

In the Matter of THE BABCOCK & WILCOX Co. and UNITED STONE AND ALLIED PRODUCTS WORKERS OF AMERICA, CIO

Case Nos. 10-R-1523 and 10-C-1928.—Decided May 13, 1948

Mr. William M. Pate, for the Board.

Thorp, Bostwick, Reed & Armstrong, by *Mr. D. W. Ebbert*, of Pittsburgh, Pa., and *Hull, Willingham, Towill & Norman*, by *Mr. J. J. Willingham*, of Augusta, Ga., for the respondent.

Mr. Sam H. Scott, of Winston-Salem, N. C., for the Union.

DECISION

AND

ORDER

On June 2, 1947, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the respondent had interfered with an election conducted among the respondent's employees by the Board on January 31, 1946, to determine representatives for the purpose of collective bargaining, and he recommended that the election be set aside. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. The respondent's request for oral argument is hereby denied inasmuch as the record, in our opinion, adequately presents the issues and positions of the parties.¹

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and supporting brief, and the entire record in the case, and finds merit in the respondent's exceptions for the reasons hereinafter set forth.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members [Houston, Murdock, and Gray].

We do not agree with the findings of the Trial Examiner that the respondent violated Section 8 (1) of the original Act² (1) by compelling its employees during working hours to attend and listen to Superintendent Claus' speeches; (2) by the aforesaid speeches when considered in the "totality of circumstances"; (3) by certain statements of Superintendent Claus and Foreman Lemar to employee Kettles when viewed in the light of the "circumstances under which they were uttered"; (4) by the conduct of Assistant Foreman Scott considered against the background of the "other conduct of the respondent"; and (5) by the "comprehensiveness" of the respondent's total conduct.

With respect to the "compulsory audience" aspect of the speeches, the Trial Examiner concluded from all the evidence that the notices of the meetings as well as the oral instructions given to the employees concerning these meetings removed the element of choice from the employees and, in effect, compelled them to attend in violation of the Act. In reaching this conclusion, the Trial Examiner relied upon the "compulsory audience" doctrine enunciated in *Matter of Clark Bros. Co., Inc.*³ However, the language of Section 8 (c) of the amended Act, and its legislative history, make it clear that the doctrine of the *Clark Bros.* case no longer exists as a basis for finding unfair labor practices in circumstances such as this record discloses. Even assuming, therefore, without deciding, that the respondent required its employees to attend and listen to the speeches, we conclude that it did not thereby violate the Act.

With reference to the other aspects of the respondent's conduct, we agree with the Trial Examiner that neither the speeches, nor the remarks of Superintendent Claus and Foreman Lemar to Kettles, nor the conduct of Scott, "standing individually," violated the Act. We do not agree with the Trial Examiner, however, that a consideration of the surrounding circumstances in each instance establishes the coercive character of the otherwise unobjectionable conduct. In our opinion no such overriding significance attaches to any of the circumstances relied upon by the Trial Examiner. Although expressive of the respondent's antipathy toward the Union, the conduct herein does not contain any threat of reprisal or force or promise of benefit and is therefore protected by the guaranty of the free speech amendment.⁴

² See Labor-Management Relations Act, 1947, amending the National Labor Relations Act. The provisions of Section 8 (1) of the National Labor Relations Act, which the Trial Examiner herein found were violated, are continued in Section 8 (a) (1) of the Act, as amended.

³ 70 N. L. R. B. 802, enf'd in *N. L. R. B. v. Clark Bros. Co., Inc.*, 163 F. (2d) 373 (C. C. A. 2)

⁴ In *Matter of Merry Brothers Brick and Tile Co.*, 75 N. L. R. B. 136, the Board dismissed a complaint insofar as it alleged that conduct similar to the conduct attributed to Scott herein was violative of the Act.

And for reasons already stated by us in prior decisions, we are also unable to adopt the Trial Examiner's further finding that, "comprehensively," the respondent's total activities violated the Act.⁵

Accordingly, we find, contrary to the Trial Examiner, that the respondent did not interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act. We shall, therefore, dismiss the complaint. Consistent with these rulings, we also find no merit in the Union's objections to the conduct of the election. We shall, therefore, dismiss the petition for investigation and certification of representatives filed by the Union in Case No. 10-R-1523.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the respondent, The Babcock & Wilcox Co., Augusta, Georgia, be, and it hereby is, dismissed.

AND IT IS FURTHER ORDERED that the petition for investigation and certification of representatives filed by United Stone and Allied Products Workers of America, CIO, in Case No. 10-R-1523 be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. William M. Pate, for the Board.

Mr. D. W. Ebbert, of Pittsburgh, Pa., and *Mr. J. J. Willingham*, of Augusta, Ga., for the Respondent.

Mr. Samuel H. Scott, of Winston-Salem, N. C., for the Union.

STATEMENT OF THE CASE

On June 11, 1945, United Stone and Allied Products Workers of America, herein called the Union, claiming to represent employees of The Babcock & Wilcox Co., herein called the Respondent, filed with the Regional Director for the Tenth Region of the National Labor Relations Board, herein called the Board, a petition for investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Following a hearing on said matter on August 16, 1945, the Board on December 29, 1945, issued its Decision and Direction of Election.

