Stanadyne Automotive Corp. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO. Case 34–CA–9365

August 24, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On November 9, 2001, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

Pursuant to an election held on June 29, 2000,[3] a unit of approximately 650 production and maintenance employees at the Windsor, Connecticut facility of Stanadyne Automotive Corporation (the Respondent) voted against representation by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO (the Union). The vote was 219 for the Union, 412 against representation, and 7 challenged ballots. The judge found that during the election campaign, the Respondent committed several unfair labor practices, discussed below.

I. ALLEGED NO-SOLICITATION RULE

We affirm the judge's finding that the Respondent violated Section 8(a)(1) by orally implementing a rule prohibiting employees from discussing the Union while on working time.

A. Facts

Before the Union filed the petition for election on May 15, the Respondent maintained no rule prohibiting employees from talking or soliciting during working time or in work areas or restricting employee discussions in any way. Employees regularly engaged in conversations on a wide range of topics such as current events and personal matters during working time and on the shop floor. Employees also purchased, sold, and distributed a wide range of items, such as Avon products and candy bars.

During the union campaign, the Respondent's attorneys provided the Company's supervisors with training concerning permissible and impermissible preelection conduct, such as avoiding threats of reprisals or promises of benefits. The training also addressed when and where employees could engage in union activity. The factual disputes in this case center not on what was conveyed to supervisors, but what the supervisors told employees. The General Counsel's witnesses testified that some supervisors told employees they could not talk about the Union, solicit, or distribute flyers on company time or working time, though they could do so during breaktimes and before and after work.[4] Several employees also testified that supervisors told them to stop talking about the Union during working time, and that they would be disciplined and possibly fired for such conduct. According to the Respondent's witnesses, supervisors were told (and in turn told employees) that employees could say or do as they pleased before work, after work, during lunchtime, and during breaktime, but they were expected to be working during working time.

No employees were formally disciplined for engaging in any prounion or antiunion discussions or activity during worktime at any point during the campaign. However, Supervisor Gary Beresford admitted that he reminded both prounion and antiunion employees of the rule that they should work when they are supposed to be working. Manager Ron Binkus testified that he responded to a prounion employee's complaint about a vocal "pro-company" employee by telling the "pro-company" employee that she could not engage in "pro-company" activities during work hours. The Respondent's witnesses testified that employees' talking during the election campaign did not interfere with production.

The judge found that the Respondent's conduct described above violated Section 8(a)(1) because the no-solicitation instructions, which were given only after the organizing campaign began, were discriminatorily limited to union solicitations. The instructions, he found, were not consistent with any past practice or justified by any legitimate business consideration. Furthermore, the judge noted that all other talking within the workplace and during working hours continued to be permitted.

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

[2] We will modify the judge's recommended Order, which is set forth in full below, to conform more closely to the findings herein. Specifically, we have added a remedy requiring the Respondent to rescind its unlawful no-solicitation/no-distribution rules.

We will substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc*., 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[3] All dates are in 2000 unless otherwise specified.

[4] The General Counsel's argument focuses on the discriminatory application of the rule, not whether the rule's specific language was lawful.

The Respondent excepts, arguing: (1) the judge erred in crediting testimony that supervisors told employees not to discuss the Union during working time; (2) the rule that employees were supposed to be working during working time was not a change from previous rules and did not restrict conversation so long as employees were working; (3) the rule was not applied in a discriminatory manner; and (4) the Respondent did not discipline any employee, whether for or against the Union, for violating the rule.

B. Analysis and Conclusion

Section 8(a)(1) prohibits employers from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7. The Board recently reiterated:

> [A]n employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition also extends to other subjects not associated or connected with their work tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work, particularly when the prohibition is announced or enforced only in response to specific union activity in an organizational campaign.

Jensen Enterprises, 339 NLRB 877, 878 (2003) (citing *Willamette Industries*, 306 NLRB 1010, 1017 (1992); *Orval Kent Food Co.*, 278 NLRB 402, 407 (1986)). The Board in *Jensen* found a violation of Section 8(a)(1) where "employees were allowed to discuss '[a]nything [they] wanted to'" as long as they continued to work, but an employee's supervisor told him that he could not "talk about the Union or things against the Union in working hours." Id. Similarly, the D.C. Circuit upheld a Board decision finding that an employer violated Section 8(a)(1) by applying a facially neutral no-solicitation policy "in non-neutral fashion" against union activity alone. *ITT Industries, Inc. v. NLRB*, 251 F.3d 995, 1006 (D.C. Cir. 2001).

As the judge noted, had the Respondent maintained a rule restricting all talking or solicitation during working time that was uniformly enforced and not promulgated in response to the Union campaign, the rule would have been presumptively valid. *Jensen Enterprises*, 339 NLRB at 878; *Our Way, Inc.*, 268 NLRB 394, 395 (1983). Here, however, the Respondent did not restrict talking and solicitation in any way before the organizing campaign. Further, the Respondent's supervisors admitted that during the campaign they admonished several employees not to engage in union activity during working time. The fact that these employees were engaged in antiunion activity as opposed to prounion activity is irrelevant; Section 7 protects both types of activity. Nor does the fact that no formal discipline was imposed change the result; the Respondent acted unlawfully by promulgating the rule in question, which applied unequally to union solicitation and other types of solicitation.[5] *ITT Industries*, 251 F.3d at 999. We therefore agree with the judge that the Respondent's restriction of employee discussion about the Union violated Section 8(a)(1).

II. ALLEGED THREAT OF REPRISAL FOR "HARASSING" FELLOW EMPLOYEES

We reverse the judge's finding that the Respondent violated Section 8(a)(1) by issuing a statement prohibiting "harassment."

A. Facts

During a June 6 campaign meeting with employees, the Respondent's President and CEO Bill Gurley stated:

> [I]t has come to my attention that some union supporters, not all, but some, are harassing fellow employees. You can disagree with the Company position; you can be for the Union. You can be for anything you want to, but no one should be harassed. Harassment of any type is not tolerated by this company and will be dealt with.

The judge found that this statement was a threat of reprisal in violation of Section 8(a)(1) because employees could reasonably fear, based on the statement, that they would be disciplined for engaging in protected activity. The Respondent excepts, arguing that Gurley's statement was a legitimate effort to enforce a company policy against harassment; the reference to "any type" of harassment indicates that it would not distinguish between harassment by prounion or "pro-company" employees; and the term "harassment" incorporates "threats" or "intimidation," which the Board has held to be sufficiently specific that an employer can lawfully prohibit such conduct.

B. Analysis and Conclusion

The Board recently held, in determining whether an employer's maintenance of a work rule reasonably tends to chill employees in the exercise of Section 7 rights, that it will give the rule a reasonable reading and refrain from reading particular phrases in isolation. *Lutheran Heritage Village-Livonia*, 343 NLRB No. 75, slip op. at 1 (2004). Under this standard, the first inquiry is "whether the rule *explicitly* restricts activities protected by Section 7." Id. (emphasis in original). If so, the rule is unlawful; if not:

[5] In adopting this violation, Member Schaumber emphasizes that the newly imposed restrictions targeted conduct that the Respondent's own witnesses agreed did not interfere with production.

> [T]he violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

Id., slip op. at 2.

Applying this standard to Gurley's statement prohibiting harassment, we find that the statement does not explicitly restrict protected activity. Under the 3-factor test described above, we also find that employees would not reasonably construe Gurley's statement to prohibit Section 7 activity, nor was the statement promulgated in response to union activity. Rather, Gurley's statement addressed harassing conduct that is not protected by Section 7, in response to unsolicited reports of improper behavior. During the organizing campaign, the Respondent encountered vandalism in the parking lots, graffiti on restroom walls (such as the written message "Kill Gurley"), and an incident involving an employee who called the police to report another employee who, while distributing union literature, allegedly grabbed her arm. In view of the various State and Federal laws that place affirmative obligations upon employers to address workplace harassment, an employer reasonably would react to reports of harassment by informing employees that such conduct will not be tolerated. Reasonable employees, however, would not assume that a statement prohibiting harassment is a restriction on Section 7 activity, particularly where, as here, the Respondent explicitly indicated that the employees were free to support the Union or not. Giving Gurley's statement a reasonable interpretation and reading it as a whole, we cannot find that employees would reasonably construe the Respondent's message as prohibiting Section 7 activity. Moreover, there is no evidence that the Respondent's rule against harassment was applied to restrict the exercise of Section 7 rights.

