495	-
Springer, Janet	1524	-
Springer, Johnny	511	2/10/77
Springer, Loreane	544	-
Steadman, Judy	1428	-
Stephens, Hazel	702	2/10/77
Strader, Olene	370	2/12/77
Taylor, Debrorah		2/11/77
Taylor, L.	961	-
Thomas, Maple	1391	2/11/77
Tillery, Anita	1460	-
Tillery, Ronald	1516	-
Trent, Ola	420	-
Turner, Linda (May)	1412	2/11/77
Van Orden, Donna	1200	2/11/77
Walck, Ida	1486	2/22/77
Walker, Leona	1287	-
Ward, Barbara	1471	2/15/77
Watkins, Maria	1439	2/11/77
Weatherford, Carrie	282	2/10/77
Welch, Katherine	238	2/10/77
Welch, Marilyn (Keith)	1461	2/10/77
Welcher, Ronda	156	-
West, Freida[20]	876	2/28/77
Whalen, Debbie	1364	2/28/77
White, Thelma	1511	2/11/77
Whitefield, Carl[21]	675	2/10/77
Wilkerson, Lucille	470	3/7/77
Williams, Jerry	1294	2/10/77
Wilson, Dawn		2/13/77
Wood, Rita	846	-
Wyatt, Debra	392	2/10/77
Zebert, Margaret	482	2/11/77

The Charging Party's brief lists Brenda Kay Davis, who the evidence shows is the same as Brenda Kay Eastwood. Also the Charging Party's brief lists Kathy Dixon, who signed a card on February 25, 1977, whose clock number is 1306; hence, it is clear that she was hired before March 10, 1977. However, Respondent's Exhibit 22 shows "temporary lay off January 31, 1977." In the absence of any further evidence concerning the "temporary lay off," I cannot find that Kathy Dixon was an employee within the appropriate unit on March 10, 1977.

Employees excluded from the appropriate unit, and the basis for exclusion, are set forth below:

Name	*Classification*	*Record Citation*
Robert Parkey	General Manager	GC-11
James Tompkins	Plant Manager	GC-11
Homer Rinehart	Manufacturing Manager	GC-11
Floyd Jones	Production Manager	GC-11
Phil Matlock	QC Supervisor	GC-11
Garland Fuller	Manufacturing Foreman	GC-11
James Gobel	Second-Shift Production Supervisor	GC-11
Myrtle Springer	R&D Supervisor	GC-11
Phyllis McKillip	Asst. Production Mgr.	GC-11
John Morrison	Purchasing Agent	GC-11
Jack Utterback	Equipment Manager	GC-11
Jim Nation	Lamp Manager	GC-11
David (Randy) Hill	Treasurer	GC-11
Verolyne Anderson	Cutting Supervisor	GC-11
Cindy Wallace	Welding Supervisor	GC-11
Floyd Wells	Ager Supervisor	GC-11
Helen James	Rework Supervisor	GC-11
Robert Smith	Mechanical Supervisor	GC-11
Robert Bez	General Administrative	TR II 1727-33
Joleta Blackwell	General Administrative	TR II 1727-33
Marvin Brooks	Guard	TR II 1727-33
Brenda Choate	Administrative Clerical	TR II 1727-33
Mark Griffin	General Administrative	TR II 1727-33
Judith Hill	Inside Sales Manager	TR II 578-579
Carol Mullens	Administrative Clerical	TR II 1727-33
Paul Newton	Computer Expert	TR II 1727-33
Ruby Pierce	Guard	TR II 1727-33
Gus Pierce	Guard	TR II 1727-33

[18] This list includes the following who were laid off on February 11, 1977, and who allegedly "quit" thereafter, but have not been offered reinstatement by Respondent, hence they remain, under standard Board law, employees: Pamela Arms, Patricia Atteberry, Cathy Cottrell, Thelma Davis, Rosie Dobbins, Helen Morris, Claudine Richardson, Anita Tillery, and Dawn Wilson.

Though K. Bergsnes, and others on this list, who were laid off on February 11, 1977, had not been recalled by March 10, Respondent's notice indicated a belief that the layoff would likely be temporary. Moreover, many laid-off employees (February 11, 1977), were recalled by mid-March 1977, establishing a reasonable expectancy of recall in the foreseeable future of those laid off on February 11, 1977. In any event, I have found, *supra*, that those laid off on February 11 were discriminatees, hence, they remain employees.

[19] The Charging Party and the General Counsel seek to exclude O. M. Kile, Larry McCurley, and James McGregor. All except Kile (who quit June 30, 1977) voted without challenge. They are included.

[20] West has clock #876, and worked regularly at least during the payroll March 11-April 29, 1977. She was rehired September 1977 as clock #1616. The above evidence shows she was an employee on the March 10, 1977, demand date.

[21] Was not recalled until August 1977. I find that Whitefield had reasonable expectation of recall in the foreseeable future as of March 10, 1977, and, in any event, as discussed *supra*, he was a discriminatee, in that Respondent delayed his recall because of his union activities.

Name	*Classification*	*Record Citation*
Hazel Ramsey	Personnel Manager	TR II 1361
Adria Stephenson	Sales Clerical	TR II 1727-33
Mary Tennison	General Administrative	TR II 1727-33
Deborah Warren	Sales Clerical	TR II 1567
Irwin Wolberg	General Administrative	TR II 1727-33
Benjamin Womach	Guard	R-22

Tony Lester, clock #1563, part-time janitor, was not hired until May 4, 1977. (Resp. Exh. 22.) Mickey Morphew, clock #1564, was not hired until May 9, 1977. (Resp. Exh. 22.)

Counsel for the General Counsel seeks to exclude maintenance employees Gail Baker, Tony Gibson, and Ronald Tillery, along with Carl Cornell, Dwayne Fuller, and Clinton Taylor.

Baker, Tillery, Cornell, and Fuller voted without challenge in the election. Taylor was challenged by the Charging Party, who alleges that he was a draftsman. The evidence does not clearly support technical status, which, under Board law, the party seeking exclusion must establish. Nor assuming, *arguendo*, that he was a technical employee, do the terms and conditions of employment support exclusion. Taylor is accordingly included as are the others. Tony Gibson was not on the *Excelsior* list because his employment ended April 8, 1977. He was an electrical maintenance employee, and there is no proven basis for his exclusion. He is accordingly included in the appropriate unit.

In sum, of 198 employees in the appropriate unit on March 10, 1973, 112 had, on or before March 9, 1977, signed valid union authorization cards establishing the Union's majority status in an appropriate unit.

36. Contemporaneously with Respondent's March 11, 1977, refusal to recognize and bargain with the Union, Respondent shifted from its PV plant to EOD, $16,018 in equipment,[22] parts, and supplies. (Party's Jt. Exh. 1, Vol. IV, packing lists numbers 4998 and 4999.)

Though records show past flows of equipment, parts, and supplies, no other transaction of this magnitude appears, save for the transfer of nine butt welders and three double cutters from PV to EOD (Party's Jt. Exh. 1), on February 11, 1977, the day of the first layoff in 1977. The value of this latter transaction is not shown on the packing list, but for comparison, two butt welders were sold to NECO in May 1977 for $9,840. The retail value of these butt welders was $44,280 (or slightly less since three were used). Further demonstrating the impact of the transfer of the 9 butt welders on February 11 is that, after the transfer, only 11 were left at PV. (Resp. Exh. 36.) (Though Tompkins testified (Tr. II, 1857) that there were 45 to 50 butt welders at PV, the compilation (Resp. Exh. 36) impeaches that.) There is testimony (Tr. II, 1906-07) that two butt welders could weld 3,600,000 pieces per year.

Though Respondent asserts that these nine butt welders were orally ordered by its official, McGraw, in January 1977, no written documentation of such an alleged order exists (C.P. Exh. 37 shows none, and packing list 4661, Party's Jt. Exh. 1, list no order number. Additionally, Emme (Tr. II, 1708-09) testified that in late 1976, and in early 1977, he was not told by management of PV or EOD that PV would manufacture equipment to be transferred to EOD to increase its productive capacity).

Clearly in late 1976, certainly at least by early 1977—see the January 1977 transfer of $36,000 in Eurolux' and Dreefs' orders from PV's bookings to EOD's (C.P. Exh. 42, p. 9)—Respondent planned to have EOD handle certain orders.[23] On March 17, 1977, Emme notified Dreefs (G.C. Exh. 115, p. 74(a)): "As I mentioned in my telex to you, we are experiencing some growing pains because of our consolidation of international business in Northfield, Illinois plant. We can assure that within a short time you will see a marked improvement in our quality and delivery . . . please bare [sic] with us during this phase over period and I'm sure we will be a satisfactory supplier to your company . . . ."

However, neither the order entries (C.P. Exh. 37), the admissions from Emme, nor the above messages to Dreefs, suggested any equipment, let alone that nine butt welders (or the double cutters) were necessary for Respondent's transfer of Dreefs to EOD.

Nor do the Emme communications above indicate that the March 11, transfer of equipment, parts, and supplies to EOD related to the Dreefs' order. Indeed, if, as Tompkins contended, the two units transferred after the February 11 layoff had not operated in 1977, clearly they were not related to the Dreefs' order.

Regarding the parts and supplies sent to EOD on March 11, some resistors were identical to those used for Canadian customers, e.g., for Leecraft and General Time, which, as discussed *infra*, policy required them to be manufactured at Pauls Valley.

It is inferred and found that the transfer of the butt welders and of the other equipment on March 11, 1977, along with the parts and supplies, were for the purposes of decreasing work normally done at PV by transfers to EOD.[24]

[22] Tompkins testified that two units thus transferred were at a result of McGraw's decision to develop EOD into an international sales company and brought EOD to four units (compared to two previously, plus some automatic units purchased in 1976 from GE, which did not operate, except briefly in 1977 in connection with the NECO order discussed *infra*); however, Tompkins claims that these two transferred units were not used by EOD in 1977 (Tr. I, 364, 369.)

[23] See also G.C. Exh. 115, p. 8, a February 4, 1977, message from Emme to Dreefs: "I'm very sorry for the problems we have cause you, but with the new operation we be able [sic] to support you better. We are having some small difficulties getting supplies but in 15 to 20 days we will have our new manufacturing plant in full running condition . . . ."

[24] Emme conceded, "We didn't have domestic orders in Northfield to any extent prior to 1977. I am not sure, but I don't think manufacturing started prior to 1977. Is there some in 1976?" (Tr. II, 1680.) Records show that about $500,000 (domestic and foreign) were sold by EOD in 1976. Hill (Tr. II, 699) testified that EOD did very little domestic work because they had about all they could handle with the foreign shipments.

Tompkins (Tr. I, 375) testified that, as early as 1974 or 1975, EOD operated units, and by about 1975 or 1976 had become more than a resource and development arm of PV. According to Tompkins (Tr. II, 1133), either November or December 1976 or January 1977, foreign business was to be done at PV. At that point, they started sending things for the foreign market to EOD, that is why Dreefs and Eurolux went to EOD.

Tompkins testified (Tr. I, 353) that McGraw made the initial decision that EOD was going to be basically a nondomestic supplier of lamps, and that PV would be the domestic supplier of lamps. At transcript II, 367–368, Tompkins testified that McGraw said that "EOD is only going to do foreign business and PV only domestic"; "Well that is good as a policy, but in fact some times it just couldn't be done."

In fact, it is clear from Tompkins' admission (Tr. II, 350) and that of Emme (Tr. II, 652–654) that policy and practice were for EOD to do foreign work and to also perform orders which PV was unable to satisfy the customer on.

In 1977, after the February 11, 1977, layoff, domestic customers (including Molex, General Electric Range Products, D&M, Jemco, NECO), as well as Canadian customers,[25] (Canadian GE, Fleck, Leecraft, General Time, George Endress, Triplex, Ingraham, GTE Automatic), were handled at least in part by EOD. While most of these customers were also handled in part by both PV and EOD in 1976, as discussed below, EOD's "charter" was to do foreign business and, as needed, help Pauls Valley on nonforeign customers. This policy was changed commencing February 11, 1977, whereby even though PV employees were on layoff, orders which should be done, pursuant to Respondent's policy, at Pauls Valley, were done in whole or in part at EOD. Additionally, since Dreefs was given to EOD in January 1977, such a substantial order would hardly permit EOD to help out PV significantly on domestic customers.

While an employer may order its business in any manner it chooses, including layoffs at its major plant which has at least six times the productive capacity as that of the satellite,[26] excellent facilities and production of a better quality than that of the satellite, while having no layoff[27] at its satellite facility, which had a history of quality problems, in the face of the deviation from a clear admitted policy, there must be a cogent and credible explanation where, as here, only the affected plant is undergoing an organizational attempt. Absent such explanation, the inference is clear, that the employees at the plant undergoing organization were punished for the organizational attempts.

Hill (Tr. II, 941) testified that EOD had a general downturn in business. Tompkins testified that EOD needed business to justify its existence, and that there was a long-term downturn in EOD bookings. (Tr. II, 351.) I find that this is not a sound business justification[28] for maintaining a stable work force (C.P. Exh. 54) at the plant not having a campaign (EOD), hiring 11 new employees there in May 1977 (C.P. Exh. 53), increasing EOD's hours from 1,373 on January 29, 1977, to about 1,500 hours/week, during the period February through April 1977, and to about 1,800–1,900 hours May–July 1977, or to work the EOD employees in excess of 1,410 hours of overtime during the period April 23–July 16, 1977. (C.P. Exh. 54.)

The shifting and contradictory explanations offered by Respondent for performance of domestic work at EOD in 1977 strengthen the inference that the transfer of work was discriminatory and in reprisal for the organizational activity at PV. Thus, Matlock testified that EOD supposedly builds overseas lamps and PV domestic ones, there is an overlap of three or four minor customers (Tr. I, 987, 1230), that there might be one or two minor areas where PV competes with EOD for orders (though he did not know of any). Matlock conceded that the two did not compete for customers. (Tr. I, 984.)