Pursuant thereto, an election was held on January 31, 1946, which the Union lost.¹ Thereafter, on February 4, 1946, the Union filed objections to the conduct and results of the election, and on July 10, 1946, the Acting Regional Director for the Tenth Region issued his report on objections, recommending that the

⁵ *Matter of Volney S. Anderson and Mildred C. Anderson, d/b/a Pacific Moulded Products Company*, 76 N. L. R. B. 1140; *Matter of The Bailey Company*, 75 N. L. R. B. 941.

¹ The tally of ballots showed that of 461 eligible voters 175 cast valid ballots for, and 276 against, the Union.

Board direct a hearing on the objections. The Respondent on July 22, 1946, filed timely exceptions to the said report.

Meanwhile, on April 26, 1946, the Union filed a charge against the Respondent, alleging violation of Section 8 (1) of the Act. On January 16, 1947, the Board ordered a hearing to be held on the objections and consolidated the two cases.

Upon the aforesaid charge, the Board, by its said Regional Director, issued its complaint dated February 19, 1947, against the Respondent, alleging that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1) of the Act. Copies of the complaint and notice of hearing on the consolidated cases were duly served on the Respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that the Respondent from about January 9, 1946, to the date of the complaint had disparaged and expressed disapproval of the Union and had urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of, or remaining members of, the Union, and from voting for the Union in a Board-conducted election.² The Respondent's answer, filed on March 21, 1947, denied the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing on the consolidated cases was held in Augusta, Georgia, on April 9, 1947, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner.

The Board and the Respondent were represented by counsel and the Union by a representative. All were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence bearing upon the issues. At the close of the hearing, Board's counsel moved to amend the pleadings to conform to the proof in minor details. The motion was granted.³ The parties waived oral argument. The Respondent alone filed a brief with the undersigned.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The Respondent is a New Jersey corporation, maintaining an office and plant at Augusta, Georgia, where it is engaged in the manufacture, sale, and distribution of refractory materials. During the year 1946, the Respondent purchased raw materials, consisting principally of clay, of a value in excess of \$500,000, approximately 65 percent of which was transported to the Augusta plant from points outside the State of Georgia. During the same period, the Respondent sold finished products manufactured at the Augusta plant of a value

² Respondent moved for a bill of particulars. The motion was granted in part and denied in part on March 5, 1947, by George Bokar as duly appointed Trial Examiner. The particulars were furnished on March 10, 1947.

³ The complaint named George Scott as one of the Respondent's supervisors alleged to have engaged in conduct in violation of the Act. In the Bill of Particulars furnished by the Board, George Scott was identified as a sub-foreman or assistant foreman in the manufacturing department. At the hearing, Respondent's counsel identified George Scott as a colored employee without supervisory authority and Fred Lee Scott, a white man, as assistant foreman in the manufacturing department, having charge of the filter press operation on one shift. The undersigned considers the complaint as amended to substitute Fred Lee Scott for George Scott.

in excess of \$1,000,000, of which approximately 90 percent was shipped to points outside the State of Georgia.⁴

The undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Stone and Allied Products Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Respondent.

III THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

1 Statement to individual employees⁵

As previously stated, the Board on December 29, 1945, directed that an election be held for the purpose of determining whether or not the employees of the Respondent in an appropriate unit desired to be represented by the Union. The election was conducted on January 31, 1946.

About December 23, 1945, Foreman L. H. Lemar sent employee Haywood Kettles to the office of Superintendent Carl Claus. There Claus told Kettles that he was very much worried that morning when he went through the plant and a fellow worker of Kettles told him that Kettles had taken his name and turned it in to the Union and that he did not want his name in it. Claus, continuing, said he had asked that man if Kettles had done that on company time and the man replied affirmatively. Superintendent Claus then told Kettles he felt like firing him because Kettles did not have any business taking names on company time.⁶ Kettles said that he did not remember taking any names on company time, although he may have, but that he did remember taking some names during the time allowed for changing clothes.⁷ Claus said he had thought Kettles was his friend, that Kettles was leading "his folks" wrong,⁸ that they did not know what they were doing and did not know anything about unions. He then asked Kettles what he expected to get out of it. Kettles replied that the Union would mean to the employees better working conditions and perhaps eventually better pay. Claus said that the Respondent was paying as much or more than any company in that section. He then told Kettles not to take any more names on company time and that he was not going to discharge him because of the length of time he had been with the Respondent.⁹

⁴ The above findings are based on the allegations of the complaint admitted by the answer. The parties stipulated that the 1947 business was on a basis comparable to that stated above for 1946.

⁵ The Respondent put no witnesses on the stand. The findings herein as to statements made by supervisors to individual employees are based on the undenied and credited testimony of such employees called as witnesses for the Board.

⁶ No rule had been promulgated to prohibit solicitation during working hours.

⁷ At the hearing Kettles remembered that he had procured an application card from an employee in an idle interlude during working hours a few days before this conversation.

⁸ Kettles is a colored man and a pastor at an A. M. E. Zion Church.

⁹ Claus apparently assumed that solicitation during working time, whether or not it interfered with production, was grounds for discharge even though no rule prohibiting such solicitation had been promulgated. But in view of the fact that Claus merely cautioned Kettles against such solicitation in the future, the undersigned does not regard Claus' statement, in isolation, as a violation of the Act.