Our colleague says that Gurley's statement was "in response to union activity." However, not all union activity is protected. As shown above, the statement here was in response to reports of unprotected union activity.

Accordingly, we reverse the judge and find that Gurley's statement did not violate Section 8(a)(1).

III. ALLEGED THREATS OF PLANT CLOSURE, INEVITABILITY OF STRIKES, AND JOB LOSS

We have carefully reviewed the record and find that the Employer's statements to employees at meetings on June 21, did not exceed the bounds of permissible campaign speech. Therefore, we reverse the judge's finding that the Respondent violated Section 8(a)(1) by its conduct at these meetings.

A. Facts

The Respondent held approximately seven meetings with employees of various shifts on June 21, each involving the same presentation by Gurley and Managers Art Caruso and Ron Binkus. As in prior campaign meetings, the speakers primarily adhered to written scripts, which are part of the record. The speakers discussed potential consequences of strikes, plant closures, and strike violence, including violence and plant closures that occurred during strikes by the Union at other Stanadyne plants. Binkus and Caruso also described their prior personal experiences regarding these issues.

Gurley, in his introduction to the meeting, referred to his promise to give employees as much information as he could to help them in deciding whether they wanted a union. He emphasized that the Union could not guarantee increases in wages or benefits or other improvements, and that the law only requires that "the company sit down and negotiate in good faith with the union." Gurley then went on to state,

> However, *if* after *negotiating* we were not willing to accept the Union's proposals or the Union were not willing to accept the company's proposals, then the Union only has two options that I know of: (1) It can *accept* the company's offer, *or* (2) It can call you out *on strike* in order to try to get Stanadyne to agree to its proposals. (Emphasis in original script).

Gurley then introduced Caruso and Binkus as employees with 35 years and 32 years of service, respectively, who would speak of their own personal experiences.

Caruso explained the potential ramifications for employees in the event of a strike, including that pay would stop, striking employees would be ineligible for unemployment compensation, the company would be entitled to hire permanent replacements during an economic strike, and that the company could legally cease health insurance contributions during the strike. Caruso then referred to a claim by the Union that strikes do not occur very often, countering, "Research shows they happen often, but to the extent they happen even once, one is *too* many. Although strikes are not inevitable, everyone knows that *where unions exist, strikes occur*." (Emphasis in original script.) He stated that "this particular local, #376, has, unfortunately, been involved in a number of strikes," and "From what I can find out, there are very few local unions who are more 'strike happy' in Connecticut than the UAW Local 376." Caruso then gave examples of several plants at which the Union called a strike, including two of Stanadyne's plants. Caruso discussed the length and consequences of the strikes, including customers lost by Stanadyne and work that was

transferred to other plants. Caruso also read aloud excerpts from a newspaper article in which employees involved in one of the strikes complained about their union leadership and the detrimental effects of the strike.

Binkus spoke next and described his work history with Stanadyne, contrasting his experience at union and nonunion facilities. He offered personal examples of the Union's restrictions on movement between job classifications at a unionized plant, as well as his views of the strike that occurred there. Binkus described an oral strike vote at a union meeting, during which he felt intimidated into abandoning his plan to vote "no," as did other employees, and he mentioned his personal knowledge of current employees who felt intimidated enough to hide their "vote no" buttons. He also described incidents of intimidation, sabotage, and violence that occurred each time a collective-bargaining agreement was about to expire, including an event involving a bomb squad's defusing of a "device" that an employee found in the plant. Binkus then explained that a strike at another Stanadyne plant resulted in the death of a guard who was struck in the head during an altercation with union employees, stating,

> The action we take as individuals does, at times, result in something completely unplanned. Let's not let any unplanned action take place here. Violence, threats, intimidation, and a death are not things that happen just on TV or something you read somewhere about another company. They happened at UAW locations at former Stanadyne facilities. Of my 32 years with Stanadyne, the last 10 have been the best, not that the current job is easy, but the environment we are in is so much better. You can keep the environment here union free. Do not place yourself in a violent environment, vote "*no*." (Emphasis in original script.)

Caruso then spoke again, stating,

> I agree with Ron's comments. No one, union or management, want [sic] to see violence occur, but when you place yourself in that type of environment, people do things that they normally would not. I am not saying that those things will happen in the future, but in a union environment, those things have happened.

He cited values that have contributed to the Company's success, stating that he witnessed such values being sacrificed when the Union got involved, and he urged employees to vote "no."

Gurley was the last speaker. He noted that although the message was not pleasant, employees must be aware of the facts in deciding how to vote. Gurley stated,

> I want to be very clear on this point. The discussions today are in no way intended to be a prediction of future events. It is impossible for anyone to say what will happen if the Union is successful on June 29. I do not know what will happen relative to possible strikes. No one knows. Nor are these comments intended to be threats. Our presentation has simply been facts and recollections about actual events.

He conveyed that, for the first time in his managerial career, a personal threat was made against him, as well as against a few employees, during the campaign, adding, "Union members also have means to threaten and coerce fellow members. *Please be careful of the path you take, you may not like where it ends*." (Emphasis in original script.) After reminding employees that the election would be confidential, unlike the oral strike vote discussed by Binkus, Gurley concluded the meeting with a question and answer session.

At the conclusion of the questions, Gurley unveiled a large sign displaying seven photographs of closed plants. A heading at the top of the sign read, "These are just a *few* examples of plants where the UAW *used to* represent employees." (Emphasis in original.) Across each photograph was the word "CLOSED" in large red block letters, with the date of closing below each photograph. Below the photographs, the sign read, "Is this what the UAW calls job security?" and "VOTE NO!" at the bottom. Copies of the sign were also displayed throughout the plant during the week before the election.[6]

Gurley testified at the hearing that he did not know the specific reasons for the closing of several of the plants depicted on the sign or whether the closures had anything to do with the Union. Based on this testimony, the judge found that "any supposed connection" between the plant closures and union representation was not supported by objective considerations. He also found that the Respondent's managers did not attempt to explain to employees the basis for any such connection. The judge concluded that employees could reasonably have construed the June 21 speeches' basic message as a high probability that selection of the Union would result in a strike, which "might be attended by intimidation and violence" and "would harm the employees financially," and that the Respondent would close the plant and transfer work to nonunion plants. For these reasons, he found that the Respondent violated Section 8(a)(1). The Respondent

[6] The sign was unveiled in response to a question about job security during at least one of the meetings. The record reveals that job security was an issue discussed by the Union during the campaign. There is some dispute as to whether Gurley added a disclaimer during his unveiling of the sign, similar to those made during the speech, that the company is not making a prediction as to what will happen in the future. The judge did not resolve this dispute, referring only to "supposed disclaimers." In any event, we find it unnecessary to decide how many times such disclaimers were used because it is clear that similar statements were included at several points during the June 21 speeches.

excepts, arguing that its statements were within its rights under Section 8(c), and thus, the Respondent lawfully discussed the issue of unionization with its employees.

B. Analysis and Conclusion

The Supreme Court described the balance between employer free speech rights as codified by Section 8(c) and employees' Section 7 rights in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969):

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. [Citation omitted]. If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment.

Subsequent cases applying this standard involve fact-intensive analyses of the circumstances involved. In *EDP Medical Computer Systems, Inc.*, 284 NLRB 1232, 1264 (1987) (citing *Michael's Markets*, 274 NLRB 826 (1985)), the employer's display of a poster entitled, "Is this job security?" depicting companies that had closed as a result of unionization, and the employer's remarks about these facts at meetings, were found to be lawful. In so finding, the Board held that neither the poster nor the employer's remarks suggested that the employer would close if the union came in, and that the employer had a "right to give employees information with respect to industry conditions, and was merely stating 'economic reality' by informing employees of these events."