Emme testified that, in June and July 1977, PV and EOD were basically in competition with each other to the point that there was some animosity between the two divisions,[29] PV was not very happy with creation of EOD and it was a very difficult period until EOD was closed about September 1978. (Tr. II, 1652.) According to Emme, EOD's "charter" was to supply lamps to the international market primarily (basically Europe and Canada (as noted below, the claim with respect to Canada is not true) and to help Pauls Valley when necessary). (Tr. II, 1652–54.)

While Emme later conceded (Tr. II, 1681) that EOD was for foreign customers, and PV for domestic customers, he contended that, because of monthly loses at EOD, he was ordered by his "boss," Rymeck, general manager at EOD, to get business in any way he could. (Tr. II, 1652–66.) To buttress this claim, he initially stated that he was working only for EOD—not also for PV—at this time, except for customers in Chicago. (Tr. II, 1654; 1652–56.)[30]

Emme later conceded that he was sales representative for PV in June 1977 (Tr. II, 1662); that this is true is also seen from Hill's testimony (Tr. II, 581), that Emme was over PV and EOD "as far as sales were concerned."

Tompkins initially sought to lend substance to Emme's claim by testifying that orders solicited by Emme for EOD would ordinarily be done there. (Tr. II, 364–365.) He impeached this claim (at Tr. II, 368), when he ad-

[25] See below for the fact that these were, before 1977, treated by Respondent as domestic customers, whose orders were to be handled at PV.

[26] Emme (Tr. II, 1685) testified that EOD only had two units plus a General Electric automatic unit which did not produce regularly. PV had at least 12 to 13 units during the same period. (Tr. I, 363–364.)

[27] Tompkins testified (Tr. II, 378) that he believed that there was a work force reduction at EOD. The record shows no work force reduction in 1977, and Emme testified that there were no layoffs or work force reduction at EOD in 1977. (Tr. II, 1684.) Tompkins eventually conceded "probably there weren't any lay offs at EOD in 1977."

[28] Tompkins (Tr. II, 352) testified that he and Rymeck, and, if need be, McGraw decided in 1977 to manufacture orders at one plant or the other, depending on some problems that came up, that good business sense required.

[29] Tompkins testified, Tr. I, 380, "We don't compete for business," EOD is not in competition, "they're primarily in international sales, Canada, and the continent." (Tr. I, 432.) (As seen below, Tompkins' claim that EOD was to handle Canadian orders is not correct.)

[30] Tompkins also initially made the same claim (Tr. II, 358–360; Tr. I, 380) and testified that Emme's job was not to solicit business for PV. He later impeached his own testimony in this regard.

mitted that, until 1978, the maxim was, whoever got the order, if it was a domestic customer, the order would be done at PV and, if nondomestic, to EOD. Hill testified that salesmen, when they made sales, did not know whether it would be down at EOD or PV. (Tr. II, 941.)

Although according to Emme, on some unspecified occasions, he took some domestic business directly to EOD without PV knowing it, and at one point Tompkins complained about this to McGraw (Tr. II, 1674–76), Tompkins placed such instances in the latter part of 1978, "that is when a lot of problems started developing between the two divisions."[31] (Tr. I, 356–358.)

Various explanations regarding American customers

Molex conceded that this was a significant domestic customer (Tr. I, 1230), that it would keep one machine busy half or full time, and that it was a yearly order. (Tr. I, 980–983.) Charging Party's Exhibit 58 shows that nearly $40,000 was shipped to Molex by EOD in 1977. Matlock claimed (Tr. I, 1225–30), that Molex was lost to EOD primarily because of quality.[32] (Contrary to this claim, G.C. Exh. 114, p. 17, shows that EOD supplied some bad parts to Molex, forcing PV to supply the balance of that order.)

In 1976 Molex was supplied by both PV and EOD. (C.P. Exh. 58; G.C. Exh. 101, pp. 1163–68). As late as May 12, 1977, PV shipped to Molex (G.C. Exh. 101, p. 1168). One Molex order to EOD (N 735, February 24, 1977) shows that a portion of the order was to be shipped from PV. (Resp. Exh. 51, Vol. IV.) C.P. Exh. 36 shows that four orders from Molex received April 12, 1977, were transferred from PV to EOD (see April's bookings).

According to Hill (Tr. II, 701, 847–848, 855) Molex was located in the same vicinity as EOD, and thought its quality was better, and requested that EOD make the lamp; that Molex was a touchy customer; that either plant which was making a lamp which would work would ship them to Molex, that both plants would have a difficult time with that lamp. (Indeed, Tr. II, 865–866 shows that, in March 1977, lamps were manufactured at PV, shipped to EOD, who then shipped them to Molex.) According to Hill, Parkey and Emme would decide, on Molex, what was to be done at PV and what at EOD (Tr. II, 937).

Emme testified that Molex was a special case. (Tr. II, 1681.)

I find that Matlock's claims are impeached by Hill's testimony. I find that Molex could have been supplied by Pauls Valley in 1977 either directly, or indirectly, as it was in one instance.

D & M (Design and Manufacturing)

This domestic customer was supplied $11,270 in product in 1977 by EOD. (C.P. Exh. 58). Emme testified (Tr. II, 1706; 1714–15) that D & M was having trouble getting lamps, so EOD helped PV out because PV was unable to satisfy the customer's delivery commitments, so PV asked EOD to supply the product. (See also G.C. Exh. 115, pp. 200(j), 200(k), 200(n), 200(o).) Of course this is no business justification, when employees are laid off at PV.

Neoptics, a domestic customer, was supplied $20,003 by EOD in 1977. (C.P. Exh. 58.) No explanation was offered by Respondent.

Littlefuse, a domestic customer (without any explanation), was supplied $2,330 by EOD in 1977.

Leviton was furnished $3,337 by EOD. Emme admitted that this was because PV could not timely supply product. (See above D & M discussion.)

Avco was furnished $2,191 by EOD.

GE (Appliance) was supplied $19,743 by EOD. (C.P. Exh. 58.) Tompkins conceded that GE needed parts and PV could not furnish them because it was behind, delinquent on some orders, GE was in a bind for parts, hence PV requested EOD to ship to alleviate this problem. (Tr. II, 353–355.) (See comments above, D & M.).

NECO, a domestic customer,[33] was supplied $69,870 by EOD in 1977.

Initially, Tompkins sought to convey the idea that the business was split between the two plants at NECO's insistence that it have two sources in the event of strikes or disasters. (However, Matlock, Tr. I, 1231, testified that there was some discrepancy about who would work indirectly with the customer on that, and the customer kind of got caught in the middle.) Tompkins later conceded that the "union" factor was not raised by NECO. (Tr. II, 450.) At transcript II, 501, Tompkins conceded that NECO's agent, Montgomery, did not care where we manufactured it. He also conceded (Tr. II, 377) that he (Tompkins) asked EOD to produce for domestic customer NECO.

Tompkins testified that Emme was not the person who made the NECO sale, but it was Tompkins, and that he did all the negotiations (Tr. II, 377); that he was called by a NECO employee in Mississippi[34] who said that NECO was in "desperate need of a large quantity of product" in the millions; that Tompkins told him that there was nothing he could do because he did not have the production time. (Tr. II, 401.)

[31] Although Tompkins in the hearing before me contended that EOD did part of the NECO business without his knowledge, Emme's testimony, and Emme's letter to NECO, with copy to Tompkins, disspells this claim.

[32] Tompkins (Tr. II, 402) testified that PV did better quality work than EOD. Hill testified that EOD had quality problems, that domestic customers were more particular than certain foreign customers; hence, EOD got the foreign customers. (Tr. II, 700.)

[33] Although Respondent's brief contends that NECO is a foreign customer, no witness thus contended, nor is there any support for this contention, which is accordingly rejected.

[34] Tompkins gave conflicting testimony concerning the date of this call, initially placing it in July, later in June or July, then at Tr. II, 447, he testified "there would be a Bell telephone record in May, June or July to a 601 area code number in either Laurel or Hattiesburg, Mississippi." At Tr. 479 he conceded that it would have been before June 24, 1977. Respondent, who could have furnished records establishing this date exactly, did not offer its records for June and July 1977. C.P. Exh. 30 shows a May 3, 1977, call to Bay Springs, Mississippi, but this, by fair inference, related to the PV sale of butt welders. (See C.P. Exh. 43.)

Tompkins gave conflicting testimony concerning the length of these negotiations. Initially he testified that the negotiations went on for two or more weeks. He later said that the negotiations lasted a couple of days. (Tr. II, 385-391; 448; 394-395.)

Tompkins and Emme, as more fully discussed below, also gave conflicting testimony concerning Emme's role. Tompkins testified that while he did not know whether this NECO agent called him or Emme first, as far as he, Tompkins, was concerned, he handled the negotiations and was the only one involved (Tr. II, 396-397), that EOD was not involved until after Tompkins had acquired some of the business, and had had a conversation with Rymeck at EOD about needing production. (Tr. II, 475-479.)

Tompkins testified that he told NECO's agent that he would send him about 100,000 lamps purchased from GE in 1976. (Tr. II, 398-399.) Tompkins conceded, "We sent some from Northfield down there because we did not have a production capacity. . . ." (Tr. II, 401), that it was his decision to let EOD ship some of these "until I could get back in to operation . . . I probably made a telephone call to Rymeck. This was after I had the call from the purchasing agent from NECO." (Tr. II, 402-403.)

According to Tompkins, but for the inability, at the time of this order to manufacture these lamps, all would have been done at PV. (Tr. II, 403-404.)

According to Emme (Tr. II, 1673-75) EOD manufactured for NECO in July 1977 because NECO had to have the lamps as soon as possible, and PV could not react this fast on this initial business (of course, since Tompkins was initially contacted June 10, 1977, or earlier by NECO, this assigned business reason by Emme, and Tompkins, lacks credibility, in view of the fact that, notwithstanding knowledge no later than June 10, a large customer desperately needed a large amount of production, Tompkins kept the work force at almost the same level thereafter, until about the end of the week ending July 8, 1977), and he assumed that EOD manufactured a million lamps for NECO with full knowledge and agreement of management at PV, and he did not think that Tompkins complained about it, that (Tr. II, 1720) he was sure he talked to someone at PV about the capability to manufacture these lamps.

Indeed, Respondent's Exhibit 22, dated June 29, 1977, from Emme to NECO, confirming a blanket order for 1 million lamps stated: "Some lamps will be manufactured in Chicago and some in Oklahoma since delivery is critical." This letter shows that a carbon copy was sent to Tompkins. (The first order, R41, was dated by NECO, June 24, 1977. Hence, if the two or more weeks for negotiations, claimed at one point by Tompkins (Tr. I, 288),[35] is accepted, the initial contact would have been June 10, 1977, or earlier.)

Emme testified that he contacted Tompkins, and asked if he could help, that Tompkins was more than elated to know that "we" could possibly get back in, and get some business out of them. (Tr. II, 1641.) Emme testified that he did not know if he told Tompkins that EOD was going to manufacture a million lamps for NECO,[36] that there was a possibility "they" may be making some in PV, it was who could make them the fastest at the time (Tr. II, 1661); and that he told Tompkins "I" expected to get substantially more of the business. (Tr. II, 1663.)

Although Emme testified that the first order was made out directly to EOD (Tr. II, 1661), he was forced to concede, when shown the order itself, that the order was to PV (Tr. II, 1661-62).

Unlike Tompkins, who claimed credit for the sale, Emme sought to portray that he, Emme, made the sale (Tr. II, 1640): Sometime in June 1977, Corson, purchasing agent for NECO in Chicago called and said, "'George, I'm in trouble, the present supplier is not able to meet the commitment, can you help us out.' I said, I would like the commitment from NECO so Glowlite can continue producing lamps over a period of time. He said, you can have it, just get me the lamps, as many as you can, as fast as you can." (Tr. II, 1640.) (Emme later testified that both he and Tompkins were involved in negotiating the contract with NECO.)

Tompkins (Tr. II, 449) testified that he might have talked to Emme about his (Tompkins') call from NECO, that he did not remember if Emme said whether he had a similar or like call from NECO.

As can be seen, the accounts of Tompkins and Emme vary, in that Tompkins claimed that he got the order, then contacted Rymeck at EOD to see if EOD could produce on the NECO order; Emme claimed that he got the call from a different official of NECO, checked with Rymeck to see if he could handle it, and then contacted Tompkins at PV.

Canadian Customers

Charging Party's Exhibit 47, dated December 27, 1976, shows that as late as that date in 1976 policy required that "all domestic and Canadian orders are manufactured here." (PV.) (G.C. Exh. 114, p. 167, shows that as late as January 31, 1977, PV handled production for Canadian GE.)

However, as will be seen below, while layoffs and refusals to recall employees at PV were extant, shipments were made to Canadian customers by EOD:

Parties Joint Exhibit 1, Volume III, shows a May 6, 1977, shipment by EOD to Canadian GE; Volume IV shows an April 1977 shipment to Canadian GE. The bookings for June 1977 (C.P. Exh. 36) show that an April 15, 1977, order to Canadian General Electric for 5,000 was transferred to EOD; those bookings for May 1977 show that an order of about April 16, 1977, for 5,000 was transferred; the April 1977 bookings show two

[35] Tompkins admitted that NECO was the largest domestic user of lamps, that NECO desperately needed the lamps.

[36] Tompkins testified (Tr. II, 1058-59), "When I talked to the purchasing agent of NECO, I knew there were conversations going on between all three plants involved in it." At Tr. II, 1186, Tompkins testified: "I might have been kept aware of what was going on [re: NECO negotiations] but being involved in it, I don't know. I do know there were a number of conversations regarding that." (Tr. II, 1186.) Of course, since PV, on June 24, 1977, sent 220 K resistors for the NECO order to PV, patently he knew about it no later than June 24.

orders of about April 16, 1977, of 10,000 parts were transferred to EOD from PV.

Parties Joint Exhibit 1, Volume IV, shows that on February 21, 1977, PV shipped EOD 105,000 30K resistors (Resp. Exh. 51, Vol. IV, shows that Leecraft, a Canadian customer, used lamps with 30K resistors—also Canadian GE, and Fleck) and 5,000 39K resistors (Resp. Exh. 51, Vol. IV, shows that General Time of Canada used lamps with 39K resistors—also Ingram).