Kettles testified that he was approached by his foreman, Lemar, many times to engage in conversation about the Union, starting at a time before he became active in the Union. On one such occasion, Lemar showed Kettles "some union records and so forth"¹⁰ and said that he did not think that unions were much for anybody except the union officials. On another occasion Lemar told Kettles that leading a union was a big job, that there was no one to do it but Kettles, and that he would have a bigger job on his shoulders that he could handle. From this, the undersigned infers that the Respondent looked upon Kettles as the leading advocate of the Union.

Between January 9 and 30, Superintendent Claus made four speeches to the employees about the Union during working hours. On January 23 at about 7:50 a. m., Foreman Lemar sent for Kettles by another employee.¹¹ On his way to Lemar's office, Kettles met Lemar, who told him that Superintendent Claus was going to make another speech at 11.15 a. m. and that Lemar would like to have Kettles hear it. Kettles, whose shift ended at 8 a. m. that morning, said that he would try to return for it.¹² Lemar then asked Kettles if he had come over to his side yet. Kettles replied that he had not. Lemar asked Kettles, who was pastor of a church, how he would like it if he (Kettles) asked a sinner to change his ways and he would not change. Kettles answered that, if the sinner would not change, he would "just take it in prayer." Lemar then said that he could not do anything with Kettles and he would turn him over to Superintendent Claus.

About a week before the election of January 31, 1946, Assistant Foreman Fred Scott, having in his hand a slip of paper on which were penciled two squares with "Yes" written on one side and "No" on the other and an "X" in the "No" square, went to employee Willie Curtis and Luvenia Spry individually and, pointing to the "No" square, said that, if he were they, he would just vote "no" and let it go at that.

A day or two after the election, which the Union lost, Superintendent Claus met Kettles outside the plant where the latter was working and where, according to Kettles' credited testimony, the following colloquy took place between Claus and Kettles:

Well, how is everybody feeling?

Well, everybody is feeling all right about the situation, Mr. Claus.

You think everybody is all right?

Yes, sir.

Oh, no, everybody is not all right, because I heard something that Haywood Kettles is saying.

Well, I don't know what that could be, Mr. Claus.

I hear something you were saying. Now, we want to work together. And we want to do all we can for you, but if you won't work with us, we rather not have you.

On another occasion in Claus' office, Claus asked Kettles, if he was not satisfied, why he did not quit. Kettles testified, ". . . I was being worried up so very much, every day or two I was wanted for a conversation with someone

¹⁰ The undersigned infers that this referred to either union circulars or articles about unions.

¹¹ The time of this conversation is fixed by correlating Kettles' testimony, which was indefinite as to the day, with one of the posted announcements indicating that only on January 23 was a speech set for 11.15 a m.

¹² He did not return.

and I was getting so very much tired of it until I almost decided to look for another job sure enough ”¹³

2. The speeches of Superintendent Claus

On January 9, 23, 28, and 30, 1946, Superintendent Claus read prepared speeches to the employees on the first and second shifts.¹⁴ The employees were notified both by posted notice and verbally by supervisors that Superintendent Claus was going to make the speeches. The notice of January 9, posted on the bulletin boards, announced:

All employees, except those needed on the kilns, are asked to come to the Grinding Department at 3.00 o'clock, this afternoon, to hear a short talk by Mr. Claus regarding a matter of importance to all of us.¹⁵

Each speech was delivered on the first shift and again on the second shift. The speeches as read by Superintendent Claus, including the interlineations and elocutionary directions thereon, are here set forth verbatim:

(Talk—1/9/46)

(Slowly—don't hurry)

When I talked to you last, / I promised / that I would talk to you about the CIO Union. / Now that we are going to have a secret election in the plant, / I think it is the right time / to say a few words about this CIO union / that is trying to sign you up. / In a few days / we will know about the time for the election / and I may want to talk to you again, / when the day has been set. /

(Pause)

In the meantime, / I know that many of you / want to hear how Mr. Kohler and I / stand on this election. / From our many years of working together, / you and I, / I feel that I not only have the *right* / but that I owe it to *you* / and that *you want me to tell* you / what we think. / We both feel / that you don't need this CIO union at all / and that we can get along just as we have been, / without any fuss or trouble / and without the CIO in this plant / *If you think differently* / and want the union in here / *you have the right to have it*. / This election is being held / to give you the chance to say *what you want* / and when you vote / you don't need to worry about what the CIO said / or what I have said /

(Slowly)

The *purpose*, / and the *only purpose*, / in this election / is to find out whether *you* / want the CIO to do your talking for you about wages and working conditions, / to pay dues to the union / and to obey their rules and

¹³ Kettles testified that “eventually things became a little calm” There is no contention that Kettles was deprived of any economic benefits given other employees, and there is evidence that, at some time since the election, Kettles, like another employee, was favored by being relieved of rotating shifts to permit him to attend school.

¹⁴ The Respondent operated three shifts—the first from 8 a. m. to 4 p. m., the second from 4 p. m. to midnight, and the third from midnight to 8 a. m.