Applying this precedent, we find, contrary to the judge, that the Respondent's conduct during the June 21 meetings was lawful. By conveying events that had already occurred, as well as supplying the perspective of employees who had experienced some of those events, the speeches and the "closed" sign merely attempted to inform employees of the potential negative effects of their upcoming vote. As stated above, an employer's right to communicate its "general views about unionism" or "specific views about a particular union," absent threats or promises, is well established. *Gissel*, 395 U.S. at 618. Throughout the speeches, the Respondent communicated its general views about unionism and the reality of strikes, as well as its specific views about this particular Union, which it supported with factual accounts of the Union's past activities.

Further, the speakers repeatedly made clear that they were not making threats or predictions about the future, but rather, presenting "facts and recollections about actual events." By providing "concrete example[s] of a negative outcome for employees who were represented by the same union that seeks to represent" the Respondent's employees, the Respondent "made no prediction at all." *Manhattan Crowne Plaza*, 341 NLRB 619, 620 (2004).

For this reason, our colleague's complaint that the Respondent's speakers did not establish an objective basis for their assertions that the Union had *caused* plants to close misses the mark.[7] The Respondent's speakers did not claim that the Union had caused any plants to close. Rather, they simply recited the facts that these were unionized plants and that they had closed. Employees were free to draw their own inference of causation or not to do so. That judgment was left to them. Further, even if employees drew the inference of Union causation, that would not suggest to those employees that the closures were volitional retaliatory acts by the Respondent.

To the extent that the Respondent's message may be construed as a "prediction" of the effects of unionization, in spite of its assurances to the contrary, we find that its statements were "carefully phrased on the basis of objective fact to convey [the Respondent's] belief as to demonstrably probable consequences beyond [its] control." *Gissel*, 395 U.S. at 618. The Respondent merely identified possible consequences of strikes, based on the previous effects of strikes by this particular Union. As a counterargument to the Union's campaign theme of job security, the Respondent also observed, based on the recitation of objective facts about previous strikes by the Union, that strikes occurred more frequently than the Union led employees to believe.

Our colleague cites Board decisions in *AP Automotive Systems, Inc.*, 333 NLRB 381 (2001), and *Gold Kist, Inc.*, 341 NLRB 1040, 1041 (2004), and argues that Gurley's and Caruso's comments conveyed that strikes were inevitable. We find the cases cited readily distinguish-

[7] Our colleague correctly points out that Caruso did not testify. To be clear, the parties stipulated that no adverse inference should be drawn from Caruso's failure to testify because he died 2 weeks before the hearing. Furthermore, the content of his remarks is uncontroverted, as an admitted exhibit contained the full text of his speech.

able. Here, the Respondent was careful to convey the objective basis for its message, i.e., previous strikes by the Union, the personal experiences of the speakers, newspaper accounts of previous strikes, and accurate statements about the potential consequences of strikes. Significantly, far from conveying the message that strikes are inevitable, Caruso told employees that "strikes are not inevitable," and both Caruso and Gurley said several times that they were not making predictions or threats. Gurley emphasized the Respondent's intent to abide by the law and negotiate in good faith with the Union. In contrast, the employers' messages in the cases our colleague cites were more extreme and lacked balance. See, e.g., *AP Automotive Systems, Inc.*, 333 NLRB 581 (2001) (A divided panel found that the employer's speech conveyed the inevitability of strikes where the employer conveyed "the scenario . . . [that] the [union] would inevitably make exorbitant demands, . . . the [e]mployer would not agree to these demands, a strike would ensue, and the plant would close." There was no reference to objective facts nor to its willingness to bargain in good faith.); *Gold Kist, Inc.*, 341 NLRB 1040, 1041–1042 (2004). (By showing graphic images of strike violence, including photographs labeled "Bullet holes in cars," "Shattered windshields," and "Woman shot while riding to work," and by telling employees, "Vote no violent strikes, vote *No* union," the Respondent was "not attempting properly to influence the employees to the Respondent's view by reason, but rather was aggressively appealing to the employees' predictable and understandable fear of a strike and violence.")

Similarly, the facts in this case are distinguishable from those in *Quamco, Inc.*, 325 NLRB 222 (1997), cited by the judge. In *Quamco*, 1 day before the election, the employer ominously questioned the fate of its facility by posting a sign entitled "UAW WALL OF SHAME." The posting displayed tombstones with the names of UAW-represented facilities that had closed, adding a tombstone with a question mark under the employer's name. Id. at 222. Here, in contrast, the Respondent refrained from adding such embellishment regarding the security of its future, conveying only what had happened in the past. Our colleague's literary references notwithstanding, we believe the Respondent's carefully phrased statements, which simply conveyed that unionized plants had closed in the past without drawing any conclusions regarding causation, were lawful under the Board precedent discussed above.

For these reasons, we find, contrary to the judge, that the Respondent's conduct during the June 21 meetings with employees did not violate Section 8(a)(1).

IV. ANNOUNCEMENT OF IMPROVED PENSION BENEFITS

We reverse the judge's finding that the Respondent violated Section 8(a)(1) by announcing an improvement in pension benefits after the filing of the petition and before the election.

A. Facts

About 1 to 2 weeks before the election, the Respondent posted a notice to employees announcing an increase in their monthly pension benefit, from $19 to $21, effective July 1. The evidence indicates that the Respondent reviewed employee compensation and benefits twice a year, using an industry survey of compensation and benefits called the "CBIA survey," in addition to other available data. The effective date of changes in benefits and/or wages, if any, was typically January 1 and/or July 1. Such changes were typically communicated to employees through a notice posted on a bulletin board, generally 1 to 2 weeks before the effective date. Periodic increases to the pension benefits had been given in various years since 1959 in either January or July, including the most recent increase prior to the one at issue, on July 1, 1999 (from $18 to $19).

The Respondent's witnesses testified that in 1996, the Respondent made a decision to incrementally increase the pension benefit until it reached the highest category in the CBIA survey, which was $21 at the time of the benefit increase at issue. The Respondent's witnesses testified that the increases were necessary to become competitive in recruiting and retaining talented employees. Compensation and benefits manager, Richard Lurie, testified that the plan to increase the pension benefit over time was an agreement in theory, but not a commitment or guarantee, due to the uncertainty regarding future business conditions; thus, no writing exists that describes this plan. Employees were not given an explanation of the reason for the July 2000 pension increase or any advance notice of it; however, the evidence indicates that this is consistent with the usual practice. The $2 increase in pension benefits was implemented at this facility, as well as the Respondent's other facilities, in July 2000.

The judge found that "There may have been some type of plan made in 1996, to incrementally raise pension benefits," but the Respondent did not specifically contemplate a July 2000 increase in 1996. The judge also found that the Respondent failed to show that the July 2000 increase was part of a previously established pattern. He concluded that the announcement of the increased benefit, shortly before the election, violated Section 8(a)(1) because it was intended to dissuade employ-

ees from voting for the Union.[8] The Respondent excepts, arguing that the July 2000 pension benefit increase was consistent with its previously established plan that predated the Union's organizing campaign, and the bulletin announcing the increase was posted at the end of June just as it had been in the past when a benefit increase was to be effective in July.

B. Analysis and Conclusion

"Under settled Board policy, a grant or promise of benefits during the critical preelection period will be considered unlawful unless the employer comes forward with an explanation, other than the pending election, for the timing of such action." *Honolulu Sporting Goods Co.,* 239 NLRB 1277, 1280 (1979) (citing *The Singer Co.*, 199 NLRB 1195 (1972)), enfd. mem. 620 F.2d 310 (9th Cir. 1980), cert. denied 449 U.S. 1034 (1980). "Similarly, an employer cannot time the announcement of the benefit in order to discourage union support, and the Board may separately scrutinize the timing of the benefit announcement to determine its lawfulness." *Mercy Hospital Mercy Southwest Hospital,* 338 NLRB 545 (2002). "The standard for determining whether the timing of benefit announcement during the critical period is unlawful is essentially the same as the standard for determining whether the grant of benefit itself violates the Act." Id. Thus, the Board will infer that an announcement or grant of benefits during the critical period is coercive. However, an employer may demonstrate a legitimate business reason to rebut an inference of unlawfulness as to the grant of the benefit and/or the timing of its announcement. *Southgate Village, Inc.*, 319 NLRB 916 (1995).