Parties Joint Exhibit 1, Volume IV, shows that on March 1, 1977, by Company plane PV shipped to EOD 20,000 27K resistors (Resp. Exh. 51, Vol. IV-2684, shows that Leecraft used lamps with 27K resistors). Also, George Endress, another Canadian customer, used lamps with 27K resistors.

Parties Joint Exhibit 1, Volume IV, packing list 4998, shows that on March 11, 1977, PV shipped, *inter alia*, to EOD 30,000 27K resistors, 90,000 30K resistors, and 30,000 39K resistors.

Parties Joint Exhibit 1, Volume IV, shows that on April 18, 1977, PV shipped to EOD 100,000 30K resistors. Parties Joint Exhibit 1, Volume III, shows that on May 12, 1977, PV shipped to EOD 100,000 30K resistors.

Parties Joint Exhibit 1, Volume III, shows that on May 20, 1977, PV shipped to EOD 55,000 39K resistors.

Parties Joint Exhibit 1 shows that on June 7, 1977, PV shipped to EOD 30,000 30K resistors, noting that 200,000 were earlier shipped on June 6, 1977.

Respondent's Exhibit 51, Volume V, shows that Fleck, a Canadian customer was supplied by EOD with 100,000 lamps on February 25, 1977, that Leecraft was supplied 75,000 lamps by EOD March 1977.

Respondent's Exhibit 51, Volume V, shows that on May 10, 1977, EOD supplied Canadian GE with 5,000 lamps, noting "this release has been already assembled in Oklahoma. They are sending completed parts to Northfield for shipping. Release 2 will be assembled here."

General Counsel's Exhibit 101, page 221, shows that 4,500 parts to complete a Canadian GE order were transferred from PV to EOD.

Charging Party's Exhibit 36 shows that Canadian GE orders 67941, 67942, and 6795C1 were transferred from PV to EOD.

Charging Party's Exhibit 58 shows that, from February 1977 to the end of August 1977, the following amounts of Canadian orders were manufactured by EOD:

February		*March*	
Fleck	$15,361	Fleck	$8,855
Leecraft	312	Canadian GE	678
Canadian GE	339	Leecraft	4,753
		Gen. Time of Canada	304
April		*May*	
Gen. Time of Canada	$1,187	Canadian GE	$2,377
		Leecraft	7,489
June		*July*	
Gen. Time of Canada	$2,880	George Endress	$1,600
Leecraft	2,225	GTE Automatic Elec.	461
George Endress	2,880	Gen. Time of Canada	380
Canadian GE	3,846	Leecraft	3,190
Triplex Engineering	1,950	Canadian GE	837
Ingraham	1,170		
GTE Automatic Elec.	690		
August			
Leecraft	$ 638		
George Endress	1,600		
Canadian GE	678		

36. On April 20, 1977, at the representation case hearing, Respondent claimed that the unit "supervisors," and Carrie Weatherford (admittedly known by it to be among the union leaders), were supervisors within the meaning of Section 2(11) of the Act, and it also sought to invalidate the Union's card interest, supporting the election petition. The Regional Director ruled that they were not supervisors and, in a separate ruling, denied Respondent's contention that the Union's showing of interest was tainted by participation and solicitation of cards by these alleged supervisors.

37. On May 6, 1977, Respondent posted written notification that Tompkins was promoted to president and general manager. Tompkins initially testified (Tr. I, 136) that McGraw came to the plant because Parkey had decided to resign, and there were some things that had to be taken care of, the change in command, and that sort of thing, that was the reason for his visit; the Company had gotten into such a bad state of disarray, we were sitting there at that time with about $56,000 in bookings for the next month; there were a number of problems there so McGraw came in and was going to announce to the people the change in management. (Tr. I, 136.) I credit the uncontradicted testimony of Weatherford (Tr. I, 1589.19) that McGraw said, "Bob Parkey had called him and told him that he was resigning. . . ."

In his 1980 testimony, Tompkins testified that things were in such a state of disarray that he urged McGraw to come earlier than planned. (Tr. II, 1926–35.) However, Parkey, according to Tompkins, stayed around after May 6, 1977, and, *inter alia*, helped to prepare the list of those to be laid off.

According to Tompkins (Tr. II, 1781) he recommended to McGraw that there be a layoff, that McGraw was in town when the decision was made to have the layoff. (Tr. II, 1082.) He testified at transcript II, 1127–28: "I'm pretty sure McGraw was present when the decision was made to actually have the layoff, but I don't remember if he was or not." At transcript II, 1129, Tompkins testified that he did not recall whether McGraw was in the meeting when the decision was made to have the layoff, "I

do not know if the decision was made by then or not." He conceded (Tr. II, 1081) that the decision to layoff was made before May 9. This equivocation occurred when he was confronted with the fact that on May 6, 1977, the bookings for June were $133,031 (see discussion below).

An employee meeting was held on or about May 6, 1977, wherein the change in management was announced. According to the credible testimony of Helen Byrd, McGraw invited questions, and one question (by employee Dodd) was whether he (McGraw) thought that the Union would help PV, and McGraw told of his personal experience where a union came in where he had worked, and that company went broke, so he did not really care for the Union (Tr. I, 1990). I find no coercion in the remarks by McGraw, since there was no proof that, as he alleged, the union's excessive demands, in his example, were not the cause of his loss of employment.

According to Weatherford's credible testimony (Tr. I, 1589.19–1589.20), McGraw told the employees that Respondent had been losing business on account of the bad quality of the product (which employees then attributed to various things such as poor glass, lack of sufficient number of unit "supervisors"); and an employee, Judy DeHart, asked McGraw "at that time, if we're facing a layoff." And Charles McGraw replied with, "I don't know. I'll let Jim Tompkins answer that question." Jim Tompkins said, yes, it did look like Respondent was facing a layoff, and it probably would consist of the rest of the second shift.[37]

Tompkins' later testimony was that McGraw told employees that there was a possibility of a layoff (Tr. II, 1082); McGraw announced, "I think, there is a possibility of layoff, there was an indication there could or would be" (Tr. II, 1127–28); that there was a possibility of a layoff (Tr. II, 1928).

38. At some time (if the literal meaning of the records is to be accepted, on May 9, 1977), the bookings records for June 1977 were modified by significant reduction in the amount of bookings shown. As discussed above, if, as Tompkins testified at one point, the layoff had been decided on when McGraw was at the plant May 5 or 6, 1977, and the then contemplation was to lay off the balance of the second shift, as he testified that he told employees at the May 6, 1977, meeting, the alteration in bookings on May 9, 1977, can only be seen as an attempt to justify a deeper and more significant layoff (of 73 employees), or as a pretext for any layoff.

On May 6, 1977, the June bookings showed $136,420.68. (C.P. Exh. 36.) This shows that Tompkins' claim that there was only about $56,000 in June bookings when he took over May 6 (Tr. II, 1081) is not correct. On May 9, 1977, Charging Party's Exhibit 36 shows the entry for cancellation of an order 6976–4 (GE 041C60015), reducing the bookings for June to $111,580.[38] Of course, the method of keeping the bookings consistently shows that each month's booking starts at zero cumulative total, that as orders are booked for that month the value of the order is cumulated, so that a daily total of bookings for the month is shown. In the case of order 6976–4, it had never been entered in the June bookings before May 9, 1977; hence, it patently should not have been deducted on May 9 from the June bookings.

Still on May 9, an entry appears in the June 1977 bookings: "New total run May 9, '77 $68,087.00." No justification appears in the bookings for this significant drop. (C.P. Exh. 36.) Finally, on May 9, 1977, an entry appears in the June 1977 bookings, "New Total 3:30 p.m. May 9, 77 $64,957.68 per Debbie Warren." (C.P. Exh. 36.) Again, no written explanation appears in the bookings record.

Respondent gave so many and diverse explanations for these latter two alterations of its June 1977 bookings records (and indeed never did give any credible explanation therefor), that it is concluded that there was no actual need for layoff in May, but that Respondent sought, by altering its records, to make it appear that such layoff was economically required.

Thus, Tompkins testified that "we have a clerk . . . Stevenson, that—to maintain and taking care of this bookings, you have to not add in your previous months delinquency into the total because if you add that previous month's delinquency in, you don't have a true picture of the front of your month to back of the month as to how many bookings you got during the month." (Tr. II, 537–538.) He testified that it was discovered that this backlog had been carried over into the month, and had overblown the bookings for that particular month. This was the adjustment that took place according to Tompkins. (Tr. II, 541.) Tompkins conceded (Tr. II, 543) that he did not know where Warren got the 3:30 p.m. adjustment. According to Tompkins, he did not know who gave the instructions to make these adjustments. (Tr. II, 544.) (This was his explanation also at Tr. II, 1086, and Tr. II, 1091.).

Tompkins later conceded that the backlog really had not been added in (Tr. II, 1059). A mere look at the June 1977 bookings (C.P. Exh. 36) demonstrates that the daily cumulative totals for the June 1977 bookings never had the backlog from April or May added,[39] and as he examined the June bookings (Tr. II, 1093–99), he admitted that he was baffled by the change in the June 1977 bookings.

Debbie Warren testified that she thought that the change was because "we" had probably shipped a lot of shipments, and we adjusted the June bookings (Tr. II, 1590.) However, this is patently not true. Parties Joint

[37] At Tr. I, 237–238, Tompkins testified that McGraw was asked whether Respondent was about to have a layoff, and McGraw answered, "At the present time yes"; that the same employee asked McGraw "how big a layoff?"; and McGraw said, "At the present time I don't know how big a layoff," and McGraw said, "You'll have to ask Jim Tompkins"; and that he, Tompkins, might have said that he believed that the layoff would consist of the rest of the second shift.

[38] There is further discussion *infra*, re: this particular part produced for GE at Portsmouth.

[39] On May 9, 1977, there patently could be no backlog for May since the month was barely started. On May 9, 1977, there could be a backlog for April, which of course existed as of May 1, 1977. The bookings always showed the backlog separately stated (but without being added into the cumulative total in the month following.) E.g., in the May bookings was it shown to be the practice to place the backlog for 1 month in the second succeeding months' bookings (Tr. II, 1088–89, Tr. II, 1097.)

Exhibit 1, the shipment documents, shows that not a single order booked for June 1977 was shipped in the first 9 days of May 1977.

Warren later testified that it "could" have been some cancellation that we failed to take out (Tr. II, 1608). However, by examining the bookings entry made other than those done in late April and May 1977 (discussed below), the cancellations were usually shown on the same line as the entry of the order to which the cancellation related, and in this May 9 entry, changing the June 1977 bookings records, no customers were listed.

Hill testified (Tr. II, 670–678) that the May 9, 1977, change in the June 1977 bookings was in her writing, that she did it on her own, but does not remember why, but she thought it was not backlog, but represented orders shipped early. She finally conceded it was not backlog, and she did not remember what the figures indicated.

Hill further testified (Tr. II, 680–682) that Respondent was running short of orders for May, or was running short of orders to be shipped, either that or Respondent needed the orders to keep "us" busy in May, or needed the sales for May, that would be the only reason for shipping in May, out of the June bookings; "We had a decline in bookings to be filled in May, that would be the only reason we would be shipping the June shipments in May." Of course her last contention is eroded by her earlier averment that these shipments could have been attributable to several factors; hence, her claim (that it was because of the latter factor) is rejected, particularly since (as discussed above, under Warren's testimony) not a single order from the June 1977 bookings was shipped in the period of May 1–9, 1977. Additionally, I find Hill's claim incredible since, after the end of May 1977, Respondent probably had at least a backlog of $38,802. Additionally, as of May 1, 1977, there was clearly a backlog from April of $52,249. It would be inane to ignore the April backlog in the first 9 days of May while working on shipments not due until June 1977.

39. Aside from the unexplained changes in the June 1977 bookings records, examination of the order entry log (C.P. Exh. 37) demonstrates there was no need for a layoff in May 1977.[40] These records show by respective months the amount of product ordered each month, including cancellations and increases occurring in that month, whether or not the original order was received that month. Unlike the bookings records, the order entries do not differentiate regarding the month the product is to be sent to the customer.

While these records (C.P. Exh. 37) start with February 1, 1977, Charging Party's Exhibit 41 shows that on December 21, 1976, the December 1976 order entries were $364,944, which Charging Party's Exhibit 40 shows had accumulated to $483,968, as of the end of December 1976. Charging Party's Exhibit 40 shows January 1977 order entries, as of January 21, 1977, were $186,640. By the end of January they were $247,147.

Charging Party's Exhibit 37 shows the following end-of-month totals of order entries:

2/77	$269,519
3/77	277,031
4/77	115,072
5/77	275,254
6/77	350,132
7/77	310,718
8/77	375,000 (Approx.)
9/77	143,032
10/77	298,949
11/77	291,357
12/77	141,421

Thus, while the April 1977 order entries were low, they were low in September 1977, when no layoffs occurred, rather Respondent hired 16 employees that month. (Resp. Exh. 22.)

40. Nor are the unexplained entries in bookings limited to the May 9 entries in the June 1977 bookings. On the last page of the June 1977 bookings (C.P. Exh. 36), while the June 30, 1977, cumulative total is shown as $166,046.74, under it appears "real total $277,627.42."

In the May 1977 bookings, at the end of the second page, the cumulative total is shown as $167,747.16. The start of the next (or third) sheet shows on May 9, 1977, the cumulative total to be $177,596.94, with no customers' order listed as a basis for the increase; however, the words appear under remarks "includes backlog." I reject the accuracy of this entry and find that, if it purports to show that the alleged backlog at the end of April 1977[41] had been reduced from $52,249.07 to about $10,000 by May 9, it is not supported by the shipment record (Parties Jt. Exh. 1). Thus, of the 62 shipments shown by Parties Joint Exhibit 1 during the first 9 days of May 1977, the following orders were shown by the order entry log to have been ordered after the end of April 1977: 7527C-1, 7520-4, 7526C1, 7531C-1, 7529-1, 7519-1, 7525-4, 7530R-1, 7543-1, 7533C-1, 7524C-1, 7538C-1, 7528C-1, 7521C-1, 7555-1, 7540C-1, and 7552C-1. Thus, these orders could not have been backlog until, at the earliest, at the end of the month of ordering; i.e., sometime after the end of April 1977.