¹⁵ Another notice posted the same day was identical, with the exception of the time, which was “8 15 o'clock, tonight” The notices for the other speeches, except for time, read “All employees are asked to come to the Grinding Department at 8. 15 p. m., this evening, to hear a short talk about the election which is scheduled to be held on Thursday, January 31 ”

regulations, / or whether you want to continue to do as we have done in the past / —work out our problems together. / This election is *very important*; / much more important than some of you think. / Each one of you / should make up your mind on this question and vote / because it has to do with your job, / your making a living / and your future with this company. / You should all do a *lot* of serious thinking / about what this means to you / and your families, / because *you* and *your families* / will be the people *most affected* by your decision, / not the CIO and not The Babcock & Wilcox Co. /

(Slow)

This plant has been a *pretty good thing* for you and me / By its coming here many of you have profited / A great many of you / have seen it start from almost nothing; / in fact, many of you helped to put up the buildings and new equipment / as the plant grew from year to year. / *Today*, Babcocks is the largest employer of colored help here in Augusta / and we expect that in the future it will continue to grow as it has in the past. / Many of you have bought homes and raised your children on what you earned here. / This plant is like home to you. /

(Pause)

I am proud of what you and I have done here. / *Our records*, since this plant started in Augusta, / is *what has made it possible* for this plant to grow. / Our record / during the war won for us the Army-Navy "E" award / —the only one given in Augusta. / Above all, / *I am proud of the fact* / that we did this without any fuss or trouble / —I'm proud / that we have always been able to work out our mutual troubles together / No matter what happened we could always sit down and talk it out. / We didn't need any strikes like they are having up in Detroit to settle our problems, / nobody has had to take up collections to feed you during any strike. /

(Emphasize)

I want to go over this whole CIO story with you / so that you will get the truth about the whole thing. / *Before I do*, / let me repeat that how you vote / is up to you / If you want the union / vote for it; / if you don't want the union / vote against it. /

You have probably heard of Widenhouse. / Well, he came here in April / to try and get you to sign up in the CIO. / He is not from around here / and I don't know much about him, / but in June he wrote the Company a letter / saying that you wanted him to take care of your wages and working conditions for you / I didn't believe then / and I don't believe now / that he was right, / and I shall not believe it until you / —all of you / —tell me what you really want / That is why we are going to have this election / and you can be sure that you can go into the voting place / and vote just as you want to. / Nobody will ever know how you vote / unless you tell them, / and nobody can make you do that / Your paper ballot will say "yes" and "no." / If you want Widenhouse's union you mark "yes": / if you want to handle things like we have always done. / without the CIO, / you mark your ballot "no" /

(Pause)

You men and women / who have signed pledge cards, / don't let that worry you. / They are not binding / and because you have signed one / doesn't mean that you have to vote for the Union. / The government recognizes that some of you might have signed under pressure, / because someone asked you to / and that is one of the main reasons why the election is secret. / *I am not telling you how to vote,* / *but I am asking you to be sure and vote.* / You can't afford to sit back / and figure that your vote won't make any difference / because it will / If only 20 of you vote / those 20 will decide the whole thing for every single one of you, / and don't forget / that if you don't want the CIO / you have got to go in there / and put it on your ballot. /

(Pause)

Many of you have heard the union side of the story ; / I would like for you to hear mine / and, as you all know, / I am just a worker here like the rest of you. / You hear *a lot of things* about this CIO union business / and because I know that many of you are *confused and worried* / about some of the things that you have heard / I want to give you, / as best I can, / the simple facts. /

(Slowly)

Somebody / may have told you that you had better join this CIO union now / because if you don't / you will lose your job, / or that you *won't get promotions,* / or that you won't be taken care / *That is a lie.* / You do not / and will not have to join the union to work here, / to get ahead, / to have an equal opportunity with anyone else, / no matter how the election goes. / You all know me / and you know this Company, / and you know / that we don't do things that way. / If you don't join the CIO / you will still have a job at this plant. /

You may have heard the story / that one of you told me last week / *Sure,* / I have treated you good, / but what will happen if I am gone? / My answer to that is this: / I have tried to do everything for you that I can, / but I could not have done what was done / unless I was working for a good company, / a company that *really wanted* to do something for its workers.

Maybe you figure / that you might as well pay the CIO union a few dollars / and find out if it can do more for you / than the company *has already done.* / That would be all right / if you were sure that the money you paid would be the last. / It won't be / —it's just the beginning. / In almost all cases / where this particular union has organized the workers of a plant / they have asked that the company deduct / from your wages, / before you get your pay envelope, / any dues / and any fines / or assessments / which you owe to this union. / Under this kind of an arrangement / you will have to pay what you owe every month, / and I mean every month on the line. / Maybe you will have to send \$2.00, or \$3.00 or \$5.00 per month up north to help out the CIO men in Detroit / and elsewhere who are on strike. /

Also, in almost all cases, / unions today ask that the company agree to fire any man who joins the union / and who has later been put out of the union / because he did not do what the union wanted him to do. / It makes no difference, in such a case, / if you are satisfied with your job / and the

company is entirely satisfied with your work. / So think this over carefully— / this is not a social organization. / Don't be fooled / that you can drop this union / as easily as the last one that was started here in 1938 / and folded up completely / after many of you had put in some of your money. /

(Slow)