The Respondent has successfully rebutted any inference that it was unlawfully motivated by intent to influence the outcome of the election when it announced a $2-pension benefit increase. The evidence demonstrates that the Respondent followed its usual procedures with regard to both the decision to grant the pension benefit increase and the timing of its announcement. Contrary to the judge, we find that the fact that increases were not given every year does not undermine the Respondent's argument. It is clear that benefits were reviewed at the same time each year, and that the pension benefit was increased in some years, but not others, depending on the results of the benefits review. That is precisely what the Respondent did in July 2000, just as it had the year before, consistent with its obligation to proceed as if the Union were not on the scene. The evidence shows that July increases were typically announced in June, 1 to 2 weeks before the effective date of the increase, which is exactly what happened in June 2000. The July 2000 increase followed the same pattern as the previous year's increase, which was effective in July 1999 and announced at the end of June 1999. Further, the amount of the July 2000 increase was not out of line with the previously established pattern.

Moreover, we disagree with the judge's finding that the Respondent's argument is undermined by the fact that it did not contemplate the specific July 2000 increase of $2 at the time it developed its general plan in 1996 to incrementally increase the pension benefit. As Lurie testified, the constraints of future business uncertainties precluded the Respondent's managers from making a predetermined commitment to specific increases in specific years. What is clear is that the Respondent had a legitimate business objective in planning to achieve parity with other employers' pension benefits for the purpose of remaining competitive in recruitment and retention of talented employees. Unlike the judge, we will not second-guess the Respondent's legitimate business goal, regardless of whether its plan set forth specific amounts or a general objective. Similarly, the absence of a document memorializing the plan does not prove that the increase was inconsistent with the Respondent's prior practice. Finally, the lack of advance notice or explanation of the increase to employees is not suspect, as they generally were not given such information in the past. For these reasons, we find, contrary to the judge, that the Respondent's conduct regarding the July 2000 pension benefit increase did not violate Section 8(a)(1).

ORDER

The National Labor Relations Board orders that the Respondent, Stanadyne Automotive Corp., Windsor, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing its no-solicitation/no-distribution rule selectively and disparately by prohibiting union solicitations and distributions and by prohibiting employees from speaking about International Union, Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO (the Union) during working time while not prohibiting conversations about nonunion topics.

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

[8] The judge did not definitively credit the testimony regarding the 1996 plan to increase pension benefits. However, based on his statement quoted above and references in his decision and recommended Order to the announcement of benefits, it appears that his finding of a violation is based only on the *announcement* and its timing, not on the *decision* to increase pension benefits.

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

(a) Rescind its unlawful no-solicitation/no-distribution rules.

(b) Within 14 days after service by the Region, post at its facility in Windsor, Connecticut, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 15, 2000.

(c) 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 LIEBMAN, dissenting in part.

The majority wrongly reverses two 8(a)(1) violations found by the judge.[1] First, the majority finds that a statement by the Respondent's president threatening employees with reprisal for "harassing" other employees was lawful, despite the fact that the statement was made in direct response to union activity and would reasonably tend to chill such activity. Second, the majority sees no harm in a series of statements by the Respondent's top officials that threatened employees that choosing the Union would lead to strikes, job losses, and the closure of the plant. The majority's rulings on both issues are based in part on recent decisions that retreated from well-established principles of Board law and that weakened employees' protections under the Act.

A. Threat of Reprisals for Harassment

1. Facts

Respondent President William Gurley made a speech to the employees in which he told them, inter alia, that "some union supporters" were "harassing" fellow employees, that "no one should be harassed," and that "harassment of any type is not tolerated by this company and will be dealt with."

2. Analysis and conclusions

Relying on *Lutheran Heritage Village-Livonia*,[2] in which Member Walsh and I dissented, the majority finds that Gurley's prohibition against harassment was not promulgated in response to union activity and that employees would not reasonably construe Gurley's words as reaching Section 7 protected activity. I disagree with both of these findings.

First, Gurley told the employees "it has come to my attention that some union supporters, not all, but some, are harassing fellow employees." Thus, Gurley's prohibition was expressly promulgated in direct response to union activity and violates Section 8(a)(1) under *Lutheran Heritage* for that reason alone.

Second, Gurley's prohibition against harassment states that "no one should be harassed," and it prohibits "[h]arassment of any type." This is essentially the same as the rule against "[h]arassment of other employees, supervisors and any other individuals in any way" in *Lutheran Heritage*, which I would have found unlawful. Gurley did not describe what he meant by harassment, and instead presented the employees with only "a very broad, vague, and highly subjective notion of 'harassment' that places the [prohibition] in statutory jeopardy."[3] As in *Lutheran Heritage*, nothing in the phrasing of Gurley's prohibition limits its breadth; just the opposite. It would thus be reasonable for employees to understand Gurley's prohibition as reaching protected—but unwelcome—union solicitation. Such a prohibition is unlawful.[4]

[9] If 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."

[1] In all other respects, I agree with the majority's decision.

[2] 343 NLRB No. 75 (2004). There, a Board majority held that a written rule prohibiting "[h]arassment of other employees, supervisors and any other individuals in any way" did not violate Sec. 8(a)(1), because it did not explicitly or implicitly prohibit activity protected under Sec. 7.

[3] *First Student, Inc.,* 341 NLRB 136, 136 fn. 4 (2004), citing *Liberty House Nursing Homes*, 245 NLRB 1194, 1197 (1979).

[4] See, e.g., *Bloomington-Normal Seating Co.*, 339 NLRB 191, 191 fn. 2 and cases cited therein (2003), enfd. 357 F.3d 692 (7th Cir. 2004) (employer's instruction to employees to inform employer if they were "threatened or harassed" about signing union cards was unlawful because it invited employees to inform the employer of protected, albeit unwanted, card solicitations by other employees and thus had the potential to chill legitimate union activity); see also, e.g., *Ryder Transportation Services*, 341 NLRB 761, 761–762 (2004), enfd. 401 F.3d 815

My colleagues say that Gurley's prohibition was lawful because in referring to "union supporters . . . harassing fellow employees," Gurley was referring to harassing conduct that is not protected by Section 7, and was responding to unsolicited reports of improper behavior. But Gurley did not describe to the employees any such unprotected, harassing conduct or improper behavior.[5] Absent such explanation, Gurley's broad prohibition against harassment had a reasonable tendency to interfere with, restrain, or coerce the employees in the exercise of their Section 7 right to solicit support for or opposition to the Union.[6]

B. Threats of Job Loss, Plant Closure and Inevitability of Strikes

1. Facts

Gurley and Vice President/General Manager Arthur Caruso made essentially identical joint speeches to all of the employees about a week before the election.

Gurley told the employees, inter alia, that if after negotiating, the Respondent or the Union was not willing to accept the other party's contract proposals, then the Union's only choice would be either to accept the Respondent's proposals or call the employees out on strike to try to get the Respondent to agree to the Union's proposals. Caruso then told the employees that while the Union said that strikes do not occur very often, "research" (not further described in the speech) showed that strikes did occur often, and that although strikes were not inevitable, "*where unions exist, strikes occur*" (emphasis in the script of Caruso's speech). Caruso also told the employees that "[t]here is a history that employees represented by UAW Local 376 frequently go on strike" and that UAW Local 376 was one of the most "strike happy" local unions in Connecticut.[7]

Caruso also told the employees about strikes at three of the Respondent's plants where the employees were represented by UAW locals. Caruso told them that by the time the 6-month strike at the Emhart plant ended, the company had subcontracted out the work so that there was no longer any work for the 400 strikers. He also told them that the Respondent shut down the Elyria and Bellwood plants while the strikes were still going on, that the work which had been performed at those plants was relocated to other plants, that when the strike ended at Elyria 470 of the 550 strikers did not return to work, and that about 500 people lost their jobs at Bellwood. Finally, Caruso told the employees that the Respondent closed the union plant at Garrett because of lost customers resulting from the Bellwood strike, and because of that plant's workplace restrictions, lack of flexibility in operations, and general disregard to protecting customers.

Next, Gurley told the employees:

> I want to be very clear on this point. The discussions today are in no way intended to be a prediction of future events. It is impossible for anyone to say what will happen if the Union is successful on June 29. I do not know what will happen relative to possible strikes. No one knows. Nor are these comments intended to be threats. Our presentation has simply been facts and recollections about actual events.

