Woodbridge Foam Fabricating, Inc. *and* Union of Needletrades, Industrial and Textile Employees, AFL–CIO–CLC, formerly Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC. Cases 10–CA–27548 and 10–RC–14487

September 30, 1999

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME

On November 14, 1995, Administrative Law Judge Phillip P. McLeod issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs and the Respondent filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings, and conclusions and to adopt the recommended Order, as modified and set forth in full below.[2]

In this proceeding, the judge found that the Respondent had violated Section 8(a)(1) of the Act by unlawfully soliciting grievances and promising to remedy them. Inter alia, he also dismissed allegations that the Respondent had told employees that unionization would be an exercise in futility, and had ascribed an alleged reduction in a pay increase to the employees' union activities. Although he found an 8(a)(1) violation, he did not set aside the election, which the Union had lost, based on that violation.

A panel majority (Chairman Truesdale and Member Fox) agrees with the judge's finding of the 8(a)(1) violation.[3] A different panel majority (Chairman Truesdale and Member Brame) agrees with the judge's dismissal of the two 8(a)(1) allegations.[4] And that same panel majority agrees with the judge that the election should not be set aside.[5]

1. The following is the reasoning of Chairman Truesdale and Member Fox in adopting the judge's finding that the Respondent violated Section 8(a)(1) of the Act by soliciting grievances and promising to remedy them.

We agree with the judge that the Respondent violated Section 8(a)(1) when Supervisor Oscia, in a conversation with employee Connally, asked him "what kind of changes could Woodbridge make without the need of a Union?" It is well established that, during a preelection critical period, an employer may not solicit grievances from employees with the express or implied promise to remedy them. E.g., *Naomi Knitting Plant*, 328 NLRB No. 180, slip op. at 2–3 (1999); *Foamex*, 315 NLRB 858, 858 (1994); *Reliance Electric Co.*, 191 NLRB 44, 46 (1971). Oscia's query explicitly linked the making of prospective "changes" to alleviating the perceived "need of a union," and was accordingly unlawful. Contrary to our dissenting colleague, we find it irrelevant that the Respondent posted a notice shortly after the Oscia-Connally conversation which attempted to explain one of the recent allegedly discriminatory actions about which Connally complained in response to Oscia's query. In our view, that notice did nothing to negate Oscia's implied promise to remedy that and other grievances, even though the notice itself contained no promise. See *Naomi Knitting Plant*, supra, at 2–3 (employer's ultimate failure to remedy a solicited grievance does not rebut inference that the solicitation was unlawful).

2. The following is the reasoning of Chairman Truesdale and Member Brame in adopting the judge's findings that the Respondent did not unlawfully convey to employees (1) that unionization would be futile, or (2) that a previous organizing attempt by another union had resulted in a reduced wage increase.

A. Regarding the claim of futility, the judge carefully analyzed five of the Respondent's campaign speeches (which are a part of the record and which we have reviewed) and determined that this allegation had no merit. We agree with that analysis. Our dissenting colleague focuses on three aspects of these speeches in arguing that the Respondent violated the Act. We find no merit in her contentions.

First, our colleague argues that, in the speeches, Plant Manager Bevilaqua "repeatedly implied that the Respondent had already determined not to agree to anything the union might propose, not only as to improvements in wages but even on noneconomic matters such as an 'end to favoritism' shown by supervisors." These same arguments were made by the General Counsel to the judge, and he concluded that "[u]nfortunately, Counsel for General Counsel's case is simply not supported by the record." We agree with that assessment.

Contrary to our colleague's claim that the Respondent had determined "not to agree to anything the union might propose," the Respondent told the employees in various speeches, inter alia, that "Woodbridge is not anti-union—almost all of its automotive division plants are union, and the company didn't even oppose those plants becoming union"; it said "we're not out to bust [the Union]" and it noted that it had a bargaining relationship

[1] We find it unnecessary to decide whether the audio cassettes alleged to be tape recordings of the Respondent's campaign speeches should be admitted into evidence as no party has argued that the tapes contain any information not already considered by the judge.

[2] We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center,* 321 NLRB 144 (1996), and *Excel Container*, 325 NLRB 17 (1997).

[3] Member Brame has filed a separate dissent on this issue.

[4] Member Fox has filed a separate dissent on these issues.

[5] Member Fox would set aside the election as described in her partial dissent.

All panel members agree with the other dismissals of the judge to which the General Counsel has excepted.

with the Charging Party at another facility; it said "[w]e will not interfere in your decision to have a third party representative, however, this is an important decision and one which deserves serious long term consideration"; and it pledged to bargain in good faith. In sum, contrary to our colleague's claim, in none of its speeches did it imply a refusal to agree to "anything" that the Union might propose.[6]

The second and third points that our colleague relies on for her futility finding are intertwined and therefore we consider them together. They stem from certain comments of Bevilaqua in his March 11 speech. He stated there:

> There is no set rule on the number of bargaining sessions to get a contract. The rule is that if a union wins an election, a company must bargain in good faith with the union for a year. After one year, if there is no contract, that bargaining obligation ends. At that time, the union can either walk away, or take the employees out on strike. Usually, in that year of bargaining the parties may meet a dozen times more. However, eventually bargaining reaches the point where the employer makes a "final offer." Often that happens before a whole year is up. When the company makes a final offer, the union can either accept it or reject it. If the union accepts the offer, the parties have a contract. If the union rejects the offer, there are two choices: either employees keep working under the terms of that final offer, or they go on strike.

Our dissenting colleague first relies on Bevilaqua's comment that, if a union wins an election, a company must bargain for a year, but after 1 year, if there is no contract, the bargaining obligation ends. She then relies on Bevilaqua's statement that when a company makes a final offer, a union can accept it, and have a contract; or it can reject it, in which case the employees will work under the terms of that offer or they go on strike. She contends that the message conveyed by the above statements is that voting for the Union would be an exercise in futility because the Respondent would only bargain for one year and further that it had determined in advance to adopt an intransigent position that would not allow the Union to obtain an agreement on any of the improvements sought by it.