Considering the other orders shipped in the first 9 days of May of $1,000 or more (no check has been made of smaller shipments) the following orders do not appear on the April bookings and therefore could not have constituted backlog at the end of April (indeed the following are shown by G.C. Exh. 101 not to have been booked for shipment until May 1977):

Order No.	*Customer*	*Shipment Value*
7087C-4	Canadian GE	$ 1,800.00
6871-5	Etowah	2,199.04
6871-5	Etowah	1,013.62
7265-2	Leecraft	1,023.40
7076-5	Slater	1,011.75
6892C4	Lowrance	3,867.50
6892C4	Lowrance	1,232.50
7411-1	GE	2,509.65

[40] These logs start with February 1, 1977.

[41] See below for discussion with regard to the inaccuracy of the alleged April 1977 backlog.

Order No.	*Customer*	*Shipment Value*
7411-1	GE	2,386.80
7411-1	GE	2,146.95
7410-2	GE	2,176.20
7410-2	GE	1,643.85
7379-1	Littlefuse	2,052.00
7138-3	Rival	2,530.80
		$27,594.06

Deducting then from the total shipped in the first 9 days of May ($57,319.73), the amount which the order entries show were ordered after April 1977 ($8,422.86), and deducting the further amount set forth above, which could not have been April backlog ($27,594.06), the resulting figure of $21,302.82 demonstrates that there was not enough shipped to reduce the April backlog as of April 30, 1977 ($52,249.09), to about $10,000 by May 9.

Hence, the claim on the above sheet that the $177,596.94 includes backlog is incorrect, and insofar as Tompkins purported to claim that this entry was correct (Tr. II, 551), I reject it.

In the May 1977 bookings, at some undated point, but after May 6, 1977, Order 6976-3 (GE Portsmouth 041C60015) was entered as a $24,840 loss because of cancellation. However, this order had never been previously entered on the May bookings, so its deduction (as with the same type of deduction in June 1977 bookings, *supra*).

Finally, the July 1977 bookings show on May 9, 1977, an entry of 6976-5, GE (Portsmouth 041C60015), canceled, reducing the bookings by about $4,000. This order had never been entered in July bookings, and it was inappropriate to deduct it.

41. In late April 1977, commencing April 25, 1977 (the first date of any entry in the May 1977 bookings after the NLRB representation hearing concluded on May 20, 1977), the bookings purport to show a loss from $16,254.89 to $143,993.91 as of the end of May 1977, as follows:

Shipped in April
$3,203.50
810.00
9,187.50
245.00
90.00
1,511.80
816.00
86.40
160.33
7,117.20
759.00
352.80
351.06
122.00
1,086.80
3,307.25

Normally the entry for early shipments appears on the bookings next to the spot where that order was entered initially, though at month's end some entries similar to the above appear in other months; e.g., in February and April bookings.

In checking all of the above reductions which were in excess of $1,000 (which together amount to a $24,000 reduction in bookings), only one ($1,086.80) is found to have been shipped during the period commencing April 25 through May 2, 1977. Similarly, in the June 1977 bookings, as of late May 1977, the bookings show a decrease for two alleged unidentified shipments, one for $5,261.86, the other for $4,527.50. Again the shipment records for May 1977 (Parties Jt. Exh. 1) show no shipments made of either such amount. (See Tr. II, 1632-35.)

42. On May 10, 1977, Respondent posted a layoff notice: "The following is a schedule of employees after the layoff [attached] and a list of employee numbers [attached] that show the order of rehire. Layoff will be effective at the end of the second shift Friday, May 13, 1977."

43. Tompkins' affidavit (G.C. Exh. 20) states that "The decision to lay off employees of May 13, 1977 was made jointly by Phil Matlock, Floyd Jones, Bob Parkey and Randy Hill." This is consistent with his testimony (at Tr. I, 448-449) re: the May 13, 1977, layoff that Tompkins, Matlock, Floyd Jones, Parkey, Steve DeHart, and possibly Rinehart and Randy Hill, were present when the decision was made and that this occurred about 1 week before the notice was posted. Fuller (Tr. I, 1012) testified that, as he recalled, Tompkins made the decision, and the only meeting which he recalled was when "we" sat down and determined who was going to be on the list; that he did not recall any meeting where Tompkins discussed the need for layoff, only one where "we worked out the layoff procedure, 2 or 3 days before 5/13/77." (Tr. I, 1214.) Tompkins testified that Parkey worked on this layoff list.

Tompkins later changed his testimony to accord with that of Matlock, testifying that it was his decision alone to lay off employees on May 13, 1977. (Tr. II, 1781.)

44. Matlock incredibly testified (Tr. I, 868-869) that "we were building a lot of lamps before the 5/13/77 layoff for which we had no orders, we had no orders to be filled." (In view of the backlog at the end of May and of the fact, as shown in the General Counsel's brief, that the claimant was behind schedule in filling some orders in May 1977, this claim for Matlock is rejected.)

Tompkins' affidavit (G.C. Exh. 20) reads, "The May 13, 1977 layoff was due to the following factor: The Company had not received sufficient orders to justify the existing work force. See Exh. B and attached graft [sic]."[42] This is consistent with his testimony (Tr. II,

[42] The information attached showed, *inter alia*, the bookings for June on May 9, which, as above noted, state an inaccurate figure, or at least one which Respondent has not credibly explained. Also, Tompkins testified (Tr. II, 1081) that the layoff decision was made before May 9. At Tr. II, 1082, he testified that McGraw was in town when the decision was made to have the May 1977 layoff (and these bookings were not changed until May 9). Hence, contrary to his claim (Tr. II, 1087), he could not have relied on bookings figures not yet posted. At Tr. II, 1114-16, he

Continued

1781) that the basis of his decision was that "we" did not have any business at that time, that he looked at the bookings at that time, the judgment was based on the bookings records "we" had, that is how the decision was arrived at; he wanted to bring the work force in line with the amount of business we had on hand, "we" did not see any alternative at that time.

Tompkins later testified that the loss of GE (Portsmouth) was part of the decisionmaking process (Tr. II, 1116–17), but then added that he did not know if that was brought up or not;[43] "It was an extremely disastrous period of time and we reacted accordingly." (Tr. II, 1119.) (I consider this interjection of the Portsmouth GE order to be a change in position, as was Tompkins' final position, i.e., that it was an extremely disastrous period—thereby seeking to claim that his decisionmaking process included any factor which might be shown to be adverse, economically speaking.)

45. Hill credibly testified (Tr. II, 682–683) that the end of March 1977 bookings ($293,886.42) was below average for March, the April total of $255,743.12 was about $100,000 below average for April, and the May total of $230,491 was about $100,000 below average for May. She testified that she talked to Emme, Parkey, and Tompkins about the downturn in business on bookings to be shipped in June. (Tr. II, 938.) She added that she believed that the minor downturn was an industrywide gradual downturn, and also that Signalite was being very competitive, that the customers just were not buying as much as they had previously (Tr. II, 938–940), and she pointed as possible examples to this Proctor Silex, Carling Switch (though she was not certain about this). She did send a letter to Chicago, indicating a need for orders at PV, testifying, "I knew we needed orders, we always needed orders. But evidently from the tone of my letter [May 9, 1977] there we were really needing them bad." (Tr. II, 1000.)

Of course, there was a decrease in business; however, the question is not whether a decrease occurred, but whether it established that a layoff was necessary. Certainly a transfer of $30,000 in January 1977 from PV to EOD (Eurolux and Dreefs) would not be a sensible reason to layoff at PV, since that was the result of a corporate decision to place most foreign business at EOD.

Nor would the transfer of Molex 7200–1, 7243–2; Canadian GE 6974–1, 6795CL to EOD from the April bookings; the transfer of Molex 6513–3 from May bookings, as well as the Molex order 7362–1; the suspicious and unexplained losses, through pen entries, in the May bookings (in late April 1977); the unwarranted deduction of $24,840 on GE order 6976–3 about May 6 (or the similar unwarranted deductions for GE in the June and July bookings); the transfer to EOD of Molex order 7362–2 from the June bookings; the transfer of order 6794–3 Canadian GE; or the transfer of order 7071–4, Leecraft, to EOD; or the unexplained May 9 reduction from $111,580 to $64,957; or the other unexplained pen deductions in late May from the June bookings; or the other occasions where EOD performed domestic or Canadian orders in 1977 support an allegation of a general downturn in business.

Nor is Hill's contention consistent with an April 22, 1977, report of Respondent (G.C. Exh. 97, p. 8), "It's [Pauls Valley] profit performance . . . was disappointing, due primarily to various problems stemming from the unexpected departure of a number of managing and production personnel. Under new management Glowlite now seems poised for a moderate sales gain in 1977 coupled with an earnings recovery. Among the positive factors this year are an anticipated 40 percent increase in lamp manufacturing equipment (on top of a 15 percent increase last year), expanded circuit component production capability, further plant automation and the increased activity at Glowlite's sales and developmental facility located at Northfield, Illinois. Also product demand appears to have firmed reflecting the continuing economic recovery; each year there is a growing demand for off-on neon lamp indicators (see photo at left) in silent running appliances."

Thus, to the extent that Hill sought to establish a significant general downturn, I reject her testimony as contradicted by Respondent's own records, and by the above report, issued shortly before the May 13, 1977, layoff notice. Moreover, Fuller (Tr. I, 975) admitted that, for all of 1977, there was about as much production as in previous years. (Of course, before May 6, 1977, there is no proof that Respondent knew that NECO would return to it as a customer, and during the second half of 1977 Respondent's sales to NECO were $127,818.48.) (Some of these NECO orders called for product without resistors, which, according to Tompkins, require about one-half the production time as those with resistors.) Thus, I find that even considering the NECO orders the alleged downturn was not significant.

I have also considered in this connection the fact that there were backlogs for 1977 as follows:

February	$71,333
March	$55,711

testified that he relied on the June 1977 bookings as they stood on May 9, 1977. At Tr. II, 1102, he conceded that his understanding of the facts was not correct with regard to the amount of bookings, yet at Tr. II, 1116, he again claimed that the records were accurate.

[43] It is unclear concerning the exact timing of the cancellation of these Portsmouth GE orders. Unquestionably, they were canceled, and Tr. II, 1118–19, shows that as of May 23, 1977, there were ongoing tests in an attempt to qualify this product. Later, it did not prove out, resulting in Respondent's payment of substantial sums to GE. The May 1977 bookings show that as of late March 23, 1977, this order was increased, from which I find that it had not been canceled at that time. Tompkins testified that (Tr. II, 536) "we" knew in March 1977 about the cancellation of the GE order. There is evidence (Tr. II, 1121–23) that final cancellation notice was received from GE several days after April 22, 1977. (G.C. Exh. 115, p. 201(a), shows a shipment on April 16, 1977.) Matlock (Tr. I, 985–986) testified "we" were running that (GE) at that time, "we" had on a second shift, and part of the reasons for the second shift was to keep that machine going. As noted above, Respondent, at or about the time of the layoff in May 1977, inappropriately reduced the May, June, and July bookings by over $52,000 in connection with this GE order; i.e., it reduced the bookings, though such orders had never previously been added to the bookings. I find that the GE (Portsmouth) cancellation must have been brought to Respondent's attention about late March 1977, and since no layoff occurred, then or in April, it cannot be credibly urged as any sound basis for the layoff, but is pretextuous. (In this connection, I have also considered that, at one point, Tompkins sought to contend that possibly this cancellation had something to do with the February 11, 1977, layoff, Tr. I, 1098.)

April	52,249
May	38,802
June	42,387
July	124,756
August	184,979
September	66,368
October	52,600
November	39,986
December	(Not shown)

Notice is made of the fact that July and August were excessively high.[44] Since Hill testified, without contradiction, that there was a practice whereby orders were produced in advance of shipment date, to keep the plant busy (Tr. II, 737), there was no reason not to have performed in June, so as to prevent a huge July backlog, particularly since the Respondent, for years, scheduled a vacation shutdown the last of July.

It is also relevant to the above conclusion that, during the layoff months, Respondent, contrary to past practice, permitted the inventory to become extremely low: (Resp. Exh. 46; Resp. Exh. 49)

Date	Amount of Inventory
9/76	5,660,203
10/76	5,112,161
11/76	6,466,872
12/76	5,277,386
1/77	4,100,403
2/77	3,117,058
3/77	3,483,087
4/77	3,087,060
5/77	2,386,608
6/77	1,605,040
7/77	1,596,396
8/77	3,346,260
9/77	4,571,919
10/77	4,852,205
11/77	4,763,080
12/77	4,763,080

Thus, without even considering the conflicting testimonies about whether Respondent produced for inventory, and, if so, how much; or whether, as Tompkins claimed, he had insufficient money to produce inventory (other Respondent witnesses testified that there was a suggestion that Chicago be contacted with regard to this, but no one at PV did so); or whether Respondent anticipated orders, solely from the above inventory levels, before and after the layoffs, it is clear that Respondent had a consistent practice of maintaining inventory of about 5 million pieces or more, that it did not do so during the layoff periods; instead during the layoffs it utilized its previously produced inventory so that employees could be kept from recall. This conclusion is buttressed by the admission of Matlock (Tr. I, 970) that the inventory was depleted as of July 1977.

Further proof that the May 1977 layoff was not needed is seen from the fact that Whitefield testified, without contradiction, that on July 27, 1977, Tompkins told him, "We've got business running out of our ears, we've had so many orders coming in that we have had to turn down orders for this year, that we could not meet." "They wanted to get geared up before vacation but they wasn't able to do so." (Tr. I, 1918–19.)[45] Matlock (Tr. I, 971) testified that as of July 27, 1977, Respondent was running out of its ears with orders that had to be filled.