At the end of each speech, however, Gurley unveiled an 8-foot by 3-foot double-sided poster which displayed photographs of shuttered or dilapidated buildings, or vacant lots, all described on the poster as closed plants. The message on the sign was that these were "just a *few* examples of plants where the UAW *used to* represent employees" (emphasis in original). "CLOSED" was printed in large red block letters across each photograph, with the date of each closing written immediately below. At the bottom of the poster appeared the question "Is this what the UAW calls job security? VOTE NO!" Several full-sized copies of this poster were placed in prominent locations in the plant during the week before the election.

2. Analysis and conclusions

The message from this stream of communications was certainly clear: if employees selected unionization, a strike would very likely ensue, work then would have to be relocated from the plant, and finally the plant would be closed. I agree with the judge that employees could reasonably have perceived Gurley's and Caruso's statements, as well as the poster itself, as warnings that this scenario was likely. The majority's approach is contrary to precedent—except for a recent, wrongly decided case.

The principles that govern this aspect of the case are set out in *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 618 (1969):

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his

(7th Cir. 2005), also *Lutheran Heritage*, supra, 343 NLRB No. 75, slip op. at 6 (joint dissent) (citing cases).

[5] My colleagues refer to vandalism, graffiti, and an employee allegedly grabbing the arm of another employee while distributing union literature. But Gurley did not refer to any such misconduct in promulgating to the employees the broad prohibition against harassment here. Indeed, there is no showing that Gurley was even considering these matters in promulgating his rule.

[6] My colleagues point to Gurley's statement that employees were free to support the union or not. But telling employees that they are free to support or oppose a union as long as they do not engage in "harassment" does not, without more, cure Gurley's broad prohibition or convey to employees that the prohibition against harassment encompasses only unprotected activity.

[7] The representation petition was actually filed by the International Union (the Charging Party in this case), not Local 376.

> specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased *on the basis of objective fact* to convey an employer's belief as to *demonstrably* probable consequences beyond his control . . . . [emphasis added].

The burden of proof is upon the employer to demonstrate that its prediction is based on objective fact. *Schaumburg Hyundai, Inc.,* 318 NLRB 449, 450 (1995).

Gurley's and Caruso's predictions that unionization would result in strikes, job loss, and plant closure fail to meet the *Gissel* standard. First, the Respondent has not shown that its predictions were based on objective fact. The Respondent neither established, nor conveyed to the employees, an objective basis for its implication that the former plants depicted in the photographs were closed, or that work was transferred from them, because their employees were represented by unions or because those employees went on strike. Gurley testified that he could not say that the closing of any of the plants shown or depicted on the sign had anything at all to do with the fact that the employees in those plants had been represented by a union. He did not convey to the employees any objective basis for the implications that the plants were closed, or that work was subcontracted or relocated, because the employees chose union representation. Caruso did not testify (he died prior to the hearing). During his speech, he provided no objective basis for his declaration that UAW Local 376 was one of the most "strike happy" local unions in Connecticut; his implication that the Respondent had subcontracted out the work of 400 employees at the Emhart plant because of a strike; his implication that the Respondent shut down its plants at Elyria and Bellwood and relocated the work of those plants because of strikes there; or his claim that the Respondent shut down its Garrett plant because of lost customers resulting from the unionization of that plant.

Initially, the majority states that the Respondent related only a recitation of past events and did not predict the future. That assertion is hard to take seriously. Why else would these events be described if not to convey the message that the choice to unionize will not bode well? "What's past is prologue, what to come in yours and my discharge." *The Tempest, act II, scene I, lines 253–254.* William Shakespeare.[8] In any event, I disagree with my colleagues' assertion that the Respondent was careful to convey the objective basis for its message. Clearly, the Respondent conveyed no such objective basis. And notwithstanding that Gurley and Caruso *told* the employees that Gurley and Caruso were not making threats, the abundant weight of their other statements establishes that Gurley and Caruso were implicitly threatening that unionization would result in plant closure. It is immaterial that Gurley and Caruso outwardly professed that they were not making threats; they were implicitly predicting this adverse consequence of unionization, without supporting the prediction with objective facts. Cf. *Michigan Products*, 236 NLRB 1143, 1146 (1978) "It is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted.". It follows that the Respondent has failed to satisfy the *Gissel* requirement that the Respondent's predictions of plant closure be carefully phrased on the basis of objective fact to convey to the employees the Respondent's belief that plant closure was a demonstrably probable consequence of unionization.

Second, although the Respondent's speeches and the poster impliedly blame unionization for the shutdown of plants and the subcontracting and relocating of work, those are decisions that are within the Respondent's control. Therefore, the speeches and the poster do not "convey [the] employer's belief as to demonstrably probable consequences *beyond* [its] control." *Gissel*, supra, 395 U.S. at 618 (emphasis added).

The judge thus correctly relied on *Quamco, Inc.,* 325 NLRB 222 (1997). There, the employer engaged in an unlawful campaign tactic by displaying a "UAW Wall of Shame," consisting of tombstones with the names of closed factories where the UAW had represented employees. The day before the election, the employer posted a tombstone bearing the name of the employer, with a question mark. The logical inference to be drawn was that the same fate of plant closure and job loss awaited the employer's plant if the employees chose union representation. Id. at 223. The employer in *Quamco* offered no objective basis for its assertion that the UAW was to blame for the closings of the other plants and that, for reasons beyond its control, selection of the UAW might cause the employer's plant to suffer the same fate. Id.[9]

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[8] Or to quote a more modern reference:

> Time present and time past
> Are both perhaps present in time future,
> And time future contained in time past.
> * * *
> What might have been and what has been
> Point to one end, which is always present.
> Burnt Norton Four Quartets, T.S. Eliot.

[9] My colleagues distinguish *Quamco* on the grounds that the Respondent here did not include a photograph of the plant involved here

Gurley's and Caruso's threats of inevitability of strikes also violated the Act. As seen, Gurley told the employees, inter alia, that if after negotiating, the Respondent or the Union was not willing to accept the other party's contract proposals, then the Union's only choice would be either to accept what the Respondent offered or to call the employees out on strike to try to get the Respondent to agree to the Union's proposals. Quite similarly, in *Gold Kist, Inc.,* 341 NLRB 1040 (2004), the employer told the employees that if the union was not able to get the employer to agree to a collective-bargaining agreement on terms acceptable to the employer, then the union would either abandon the employees or call a strike. The Board found that the employer unlawfully threatened the inevitability of strikes by telling its employees that strikes were the union's only weapon to win the employer's agreement to the union's bargaining proposals.[10]

Shortly after Gurley threatened the inevitability of a strike by telling the employees that if the Respondent or the Union was not willing to accept each other's contract proposals, the Union's only way to get the Respondent's agreement would be to call a strike, Caruso put a fine point on Gurley's message. He told employees that although strikes were not inevitable, "*everyone knows that where unions exist, strikes occur,*" and that Local 376 was one of the most strike-happy unions in the state.

The majority's reliance on *EDP Medical Computer Systems*, 284 NLRB 1232, 1255, 1264 (1987), is unavailing. There, the Board held that the employer's poster did not impliedly threaten plant closure because neither the poster nor the remarks of the employer's president suggested that the employer would close if the union got in. But Gurley's and Caruso's repeated speeches sent the message that unionization would most likely result in strikes, job loss, and plant closure.

My colleagues also rely on *Manhattan Crowne Plaza*, 341 NLRB 631 (2004). For the reasons fully set forth in the dissenting opinion there, I believe that case was wrongly decided. The principal infirmities in the employer's message in *Manhattan Crowne Plaza* are present in the Respondent's message here. The Respondent neither proffered nor conveyed to the employees an objective basis for its implication that the former plants shown or referred to in the speeches and in the photographs on the poster were closed, or that work was subcontracted or relocated from them, because their employees were represented by unions or because those employees went on strike. Also, like the employer's message in *Manhattan Crowne Plaza*, the Respondent's speeches and the poster impliedly blame unionization for shutdown of plants and subcontracting and relocating of work. But those are decisions that are within the Respondent's control, and are thus not demonstrably probable consequences beyond the Respondent's control.