We find that our colleague gives too much weight to the above extrapolated section of the speech without considering the entire context of that speech. As set out in the judge's decision, in that March 11 speech, Bevilaqua assured employees that the Respondent was not anti-union. He further stated that the Respondent would not close down the plant if the Union won the election. He told employees that the Respondent was not out to "bust" the Union, and that it had to get along with the Union at another location. Moreover, Bevilaqua stated that the Company had the responsibility to bargain in good faith. By admitting that it had to bargain in good faith, it is not likely, as the dissent argues, that the Respondent was trying to communicate that it would try to adopt in advance an intransigent bargaining position. Bevilaqua did err in stating that the "rule" was that the Respondent's good-faith bargaining obligation only lasted a year.[7] However, in the context of the entire speech, and in the absence of any evidence of any deception in the manner of Bevilaqua's presentation, we find that it was not, as the dissent describes it, an "anticipatory refusal to bargain."

Next, our colleague discerns from the remainder of the quoted speech that Bevilaqua indicated that the Respondent would not agree to any union demands but that the Union would either have to live with the Respondent's terms or strike. We cannot read such intransigence by the Respondent into the March 11 speech. Bevilaqua did not say that the Respondent would not agree to a contract that included any concessions to the Union. Rather, Bevilaqua talked of bargaining. He then talked of an employer's final offer which the union could accept, at which point the parties would have a contract. He did not indicate, however, that the contract would only be based on terms that the employer had dictated because he had not earlier indicated that the employer's "final offer" was to be based solely on the employer's terms. Rather, he had just mentioned the Respondent's responsibility to bargain in good faith and that the parties had been bargaining. And in an earlier part of the speech, he had proposed a scenario where the Respondent had agreed to union demands for increased wages and benefits. Accordingly, his reference to the employer's final offer did not inexorably mean a final offer based solely on the employer's terms.

In contrast to the parties having a contract if the Union accepted the employer's final offer, Bevilaqua proposed two scenarios if the Union rejected the offer, i.e., the employees could continue to work but under the terms of that final offer, or they could strike. Bevilaqua was thus giving a shorthand description of an employer's ability to

[6] Our colleague underscores her position on this point by a claim that the Respondent specifically refused to agree to consider any union proposal dealing with an "end to favoritism" shown by supervisors. Bevilaqua addressed this issue at length in his March 24 speech. The speech shows the Respondent's acknowledgement of the difficulty of defining what is favoritism and its attempts to root out such favoritism where it existed. The speech also reflects that the Respondent questioned whether bringing in the Union would better the situation. But this is opinion protected by Sec. 8(c) of the Act (which protects the "expressing of any views, argument or opinion . . . if such expression contains no threat of reprisal or force or promise of benefit") and nowhere does the speech reflect a predetermined position not to agree to anything that the Union might raise on the issue of favoritism.

[7] See, e.g., *Ray Brooks v. NLRB*, 348 U.S. 96 (1954).

implement terms of a final offer at valid impasse.[8] But again, as described above, those implemented terms were not ineluctably to be based only the employer's dictated terms. Rather, Bevilaqua had pledged good-faith bargaining on the Respondent's part and then had mentioned the parties' bargaining before mentioning the employer's "final offer." In these circumstances, we are unwilling to conclude that this final offer would be the product of the employer's self-dictated terms.[9]

For the foregoing reasons, and those that he elaborated, we agree with the judge that the Respondent did not convey to the employees the message that selecting the Union would be an exercise in futility.

B. We further agree with the judge's dismissal of the complaint allegation that the Respondent blamed the employees' earlier union activities for an alleged reduction in a 1993 pay raise. In Bevilaqua's March 11 speech, which was set up in the form of questions and answers, the question was asked "[w]hy were our raises smaller in '93 than ever before?" The answer was:

> This year we did something different. We split the raises into a number of different pieces. At the same time, I ask [sic] you to get more involved in making our work environment safer and told you there would be a quality and productivity incentive starting in May, contingent on us making a profit in our business. Briefly, let me review the numbers from December 1993.
>
> Fifteen cent raise effective May 2 and a $300 Health and Safety Incentive. When these two are combined—the average straight time wage rises from 3.36% in A Class to 3.6% in D Class jobs.
>
> We're in a tough spot—when we were deciding on the raises in December, the Teamsters were still organizing. They filed numerous unfair labor practice charges against us to keep us from even talking about raises or benefits. We decided on what we thought were reasonable raises, and even if we had wanted to do more—we felt sure the Teamsters would file another unfair labor practice charge against us if we did.

The judge painstakingly analyzed this portion of Bevilaqua's speech and concluded that "[t]he Respondent's answer can only be fairly said to convey the message that in fact the 1993 raise was not really smaller than before, but rather was simply broken down into different components." We agree with that analysis, and we see no need to repeat it here. We also agree with the judge for the reasons he described that "[w]hile Respondent certainly availed itself of an opportunity to take a swipe at the Teamsters, it did not blame the union for a smaller than average raise." Nothing in our colleague's dissent persuades us otherwise.

3. As noted, a panel majority (Chairman Truesdale and Member Brame) also agrees with the judge that the election held here should not be set aside.

Chairman Truesdale agrees with the judge's reasoning for doing so. As noted in his dissent, because Member Brame finds no unfair labor practices in this proceeding and the alleged violations mirrored the objections to the election, he finds no objectionable conduct here and accordingly would not set aside the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Union of Needletrades, Industrial and Textile Employees, AFL–CIO–CLC, formerly Amalgamated Clothing and Textile Workers Union, AFL–CIO–CLC, and that it is not the exclusive representative of these bargaining unit employees.

ORDER

The National Labor Relations Board orders that the Respondent Woodbridge Foam Fabricating, Inc., Chattanooga, Tennessee its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Soliciting grievances from employees to appease their employment-related concerns in order to avoid the possibility of unionization.

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

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

(a) Within 14 days after service by the Region, post at its Chattanooga, Tennessee facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by it for 60

[8] *Atlas Tack Corp.*, 226 NLRB 222, 227 (1976), enfd. 559 F.2d 1201 (1st Cir. 1971) ("[I]f parties have bargained in good faith to an impasse then an employer may institute unilateral changes in terms and conditions of employment so long as they are not substantially different or greater than any which the employer has proposed during the negotiations") (citation omitted).