I reject, as incredible, the implied contention of Tompkins that the upcoming vacation, scheduled for the last weeks of July 1977, was a factor in preventing a wholesale recall in June, or a recall before the vacation period in July. Thus, although the mid-June recalls were, according to Ramsey's credible testimony, voluntary, when they were not majorily successful in evoking a response, she was directed to make the recalls not only by letter, but also to make them mandatory. (Tr. II, 1544.) Since the first mandatory letter was sent June 24, 1977, almost a month before the July vacation, it is clear that Respondent wanted a certain number of employees back then, even though they might, in about a month, be let out for the July vacation. Also demonstrating the incredible nature of Tompkins' implied claim is the fact that as shown, *infra*, substantial hours were worked during the July vacation, from which it is concluded that it was not the type of vacation shutdown normal in past years.

46. *The decision to start to recall after the May 13, 1977, layoffs*, according to Tompkins, was because Respondent got a number of substantial orders in the latter part of June or the first part of July. (Tr. I, 84.) He identified these as NECO and Chicago Miniature. (Tr. I, 287.) At transcript II, 399–400, he testified that "when someone like NECO calls you in July, and told me about this potential new business, that created in my mind a need to restaff the plant, and start getting geared back up for production; if I had known this business was coming, I knew there would be a need to try to get some of the people back on board and get rolling." In fact it appears from other testimony by Tompkins that he first was contacted by NECO about June 10, 1977, or earlier. NECO was, as Tompkins admitted, in desparate need of lamps, yet, not only did Tompkins tell NECO that PV had no production time, but also he sent a large part of the order to EOD rather than recall (commencing in June or thereafter) any significant number of employees. I find that this was in order to keep the number of voters at about 93 as appears from Respondent's campaign letter (G.C. Exh. 15). Thus, the Decision and Direction of Election issued on June 14, 1977 (G.C. Exh. 11). The payroll records for the week ending June 10 showed 93 employees. By the date of the election, July 11, 1977, only a net increase of six employees over the May 13, 1977, layoff complement was achieved. Tompkins said that it was kind of an awkward time, "we" were recall-

[44] Nor did the NECO orders explain the huge backlogs. Thus, C.P. Exh. 33, the delinquency report for August 2, 1977, shows 71 separate orders delinquent as of August 2, 1977, of which 112,000 pieces involved NECO.

[45] Weatherford credibly testified, without contradiction, that, a week or so after the NLRB election, Fuller said that Respondent was going to have to start working from 10 to 10-1/2 hours a day because it was from 7 to 8 million lamps behind. (Tr. I, 1628.)

ing from layoff at that time, but "we" were also closing down 2 weeks for our normal vacation period.[46]

According to Matlock's admission, at least a week before vacation started "we" started getting behind, "we" knew "we" had not scheduled enough people to stay during vacation. (Tr. I, 877, 880.) (I reject as incredible Tompkins' testimony at Tr. I, 83: "I wasn't behind in filling orders in July.")

According to Matlock's admission (Tr. I, 1084), right before vacation started "we" needed more lamps than "we" had people there to work; there was a greater need for lamp production the last 2 weeks of July 1977 than during the last 2 weeks of July 1976 (Tr. I, 1082); so during the 1977 vacation "we" had to get one unit "supervisor" to run four units (which he did not recall happening in the 1976 vacation period.) (Tr. 1085.)

Matlock testified (Tr. I, 971) that by July 27, 1977, the Company was running out of its ears with orders that had to be filled, that is the reason for calling back, it was picking up.

According to Tompkins, the decision that people would be recalled was a group decision, members of management, Matlock, Tompkins, Floyd Jones, and maybe Hazel Ramsey; "we" met pretty sporadically on this during the period May 13–July 11, 1977. Regarding the numbers to recall, Tompkins testified that he did not make that decision by himself, that the criterion was the need for people because business was starting to pick up again; he knew this because orders were starting to come in over the phone and by mail (Tr. I, 273–275); that on the decision when to recall he was looking at the bookings themselves, and that is when he decided there would be a recall; after the May 13, 1977, layoff he was examining the books probably in June, looking at the bookings in June, he decided there was a need for recall the latter part of June and the first part of July; the thing he saw on the bookings was they were starting the book up, and

> [W]e were starting to get more orders, and also he had talked to a couple of customers on the phone that the potential was there, that he felt pretty strongly about it; one of these customers was Northern Electric in July, and the other was Chicago Miniature; he could not recall exactly when the calls were—there were bargainings with these people on price, and was over a 2-week period, maybe longer, that "we" kept hasseling over the price with these people, especially the Northern bid. [Tr. I, 280–288.] He said that he gave general instructions to people to call employees as they were needed for the work force, that each department was aware of the type of load "we" have. [Tr. I, 288.]

According to Tompkins, he did not give the order to recall 15 employees, rather the departmental supervisors (Matlock, Jones, possibly others and probably the personnel department) got the number of employees needed to staff up the amount of employees they had at that time, he doubted there was a meeting, though there could have been,[47] "you need people, you decide you need people, how many you need, they get together and figure the number of people they need, you decide that there's an increase in business." (Tr. I, 297–298.)

Discussion

As in other areas, Tompkins gave varying explanations. Thus, he initially gave emphasis to two large orders, Chicago Miniature and NECO. He then talked of looking at the bookings, plus customer contacts, which seem promising, particularly NECO.

Of course with respect to Chicago Miniature, General Counsel's Exhibit 101, pages 248–286, demonstrates that this customer's orders lend no substantial support to Tompkins' explanation:

Order No.	*Date of Order*	*No. of Pieces*	*Date Order Comp.*
6916-1	12/7/76	3,000	Not Material
6882R1	12/10/76	2,300	Not Material
6962C1	12/23/76	5,000	Not Material
7014C1	1/6/77	5,000	Not Material
7077-1	1/21/77	2,500	Not Material
7209C1	2/22/77	16,000	Not Material
7341C	3/22/77	50,000	4/4/77
7342	3/22/77	20,000	3/22/77
7343	3/22/77	25,000	3/22/77
7360	3/23/77	15,000	3/29/77
7372C	3/24/77	300	4/11/77
7373C	3/24/77	100	3/25/77
73931-1	3/31/77	2,500	4/14/77
7445C1	4/13/77	17,000	4/19/77
7446-1	4/13/77	4,000	4/20/77
75191	5/2/77	40,000	5/4/77
7520-1	5/2/77	30,000	5/3/77
7521C-1	5/2/77	5,000	5/10/77
7678-1	5/31/77	15,000	6/1/77
7679-1	5/31/77	30,000	6/1/77
7741-1	6/13/77	100,000	7/12/77
7772C1	6/22/77	6,000	7/15/77

[46] Hill credibly testified (Tr. II, 927) that during the July vacation "we" normally had a skeleton crew. Ramsey credibly testified (Tr. II, 1482) that Respondent always had a skeleton crew for those not eligible for vacation, or senior employees who wished to work through their vacation. Matlock (Tr. I, 1083) testified that there was never a complete shutdown, work was on a voluntary basis.

Tompkins (Tr. II, 1175) sought to portray the work during the vacation in the last 2 weeks of July 1977, as in accord with normal practice (see also his testimony at Tr. I, 295). However, C.P. Exh. 28, the payrolls, shows that during those two vacation weeks in 1977, 2,798.46 regular and 172.63 overtime hours and 3,154.61 and 379.70 overtime hours, respectively, were worked during these weeks. This is significant, and more than a skeleton crew. Indeed, to show the significance of these hours, C.P. Exh. 28 shows that the following hours were worked after the May 13, 1977, layoffs:

WE 5/20—regular 3,637.62; overtime 154.67
WE 5/27—3,617.19
WE 6/3—3,650.29; 137.5
WE 6/10—3,592.91; 142.85
WE 6/17—3,388.82; 144.19
WE 6/24—3,726; 184.83
WE 7/1—3,920.11; 250.59
WE 7/8—4,024.12; 112.73
WE 7/15—4,121.11; 134.77.

[47] Fuller's affidavit, G.C. Exh. 28, states that Tompkins had most knowledge on a number of units required, with that information he consulted with Matlock and Jones to arrive at staffing requirements.

Order No.	*Date of Order*	*No. of Pieces*	*Date Order Comp.*
7895-1	7/21/77	60,000	7/28/77

As can be seen, only one large order came in June, that of June 13, 1977, and the mandatory recall was not used until June 24.

With respect to NECO, Tompkins initially placed the contact in July 1977, later he placed it as in June. (In other testimony he conceded it could have been in May 1977.) He gave varying lengths of time (from several days to several weeks or longer) during which negotiations were under way. He admitted that he requested EOD to perform substantial amounts of the NECO work until PV was "able to gear up." Hence the NECO business would not be much support for a recall, particularly since he testified that an earlier shipment for the new business with NECO used GE lamps which PV had in inventory since 1976; only $40,844 was shipped from PV to NECO from July 11 to the end of August 1977 (Parties Jt. Exh. 1), and only about $7,000 in July 1977:

7/11/77	1,550.40
7/13/77	825.60
7/13/77	169.15
7/15/77	422.88
7/15/77	467.65
7/18/77	504.96
7/21/77	238.80
	859.20
	557.20
	74.63
	573.12
	816.00
	1,068.48
7/28/77	576.00
7/29	1,368.00

Regarding Tompkins' general claim that he was looking at the bookings, the bookings from June 13 through the end of June show the following (C.P. Exh. 36):

June Bookings Record

Cumulative total on 6/13/77 $124,109.15
Cumulative total on 6/30/77 166,046.74 (Net increase 41,937.59)

July Bookings Record

Cumulative total on 6/13/77 $106,203.22
Cumulative total on 6/30/77 138,207.59 (Net increase 32,004.37)

August Bookings Record

Cumulative total on 6/13/77 $100,041.05
Cumulative total on 6/30/77 124,151.01 (Net increase 24,109.96)

The 3-month bookings increase from June 13–30, 1977, was therefore $98,051.92. This is not significant, when it is seen from the order entry log (C.P. Exh. 37) that during the preceding 17 days May 28–June 13, 1977; $171,433.99 in new business was booked.

The most glaring problem in accepting the essential thrust of Tompkins' varying claims (i.e., that there was increased business and/or the prospects of it) is that the recalls from the May 13, 1977, layoffs (which as shown below first occurred during the week ending June 24, 1977) through the period from the week ending May 13, 1977, through the week ending May 24, 1977, were six less than needed to maintain the same level of employment as extant after the May 13, 1977, layoff was accomplished. Thus, during the week ending May 20, 1977, Morphew was hired, and Clymer, Foster, Shepherd, Edgar, Wyatt, H. Byrd, and Gleason quit; during the week ending May 27, T. Martin quit; during the week ending June 3, L. Sanders and Catlin quit; during the week ending June 10, B. Sanders quit; for the week ending June 17, T. Lester and Steve DeHart quit; for the week ending June 24, D. Van Orden, Cruise, Scoggins, Doughty, Crouse, Miller, Pace, Slaughter, and Foster (among the 73 laid off May 13, 1977) were recalled, but during the same week D. Van Orden and Lauderdale quit. Thus, there were 16 terminations, 1 new hire, and 9 recalls from layoff—resulting in a net loss of 6 employees from May 13–June 24, 1977.

Similarly, during the next week (the week ending July), laid-off employees Fields, Sledd (Springer), Gibson, LaMarr, M. Bittle, L. Bittle, Cushenberry, Delois, and Digby accepted recall; Cox (janitor) was hired; Cox (janitor), Kile, and Frazee quit. Hence through the week ending July 1 there was only a net gain over the May 13 layoff level of two employees.

For the week ending July 8, laid-off employees Russell, Murray, Holloway, and J. DeHart accepted recall; Holsapple (salesman) was hired; and Floyd Wells (supervisor) quit, resulting in a plus in the complement compared to the May 13 layoff level.

For the week ending July 15, 6 accepted recall and 1 quit, for a net of 11 more than the May 13, 1977, layoff level.

For the week ending July 22, 5 accepted recall and 2 quit, for a net of 14.

For the week ending July 29, 8 accepted recall, 3 quit, for a net gain of 19.

For the week ending August 5, Whitefield, and 4 others, were recalled from the February 11, 1977, layoff, 19 new employees were hired, and 1 employee quit, for a net increase of 43 over the May 13, 1977, layoff level (or still 30 below the level preceding the May 13, 1977, layoff.)

The week ending August 12 had no net increase; the week ending August 19 increased to plus 48; the week ending August 26 brought the net increase to plus 56; the week ending September 2 plus 61 (hence not even by this date was the complement returned to the pre-May 13, 1977, layoff status).

The above picture is also confirmed by Respondent Exhibit 21, a chart listing numbers of employees by department in 1977 and by the chart below (C.P. Exh. 28) (Payroll records).

W/E	*Reg. Hours*	*Overtime Hours*	*Number of Employees*
1/7/77	8539	324	238
1/14	5849	149	216
1/21	8269	312	224
1/28	8269	547	219
2/4	7700	273	208
2/11	7364	223	205
2/18	5442	236	145
2/25	5822	215	157
3/4	6093	227	164
3/11	6559	350	181
3/18	6694	252	185
3/25	6883	252	188
4/1	7050	299	189
4/8	6899	236	186
4/15	6964	245	186
4/22	6794	206	185
4/29	6685	246	182
5/6	6628	211	180
5/13	6226	218	174
5/20	3637	154	95
5/27	3617	138	93
6/3	3650	137	94
6/10	3952	142	93
6/17	3388	144	89
6/24	3726	184	99
7/1	3928	250	107
7/8	4024	112	108
7/15	4121	134	113
7/22	2798	172	76
7/29	3154	379	87
8/5	5228	843	143
8/12	5575	1097	145
8/19	5556	1051	149
8/26	5898	934	156
9/2	5899	176	159
9/9	5680	291	157
9/16	5978	554	160
9/23	5935	463	160
10/1	5792	478	157
10/7	5905	432	162
10/14	5960	927	160
10/21	5805	227	155
10/28	5916	745	154
11/4	5662	440	155
11/11	5745	680	154
11/18/77	6125	1415	159
11/25	5015	51	159
12/2	6091	808	160
12/9	6144	799	162
12/16	6142	992	159
12/23	7131	672	159

47. As can also be seen from the above chart, unprecedented overtime was performed during the weeks ending August 5, August 12, August 19, August 26, September 2, September 16, October 14, October 28, November 11, November 18, December 2, December 9, December 16, and December 23. From this, it is found that Respondent, in early August 1977, was hopelessly behind in its production,[48] which, it is found, was, in principal part, caused by the layoff of May 13, 1977. This is also supported by the large backlog at the end of July ($124,756), and the large backlog at the end of August ($184,979).