While the majority's decision here may be consistent with *Manhattan Crowne Plaza*, it remains at odds with the mainstream of Board precedent and the principles it draws on. Accordingly, I dissent.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce our no-solicitation/no-distribution rule selectively and disparately by prohibiting union solicitations and distributions while not enforcing the rule against nonunion solicitations and distributions and by prohibiting employees from speaking about International Union, Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO (the Union) during working time while not prohibiting conversations about nonunion topics during working time.

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

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along with the photographs of the closed plants on its poster and thus the Respondent's poster, unlike the display in *Quamco*, did not raise any question about the future of the plant. I disagree. Given the overall context and tone of the Respondent's speeches and its poster, its message was no less clear and threatening than the message in *Quamco*.

[10] See also *AP Automotive Systems, Inc.,* 333 NLRB 581 (2001) (message conveyed to employees was that, if they chose representation, the union would inevitably make exorbitant demands, the employer would not agree to those demands, a strike would ensue, and the plant would close); *Progressive Supermarkets, Inc.,* 259 NLRB 512 (1981), petition for review granted 696 F.2d 984 (3rd Cir. 1982) (Table) (employer's statement to employees that the only weapon a union had to force agreement was a strike, unlawful in context of other statements, even though employer repeatedly pointed out that the law required only that it bargain in good faith, not that it agree to any union demand.)

WE WILL rescind our unlawful no-solicitation/no-distribution rules.

STANADYNE AUTOMOTIVE CORP.

Terry Craig, Esq., for the General Counsel.
Richard O'Connor Esq., for the Respondent.
Thomas W. Mieklejohn Esq., for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was heard by me in Hartford, Connecticut, on August 15, 16, 17, and 24, 2001. The charge and amended charge were filed on July 24, and December 18, 2000. The complaint was issued by the Regional Director on February 27, 2000 and alleges:

1. That since on or about May 15, 2000, the Respondent orally implemented and enforced a rule prohibiting employees from discussing the Union while on working time.

2. That on or about June 6, 2000, the Respondent by its President and CEO William D. Gurley, solicited employee complaints and grievances and promised increased benefits and other improvements if they rejected the Union. It also is alleged that on the same date, Gurley threatened employees with unspecified reprisals.

3. That on or about June 14, 2000, the Respondent by Gurley, told employees that it would be futile to select the Union as their representative.

4. That on or about June 21, 2000, the Respondent by Gurley, threatened employees with plant closure and the loss of employment if they selected the Union as their representative.

5. That on or about June 21, 2000, the Respondent by Arthur S. Caruso, threatened employees with plant closure, told employees that strikes would be inevitable and threatened that employees would lose their jobs in the event of a strike.

6. That on or about June 21, 2000, the Respondent by the use of posters, threatened employees with plant closure.

7. That on or about July 12, 2000, the Respondent increased its employees' monthly pension benefits.

Based on the record as a whole including my observation of the demeanor of the witnesses and after considering the briefs filed,[1] I hereby make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The parties agree and I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

A. Background

The Company is a privately held corporation engaged in the manufacture of engine parts for the automotive industry. It has manufacturing facilities located in various cities in the United States as well as in Italy and Brazil. Its headquarters are located in Windsor, Connecticut, where it employees about 650 production and maintenance employees.[2]

In January 2000, the Union began an organizing campaign at the Company's Windsor facilities.[3] By at least March 2000, the Company was aware of the campaign. This is shown by a memorandum issued by its president, William Gurley, where he urged employees not to sign union cards and stated that the Company had been firmly opposed to unionization at Windsor.[4]

On May 15, 2000, the Union filed a petition for an election in Case 34–RC–1824. On the same day, members of a union organizing committee made an oral demand for recognition that was rejected. On May 25, 2000, the parties entered into a stipulated election agreement pursuant to which an election was held on June 29, 2000. The results were that 412 votes were cast against representation and 219 votes were cast for the Union.

B. Alleged No-Solicitation Rule

Before the petition was filed, there was no rule prohibiting employees from talking at their workstations and during worktime about various issues including politics etc. Indeed, the Company asserts that it never enacted any rule prohibiting or even limiting employees from talking about the union campaign. It asserts that it never promulgated such a rule after the petition was filed or at any other time.

Nevertheless, several employees credibly testified that after the petition was filed, their supervisors told them individually and in groups that they could not talk about the Union or solicit union support on company or working time. Vanessa Burrell testified that her supervisor, Brendon Good, told about 21 employees in a production meeting that while on company time, they could not talk about the Union or give out flyers. Richard Appiah testified that his supervisor, Jim Shea, told him that he couldn't talk about union activities during work hours. Christopher Trancoso and Marge Royer testified that they were told by Supervisor Gary Beresford that they shouldn't be talking about the Union during working hours because they could get fired. Royer further testified that on one occasion, Beresford came over to her saying that he heard that she was talking union during working hours and that he didn't want to see her get in any trouble. Trancoso also testified that Supervisor Russ Otten, on one occasion, told a group of employees that they could not talk about the Union during working time because it was not right and they could get into a lot of trouble.

[1] Subsequent to the close of the hearing, the Charging Party offered into evidence a copy of the speech given by the Respondent on June 21, 2000. As the parties stipulated to the receipt of this document, with handwritten notations, I shall receive it as CP Exh. 1.

[2] There is no dispute that the following persons are either supervisors and/or agents of the Respondent. William Gurley is its President and chief executive officer. Arthur Caruso was its vice president and general manager. Ron Binkus was the operations manager of the pepc division. Rich Laurie is the director of employee benefits. Robert Mass was the vice president of human resources. Phil Ricci was the manager of human resources. Mike Boyer is the chief financial officer. Bill Kelly is the vice president and general manager of the fuel pumps division. Gary Bersford, Shane Good, John Johnson, AND Russ Perrier were supervisors. Brian Holmes was stipulated to be an agent.

[3] In Windsor there are two buildings. These are called the main building and the "PEPC" building.

[4] There had been at least two other union attempts to organize the employees at Windsor.

Respondent's witnesses testified that its supervisors were given instructions by management and by legal counsel regarding what they could or could not say to employees. With respect to solicitation, the Respondent asserts that supervisors were told to instruct employees that they could talk about the Union before and after work and during breaktimes. The Respondent asserts that the instructions did not include any direction that employees could not talk about union activities or solicit for union support during working hours or on company premises. But if you tell a group of supervisors and managers what employees can do with respect to solicitation, it would not be surprising to me that intelligent people would infer from those instructions what employees could not do. So if one is told that the rule is that employees can only solicit during times when they are on breaks or off duty, a reasonably intelligent person should conclude that solicitation at all other times is prohibited.

Given my belief that the employees who testified about this subject were credible, I conclude that during the campaign period, substantial numbers of employees were told that although they could solicit for the Union during off hours and breaktimes, they also were told the obverse; that they could not do so during working hours. Moreover, I credit the testimony of those witnesses who testified that they were told that breaching such a rule could get them in trouble or even fired.

There was no prior prohibition against talking amongst employees about various issues while at work. Further, the above described prohibitions were told to employees only after the petition for election was filed and employees were not told that the restriction on talking about the Union during working time was also applicable to other topics or issues. Further, the evidence was that such union talk during the campaign did not affect or interfere with production. The fact that no employee was discharged or disciplined for breaching the solicitation instructions is not material, in my opinion, inasmuch as the credible evidence establishes that at least some employees were told that they could be fired or get in trouble for talking about the Union during working time.

Had the employer promulgated and enforced a rule prohibiting solicitation during working time, and enforced that rule in a nondiscriminatory manner, such a rule would be presumptively valid. *Our Way*, 268 NLRB 394 (l983); *Provincial House Total Living Center*, 287 NLRB 158 fn. 2 (l987), (employer did not violate the Act when it banned solicitation or distribution during "work time" rather than "work hours."