[9] *Seville Flexpack Corp.*, 288 NLRB 518 (1988), cited by our colleague, presented a different set of facts. In finding the violation there in the respondent's speech, the judge took into account the other violations that the respondent had committed (including interrogation, creating the impression of surveillance, threat of plant closure, grant of benefits, and a discriminatory discharge only a few days before the speech); the judge specifically noted that, unlike an earlier speech, the respondent had made no reference in the speech at issue to bargaining in good faith; and he specifically found that the respondent had stated in the latter speech that it would not agree to any of the union's demands.

[10] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

consecutive days in conspicuous places including all places where notices to employees are customarily placed. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since March 13, 1994.

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

MEMBER FOX, dissenting in part.

In addition to finding that the Respondent violated Section 8(a)(1) by soliciting grievances, I would find that the Respondent unlawfully conveyed to employees the message that the selection of the Union would be futile and that the previous organizing attempt by another union resulted in a reduced wage increase. Because of this unlawful conduct by the Respondent, I would also set aside the election and direct that a new election be held.

The Respondent's plant manager, Joseph Bevilaqua, delivered a series of captive audience speeches to the employees throughout the Union's organizational campaign. In these speeches, Bevilaqua delivered a clear message that unionization would be futile. In this regard, Bevilaqua repeatedly implied that the Respondent had already determined not to agree to anything the union might propose, not only as to improvements in wages but even on noneconomic matters such as an "end to favoritism" shown by supervisors. He grossly misstated the Respondent's legal obligations under the Act, asserting to the employees that if the Union won the election, the Respondent would only have to bargain with the Union in good faith for 1 year, at which point the Union's only option would be to either "walk away" or "take the employees out on strike." Even during the year or less in which he allowed that bargaining might take place, he ruled out any possibility that the Respondent and the Union might reach agreement on mutually acceptable terms, instead describing the collective-bargaining process as one in which "eventually bargaining reaches the point where the employer makes a 'final offer,'" at which point the Union's options would be to live with the Respondent's terms or go on strike.[1] These statements, delivered to all of the employees at captive audience meetings, clearly conveyed the message that a choice in favor of the Union would be futile both because the Respondent would only bargain for 1 year and because the Respondent had determined in advance to adopt an intransigent position that would not allow any possibility of getting agreement on any improvements sought by the Union during that year.[2]

My colleagues condone this conduct, agreeing with the judge's conclusion that the Respondent "did no more than explain the sometimes harsh economic realities of collective bargaining." It is not, however, a "harsh reality" of collective bargaining that an employer's obligation to bargain in good faith ceases if the parties have not agreed on a contract by the end of the certification year, as Bevilaqua claimed. As a matter of law, an employer's obligation to bargain in good faith continues so long as the union is the employees' 9(a) representative. In stating to the contrary, Bevilaqua committed an anticipatory refusal to bargain as of the end of the certification year, in clear violation of Section 8(a)(1). The coercive effect of this particular statement was exacerbated by Bevilaqua's further statements to the effect that the Respondent would not agree to any of the Union's demands—even before any were made—and that the Union would either have to live under the terms of the Respondent's "final offer" or strike. Like the unlawful statements by the employer in *Seville Flexpack Corp.*, 288 NLRB 518, 534 (1988), these statements amounted to an announcement to employees that "Respondent's intransigence—not economic necessity or the give-and-take of negotiations—would render it useless to support a union." Id. at 535. As the Board explained in *Fred Wilkinson Associates*, 297 NLRB 737 (1990), quoting *Amerace Corp.,* 217 NLRB 850, 852 (1975):

> In arguing against unionism, an employer is free to discuss rationally the potency of strikes as a weapon and the effectiveness of the union seeking to represent his employees. It is, however, a different matter when the employer leads the employees to believe that they must strike in order to get concessions. A major presupposi-

[1] Specifically, Bevilaqua told employees that if they voted for the Union, the following would transpire:

> There is no set rule on the number of bargaining sessions to get a contract. The rule is that if a union wins an election, a company must bargain in good faith with the union for a year. After one year, if there is no contract, that bargaining obligation ends. At that time, the union can either walk away, or take the employees out on strike. Usually, in that year of bargaining the parties may meet a dozen times or more. However, eventually bargaining reaches the point where the employer makes a "final offer." Often that happens before a whole year is up. When the company makes a final offer, the union can either accept it or reject it. If the union accepts the offer, the parties have a contract. If the union rejects the offer, there are two choices: either employees keep working under the terms of that final offer, or they go on strike.

[2] As noted above, after describing the collective-bargaining process as inevitably reaching the point where the employer makes a "final offer," Bevilaqua described the Union as having to choose either (1) to accept the final offer or, (2) if it rejects the offer, to either "keep working under the terms of that final offer" or go on strike. The message to employees was that regardless of what the Union proposes, the employer's terms will eventually be implemented, with or without the Union's agreement, and the Union's only alternative to accepting the Employer's terms will be to strike.

> tion of the concept of collective bargaining is that minds can be changed by discussion, and that skilled, rational, cogent argument can produce change without the necessity for striking . . . . Employees should not be led to believe, before voting, that their choice is simply between no union and striking.

Here, the clear import of Bevilaqua's statements was that no matter what the Union proposed, or how the negotiations progressed, the Respondent had no intention of reaching agreement on terms that included any concessions to the Union. Under the scenario laid out by Bevilaqua to the employees, either a year would pass, in which case the Respondent would simply cease bargaining altogether, or sometime within the year the Respondent would make a final offer and implement it, with or without the Union's agreement, in which case the Union's only recourse would be to call a strike. Consistent with longstanding Board precedent, I would find that these statements threatened, in violation of Section 8(a)(1), that a choice for the Union would be futile, and that this was objectionable conduct warranting setting aside the election.