Tompkins' testimony, that during the period August 1, 1977-January 9, 1978, more orders or bookings were received than during a similar period is not credible. Thus, the order entry log (C.P. Exh. 37) shows that for August $379,093 was received, for September $143,032, for October $296,895, for November $291,357, for December $141,421, and for the first 9 days of January 1978, $48,314.

Orders on the entry log for February 1977 were $269,517; March, $277,031, April, $115,072; May, $257,254; June, $350,132; and July, $310,718. Hence, only August was larger than the June amount, those for September were below all previous months except for April, and December was amazingly low contrasted with that for December 1976, shown by (C.P. Exh. 40) to have been $483,968.

48. *Final conclusions regarding the May 13, 1977, layoff and the delay in recalls thereafter*: While Respondent may have experienced some decline in demand, its asserted defense that a bookings decline required a layoff, and the slow recall, cannot be found credible.[49]

At the outset, the alterations of the bookings discussed above permit the inference which is drawn that, if unaltered, the bookings would not demonstrate a need for layoff. (Respondent's brief asserts that whether the bookings were accurate is of little moment, what is material is that the bookings were the only projections available to Tompkins. However, Tompkins testified: "I don't think it was just that as a new general manager, I didn't have a grasp of things, and actually made a good faith honest mistake." (Tr. II, 1099.) Quite apart from this, Respondent placed the layoff decision as being made about May 5 or 6, 1977, at which time the May 9 changes had not been made in the May, June, and July 1977 bookings records; hence, the bookings for those 3 months, as of May 9, 1977, would not support a decision arrived at earlier. Also considered are the conflicting explanations by Tompkins, Hill, and Warren, regarding why the May 9, 1977, changes were made, as well as the fact that none of these claims were supported by Respondent's records.

Additionally, it is found that the bookings cannot constitute a credible defense in view of the fact that Respondent was transferring domestic and Canadian customers from PV to EOD, which obviously would reduce

[48] Tompkins (Tr. I, 84–85) conceded that for the period August 8, 1977, through January 9, 1978, more employees in the production area worked overtime than any similar period in Respondent's history, at least since January 1974, and that that did not mean that "we" received more orders or bookings during that period, than any similar period. He sought later (Tr. I, 86–87) to impeach the above admission, claiming "there has been a sharp rise in the total volume of our orders, and bookings since August 1, 1977, which could not have been foreseen. He contended (at Tr. I, 85) that this overtime was because it was more economical to work overtime and maintain flexibility. Of course the admission of unparalleled overtime shows that this was not the policy or practice. Moreover, during August 1977, Respondent hired 39 new employees, also demonstrating that Tompkins' claim is not credible.

[49] Respondent offered various charts, but only one dealt with its stated defense. The other charts thus do not aid Respondent's defense of lack of bookings. Nor may Respondent rely on sales, or other factors, in view of its earlier oft-repeated claims that the bookings were the basis of its decision.

the actual and future bookings at PV. In this connection, the conflict in Respondent's officials' explanations for these transfers permits the inference that there was an illegal motivation for these transfers of business to EOD. And, the unwarranted reduction in the June and July bookings, by purporting to deduct $52,000 because of GE (Portsmouth), as well as the unwarranted deductions of unsupported shipments, shows that the bookings were not an accurate indication of business.

The story offered by Tompkins concerning the recalls, which commenced about June 1977, does not square with Respondent's records, particularly those dealing with whether there was a significant increase in orders related to time of recall, as well as those records which show that the recalls did not majorily increase the work force (which had been affected by terminations after the May 13, 1977, layoff).

That Respondent's May 13, 1977, layoff caused it to fall hopelessly behind is seen, *inter alia*, by the substantial work force employed rather than the normal skeleton crew during the two vacation weeks in July 1977; by the large amounts of mandatory overtime worked on August 1, 1977, through the rest of that year (this is confirmed by the credible testimony of employee Hollowell, that Tompkins told her that the overtime was mandatory because the layoff had "kind of messed things up and things were in a mess" (Tr. I, 2559–60); by the significant use of most of its inventory during the layoff periods; and by the massive backlog at the end of July and also at the end of August 1977.

To further illustrate that no layoff was necessary, Respondent had from 216–218 employees in January 1977 with bookings of about $316,611. That no layoff was needed at that time is seen from the existence of a backlog at the end of January in the amount of $71,333. (February is not listed in this statement since, as found above, Respondent violated the Act with respect to the February 11, 1977, layoff.) In March 1977, Respondent had 164–188 employees with bookings that month of $293,886. That no layoff was needed then is seen by the fact that, at the end of March, there was a backlog of $55,711.

In April 1977, Respondent had 182–189 employees, with bookings of $255,743. That no layoff was needed is seen from the fact that, at the end of April, there was at least $72,249 in backlog.

Thus, the May bookings were at least $230,491 with only 93–95 employees (which were extant after the layoff).

It is concluded, therefore, that Respondent has not established by a credible defense to the strong *prima facie* case of the General Counsel, and that the layoff and failure to recall those employees laid off on May 13, 1977, were for the purposes of discouraging employees' activities on behalf of the Union, and to avoid Respondent's duty to recognize and bargain with the Union. Since concededly there was no notice to the Union of the May 13, 1977, layoff, this refusal to bargain also violates Section 8(a)(5), since the Union was, at the time, entitled to recognition and bargaining.

49. Set forth below are the names and other data with respect to the 73 employees laid off by Respondent on May 13, 1977:

Clock No.	*Employee*	*Date Recalled or Offered*	*Date Card Signed*
1082	Anita Russell	7/5/77 (Granted LOA 2/5/77)	2/12/77
1095	Lillie P. Fields	6/29/77	2/12/77
1120	Shr-Lynn Cruse	6/20/77	
1131	Alice Scoggins	6/20/77	
1133	Carolyn Sue Sledd (Springer)	W/E 7/1/77	2/10/77
1134	Nonia Doughty	6/20/77	
1153	Alta Crouse	6/20/77	2/11/77
1168	Tammy Frazee	6/28/77 ("Quit")	2/11/77
1185	Debora Gibson	6/29/77	2/15/77
1190	Kitty Lee	7/18/77 ("Quit")	2/10/77
1194	Beatrice Miller	6/20/77	3/24/77
1197	Betty Pace	6/20/77	
1198	Vanissia Richey	6/27/77 ("Quit")	
1205	La Quita La Marr	6/29/77	2/16/77
1207	Charlene Fields	6/27/77	
1214	Mayrene Bittle	6/29/77	
1215	Linda Bittle	6/29/77	
1238	Shirley Slaughter	6/22/77	2/11/77
1239	Jeannie Hackett	6/29/77 ("Quit")	2/23/77
1241	Dalphia-Hutchenson	6/29/77 ("Quit")	2/12/77
1252	Frances Sise	6/28/77 ("Quit")	2/11/77
1258	Cindy Foster	6/24/77	2/11/77
1270	Pearlie Cushenberry	6/29/77	2/11/77
1280	Bealvie Delois	6/29/77	
1287	Leona Walker	Granted Maternity Leave	
1297	Rubye Murray	7/6/77	
1317	Jackline Hatley	7/1/77	2/11/77
1319	Gloria Digby	7/1/77	2/10/77
1332	Bridget Cearley (Hunt)	7/11/77	
1347	Glenda Holloway	7/8/77	
1348	Judy DeHart	7/7/77	2/10/77
1354	Jeanetta Scroggins	8/1/77 ("LOA" to 8/1/77)	2/11/77
1364	Debbie Whalen	7/8/77 ("Quit")	2/28/77
1372	Yvonna Logan	7/8/77 ("Quit")	2/22/77
1391	Maple Thomas	7/18/77	2/11/77
1404	Cynthia Fields	7/15/77	2/12/77
1408	Shirley Simmons	8/1/77 ("LOA" to 8/1/77)	3/16/77
1412	Linda Sue May	7/25/77 ("LOA" to 7/25/77)	2/11/77
1414	Vickey Spencer	7/14/77 ("Quit")	
1418	Sherrie Smith	7/12/77	2/28/77
1428	Judy Steadman	7/14/77 ("Quit")	
1439	Maria Watkins	7/8/77 ("Quit")	2/11/77
1440	Sue B. Holloway	7/14/77	
1443	Nancy Matthews	8/15/77 ("LOA" to 8/15/77)	2/10/77
1446	Mary Scott	7/14/77 ("Quit")	
1450	Patricia Russell	7/12/77	2/11/77
1454	Hazel Estes	7/12/77 ("Quit")	
1456	Brenda Davis	7/21/77 ("Quit") ("LOA" to 7/21/77)	2/11/77
1461	Marilyn Keith (Welch)	7/18/77 ("LOA" to 7/21/77)	2/10/77
1463	Diana Simpson	7/20/77	3/22/77

Clock No.	*Employee*	*Date Recalled or Offered*	*Date Card Signed*
1470	Reba McDonald	7/18/77 ("Quit")	2/10/77
1471	Barbara Ward	7/25/77 ("LOA" to 7/25/77)	2/15/77
1478	Linda Bergsnes	7/20/77 ("Quit")	2/14/77
1486	Ida Walck	(not returned from maternity leave)	2/22/77
1495	Ella M. Springer	7/18/77 ("Quit")	
1503	Minnie Dulworth	7/21/77	
1504	Ruby Robinson	7/19/77	2/10/77
1506	Mollie Gilbert	7/25/77	
1509	Berta Dodd	7/21/77 ("Quit")	2/11/77
1513	Barbara Howerton	7/28/77	2/11/77
1519	Jora V. Robinson	7/25/77	
1530	Debbie Driskill	7/26/77	
1531	Judy Mantooth	7/26/77 ("Quit")	2/11/77
1533	Daren Holman	7/26/77 ("Quit")	2/28/77
1540	Sarah Conley	7/26/77 ("Quit")	3/18/77
1543	Shirley Lambdin	7/21/77 ("Quit")	
1545	Melba Sampson	7/25/77	3/18/77
1547	Neva Owens	7/25/77	
1556	Vera Luckinbill	7/26/77 ("Quit")	
1558	Judy Carrol	7/26/77 ("Quit")	3/29/77
1559	Janet Robinson	8/1/77 ("LOA" to 8/1/77)	4/4/77
1560	Jayne Logan	7/26/77 ("Quit")	4/4/77
1466	Dick Glover	8/1/77 (Telephonically offered recall 7/28/77)	

Only 73 were laid off on May 13, 1977, as the complaint alleges. The list of those laid off (G.C. Exh. 9, p. 2), prepared by Respondent, is thus in error, in that the following were not laid off on May 13:

Clock No.	*Employee*	*Explanation*	*Signed Card*
1051	Elizabeth Gleason	Terminated before 5/13/77	2/10/77
1310	Darlene Edgar	Terminated 5/12/77 (R-22)	2/11/77
1316	Marvin Brooks	Not laid off	
1349	Carl D. Cornell	Not laid off (R-22)	2/12/77
1510	Bobbi Reynolds	Terminated 5/2/77 (R-22)	2/14/77
1539	Ann Clymer	Terminated 5/11/77 (R-22)	3/16/77
1544	Brenda Foster	Quit 5/11/77 (R-22)	
1546	Donna Harrison	Quit 5/6/77	3/18/77
1549	Nina Morphew	Quit 5/6/77	
1553	Linda Shepherd	Terminated 4/11/77	
1554	Debbie Fields	Quit 4/4/77	

Respondent admittedly changed its past policy, and practice, in that past layoffs were essentially made by departmental seniority. (Tr. I, 1038.) Tompkins testified that plantwide seniority was used because of the pendency of the union campaign, to be completely fair to the employees, "we" thought that the employees would accept it better; and he claimed that the employees disliked departmental seniority layoffs, and complained vehemently to him. (Tr. II, 1852.) However, he testified (at Tr. I, 132), that no one laid off on February 11, 1977, complained that the Company was not following plantwide seniority. At transcript I, 133, Tompkins testified he could not say exactly why plantwide seniority was thought about, it "was" just that we decided that it would be better to follow plantwide seniority instead of departmental seniority.

Contrary to Tompkins' claim, plantwide seniority was not followed in all cases. Thus, clock employee 1051 was the least senior employee marked off for layoff. The payroll ledgers (C.P. Exh. 28) show that less senior guards, unit "supervisors" (Rollins, Hinkle, Martin, and Gibson), as well as shipping employee Mark Griffin, were not laid off. Others not selected for layoff (though if plantwide seniority had been followed they would have been) were Tillery, Catlin, and Carl Cornell. Tompkins conceded that he did not know of any maintenance or administrative employees who were laid off, but pointed out that General Manager Parkey and Rinehart quit. (Tr. II, 1187.)