As I said earlier, / I want to talk plainly to you about this matter. / What can the union give you / that you don't already have? / I have had some experience with unions before I came to Augusta / and since this matter came up, / last spring, / I have done a lot of thinking, / a lot of reading / and a lot of listening / about unions in general, / and this union in particular. / I think / that if you take away all the fancy trimmings / the high sounding words, / a man joins a union in the hope of getting two things: / First, *more money* / and, second, *better working conditions*. /

(Pause)

(Slow)

Let us take the first one /—*More Money*. / *That sounds good*. / All of us want more money / and it is easy to get het up about some person / or some idea / that promises to get us more money. / Remember, though, / it is *easy* to make promises / but when it comes to delivering the goods that is something else again. / Let us look at the Company record / and see what The Babcock & Wilcox Co. *has done* /—not *what* it *promises* to do, / but what it has *actually done* / in this matter of wages. / In the first place, / this company is paying *top wages* in Augusta. / Furthermore, / this is not something that has happened within the last few months, / as some of you may have been told. / You men who have worked here / 5 years or more /—and that means one out of every four of you who are listening to me— / *know* that your wages have averaged better / than those of your neighbors and your friends. / *You know* that the Company, / without any union, / has increased wages *many times in the past*. / You know / that we have been first with vacation pay. / You know / that when wages were frozen / we went to the War Labor Board four times, / during the war, / to get increases for you / and there wasn't any CIO union around to urge us. /

There are several things to consider / when you talk about more money. / The prices of most of the brick / that we make / are still the same / as they were before the war. / The cost of raw materials, / such as clay and Oil, / used in making these brick has gone up; / and you all know / what has happened to wages. / *Today* they are more than double / what they were before the war. / As a result of these things, / some of the brick we make— / the Juniors and K-28's especially, / are actually costing us more money / than we are selling them for. /

(Slowly)

Now, if you were running a business / under such conditions, / paying a *good wage*, / as a matter of fact *paying top wages in town*, / and a union came along / and told you that you had to pay higher wages, / what would your answer be? / Something like—Go jump in the lake / I suspect. / I know that is what I would say, / except a whole lot stronger. / Then what hap-

pens? / The union would either have to take "no" for an answer, / or pull a strike. / If that happens, everybody loses, / but most of all / you people and your families will lose / The union and the company / can stand something like that a whole lot better / and a lot longer / than you can. / So when you hear promises about more money, / think what the company has done in the past / and remember that you are getting top pay in Augusta right now, / without any union / and without having to pay money to anyone else to do your talking for you. / The old proverb / —*A bird in the hand / is worth two in the bush* / —is still a pretty good rule to follow. /

(Pause)

I have heard some talk / that you have been worried about short weeks / and short pays. / If these strikes in the north keep up / we will all be on short pay, / but if they leave us alone / we at Babcock & Wilcox / can be sure of 48 hours a week / for a long time. /

While I am talking about pay, / I want to say a word to the women / who are working here. / You may have been told / that if the union comes in / you will have a better chance of keeping your jobs. / Don't be fooled by that kind of talk. / The union cannot make jobs for anyone / except possibly the union organizers. / *Business makes jobs / Business pays wages— / not the unions.* / This Company, / because it *knows* the business, / because it has spent money / and time / training you to do the jobs you are now doing, / is your best bet for steady work /

(Pause)

Now, let us consider the second point / —*Better Working Conditions* / Here, again, / let us look at the record / Take any department in the plant / and compare the work today / with what you did in that same department eight years ago. / It would take an hour / to cover all of the improvements / that have been made, / so I am just going to mention a few. / Some of you may have worked on the old plaster line / when we had to wash the molds by hand, / outside of the building, / rain or shine, / night or day. / Some of you / worked on the old spinning machines / for molding insulators. / The mix was rolled in buggies. / The men who worked on this machine / had to wear rubber boots and rubber aprons. / Still they got wet and sloppy. / You have seen the gasoline lift trucks brought in. / They have done away with a lot of back-breaking work. / The electric transfer cars have done the same thing. / Here, in the Grinding Dept, / you have seen the amount of work / and money / the Company has spent in keeping down the dust; / in fact, some of you have even thought me entirely too fussy on that subject. /

Let's take some of the *other things* / the Company has done / to make your job more pleasant. / The new washrooms and lavatories are a good example. / There are plans for more of these in the future. / The lunchroom was added for your convenience. / *All these things are facts, / They are here,* / they are not simply promises, / but they show you *fair-minded people,* / that the Company has your interest at heart; / that you don't need a union / to get these things for you. / The CIO / has not been needed to make these improvements in the past / and it is not needed to make more improvements in the future. /

While I am talking about working conditions / I should mention the many personal favors / the Company is doing to try and help you outside of the plant. / For many years / we have had a man / whom you all know / and who understands your problems /—Mr. Carmichael, /—his main job is to help you / when you are in need / When some of you have been a little indiscreet / and landed in jail / he has seen to it that you were released. /

When you have been sick / and in trouble / he has gone to see you / to see that you had a doctor, / to loan you money to tide you over. / We don't do much talking about these things, / but it may surprise you to know that this company has loaned over \$50,000 00 / in the past few years / to you to tide you over such periods, / and this money has been loaned without interest. / *That is the record / and those are the facts* / and you have these things now, / without having to join a union, / to pay dues to a union, / to abide by union rules. /