Bevilaqua also delivered the message in his speeches that the wage increase in 1993 was smaller than in previous years because of the Teamsters organizing drive. In my view, this was a further violation of Section 8(a)(1) and, in and of itself, was grounds for setting aside the election. In this regard, Bevilaqua stated:

> Why were raises smaller in '93 than ever before? This year we did something different. We split the raise into a number of different pieces. At the same time, I ask you to get more involved in making our work environment safer and told you there would be a quality and productivity incentive starting in May, contingent on us making a profit in business. . . . We're in a tough spot—when we were deciding on the raises in December, the Teamsters were still organizing. They filed numerous unfair labor practice charges against us to keep us from even talking about raises or benefits. We decided on what we thought were reasonable raises, and even if we had wanted to do more—we felt sure the Teamsters would file another unfair labor practice charge against us if we did.

The judge found, and my colleagues agree, that by referring to a merit incentive and to "reasonable raises" Bevilaqua "explained" that the wage increase was not really lower, and that he merely used the occasion to take a permissible "swipe" at the Teamsters. However, the initial question Bevilaqua himself posed—"[W]hy were raises smaller in '93 than ever before?"—obscured any such "explanation." Moreover, the artful insertion of the reference to "reasonable raises" did not alter Bevilaqua's essential statement that the increase was lower because the Teamsters were deliberately "keep[ing] us from even talking about raises" and trying to prevent employees from receiving pay increases. The only practical effect of Bevilaqua's brief references to a merit incentive and "reasonable raises" is the effect my colleagues choose to allow: that of a fig leaf to legitimize unlawful conduct.

Even assuming that the Respondent, as it implied, granted a lower 1993 pay increase because it believed that a higher increase would trigger another unfair labor practice charge from the Teamsters—which makes little sense—it was improper for the Respondent to communicate to employees that the Teamsters were responsible for the reduced increase. It is well settled that an employer is required to act "as if no union were in the picture" with respect to granting benefit improvements during a critical preelection period. *Reno Hilton*, 320 NLRB 197, 206 (1995). An employer may not tell employees that the union is responsible for the withholding of a benefit. *United Electrical & Mechanical,* 279 NLRB 208, 218 (1986); *Labs Truck Repair Co*., 198 NLRB 1130, 1133 (1972). An employer may defer the announcement or implementation of an expected improvement in order to avoid the appearance of trying to influence the election's outcome. Even then, however, the employer must avoid stating or implying that the union is responsible for the delay. *Network Ambulance Services,* 329 NLRB No. 13, slip op. at fn. 6 (1999); *Atlantic Forest Products,* 282 NLRB 855, 858 (1987); *Uarco, Inc.*, 169 NLRB 1153, 1154 (1968).

Bevilaqua's statement that the Teamsters had been directly responsible for the lower 1993 pay increase unmistakably conveyed to the employees that future raises would be similarly jeopardized by the Union's organizational efforts and therefore violated Section 8(a)(1).

In sum, I would find that the Respondent violated Section 8(a)(1) by conveying clear messages to its employees that it would be futile for them to choose to be represented by a union and that unionization would lead to reduced wage increases. Accordingly, I would find merit in the Union's parallel objections, set aside the election, and order a second election.

MEMBER BRAME, dissenting in part.

I agree with the judge that the Respondent did not ascribe a reduction in the 1993 pay raise to the employees' union activities; or threaten employees that unionization would cause job loss and plant closure; or admonish employees that unionization would be an exercise in futility; or threaten employees that collective bargaining would necessarily end in strikes. I also agree with the judge that the election which the Union lost should not be set aside. I do so, however, because, unlike the judge, I would find that the Respondent committed no unfair labor practices in this proceeding. Specifically, I do not agree with the judge that the Respondent unlawfully solicited grievances from employee Thomas Connally.

Rather, I would dismiss that complaint allegation and accordingly dismiss the complaint in its entirety.

The facts regarding the alleged unlawful solicitation of grievances reveal that on March 13, 1994, Respondent's supervisor Oscia approached employee Connally and asked him "what kind of changes could [the Respondent] make without the need of a Union?" Connally testified that he told Oscia that "people didn't like the way Respondent was treating people . . . and a lot of other things." Connally did not elaborate on the "lot of other things" other than to complain specifically about the perceived unfairness in rescheduling certain employees' hours, particularly those of Mike and Diane Brown. Oscia did not respond to Connally's complaints. The discussion between Oscia and Connally was not overheard by anyone. The day after the conversation, Oscia posted a notice explaining why the hours of the Browns had been changed, i.e., the hours had been changed at the convenience of the Respondent and at its request. Furthermore, the hours had been changed before the advent of the Union's organizing effort.

It is well established that it is not the solicitation of grievances itself during an election campaign that is coercive and violative of Section 8(a) (1), but it is the promise to correct grievances that is unlawful. *Idaho Falls Consolidated Hospitals v. NLRB*, 731 F.2d 1384, 1386–1387 (9th Cir. 1984); *NLRB v. Arrow Molded Plastics, Inc*., 653 F.2d 280, 283 (6th Cir. 1981); *NLRB v. Eagle Material Handling,* 558 F.2d 160, 164 (3d Cir. 1977). Solicitation only becomes an unfair labor practice when accompanied by either an implied or express promise that the grievances will be remedied and under circumstances giving rise to the inference that the remedy will only be provided if the union loses the election. *Idaho Falls Consolidated Hospitals,* 731 F.2d at 1386–1387. But "an expressed willingness to listen to grievances is not sufficient to constitute a violation." *NLRB v. K & K Gourmet Meats, Inc.,* 640 F.2d 460, 467 (3d Cir. 1981). Similarly, the Board has also held that the preelection solicitation of grievances absent an implied or express promise to correct the grievance is not a violation of the Act. *Uarco Incorporated*, 216 NLRB 1, 2 (1974). The Board has reasoned that the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer. Id. at 2.