Nor does the fact, standing by itself, that an employer promulgated an otherwise valid no-solicitation rule after a union starts to organize, mean that the employer has violated the Act. *Hawkins-Hawkins Co*., 289 NLRB 1423, 1435 (l988); *Clothing & Textile Workers v. NLRB,* 776 F.2d 365 (D.C. Dir. l985); Cf. *Cadiz Convalescent Center* 258 NLRB 559 (l981), where, during a union campaign the employer replaced an invalid rule with a rule that was presumptively valid. On the other hand, where the evidence shows that the promulgation of a no-solicitation rule is motivated by an intention to impede a union's organizing drive; it may be held to be unlawful. *Bluebonnet Express,* 271 NLRB 433 fn. 3 (1984). And an employer would violate the Act if the evidence shows that a presumptively valid no-solicitation rule is directed *only* against union solicitations. *Southwest Gas Corp.,* 283 NLRB 543, 546 (l987). By the same token, enforcement, or threatened enforcement of a presumptively valid rule would violate the law if it is applied in a discriminatory fashion. *ITT Industries*, 331 NLRB 4 (2000); *Marathon Letourneau Co., v. NLRB*, 699 F.2d 248 (5th Cir. l983).

In my opinion, the no-solicitation instructions involved in this case, limited as they were to union solicitations only, and first given after the Union began its organizing campaign, were discriminatorily motivated. In this regard, the evidence does not show that they were consistent with any prior practice or justified by any contemporaneous legitimate business consideration. Further, the evidence indicates that all other talk within the workplace and during working hours was permitted as it had been in the past; that the only type of discussion that some employees were told was barred, was talk about the union campaign. Accordingly, as these no-solicitation instructions were, in some cases, also accompanied by threats of disciplinary action, it is my opinion that the Respondent has violated Section 8(a)(1) of the Act.

C. The June 6, 2000 Speeches

1. Alleged solicitation of grievances

During the election campaign, the Employer through Gurley and others, gave three speeches to assembled employees. (On June 6, 14, and 21, 2000). These speeches were written down and each person who addressed an audience pretty much stuck to the script. The first was on June 6, 2000, and the General Counsel contends that in this speech, Gurley solicited a grievance and implicitly promised to grant it. In pertinent part, Gurley stated:

> Another part of the bond between us is our benefits. Our benefits remain quite good, still very competitive with area companies. Over the last 14 years, like our customer expectations and our manufacturing processes, insurance has changed. In the "old days", employers, like Stanadyne, paid the full cost of medical insurance. That day has come and gone. In today's competitive marketplace, almost every employer shares the cost of insurance with its employees. I am shocked at what I am now hearing from you about this issue. There is no doubt that the changes this year to prescription co-pay are a disaster.
>
> In particular, stories are circulating about employees going without medication because of the increased cost of the prescription drug co-pay amounts. I certainly take responsibility in the sense that I directed our people to look into alternative packages. Somewhere along the line, we "missed the boat." It was not our intention to have the prescription drug plans turn out the way they have. This is broken and needs to be fixed. Unfortunately, the law prohibits making any changes during the election. But rest assured that I am now well aware of the issue. In the meantime, Rich Lurie is making himself readily available for anyone who has insurance issues. Many serious situations can be dealt with by better understanding our current plans.

The Respondent points out that at an earlier part of the same speech, Gurley explicitly stated that under the law he could make no promises, no statements that could be construed as a promise, and that the company, "cannot make changes to any of our policies or procedures."

A little background is in order. The Company, as part of its benefit program, negotiates each year, with a number of health insurance providers and arranges that certain health insurance benefits will be made available to its employees. Most of the employees have selected ConnectiCare as their insurance carrier.

As part of the package made available to employers, insurance companies normally set up a set of benefits which may include prescription drugs. These are offered at a negotiated price to a company and its employees. The carrier may alter their benefit packages from year to year and this is generally not a matter which is determined by the employer that decides to utilize a carrier for its employees. Once a plan is bought, it is fixed for the following year.

For the year 2000, ConnectiCare made a change in its prescription drug plan which was designed to strongly induce participants to utilize generics. Under the new plan, if a doctor prescribed a branded medication that was also in generic form, the employee participant had to use the generic or pay the difference between the price of the nongeneric and the generic form of the drug. By January 2000, the Company was aware that some employees had been affected by the change and were not happy.[5]

The speech given by Gurley on June 6, 2000, acknowledges the change in the prescription drug benefit and its affect on some employees. But it is clear to me that he was not offering to change the benefits that were established by the insurance company and which could not be changed at this time by Stanadyne. Therefore it is my conclusion that there was no promise attached to this statement. In telling employees to talk to Mr. Lurie if they had any issues, Gurley did not, in my opinion, indicate or promise that the Company would either change the insurance company's benefit or that it would reimburse employees the difference between what they paid and what they were reimbursed.

In my opinion the evidence does not establish that the Respondent unlawfully solicited grievances. Therefore, I recommend that this allegation of the complaint be dismissed.

2. Alleged threat of reprisal

At the end of the June 6, 2000 speech, Gurley made the following statement:

> Second, it has come to my attention that some union supporters, not all, but some, are harassing fellow employees. You can disagree with the Company position; you can be for the Union. You can be for anything you want to, but no one should be harassed. Harassment of any type is not tolerated by this company and will be dealt with.

This is a broadly worded statement which does not define what the Company meant by harassment. As such, it could mean any kind of solicitation from casual to persistent or anywhere in between. Since employee solicitations both for *and* against union representation, unaccompanied by threats or other unlawful actions, constitutes protected concerted activity within the meaning of Section 7 of the Act, it would be reasonable for employees to fear, from the statement, that such protected activity would not be tolerated. Further, a statement that, "harassment of any type is not tolerated," can only be construed by employees as meaning that occurrences which the Company defines as harassment, will be dealt with by some sort of disciplinary means.

Accordingly, I agree with the General Counsel that this statement is a threat of reprisal and violates Section 8(a)(1) of the Act. See *J. H. Block & Co*., 247 NLRB 262 (1980).

D. The June 21 Meetings

The Respondent held a series of meetings on June 21, 2000, this being 8 days before the election. Each meeting was addressed by Gurley who also introduced Art Caruso and Ron Binkus. They each made remarks in accordance with a prepared text. Gurley opened the meetings by stating, in substance, that selecting a union did not guarantee an improvement in wages or benefits; that any changes would be the result of bargaining and that in the event that the parties could not reach agreement, the Union's only options were to accept the Company's offer or to go on strike. At this point, Gurley introduced Art Caruso and Ron Binkus, whom he described as long term employees who would describe their experiences at two of the Company's other plants.

Caruso talked almost exclusively about strikes and the potential consequences of strikes. Although stating that strikes were not inevitable, Caruso clearly emphasized the financial impact of a strike on striking employees. Taken as a whole, there is no question but that his remarks, to the ear of a reasonable listener, was to emphasize that with the UAW, there was a high likelihood that there would be a strike at Stanadyne if the employees voted to have the Union represent them.

In substance, Caruso made the following comments. First, that all pay would stop immediately if employees went out on strike. Second, that in Connecticut, an employee who is on strike can't collect unemployment insurance. Third, that even if no pay is received, employees would still have to pay their bills. Fourth, that if a strike is called over wages or other economic issues, the Company has the right to hire permanent replacements to fill the striker's jobs and that when the strike is over there is no guarantee that the strikers would get their jobs back. Fifth, that in the event of a strike, the Company can stop making payments to the striker's medical and health insurance plans. Sixth, that strikes are very expensive to employees. Seventh, that, "although strikes are not inevitable, everyone knows that where unions exist, strikes occur."

Caruso then went on to say that Local 376 has "unfortunately, been involved in a number of strikes, some of which have lasted many months and, in some cases, several years. Caruso stated that, "there are very few local unions who are more strike happy in Connecticut than the UAW Local 376."

[5] Well after the election, the Company negotiated with ConnectiCare and secured a plan that corrected the prescription drug issue.

He mentioned, as an example, that in the 1980s, that Local 376 called a strike at a company called Emhart located in Connecticut which lasted for 6 months and when it ended with the Union capitulating to that Company's offer, there were 400 strikers who did not get their jobs back immediately because Emhart had subcontracted out much of the work. Acknowledging that most of the strikers ultimately returned to work, Caruso stated that they paid a high price and suffered substantial losses for which they got nothing in return.

Caruso also spoke of two other strikes in Connecticut, one of which involved another local of the UAW and which lasted for 3 years.