When you consider all these things, / do you think / that someone can get something for you / *that you cannot have* for the asking, / when the request is reasonable? / When it comes to pay, / hours and working conditions, / I don't think the CIO union / can help you one bit. / In the long run, / it may mean trouble for you, / just like it has meant trouble / for the people in Detroit / who have already lost six weeks' pay / to suit somebody in the CIO. / We don't want / what is happening in Detroit / to happen here / and I don't think you want it either. /

(Emphasize)

Still, / if you decide you want the CIO / *it is your business / and remember,* / no matter how you vote / you are still Babcock & Wilcox employees / and I'm sure still going to do my best to look after you, / but be sure that you do vote / and be sure that you make up your mind, / one way or the other, / on this question. / If you have any further questions / about this matter talk / to your gang bosses, / to your foremen / or come to me— / individually or in groups. / *We want you have all the facts,* / not just rumors such as have been going around / since it started, last April. / I am not worried about this thing / because I know / that most of you / have the good, ordinary common sense / to think this thing out / and to vote to keep the CIO out, / when the election comes /

Talk—1/23/46

(Slowly)

Two weeks have passed / since I talked to you / about the CIO Union / that is trying to sign you up. / During that time / many of you have gone to your foremen / and have come to me / with questions about this CIO business. / I am glad / that *you* are *asking* these questions. / It shows / that you here / are intelligent / and you make up *your* minds / from the facts; / that you are not fooled / by a lot of rumors, / wild statements / and big promises / that everyone *knows* cannot possibly be kept. / It shows / that you are doing a lot of serious thinking / and that you realize / how important the voting, / Thursday week, / is to *you* and to *your* families. / Best of all, / the questions / have brought the matter out into the open / where we can all talk about it. /

This election / will give *you* / the chance to say what *you* want / and I am
not trying to tell you / how you should vote. / When you vote, / I won't
be in there / and Widenhouse won't be in there. / *You can vote just like you
want to.* /

(Slowly)

All of us / have a good thing / here with this Company. / We have good
jobs, / top pay / and vacation pay, / without any union. / We have steady
work / and good working conditions. / More than that, / we are working
for a Company / that has your interest at heart, that understands your prob-
lems; / a Company / that has loaned you money / when you were in trouble /
and needed help. / You know / from what the Company / *has done and is
doing* / that there isn't another place in Augusta / where you can get what
you're getting here. / You have these things *now* / —without any union, /
without paying union dues, / without following union rules. / We have
these things / because we have worked together, / all of us, / to make this
plant what it is today. / I never believed / and I don't think you believe /
that it is worthwhile / to swap something that you have in your hands now /
for a pig in a bag. /

Because you know this / and because you have the good, / ordinary, /
common sense / to think this thing out, / I know / that most of you / are
going to decide that it is better to keep Widenhouse's union out of this
plant. / I meant what I said two weeks ago / and I mean it even
more today. / The CIO cannot help you here. / In the long run, / it may
mean trouble for you, / just like it has meant trouble / for the people in
Detroit, in New York, and in other places. /

(Slow)

There are still a few of you / who are leaning toward the Union / and it
is to you / that I am talking especially, today. / Some few of you / are
still dazzled by the rosy promises, / and confused by some of the things
that you may have heard. / To try and help you, / I want to give you some
more facts. / Remember, / it is easy to *make* promises, / but it is something
else to *keep* those promises, / especially if the man that made them / goes
away to try and sign up workers some place else. /

Have you ever thought of this point? / The CIO is now trying to organize
workers / they never bothered with before. / You all know / that when the
war ended / many of the plants making airplanes and tanks, / and guns and
ships / shut down. / The CIO unions / lost many dues-paying members in
those plants. / Just ask yourselves this question: / Who pays Widenhouse
and Scott, / and the other CIO bosses? / Don't you think / that the people
who are running the Union / are thinking about the thousand dollars a
month / that they hope to collect in dues from you people? / Is it any
wonder, then, / that now that they have lost so many members / that they
are looking around for new prospects? / It is not your interest, / it is your
pocketbook they are after, / so they can hold on to their jobs / and make
their living / from *your money* that *you* earn. /

With all the trouble / that has been going on in Detroit / and New York, /
and other places where the CIO is, / it should not be hard to decide / which
way to vote. / Who is getting hurt in those places? / The Companies? /

Yes. / The Unions? / Yes / *But most all,* / *the workers and* their families are getting hurt. Up in Detroit / they have been out for 10 weeks. / When that strike is settled, / and I hope it is settled soon, / even though the men get a raise, / it is going to take them / at least 2 years to get back the pay that they lost. / By the time they catch up / they will probably be caught again, / if they listen to the CIO bosses. /

But we don't have to go all the way to Detroit / to see who loses most in a strike. / Right here in our own back yard / you have seen what happened when the Georgia & Florida Railroad was out / Talk to any of those men / and they will tell you / it is going to take them / 3 years to get back the money they lost. / And remember, / none of those people / joined a union with the idea / that they would have to strike / And remember, also, / that in these strikes / it isn't only the Union worker that gets hurt. / All the workers, / whether they belong to the union or not, / are unable to get into the plant. / *That is why it is so important that all of you make up your minds / and vote next Thursday.*

I know / that you people / are not going to place yourselves / and your families / under that kind of a union set-up; / that you don't want to use up your savings / and owe the rent / and owe the grocer, / and when its all over / find out that it will take you 2 years to get even with the board. /