Based on this case law, Oscia did not unlawfully solicit grievances from Connally. Contrary to the judge, who found that "Oscia was blatantly trying to appease Connally's employment-related concerns while at the same time avoiding the possibility of unionization," Oscia's question to Connally, "what kind of changes could [the Respondent] make without the need of a Union?"does not on its face imply a promise to remedy any grievance presented, and an employer's "listen[ing] to suggestions does not in and of itself imply that the suggestions will be acted on," *Visador Co.*, 245 NLRB 508 (1979), and is not enough alone to establish a violation. *K & K Gourmet Meats, Inc*., supra, 640 F.2d at 467. Indeed, in their meeting, Oscia did not make any promise to remedy Connally's grievance and did not even say that he would pursue an investigation of any grievance that Connally raised.[1]

Furthermore, assuming arguendo that Oscia's question could be interpreted as implying a promise to correct the only specific grievance that Connally raised to Oscia, the Respondent rebutted any such implication when Oscia posted the subsequent notice. I agree with the judge who found that Oscia's notice did not carry "any implied promise to remedy employee grievances." To the contrary, as the judge found, this notice "attempted to explain and justify its own actions [with regard to the Brown's hours], and in no way suggested that Respondent would take action to remedy employee grievances."[2]

For all of the foregoing reasons, I find that the Respondent did not unlawfully solicit grievances in contravention of Section 8(a) (1).

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

[1] This is in contrast to the situation in *Naomi Knitting Plant*, 328 NLRB No. 180 (1999), cited by my colleagues, where, after having explicitly solicited from an employee the grievances that had motivated the employees' unionization activities, the supervisor expressed her sympathy for the concerns that the employee had raised and "promised that she would take action on [the employee's] behalf." Id. at 3.

[2] Compare *Complete Carrier Services*, 325 NLRB 565 (1998). (Where the Board found an unlawful solicitation of grievances by an employer who asked the leading union supporter why the employees turned to the union and not him; the union supporter replied that the employer's failure to keep his promise for pay raises prompted the employees' interest in the union; and the employer promised to consider the issue after the union leader suggested the exact amount that the pay increase should be. Afterwards, the employer announced pay increases of the size suggested by the union supporter.)

While in *Naomi Knitting Plant*, supra at 3, the Board held that "[the supervisor's] failure to remedy the grievances, taken alone, does not serve to rebut the inference [of unlawful solicitation]", the circumstances there were different. The supervisor there never followed up with the employee and the unlawful inference remained. Here, the very next day, the supervisor responded to the only specific grievance raised by the employee with an explanation of the Respondent's action which, as the judge found, in no matter suggested that the employee's grievance would be remedied.

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT solicit grievances from employees to appease their employment-related concerns in order to avoid the possibility of unionization.

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

WOODBRIDGE FOAM FABRICATING, INC.

Kerstin I. Meyers, Esq., for the General Counsel.
Mark G. Flaherty, Esq. (Husch & Eppenberger), of Kansas City, Missouri, for the Respondent.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case in Chattanooga, Tennessee, on August 15, 1995. The case originated from a petition filed by the Union of Needletrades, Industrial and Textile Employees, formerly Amalgamated Clothing and Textile Workers Union (the Union), on February 22, 1994, in Case 10–RC–14487, seeking to represent production and maintenance employees of Woodbridge Foam Fabricating, Inc. (Respondent), at its Chattanooga, Tennessee facility. A stipulated election was held among those employees on March 30, 1994, in which 55 ballots were cast for union representation and 62 ballots were cast against union representation. Objections to conduct affecting the results of the election were timely filed by the Union.

Thereafter, based on a charge filed by the Union on April 20, 1994, as amended on July 28, 1994, and March 29, 1995, a complaint and notice of hearing issued on May 22, 1995. The complaint alleges that Respondent violated the Act by ascribing its reduction in 1993 wage increases to employees' union activities; by threatening employees that unionization would cause job loss and plant closure; by admonishing employees that unionization would be an exercise in futility, by threatening employees that collective bargaining would necessarily end in strikes; and by soliciting employees' grievances. The objections to the election are coextensive with allegations of the complaint.

In its answer to the complaint, Respondent admitted certain allegations, including the filing and serving of the charges; its status as an employer within the meaning of the Act; the status of the Union as a labor organization within the meaning of the Act; and the status of certain individuals as supervisors and agents of Respondent within the meaning of Section 2(11) of the Act. Respondent denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the trial, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On September 15, 1995, counsel for the General Counsel and Respondent filed timely briefs, which have been duly considered. On the entire record in this case, and from my observation of the witnesses, I make the following findings of fact, analysis, and conclusions.

I. JURISDICTION

Respondent is a Tennessee corporation, with a facility at Chattanooga, where it is engaged in the business of manufacturing commercial foam products. In the regular course and conduct of its business, Respondent annually sells and ships from its facility products valued in excess of $50,000 directly to points located outside the State.

Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Union of Needletrades, Industrial and Textile Employees, formerly Amalgamated Clothing and Textile Workers Union, AFL–CIO is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

The Employer produces industrial foam products at its Chattanooga, Tennessee facility. It employs approximately 120 production and maintenance employees.

In late 1993, a Teamsters local union attempted to organize the employees at Respondent's Chattanooga plant. The Teamsters did not file a petition for an election, however, and in February 1994, UNITE (formerly ACTWU) began its own organizing effort at Respondent's plant. In response to that organizing effort, beginning on March 10 or 11, and continuing until March 28, 1994, Respondent gave a series of speeches to employees in which Plant Manager Joseph P. Bevilaqua, the Respondent's senior site person, presented Respondent's countercampaign to the Union's organizing effort. During these speeches, employees were encouraged to submit questions about the union organizing effort to the Company, and those questions and answers to them were posted on Respondent's bulletin board during the campaign. With the exception of one allegation, all other allegations relate to statements made in the speeches.

B. The Speeches

Manager Bevilaqua conducted a series of captive audience speeches on March 11, 14, 17, 21, 24, and 28, 1994. Each speech was delivered to several separate groups of employees. During these meetings, Bevilaqua used prepared scripts from which he deviated only occasionally when he extemporaneously responded to employees' questions. The printed speeches were stipulated into evidence by the parties, and counsel for the General Counsel points to these as the basis for complaint allegations that Respondent violated Section 8(a)(1) of the Act.

I note that counsel for the General Counsel also offered oral testimony of various employees, including Donald Nunley, Charles Walker, and Carlton Tinder concerning Belivaqua's remarks during the speeches. While Nunley testified on direct to remarks, which are different from the speech printed text concerning the 1993 raises, Nunley admitted on cross-examination that Bevilaqua's remarks may well have tracked the printed text. Walker's testimony is very much consistent with the printed speech on that issue. Testimony of Carlton Tinder concerning remarks about possible loss of customers is

not significantly different from any of the printed speeches. Therefore, I find the printed text of the speeches to be the most reliable evidence of Bevilaqua's remarks to employees during March speeches.