50. Those retained on May 13, 1977, and their departmental location on that date are as follows (G.C. Exh. 9):

Department	*Employee*	*Card Sign Date*
Unit Men	Robert Rollins	2/10/77
	Farrell Gibson	2/10/77
	Terry Martin	2/11/77
Unit Supervisor	Garland Fuller	
Candle Glow	Carrie Weatherford	2/10/77
	Debbie Wyatt	2/10/77
	Marjorie Shults	Did not Sign
Agers		
Pick off	Ruth Edgar	2/11/77
Loader	Judy Green	2/11/77
Loader	Mary Doudican	2/24/77
Pick off	Catherine McClure	2/15/77
Loader	Grace Koehler	Did not sign
Loader	Hazel Barnett	2/11/77
Pick off	Loreane Springer	Did not sign
Loader	Teresa Lightsey	2/11/77
Loader	Myrtle Jennings	2/11/77
Ager Supervisor	Floyd Wells	
Floor Girls	Jo Nell McBroom	2/11/77
Weld Washer	Sylvia Hickman	2/11/77
Wash-Tinning	Lenore Sanders	2/10/77
Ager	Neil Catlin	2/10/77
Trolley Circuit Components and Samples		
	Steve Hinkle	2/10/77
	Jerry Humphrey	2/10/77
Maintenance Machine Shop		
	Bob Smith	
	Larry McCurley	
	Ronald Tillery	
Maintenance Floor Man - Third Shift Unit Operators		
Exhaust	James Goble	

Department	*Employee*	*Card Sign Date*
Stem	Cathy Welch	2/10/77
Exhaust	Faye Brown	2/11/77
Exhaust	Joan Robinson	
Stem	Phyllis Frias	2/11/77
Exhaust	Wanda Conner	
Exhaust	Sophia Driskill	2/11/77
Stem	Faye Dixon	2/11/77
Exhaust	Liz Christian	2/13/77
Exhaust	Jimmie Monzo	2/10/77
Fish Finder		
Exhaust	Ruth Zebert	2/11/77
Compression Room		
Exhaust	Nell Gibson	2/11/77
Quality Control		
Manager	Phillip Matlock	
	Johnny Springer	2/10/77
	Linda Mitchell	
	Erl Craig	2/11/77
	Shirley Dixon	2/11/77
	Billie Sanders	
Circuit Component		
Supervisor	Myrtle Springer	
	Ronda Welcher	
	Sandra Smith	
	Brenda Risenhoover	2/13/77
	Wilma Pickens	2/13/77
	Ruby Cain	2/10/77
	Rita Wood	
	Donna Box	
	Judy Hughes	
	Nancy Russell	2/21/77
	Helen James	
	Verla Deaver	
	Frieda West	2/28/77
Packer	Randy Smith	
Warehouseman	Mark Griffin	
Part-time Janitor	Tony Lester	
Machine Building Div.		
Supervisor	Jack Uterback	
	Duane Fuller	
	James McGregor	
	Clinton Taylor	
	Lawrence Lauderdale	
	O. M. Kile	
	Carl Cornell	
	Mickie Morphew	
Welders		
Supervisor	Cindy Wallace	
	Eva Bolin	
	Olene Strader	2/12/77
	Ola Trent	
	Laura Evans	
	Helen Graham	2/15/77
	Virginia Morse	2/11/77
	Brenda Reece	
	June Cox	
	Zola Haxton	
	Mary Bone	
Production Asst. Supervisor	Steve DeHart	
Resistor Cutter	Betty Pritchett	
Electrician	Gale Baker	
Cutters		
Supervisor	Phyllis McKillip	
	Deborah Biggs	3/7/77
	Veralyne Anderson	2/11/77
	Lucille Wilkerson	3/7/77
	Vernia Clement	
	Lena Jay	
	Judy Goble	
	Jane Ingram	
	Waltine Erwin	
	Elaine Reed	
	Pamela Battles	

51. From Respondent's Exhibits 33 and 50, the following appears relative to the offers of recall to those laid off on May 13, 1977:

a. On June 13, 1977, Tammy Frazee, and Frankie Koehler were notified by letter that Respondent was calling back a few employees.

b. On June 22, 1977, Frances Sise and Dalphia Hutcheson were similarly notified (not a mandatory callback). Sise, according to Respondent, quit on June 28, 1977.

c. On June 24, 1977, the following were mailed the following identical letter to wit:

> Glowlite is calling 15 employees back from layoff. This is a mandatory call. You must report to work at 7:00 a.m. on June 29, 1977. . . .
>
> 1287—Lenora Walker (granted maternity leave)
> 1082—Anita Russell (granted LOA to 7/5/77)
> 1133—Sue Springer
> 1095—Lillie Fields
> 1168—Tammy Frazee ("Quit" 6/28/77)
> 1185—Deborah Gibson
> 1190—Kitty Lee (LOA to 7/18 "Quit" 7/18/77)
> 1198—Vanissia Richey "Quit" 6/27/77
> 1205—LaQuita Lamar
> 556—Frankie Koehler
> 1214—Mayrene Bittle
> 1215—Linda Bittle
> 1239—Jeannine Hackett "Quit" 6/29/77
> 1241—Dalphia Hutcheson "Quit" 6/29/77
> 1270—Pearlie Cushenberry

d. On June 27, 1977, Belvie Allen (1280) was mailed a letter identical to that in c, above.

e. On June 28, 1977, the following were sent letters like those in c, except they had until July 6, 1977, to report:

> 1281—Kay Biggs (Had been laid off 2/11/77)
> 1297—Rubye Murray
> 1317—Jackline Hatley
> 1319—Gloria Digby

f. On June 29, 1977, the above letter was sent to:

> 1320—Connie Moore (She was not listed as laid off 2/11 or 5/11/77)
> 1332—Bridgett Cearley (Hunt)

g. On July 1, 1977, Respondent sent to the following employees the following letter:

> Glowlite is calling five employees back from layoff. This is a mandatory call. You must report to work at 7:00 a.m. on July 8, 1977. . . .
>
> 1347—Glenda Holloway
> 1348—Judy DeHart
> 1354—Sue Scroggins (LOA to 8/1/77)
> 1364—Debbie Whalen ("Quit" 7/8/77)
> 1372—Yvonna Logan ("Quit" 7/8/77)

h. On July 7, 1977, Respondent sent the same letter as in c, except that the employees were to report no later than July 14, 1977:

> 1428—Judy Steadman "Quit" 7/14/77
> 1391—Maple Thomas
> 1404—Cynthia Fields
> 1408—Shirley Simmons (LOA to 8/1/77)
> 1414—Beckie Spencer "Quit" 7/14/77
> 1412—Linda May (LOA from 7/14–25/77)
> 1418—Sherrie Smith
> 1439—Maria Watkins "Quit" 7/8/77
> 1440—Sue Holloway
> 1446—Mary Scott ("Never Responded")
> 1450—Patricia Russell
> 1454—Hazel Estes ("Quit" 7/12/77)
> 1456—Brenda Davis (LOA to 7/21/77, then "Quit")
> 1461—Marilyn Keith (LOA 7/14–18/77)
> 1443—Nancy Matthews (LOA to 8/15/77)

i. On July 13, 1977, the following were sent a letter like that in h, except that they had until July 27, 1977, to report:

> 1463—Diana Simpson
> 1470—Reba McDonald ("Quit" 7/18/77)
> 1471—Barbara Ward (LOA to 7/25/77)
> 1478—Linda Bergsnes (Never responded)

j. On July 14, 1977, the following were sent a letter like that in h, except that they had until July 21, 1977, to report:

> 1486—Ida Walck (LOA for at least 2-1/2 weeks)
> 1492—Elizabeth Kirkbridge (Not shown as laid off 5/13—shown laid off 2/11/77—"later retired 7/18/77")
> 1495—Ella M. Springer ("Quit" 7/18/77)
> 1503—Minnie Dulworth

k. On July 15, 1977, Ruby Robinson, 1504, was sent a letter like that in h above, except that she had until July 22, 1977, to report.

l. On July 18, 1977, the following were sent a letter like in h, except that they had until July 25, 1977, to report:

> 1506—Mollie Gilbert
> 1509—Berta Dodd ("Quit" 7/21/77)

m. On July 19, 1977, the following were sent letters like in h, except that they had until July 26, 1977, to report:

> 1513—Barbara Howerton
> 1519—Jora Robinson
> 1530—Deborah Driskill
> 1531—Judy Mantooth "Quit" 7/26/77
> 1533—Karren Holman "Quit" 7/26/77
> 1540—Sarah Conley "Quit" 7/26/77
> 1543—Shirley Lambdin "Quit" 7/21/77
> 1545—Melba Sampson
> 1547—Neva Owens
> 1556—Vera Luckinbill "Quit" 7/26/77
> 1558—Judy Carroll "Quit" 7/26/77
> 1559—Janet Robison (LOA 7/26–8/1/77)
> 1560—Jayne Logan "Quit" 7/26/77

n. On July 28, 1977, Richard Glover was telephonically offered recall.

o. Employees for whom there is no letter in evidence:

> Shr-Lyn Cruse—Payroll shows workweek ending 7/8/77
> Alice Scoggins—Payroll shows returned week ending 7/8/77
> Nonia Doughty—Payroll shows back week ending 6/24/77
> Alta Crouse—Payroll shows back week ending 6/24/77
> Beatrice Miller—Payroll shows back week ending 6/24/77
> Betty Pace—Payroll shows back week ending 6/24/77
> Charlene Fields—Payroll shows back week ending 7/1/77
> Shirley Slaughter—Payroll shows back week ending 6/24/77
> Cindy Foster—Payroll shows back week ending 6/24/77

52. On June 14, 1977, the Regional Director directed an election in the unit found appropriate, *supra*, finding, *inter alia*, that the unit "supervisors" and Weatherford were not supervisors within the meaning of Section 2(11) of the Act. (G.C. Exh. 11.) Respondent requested review on the supervisory issues, but on July 8, 1977, the Board denied the request for review. (G.C. Exh. 40.)

53. On June 20, 1977, according to the credible testimony of Weatherford (Tr. I, 1589.10–1589.16), she was told by Fuller and Matlock that Respondent had been thinking about taking away her 15-cent raise, because the NLRB had found her not a supervisor. This is an illegal threat to reduce wages because Weatherford and/or others refused to accede to Respondent's position that Weatherford was not eligible to engage in union activities, because she was a supervisor. The General Counsel's (complaint par. 18(b)) view that this is direct or individual bargaining is rejected.

54. On June 30, 1977 (G.C. Exh. 13), Respondent distributed to its employees a campaign letter which stated, *inter alia*, that with respect to higher wages "you all

know the problems we are currently having. Business is way off and our new competitor down the road is stealing our best customers. In short, survival is even a question. Higher wages are not possible unless productivity improves. Any increase in unit cost to the Company could be fatal to the Pauls Valley operation."

With respect to job security, this letter stated: "The company, not the union, create jobs. No union can force us to hire or to keep people we don't need."

I find that this letter is coercive in that it falsely claimed that business was substantially down, failed to reveal that Respondent had already received a substantial order from NECO, and failed to reveal that Respondent was transferring work to EOD. Thus the implied threat that unionization could tip the scales against survival was so untrue as to be coercive.

55. On July 7, 1977 (G.C. Exh. 14), Respondent distributed a campaign message to its employees which stressed the adverse effects of strikes, and indicated that strikes were not always successful. I find this is permissible free speech.

56. On July 8, 1977, according to credible testimony of Weatherford (Tr. I, 1589.17-1589.18), Matlock told her that he had been told that Weatherford tore up antiunion literature, which Weatherford admitted, adding that it had been handed to her. He told her that she could not hand out union literature during working hours. She told him he should tell his own people that they could not hand out antiunion literature during working hours. He said that he did not know anything about that, but wanted the campaign to be run as fairly as possible. I find that this establishes discriminatory enforcement of a no-distribution rule which is, accordingly, violative of Section 8(a)(1) of the Act, irrespective of whether it is also violative of that section because of the timing, the individual oral promulgation, or whether the words "working hours" made the rule too broad.

57. On July 8, 1977 (G.C. Exh. 15), Respondent distributed a campaign message dealing with the mechanics of voting in the NLRB election. I find that this is permissible free speech.

58. On July 8, 1977 (G.C. Exh. 12), Respondent distributed a campaign message generally dealing with negative facets of unionization, which is permissible free speech, except for the ultimate clause "vote as if your job depended upon it." I find that this latter statement is an implied threat of loss of jobs if the Union were selected as bargaining agent.

59. On July 11, 1977 (G.C. Exh. 16), Respondent distributed a campaign message which dwelled on the strike theme. I find that this was permissible free speech.

60. The election was held on July 11, 1977, and the objections and challenged ballots relating thereto are discussed below. While Respondent's counsel sought to establish that the Union forced this election date (apparently to bolster Respondent's claim that it did not delay recall of those laid off on May 13, 1977), I cannot conclude on the present record that this is so. Thus, I take notice of the usual Board policy to conduct elections within 3 days of the Decision and Direction of Election (here June 14, 1977) and of the fact, stated by Charging Party counsel, that NLRB employees traditionally represent to one party that the other party demands that the election be held at a certain date.

61. The attempts to remove the union leaders (unit "supervisors," and Weatherford) from the bargaining unit is so transparent as to be palpably coercive in that Respondent sought to remove from the unit the core of the Union's leadership. Discussed above were the efforts preceding the representation case hearing. After that hearing, Respondent tried to fabricate a factual basis for excluding them, by adding additional responsibilities (Tr. I, 193-194, 214), by giving the unit "supervisors" timekeeping responsibilities (Tr. I, 389), and by telling them that they had authority to issue written disciplinary warnings (Tr. I, 195), while concededly they had not been told theretofore of such authority, nor had they previously exercised such authority. (Tr. I, 194-197, 755, 840, 1099.)

Similarly, shortly after the R hearing on April 20, 1977, Weatherford was given the job of keeping track of inventory, and time worked by Candleglow employees. (Tr. I, 820.)

In an effort to coerce the unit "supervisors" to accede to Respondent's attempt to eliminate them from the unit, Matlock warned them that they would lose their rights to merit raises if they did not accede. (Tr. I, 2214-15, 2383, 2705.)

Nor can the elimination of three unit "supervisors" (Whitefield, Bergsnes, and Newton) through the February 11, 1977, layoff, and their continuation in layoff status until at least August 1, 1977 (well after the July 11, 1977, NLRB election), be seen as isolated from the above attempts to remove the unit "supervisors" from the unit. Moreover, after the May 13, 1977, layoff only four unit men remained: Hinkle, Rollins, Gibson, and Martin. I find that Respondent's entire course of conduct toward the unit "supervisor" and Weatherford was for the sole purpose of eliminating the Union's leadership and not for any legitimate business purpose. I accordingly find that the attempts to convince them that they possessed supervisory authority, even assuming, *arguendo*, that it bore fruit in that it convinced some that they were supervisors, cannot aid Respondent's contention that it did indeed finally clothe them with supervisory authority, since that would permit an unfair labor practicer to retain the fruits of his unfair labor practices.