You may have heard some of the CIO men tell you / that the Union is spreading / and that all plants around here / are going to be with the CIO. / Let me give you some facts: / Last month, / in one of the plants / of one of the biggest building brick companies in Tennessee, / the workers voted 3 to 1 against the CIO. / Two weeks ago, / elections were held at 2 brick plants up in Cheraw, S. C., / and among employees like yourselves. / Both of these elections, / were dead against the Union / and in one plant, / where 58 men voted, / 57 voted against the Union / and only 1 voted for it. / In the other plant, / only 4 men voted for the union. / Those men knew / that the promises made to them / by the Union could not be carried out. / And the man / who tried to organize those two plants at Cheraw / was Scott, / the same man who is working with Widenhouse here. /

(Pause)

Some few of you / are still asking your foremen / whether you must join this Union. / I want to repeat what I said two weeks ago—/ No matter how the election goes, / you do not / and will not have to join the Union to work here, / to get ahead, / or to hold on to your job. /

Another question which many of you are asking yourselves is: / What is the Company going to do for us in the future? / All of us know that saying /—"*Judge the future by the past*"; / and that is all / that I would ask you to do. / You have seen this Company raise wages many times; / you know that we are paying top wages; / that we are first with vacation pay; / that we have always paid good wages. / And we didn't need any union to get all this. / You have seen the Company improve working conditions / to make your jobs / easier and more pleasant. / The Company has loaned money / to many of you to tide you over during periods of trouble. / All of these things have been done without any Union, / without having Union dues taken out of your wages / before you get your pay envelope. / That is the record / and those are the facts / and from them / you can best judge what will happen in the future. /

Babcocks has always kept pace with the times / and will continue to do so /
 Whatever happens / all over the country, / you can be sure that we will do
 the same here. / If we do a good job, / a good day's work, / and if we work
 together, / and if you help the Company, / you can be sure that the Company
 will do as it has always done / —pay good wages / and continue to make
 your jobs / easier and more pleasant./

(Slowly)

(Pause)

While most of you are against this Union / you should all remember / that
 in order to keep it out of here / you have got to go to the voting place / and
 vote against the CIO. / We have tried to give you the facts / so that you
 can make up your mind from those facts / and not from a lot of rosy
 promises. / When you separate the chaff from the wheat, / I have no doubt
 as to the result of the election / and that it will be against the Union, by a
 big majority. /

Talk 1/28

(Slow)

During the past week, / Widenhouse has called for help / and the Union /
 has sent in more organizers. / It is making its last desperate effort / to
 fool you men and women / to vote for the union. / From the stand that
you people are taking, / they know / that they must turn on the heat / to
 win. / So, / they've made a lot of wild statements / The closer the voting
 day / the wilder the statements seem to get. / They've told deliberate lies /
 to try and deceive you; / they've made threats / and have done a lot of mud-
 slinging. / Why? / Because when the going gets rough — / that is all
 that they know how to do. / They lost two elections up at Cheraw / and they
 know / that they are licked here / That's why they are so desperately / try-
 ing to stir up trouble and hate. /

(Pause)

I know that they are not fooling many of you / with that kind of talk, /
 but so that we may all keep the record straight, / I want to answer some
 of those wild statements. / I want to answer them plainly / and straight
 from the shoulder. /

The union would have you believe / that the Company is afraid / that a
 union / may force us to do more for you / than we are now doing. / They
 claim that is the reason / why we are fighting to keep it out. / That is
 a lie. / The union is the one doing the fighting; / making the threats; /
 doing the mud-slinging / It is the union that started all this; / not the
 Company / and not you people. / You did not ask them to come, / they were
 sent down from the North. / Most of you, today, / wish that they had left
 you and us alone. /

We owe it to you, though, / to tell you what we think. / We believe / that
 the reason the union is after you / is to collect money from you / for some-
 thing that you already have; / for something that you can get anyway— /
 without any union / We know / and we promise you / that the union can-
 not force the Company / to do any more than it has done in the past / and
 will do in the future. /

(Slow)

We know, / and you know, / that in trying to use force, / unions have shut plants down. / We don't want to see that happen here, / because of some men / who dont even work here / and who would not lose anything / while you were out on strike. /

(Pause)

We want to keep the unity, / friendship / and cooperation / that we have had here. / The union claims to want the same thing, / but they are already threatening many of you who are opposed to them. / What do you think of that? / Let me tell you /—here and now /—that so long as Babcock & Wilcox operates in Augusta, no union will make good any threat against any of you / You do not and will not have to join any union to work here /

(Pause)

The union would have you believe / that Babcocks came to Augusta / because wages were low here. / You know, / even before I tell you, / that is not true. / It shows that the union organizers / either know nothing about our business, / or have no regard for the truth. You all know / that the main thing we use in making our brick / is kaolin /—the chalk that comes from Hephzidah, / only a few miles from here. / That's why we are here. / The kaolin we need is in Georgia. / This is a sample / of the kind of talk / the union has been handing out. / Can you have any trust in a man / who is either so dumb / about your business, or deliberately hides the facts? /