Lastly, I affirm my earlier ruling rejecting counsel for the General Counsel's attempt to place into evidence purported tape recordings of the March 11 and 14 speeches. The only foundation offered by counsel in support of these recordings was the oral testimony of one witness, Carolyn Neal, who did not make the tape recordings and could offer no testimony concerning their chain of custody after the tapes were made. The only "foundation" offered through Neal was that she had listened to the tape recordings and they comported with her memory of what was said. Even after counsel was put on notice that a proper foundation had not been laid, she still made no effort to call the person who made these recordings and who could authenticate them and testify concerning their chain of custody since the time the recordings were made. Counsel made no attempt to offer any excuse or any reason for not calling that person. Even if counsel was reluctant to call that person as a witness, a point which she never made, she could nevertheless have laid a proper foundation by authenticating both the voices and the substance of the remarks through Bevilaqua himself, who was present and whom she did call as an adverse witness on other matters. However, counsel made no effort to do this either. The extreme difficulty with admitting these tapes as offered is that their foundation relies *solely* on the memory of the witness. As such, her oral testimony concerning remarks made would be the appropriate vehicle for introducing that evidence, with the tapes being available solely to refresh her memory where necessary. The fact that the witness has listened to the tapes and *recalls* them as being accurate is really no foundation for introduction of the tapes themselves. I find, as I did earlier, that counsel for the General Counsel did not lay a proper foundation for introduction of the purported tapes despite being given ample opportunity for doing so. Counsel for the General Counsel's motion to reopen the record to receive the purported tape recordings is denied.

In her posttrial brief, counsel for the General Counsel points to certain specific passages of Respondent's March 11 speech as supporting the complaint allegations. While it is true that the passages quoted by counsel for the General Counsel are in the speech, it is important to consider other parts of the speech as well in order to analyze the remarks in their proper context. When considering Bevilaqua's remarks, I believe it is important to consider the following portions of Respondent's March 11 speech, not just the portions quoted by counsel for the General Counsel:

> Woodbridge is not anti-union–almost all of its automotive division plants are Union, and the company didn't even oppose those plants becoming union.
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> You employees, not Woodbridge decide whether to be represented by a union–this is your decision–the company does not ever get to vote.
>
> . . . .
>
> We don' t think a union can do anything here in this plant to help and it could hurt. We're *not* in the auto market, which is almost all union, we're in a very competitive industry and almost all of our competitors are non-union.
>
> If the Union is voted in, one of two things is likely to happen. 1) The Union demands increased wages and benefits–we say no–then we have a strike and things end up just like they did next door at Central Soya, or 2) The Union demands increased wages and benefits–we say okay–we raise prices to cover the additional costs and we lose business because of higher prices. That's it–either way we all end up worse off. That's why we're opposed to a union in this plant.
>
> . . . .
>
> Why were raises smaller in '93 than ever before? This year we did something different. We split the raise into a number of different pieces. At the same time, I ask you to get more involved in making our work environment safer and told you there would be a quality and productivity incentive starting in May, contingent on us making a profit in our business. . . . We're in a tough spot–when we were deciding on the raises in December, the Teamsters were still organizing. They filed numerous unfair labor practice charges against us to keep us from even talking about raises or benefits. We decided on what we thought were reasonable raises, and even if we had wanted to do more–we felt sure the Teamsters would file another unfair labor practice charge against us if we did.
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> . . . .
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> As you're going to hear more from me next Monday, we're still losing money at this plant and we're in no position to run up a huge legal bill. Plus, we' re not out to bust ACTWU–we have to get along with them at our Broadhead plant.
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> . . . .
>
> We would not shut the doors and relocate somewhere else because employees voted to be represented by a union. We have a large investment in this plant, and we want to succeed here in Chattanooga. On the other hand, we still aren't making money. If we continue to lose money, or if we lost a big client like Paragon, this plant could be closed or sold, since no company is going to keep on supporting a losing operation forever. We are in a highly competitive business, and if we can't successfully compete on prices and keep our customers happy, we won't have any customers. If we lose customers, we fail. But that kind of decision wouldn't be made because employees decided to be represented by a union, it would be made on business and economic reasons alone.
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> . . . .
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> There is no set rule on the number of bargaining sessions to get a contract. The rule is that if a union wins an election, a company must bargain in good faith with the union for a year. After 1 year, if there is no contract, that bargaining obligation ends. At that time, the union can either walk away, or take the employees out on strike. Usually, in that year of bargaining the parties may meet a dozen times or more. However, eventually bargaining reaches the point where the employer makes a "final offer." Often that happens before a whole year is up. When the company makes a final offer, the union can either accept it or reject it. If the union accepts the offer, the parties have a contract. If the union rejects the offer, there are

two choices: either employees keep working under the terms of that final offer, or they go on strike.

The complaint alleges and counsel for the General Counsel argues that Bevilaqua's speech on March 11 threatened employees by telling them Respondent would lose customers, which would result in layoffs and/or plant closure if the employees selected the Union. In her posttrial brief, counsel for the General Counsel chooses to ignore the fact that Respondent specifically told employees, "*We would not shut the doors and relocate somewhere else because employees voted to be represented by a union.*" Even employee witnesses called by counsel for the General Counsel admit Bevilaqua gave employees this assurance. When Bevilaqua's remarks are considered in their entire context it is abundantly clear that all Bevilaqua did was explain to employees the possible adverse, but nevertheless real, economic consequences of collective bargaining. Bevilaqua specifically assured employees that Respondent *was not* antiunion. He specifically assured employees that Respondent *would not* close the Chattanooga plant because employees chose to be represented by the Union. But he also explained that there were some possible economic conditions, which might cause Respondent to close that facility, and what some of those might be. The Board and courts have long recognized that an employer does not violate the Act simply by pointing out to employees possible adverse consequences of unionization. That is particularly true where, as here, remarks are based on actual information about profitability and clearly convey that any decision to close the plant would be based on profitability and competitive status, not unionization. Employees are fully capable of assessing such comments in their proper context. I find that Respondent's comments in this regard did not violate the Act, and I shall dismiss that allegation of the complaint.