Nor did Respondent ever genuinely believe that the unit men were supervisors. Thus, Matlock conceded (Tr. I, 1031) that, around July 1977, he asked the unit men "what did they want to do," he told them "if the men wanted to become supervisors, the company would have to restructure their jobs." (Tr. I, 1209.) Similarly, Matlock treated Weatherford in essentially the same manner. (Tr. I, 1217-18.) It is concluded that the attempts to remove the unit "supervisors" and Weatherford from the bargaining unit violated Section 8(a)(1) of the Act. Their status, having been decided by the Regional Director (and approved by the Board) may not be relitigated in this case. Nor has it been shown that Respondent, after April 20, 1977, actually changed their status to that of supervisors within the meaning of Section 2(11) of the

Act, since these efforts were part of the pattern of illegal conduct by Respondent, designed to emasculate the Union's leadership.

62. The complaint amendments at the hearing alleged, and the admitted evidence proved, that on dates set forth below, without notification to, consultation or bargaining with, the Union, Respondent unilaterally, on December December 15 1977, granted a bonus to all employees in the unit herein above found appropriate; on January 1, 1978, granted a 27-cent wage increase to said employees; instituted a thrift plan for them; and instituted new group life, hospitalization, and dental insurance plans.

Since the Union, at all times after March 10, 1977, was the employees' exclusive bargaining representative, these acts violated Section 8(a)(5) and (1) of the Act.

II. THE UNION'S OBJECTIONS TO THE ELECTION

A. On July 28, 1977, the Petitioner filed timely objections to the July 11, 1977, election, which, after investigation thereof, were referred by the Regional Director to an administrative law judge for a decision. The objections were:

1. Threatened and coerced employees because of their membership in and activities on behalf of the union.
2. Interrogated employees concerning their membership in and activities on behalf of the union.
3. Threatened employees with loss of benefits and other reprisals if they selected the IUE.
4. Improperly supplied the voter eligibility list and intentionally excluded eligible employees and engaged in other improprieties concerning the eligibility list, including, but not limited to failing to supply supplemental list.
5. Conducted captive audience meetings in small groups.
6. Made fraudulent and material misrepresentations to employees concerning unions, union membership and the IUE and the existing state of the law.
7. Reduced the number of its employees to influence the election outcome by engaging in selective and discriminatory layoffs, as well as other methods.
8. Made pro-company campaign insignia available to employees to make known their pre-election preferences.
9. Conducted a campaign of fear and intimidation through constant predictions of violence, strikes, loss of customers and economic detriment which would inevitably result from a union victory.
10. Engaged in electioneering near the polls or otherwise interfered with the election process itself.
11. Created the impression of futility by statements of bargaining difficulties if the union won the election.
12. Solicited grievances from employees.
13. By and through its labor relations counsel, advised eligible voters when they appeared at the polls that they should go back outside.
14. Supervisors of the employer were in the polling area while employees were voting and attempting to vote.
15. Labor relations counsel for the employer was in the polling area after the polls were open.
16. The pre-election conference was inadequate, since the union had no opportunity to review the improper *Excelsior* list concerning employees on layoff status.
17. Improper release of voters.
18. Board agent improperly removed the challenged ballot of Linda Mitchell from the envelope.
19. Employer, by and through its supervisors and agents, offered the employees benefits, promotions and other inducements to reject the IUE.
20. Employer supervisors and agents instructed eligible voters that they were not eligible to vote and that they would be challenged if they did vote.
21. The employer allowed distribution of its own campaign materials in the plant while removing union materials from the canteen and other areas.
22. Union representatives were denied access to the polling area.
23. Prevented and denied a substantial number of eligible employees from voting by, *inter alia*, improprieties in regard to its *Excelsior* list, its layoff and recall practices, and failure to recall laid off employees.
24. Company supervisors wore "Vote No" and anti-union insignia and made t-shirts available to employees on company time.

B. In its post-hearing brief, the Union conceded that it was not currently pursuing Objections 5, 6, 10, 14, 16, 17, or 22. Accordingly, it is found that these should be, and they hereby are, overruled.

C. Objections 8 and 24 relate to T-shirts (on which were written procompany statements), which were placed alongside of a note which invited employees to wear them. There is no proof that these were prepared or distributed by Respondent, its supervisors, or agents; hence, these objections are overruled.

D. Objection 11 has not been sustained since it has been found above that Respondent's campaign rhetoric in this regard was not violative of Section 8(a)(1), nor did it create the impression of futility in bargaining.

E. Objections 13, 15, and 20 concerned instructions given by Respondent's agents, which the evidence either does not support, or which has not been shown to constitute objectionable conduct. These objections are accordingly overruled.

F. Objection 21 has not been established since no substantial evidence was adduced regarding unfair treatment concerning campaign material. This objection is overruled.

G. Objection 1: This objection is established, based on the June 27, 1977, incident (see ULP par. 53) involving Weatherford; by the portion of General Counsel's Exhibit 13 found coercive (ULP par. 54); by the portion of General Counsel's Exhibit 12 found coercive (see ULP par. 58).

H. Objection 2: There is no evidence of interrogation after the March 18, 1977, filing of the petition for an election. This objection is overruled.

I. Objection 3 is established. See objection 1, *supra*.

J. Objection 4 and to an extent Objection 23 deal with Respondent's conduct with respect to the *Excelsior* list.

Though required to provide a list of all eligible employees by June 21, 1977, Respondent (even counting the faulty supplemental lists, which were not timely supplied and which lacked addresses) supplied the names of 104 of the approximately 156 eligible voters. Such a substantial failure to supply requires that the election be set aside on this basis alone, even though Respondent's failure to provide an adequate list was in an effort to maintain its position that certain laid-off employees were not eligible to vote. *Ponce Television Corporation (WRIK-TV-Channel 7)*, 192 NLRB 115 (1971).

K. Objection 7 and to an extent Objection 23 concern the reduction of employees through discriminatory layoffs, and failure to recall (or to timely recall). This has been established through the discriminatory May 13, 1977, layoff, and by the discriminatory refusal to promptly recall therefrom, as well as by the failure, after the March 18, 1977, petition filing, to recall Whitefield, as well as by the refusal to recall other unit "supervisors" until after the election.

L. Objection 9 is not established, except to the extent that it tracks Objection 1.

M. Objection 12 is not sustained by any evidence, and is overruled.

N. Objection 18 involves the Board agent's removal of the supposed ballot of Linda Mitchell from the ballot box. The evidence does not show that the ballot actually removed was the ballot cast by Mitchell, who the parties agree, was not eligible to vote. If, for example, the ballot removed (it has been destroyed or is otherwise not available at the present time) was indeed Mitchell's, then no harm was done. If, instead, Mitchell cast a no vote and any "no vote" was removed (or the same would be true if it were a yes vote and a yes were removed), again no harm was done. If, however, the vote cast by Mitchell was either for or against, and it was left in the ballot box, and an opposite vote was removed, the tally of ballots would distort the result by two votes. Accordingly, if, after the challenges which may be opened by the Regional Director, the difference of two votes would make the election results uncertain, then the election should be set aside on this basis.

O. Objection 19. This objection is established since Respondent did promise promotions to the unit "supervisors" conditioned on their acceding to Respondent's position that they were not eligible to participate in union activities.

Conclusions

Board law requires that an election be set aside based solely on an *Excelsior* list violation. Accordingly, the election must be set aside on that basis alone. Moreover, quite apart from this, it is found that the election must be set aside based on meritorious Objections 1, 3, 7, 9, and 19. The election may (depending on the revised tally of ballots after opening and counting the challenged ballots identified below) be uncertain because of the potential effect of the removal of the alleged ballot of Mitchell. If this eventuates, then the election would need to be set aside on that basis.

III. THE CHALLENGED BALLOTS

A. The Board agent challenged the ballots of Berta Dodd, Minnie Dulworth, Barbara Howerton, Marilyn Keith, Neva Owens, Jora Robison, Ruby Robinson, Diana Simpson, Barbara Ward, and Carl Whitefield. The Petitioner challenged the ballots of Elaine Reed, Ruth Edgar, Pamela Battles, and Louis Taylor. As discussed above, the ballot of Linda Mitchell was also challenged by the Board agent.

B. At the hearing (Tr. I, 270), Respondent and the Charging Party agreed that Minnie Dulworth, Barbara Howerton, Marilyn Keith, Neva Owens, Jora Robinson, Ruby Robison, Diana Simpson, and Barbara Ward were eligible voters, and that the challenges to their ballots should be overruled. Accordingly, the challenges to their ballots are overruled.

C. Berta Dodd, according to Respondent, did not have reasonable expectancy of recall as of the time of the election, July 11, 1977. Since it has been concluded above that she had been discriminatorily laid off, and was thereafter discriminatorily denied recall, it is concluded that she was eligible to vote in the July 11, 1977, election, and, accordingly, the challenge to her ballot is overruled.

D. Elaine Reed at some point admittedly became a supervisor within the meaning of Section 2(11) of the Act, but the Petitioner failed to clearly establish that this was before the July 11, 1977, election. The challenge to her ballot is accordingly overruled.

E. Ruth Edgar, according to Weatherford, and Digby, became a supervisor, replacing Floyd Wells (who clearly was a supervisor who was terminated on July 4, 1977, and thus, well before the July 11, 1977, election). While the testimony of these two in this regard was weak, it was sufficient to establish *prima facie* that Edgar was no longer a rank-and-file employee as of a time before July 11, 1977. Hence the failure of Respondent to produce its wage records, which admittedly would fix the date specifically, must be seen as additional inferential evidence that Edgar became a supervisor before the election. Hence, the challenge to Edgar's ballot is sustained.

F. Pamela Battles was shown by the evidence to be a plant clerical employee (Tr. I, 1704–05); hence, absent agreement of the parties to exclude she must, in accordance with well-established Board law, be included in the production and maintenance unit. Accordingly, the challenge to her ballot is overruled.

G. Louis Taylor was not shown by the Petitioner to be a technical employee, and, under well-established Board law, the party seeking exclusion must prove such status. Moreover, since his terms and conditions of employment were not shown to require a finding of lack of substantial community of interest with other production and maintenance employees, he must be included, even

assuming *arguendo*, that he was a technical employee. The challenge to his ballot is overruled.

H. Carl Whitefield. Whitefield's eligibility depends on the question of whether he had reasonable expectancy of recall before the election. It is concluded that he did, since as found above (item 32) he should have been recalled on February 28, 1977. Moreover, as a discriminatee, he is eligible to vote, and the challenge to his ballot is overruled.

I. Linda Mitchell. The parties agreed, and it is found, that, at the time of the election, Linda Mitchell was not an eligible voter, because she was then an office clerical employee. Accordingly, she is not eligible to vote, and the challenge to her ballot is sustained.

Conclusions Re: Challenged Ballots

Dodd, Dulworth, Howerton, Keith, Owens, Robinson, Robison, Simpson, Ward, Whitefield, Reed, Taylor, and Battles are eligible voters; the challenges to their ballots are overruled; and their ballots shall be opened and counted. If, after counting, a revised tally of ballots shows that the Union has been selected as the exclusive collective-bargaining representative of the employees in the election unit, the Union shall be certified. If, however, the revised tally does not so show, the petition shall be dismissed. Thus, if the Union should lose the election, based on the revised tally of ballots, the election shall be set aside, and the bargaining order alone shall take effect. *Kwiz-Kasch, Inc.*, 239 NLRB 1044 (1978).

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2) of the Act, and is 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. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, it will be recommended that Respondent cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

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

ORDER[50]

The Respondent, Dutch Boy, Inc., Glow-Lite Division, Pauls Valley, Oklahoma, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Questioning employees concerning their or other employees' union membership, activities, sympathies, or desires.

(b) Threatening employees with plant closure or cessation of operations, if they continue their union activities or if they select the Union as their collective-bargaining representative.

(c) Threatening its employees with discharge, or refusals to recall or rehire, or with other reprisals, if they engage in union activities.

(d) Threatening to rescind previously granted wage increases or to deny employees future wage increases, because they engaged in union activities or because they refuse to accede to its attempts to coercively remove employees from a bargaining unit.

(e) Threatening, impliedly, to engage in reprisals against employees, if they refuse its orders to cease their union activities or support.

(f) Creating or giving the impression that its employees' union activities are under surveillance.

(g) Engaging in surveillance of its employee union activities.

(h) Prohibiting its employees from distributing prounion literature, while permitting distribution of antiunion literature.

(i) Promulgating or maintaining in effect rules discriminatorily barring union conversation by union supporters.

(j) Attempting, coercively, to remove nonsupervisory union leaders from the bargaining unit.

(k) Granting wage increases or other benefits in order to induce its employees not to support the Union, or any other labor organization, provided, however, that nothing herein requires it to vary or abandon any economic benefits, or other terms or conditions of employment, which it has heretofore established.

(l) Discouraging membership in the Union by laying off employees, by refusing to recall them, or by delaying their recall, or by otherwise discriminating in any manner with respect to their tenure of employment, for engaging in protected concerted activities or union activity.

(m) Refusing to bargain with the Union as the duly designated representative of a majority of employees in the following unit found appropriate under Section 9(b) of the Act:

> All production and maintenance employees of the employer, including unit men, but excluding all other employees including office clerical, professional and technical employees, guards, watchmen, confidential employees, and supervisors as defined in the Act.

(n) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

[50] 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.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer employees laid off on February 11, 1977, those laid off on May 13, 1977, and Carl Whitefield, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights or privileges previously enjoyed. In addition, Respondent shall make whole all of these employees for any losses of pay they may have suffered as a result of the discrimination against them in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).

(b) Recognize and, upon request, bargain collectively with the Union as the exclusive representative of the employees in the above-described unit and, if an agreement is reached, embody such agreement in a written signed contract.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other necessary records to analyze the amount of backpay due under the terms of this Order.

(d) Post at its offices and places of business in Pauls Valley, Oklahoma, copies of the attached notice marked "Appendix."[51] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by it 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 other material.

(e) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[51] 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."