Finally, Caruso described two other situations involving other locals of the UAW, one involving a Stanadyne plant in Bellwood, Illinois, and the other in Elyria, Ohio. As to these, Caruso stated that there were strikes at both plants and that during each strike the plants were closed and the work moved to other locations. In the case of the Bellwood plant, Caruso stated that the work was transferred to three other plants (including the Hartford plant), two of which were nonunion.

After Caruso's remarks, the floor was turned over to Ron Binkus who talked about his experience at the Bellwood plant. Binkus stated that when he started to work at Bellwood he was forced to join UAW Local 69 and was not allowed to do certain jobs because the contract provided no job flexibility. Binkus said that when that Union decided to go on strike, he and others who were not in favor of striking, were intimidated into voting for a strike when the Union held a voice vote at the Union's hall. He then went on to assert that every 3 years, "there would be intimidation, sabotage and violence and that employees who worked overtime were threatened by other hourly workers and have their tires cut." Binkus described two incidents, one where a bomb was discovered in the Bellwood parking lot, and the second where he asserted that a strike led to the death of a guard whom he asserted was struck on the head with a blunt instrument during an altercation with four union employees. (However, Binkus had no direct knowledge of the second incident). In his concluding remarks, Binkus stated; "Violence, threats, intimidation, and a death are not things that happen just on TV or something you read about another Company. They happened at UAW locations at former Stanadyne facilities. Of my 32 years with Stanadyne, the last 10 have been the best, not that the current job is easy, but the environment we are in is so much better. You can keep the environment here union free. Do not place yourself in a violent environment. Vote No."

Binkus, having concluded his remarks, Gurley took a couple of questions and then unveiled a large sign. At the top, the sign read; "These are just a *few* examples of plants where the UAW *used to* represent employees." Under this heading, there are seven photographs of shuttered or dilapidated buildings or empty fields, each picture described as a plant at a particular location with the date of its alleged closing. Across each photograph is written, in large red block letters, the word, "CLOSED." Under the pictures is the statement; "Is this what the UAW calls job security?" At the bottom, the sign says, "VOTE NO!"

This sign, copies of which were prominently hung throughout the plant during the week before the election, was prepared by the Company and approved by Gurley. Gurley testified that he could *not* say that the closing of any of the particular plants shown, had any relationship at all to the fact that employees there were represented by the UAW. In some instances, the dates of the closings were wrong and taken all together, Gurley's testimony shows that any supposed connection between the closing of these plants and their having had union representation was not based on any objective considerations. Moreover, neither Gurley nor any other member of management attempted to explain to the employees the basis for the implication that the factories shown on the sign were closed because their employees were represented by a union.

Despite supposed disclaimers, it seems to me that at least a significant proportion of the Company's employees could reasonably have construed the basic message made by Gurley, Caruso, and Binkus during the June 21 meetings as being: (1) There was a high probability that the selection of Local 376 would result in a strike; (2) that any such strike might be attended by intimidation and violence; (3) that such a strike would harm the employees financially; (4) that the Company would likely transfer work from this plant to other nonunion plants as it had done in the past; and (5) that there was a high probability that the selection of the Union would result in the closing of the Windsor, Connecticut facilities.

In my opinion, the Respondent went well beyond the boundaries of the free speech provisions of Section 8(c), (permissible economic predictions), and crossed the line into the realm of threats of plant closure and job loss. Essentially, I see little distinction between the facts in this case and those in *Quamco, Inc*., 325 NLRB 222 (1997), where the Board held that similar signs violated Section 8(a)(1) of the Act. See also *Laser Tool Inc*., 320 NLRB 105, 111 (1995).

E. Announcement of Improved Pension Benefits

The Respondent has a defined benefit pension plan. Like wages and other benefits, changes in the amount of the Company's pension benefit are made from time to time. As a rule, wage and other benefits are reviewed on a yearly basis and are based on an industrial survey that is conducted every other year and which contains information regarding the types of wages and benefits maintained by various different categories of Connecticut employers.

In the past, wage changes have occurred every year at Stanadyne. But this has not been the case for the pension benefits.

On March 10, 2000, the employer put out a bulletin (called Shoptalk), which sought to answer certain claims allegedly made by union supporters. In response to rumor #3, to the effect that the Company has frozen pensions for all current employees and eliminated them for future employees, the Company stated; "Currently the Company provides a pension at $19.00 per month, per year of service for all vested credited service. This valuable benefit is available to all present and future employees."

In June 2000, the Employer announced to the employees, about 1 or 2 weeks before the election, that the "pension allowance of $19.00 per month per year of credited service will in-

crease by $2.00 (10.5%), to $21.00 per month per year of credited service for future retirees."

The Respondent asserted that the increases in the pension benefit had been planned back in 1996, when it decided to increase the benefits over a gradual multiyear basis until it reached a level equal to the highest level paid by other Connecticut employers. The evidence showed, however, that this intention was never memorialized in any kind of memorandum and was never revealed to any employees. Further, the evidence shows that the Company did not determine, in 1996 or thereafter, when or the amounts, if any, of pension increases to be made in any given year.

The pension plan was created in 1956 and the benefit at that time was $2.25 per month per year of credited service. Increases to that benefit were made intermittently in the first week of January or the first week of July in various years from 1959 to 1989. In 1989, the benefit was increased from $14 to $15.[6] As to the asserted "plan" of 1996 to increase the benefit, the evidence, (in R Exh. 16), shows that on January 1, 1997, the benefit was increased to $18 (20 percent); that on January 1, 1998, there was no increase; that on July 1, 1999, there was an increase to $19 (5.6 percent); and that on July 1, 2000, there was an increase to $21 (10.5 percent).

An employer which grants benefits while an election petition is pending, will be held to violate the Act unless it meets its burden of proof by showing that the increases either had been planned prior to the Union's advent on the scene or that they were part of some established past practice. *NLRB v. Exchange Parts Co*., 375 U.S. 405 (1963); *Baltimore Catering Co*. 148 NLRB 970 (l964). In *Mountaineer Petroleum*, 301 NLRB 801 (1991), the Board stated:

> The validity of wage increases or other benefits during the pendency of representation petitions turns upon whether they are granted "for the purpose of inducing employees to vote against the union." … Under settled Board policy, a grant or promise of benefits during the critical preelection period will be considered unlawful unless the employer comes forward with an explanation, other than the pending election, for the timing of such action.

Further, where the announcement of a benefit is timed so as to influence the outcome of an election, the Board may find a violation of the Act even where the benefit had previously been planned. In *NLRB v. Pandel-Bradford*, 520 F.2d 275 (lst Cir. l975), the Court stated:

> The Board has long required employers to justify the timing of benefits conferred while an election is actually pending. Justifying the timing is different from merely justifying the benefits generally. Wage increases and associated benefits may be well warranted for business reasons; still the Board is under no duty to permit them to be husbanded until right before an election and sprung on the employees in a manner calculated to influence the employees' choice.

There may have been some type of plan made in 1996, to incrementally raise pension benefits. But it is clear to me, and I do not believe any assertion to the contrary, that the Respondent, in 1996, did not intend or even contemplate that an increase of $2 or any increase at all, would be made on July 1, 2000. Nor has the Company shown, by its past practice from before or after 1996 that the July 1, 2000 increase was part of a previously established pattern.[7] Therefore, I conclude that the announcement, shortly before the election of the increased pension benefit was undertaken for the purpose of dissuading employees from voting for the Union. As such, I conclude that the Employer violated Section 8(a)(1) of the Act. *Audubon Regional Medical Center*, 331 NLRB 374 fn. 5 (2000).

REMEDY

Having found that the Respondent, Stanadyne Automotive Corp., has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]

[6] Increases were made in 1958, 1959, 1962, 1969, 1971, 1974, 1976, 1978, 1979, 1980, 1981, 1985, 1987, and 1989.

[7] This bulletin is dated July 2000 even though it was distributed in June 2000. The General Counsel asserts that this anomaly shows that the Respondent was aware of the problematic timing of the announcement and hoped that the announcement might go unnoticed. More likely, in my opinion, is that the bulletin was originally intended to be posted in July, after the election, but its timing was moved up so that the announcement could have an impact on the election..