Counsel for the General Counsel argues that the portion of the March 11 speech which discusses the 1993 pay raise blames the employees' union activities for Respondent's reduction in that raise and thereby violates Section 8(a)(1) of the Act. Respondent on the other hand argues that Bevilaqua never told employees Respondent had given a smaller than usual pay increase in 1993. I partially agree with Respondent's argument on this point of fact, as more fully explained below, and in the final analysis I agree that Bevilaqua did not unlawfully blame employee union activities for any reduction in pay increases.

The printed text of Bevilaqua's March 11 speech, which was introduced by the parties by stipulation, is laid out in a series of questions and answers. The speech does not offer any explanation for the origin of the questions, and it is not clear the specific questions actually originated from employees. Even if they did, there is nothing in the speech, which shows employees listening to the speech would have any reason to know that. In one part of the speech, Respondent poses the question: "Why were our raises smaller in '93 than ever before?" The question as posed by Respondent assumes on its face that raises were indeed smaller in 1993. One logical conclusion to be drawn from this is that Respondent conveyed the message to employees that raises were smaller than before, as argued by counsel for the General Counsel. The rest of Respondent's remarks on this subject, however, must also be weighed in context.

After posing the question to employees, Respondent's answer can only be fairly said to convey the message that in fact the 1993 raise was not really smaller than before, but rather was simply broken down into different components. In this sense, Respondent is correct in arguing that Bevilaqua did not tell employees the 1993 raise was smaller than in previous years. Moreover, I believe the critical remark cannot be fairly read to blame the Teamsters union for a smaller raise. In the critical remark where the Teamsters union is mentioned, Bevilaqua told employees: "*We decided on what we thought were reasonable raises*, and *even if* we had wanted to do more–we felt sure the Teamsters would file another unfair labor practice charge against us if we did." (Emphasis added.) Counsel for the General Counsel wants to focus only on the reference to the Teamsters, and from that draw a conclusion that Respondent violated the Act. A fair reading of the entire remark requires a different conclusion. To find, first, that Respondent told employees they actually received a smaller than average raise in 1993, and second, that this was the fault of the Teamsters, or any other union, requires a very contorted construction of what Bevilaqua actually told employees, a construction which is simply not warranted by the facts.

Bevilaqua specifically told employees that Respondent itself "decided on what we thought were reasonable raises." Bevilaqua's comment makes it clear that the amount of the raise was Respondent's decision, not something to be blamed on anyone else. Respondent also made it clear that it gave employees what it thought was fair. This was further emphasized when Bevilaqua went on to say that Respondent felt sure the Teamsters would file charges "*even if we had wanted to do more*." While Respondent certainly availed itself of an opportunity to take a swipe at the Teamsters, it did not blame the union for a smaller than average raise. Bevilaqua's remarks explained to employees that the 1993 raise was in reality the same size as past years, simply broken down differently; that Respondent made the decision of how much to give; and that it stood by its conclusion that it gave what it thought was fair. That it used this opportunity to take a swipe at the Teamsters union was simply part-and-parcel of the normal banter which takes place during a union campaign, and which employees are fully capable of assessing in context. I find that Respondent's comments in this regard did not violate the Act, and I shall dismiss that allegation of the complaint.

The complaint alleges that in speeches on March 11, 14, 17, 21, and 24, Respondent threatened employees that it would be futile to select the Union as their collective-bargaining representative. The complaint alleges that Respondent did this "by telling the employees if the Union was voted in: (a) any improvement in economic terms would inevitably lead to job loss; (b) that the Union could not persuade Respondent to give them either monetary or nonmonetary benefits beyond what they already had; (c) that the Union would have no success in changing the Respondent's absenteeism policy or the existence of supervisory favoritism toward certain employees; and (d) that even if there was a contract, union favoritism and monetary considerations determined which grievances were pursued." Unfortunately, counsel for the General Counsel's case is simply not supported by the record. I have reviewed all of the speeches entered by the parties by stipulation and nowhere do I find the statements alleged in this paragraph of the complaint. Instead, counsel for the General Counsel's case is built like a house of cards on other statements Respondent did make to employees from which one is asked to draw the conclusion that the "real" messages are those described in the complaint. From that we are then asked to conclude that the real-message-once-removed is that it would be futile for employees to select the

Union. The General Counsel's allegations, however, must be assessed in the context of the entire situation, and not by drawing a few comments out of this group of speeches and isolating them as "coercive." With this in mind, it is important to review not only the portions of speeches highlighted by counsel for the General Counsel, but related remarks.

Regarding the contention that Respondent told employees any improvement in economic terms would inevitably lead to job loss, Bevilaqua did tell employees in the March 11 speech that if employees selected the Union, one of two things that were likely to happen was, "The Union demands increased wages and benefits–we say okay–we raise prices to cover the additional costs and we lose business because of higher prices." Nowhere did Bevilaqua say any improvement in economic terms would inevitably lead to job loss, or for that matter that anything else was inevitable. Bevilaqua's statement does indeed represent one of the likely possibilities resulting from an increase in wages and costs arising out of the collective-bargaining process, and as such, it represents protected free speech.

In the March 14 speech, Bevilaqua explained in detail the Chattanooga plant's financial history from the date Respondent purchased it in the fall of 1986. Counsel for the General Counsel does not dispute any of the facts which Bevilaqua represented to employees, including the fact that Respondent has never shown a profit from that plant. Bevilaqua explained to employees in detail the way in which various costs affect the operation, including cost of the plant itself, equipment and fixtures, materials, utilities, upkeep, and of course the cost for labor. Bevilaqua told employees that Respondent was prepared to offer to let the Union bring in an outside auditor to verify the financial information he had discussed with employees. In this speech, Bevilaqua told employees, "There are lots of people looking for jobs that pay as well as we do. We have a good employee base, little turnover, fair and equitable wage and benefits package for our area of the country and our served markets and industries." Bevilaqua explained in detail Respondent's numerous direct and indirect labor costs, including not only wages but benefit plans and holiday, vacation, and sick leave plans.

Within this speech, counsel for the General Counsel points to the single isolated remark by Bevilaqua, "If we had to pay more, we would have to raise our prices, and then our competitors would potentially take these customers away from us, because they could sell the product for less." The simple fact is that nowhere did Bevilaqua tell employees that any improvement in economic terms would inevitably lead to job loss. What Bevilaqua did do was explain to employees in detail some of the economic realities of collective bargaining, which Section 8(c) was specifically designed to protect as free speech. As I have already noted, all of the alleged statements framed by the complaint are in fact nothing more than conclusions we are asked to draw from Bevilaqua's actual remarks. For example, the complaint alleges that Bevilaqua told employees that the Union could not persuade Respondent to give them either monetary or nonmonetary benefits beyond what they already had. In fact what Bevilaqua told employees was that at other Woodbridge plants, pay scales and raises for employees had continued to be virtually the same after unionization as before, a matter of fact which counsel for the General Counsel does not dispute. Bevilaqua pointed out that companies budget a certain amount for labor costs, and negotiate with a union about how to allocate that money. Again it must be noted that Bevilaqua simply pointed out to employees one of the economic realities of collective bargaining. I find it unnecessary to further analyze each of Bevilaqua's speeches ad nauseum. Nowhere did he make the remarks alleged in this complaint allegation, and no conclusion is warranted that his actual remarks carried the "real hidden message" framed by the complaint. In each and every case, a comparison of the conclusions which counsel for the General Counsel would have me draw with the actual remarks by Bevilaqua show that throughout his speeches to employees, Bevilaqua did no more than explain the sometimes harsh economic realities of collective bargaining. Accordingly, I shall dismiss that allegation from the complaint.

C. Solicitation of Grievances

Employee Thomas Connally testified that around March 13, 1994, Supervisor Don Oscia approached Connally at his work station. According to Connally's uncontradicted testimony, Oscia asked Connally "what kind of changes could Woodbridge make without the need of a Union?" Connally told Oscia that "people didn't like the way Respondent was treating people . . . and a lot of other things." Connally complained about perceived unfairness in rescheduling certain employees' hours, and the perceived favoritism of some employees, particularly fellow employees Mike and Diane Brown. Oscia was not called as a witness.

The day after this conversation, Oscia posted a notice to all department employees explaining why the hours of the Browns had been changed. The memo stated that the Browns' hours had been changed for the convenience of Respondent and at Respondent's request. Connally conceded that the Browns' hours were changed effective January 1, 1994, prior to the advent of the Union's organizing effort. Connally also conceded that the conversation between him and Oscia was not overheard by anyone, and that he did not mention the conversation to any of his fellow employees at any time before the Board-conducted election.

I agree with counsel for the General Counsel that Oscia unlawfully solicited grievances from Connally when he asked Connally "what kind of changes could Woodbridge make without the need of a Union?" By approaching Connally in this manner, Oscia was blatantly trying to appease Connally's employment-related concerns while at the same time avoiding the possibility of unionization. Grievance solicitation of this type has long been recognized by the Board to be unlawful, and I find that Respondent violated Section 8(a)(1) of the Act. I do not agree with counsel for the General Counsel, however, that Oscia's memo to employees concerning the Browns itself carried any implied promise to remedy employee grievances. On the contrary, this memo attempted to explain and justify its own actions, and in no way suggested that Respondent would take action to remedy employee grievances. I find that the solicitation of grievances from Connally, while unlawful, was limited to him alone.

ANALYSIS AND CONCLUSIONS

It is the Board's usual policy to direct a new election whenever an unfair labor practice occurs during the critical period between the filling of the representation petition and the Board-conducted election. Conduct violative of Section 8(a)(1) of the Act is considered, a fortiori, to interfere with the exercise of a free and untrammeled choice in an election. The Board, however, has departed from this policy in recent years where it is

virtually impossible to conclude that the misconduct could have affected the election results. In determining whether the election here should be set aside, several factors should be considered, including the number of violations of the Act, their severity, the extent of their dissemination, the size of the bargaining unit, and other factors which might be relevant. *Clark Equipment Co.*, 278 NLRB 498 (l986); *Super Thrift Markets,* 233 NLRB 409 (1977).

In the instant case, I have dismissed the vast majority of allegations, including those that Respondent threatened the futility of selecting a union, threatened a refusal to bargain with the Union, threatened plant closure, or otherwise threatened retaliation against employees for selecting the Union to represent them. The only violation, which I have found occurred in a conversation between Supervisor Don Oscia and employee Thomas Connally. The sole incident occurred in a bargaining unit of approximately 120 employees, and in my view represented an isolated incident, which is not sufficient to affect the results of the election. Connally himself conceded that the conversation with Oscia was not overheard by anyone, and that he did not mention the conversation to any of his fellow employees at any time before the Board-conducted election. In short, there is no evidence whatever that this incident was disseminated beyond the individuals directly involved. See *Coca-Cola Bottling Co.*, 232 NLRB 717 (1977). Accordingly, I dismiss the Union's objections to the election and recommend the Board certify the election results.

CONCLUSIONS OF LAW

1. Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not ascribe a reduction in 1993 wage increases to employees' union activities; threaten employees that unionization would cause job loss and plant closure; admonish employees that unionization would be an exercise in futility, or threaten employees that collective bargaining would necessarily end in strikes in violation of Section 8(a)(1) of the Act, and those allegations are dismissed.

4. Respondent, through Supervisor Don Oscia, unlawfully solicited grievances from employee Thomas Connally to appease Connally's employment-related concerns while at the same time avoiding the possibility of unionization, and Respondent violated Section 8(a)(1) of the Act.

5. Respondent did not otherwise violate the Act.

6. The unfair labor practice Respondent has been found to have engaged in is an isolated incident which is not sufficient to affect the results of the Board-conducted election. Accordingly, the Union's objections to the election are dismissed, and it is recommended the Board certify the election results.

THE REMEDY

The unfair labor practices which Respondent has been found to have engaged in have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

Having found that the Respondent has engaged in certain unfair labor practices in violation of the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]