You may have heard / that the union has guaranteed to get you a raise. / That is another wild statement that they cannot make good. / Who is going to back up that statement? / When Babcocks tells you something / you know you can believe it. / When a union organizer tells you something, / how can you depend on it? / The union does not pay wages /—they collect dues. / We are paying top wages in Augusta now /—we have always paid good wages / and no union can get a raise for you / that the Company will not give you anyway, / without a union. / The CIO hasn't been needed to get you raises in the past / and won't be needed to get you raises in the future. /

(Slow)

Unions do not pay wages, / but by making unreasonable demands / they can / and do / force strikes. / That can happen right here. / If it does, / everybody loses, / but most of all / you people and your families / will lose. / The union and the Company can stand something like that / a whole lot better / and a lot longer / than you can. / That's what is going on in Detroit and Pittsburgh, / and the other places where the CIO is. / Many of those people have lost almost three month's pay. / And what are they getting for it? / They walk up and down in front of closed plants / in the snow / and the cold / and the rain, / and maybe they get a sandwich and a cup of coffee. / Maybe they'll get some more pay / when the CIO gets tired of it / and lets them go back to work. / But it is going to take them two / and maybe three years of hard work / to make up for what they've already lost. /

(Pause)

While I am talking about wages, / let me tell you / that we have checked one of the plants here in Georgia / where this particular union / has organized the workers. / We found that after about two years of paying union dues, / the workers in that plant / are not making as much money as you people here.

The union would have you believe / that the Company is a foreign organization— / that they have no interest in you / or the community in which you live. / *That it is a greedy monster / taking everything and giving nothing. / That, too, is a lie.* / This Company / is the largest and oldest American boiler company. / This plant, / during the past 17 years, / has been a pretty good thing for you. / By its coming here / many of you are better off. / A great many of you / have seen it start from almost nothing; / in fact, many of you helped to put up the buildings and new equipment / as the plant grew from year to year. / Today, Babcocks is the largest employer / of colored help here in Augusta. / Many of you / have bought homes / and raised your children / on what you earned here. /

The Company has contributed many thousands of dollars / to worthwhile community activities / such as the hospital, / Paine College, / the Y. M. and Y. W. C. A. / —both white and colored, / and many others. / It pays a lot of money / in taxes to Richmond County / to support the schools, / the roads / and the local Government. / And yet, / Widenhouse-Scott & Co. / say that we are Public Enemy #1. / Who are they / to say such things? /

The union would have you believe / that your bosses and the officials of this Company are your enemies. / You know that is not true. / You know that men like Mr. Carmichael, / Mr. Happy / and others / who have been here all their lives, have always taken care of you / You know these men / *and what they can / and will do for you,* / but you don't know what the CIO man, can do for you. /

Since the war ended, / the CIO has lost thousands of members / They have to do something now / to get new members, / or else lay off a few union bosses and organizers. / Then maybe they'll have to go to work. / Maybe that's why / you are hearing some of those wild statements and wild promises. /

The nearer we come to the time to vote / the more desperate the union will get / —the more lies they will tell about us / and the more they will promise you. / Don't be fooled by that sort of talk. / Look at the record / of what this Company *has done* / Compare what you have here *now* / with what your friends and neighbors / are getting any place else in Augusta. / Remember, too, / we are still working at war-time pace / and all of us / enjoy many privileges under our present way of doing things. / We don't want you to get hurt / and do something that you will feel sorry for / later on. / Remember, Babcocks owns this plant / —not the union. / Babcocks will continue to run this plant— / not the union / Babcocks will continue to pay good wages / and when raises come / Babcocks will do the same. / To vote against the CIO / vote on the right side of the ballot. /

Talk 1/30/46

(Slow)

Tomorrow is the day to vote. / I've already told you / how I feel / about this CIO business / and I know all of us will be glad when the election is over, / and we can talk about something else. /

There are some points / about the voting tomorrow, / that I want to explain. / The voting will start at 7:00 o'clock in the morning. / so that the men on the midnight shift / will have a chance to vote / before they go home / When you come to work, tomorrow, / go directly to your jobs, / as usual. / You will all be given plenty of time / to vote during working hours. / Some of you / may have to wait until other departments are finished voting, but don't worry about it, we'll tell you when your turn comes / and you will have all the time you want. /

If you are not working tomorrow / you should still come in and vote, / *because this election / means a whole lot to you / and your families.* / It won't take long / and you can come in any time between 7:00 o'clock in the morning / and 7:00 o'clock at night. / When you come in, / go to your foreman first / and he will tell you where to go to vote. /

We have put the voting place / between the Kiln Building and the Handmold Shop / In this voting place / there'll be five men / —four of whom work here / and the other man is the Board man / You tell them your name / and they'll give you a ballot / This ballot they give you / is the only one that counts / —don't try to use any other. / The ballot will look like the ones on signs around here, / but it will be a different color. /

There are two little squares / at the bottom of the ballot. / The square on the left side says "Yes", / —that's the CIO square / The square on the right side / is the "No" square, / and is against the CIO. / If you don't want Widenhouse / and the CIO / you put your cross / in the square on the right side. / If you want the CIO / you put your cross in the square on the left side. / I hope that you all will put your cross / on the right side / and vote "No".

The Board man is there to help you / He doesn't care how you vote; / all he wants / is to see that you have a chance to vote your own way / It doesn't matter how many cards / you may have signed / They don't mean a thing / —the only thing that counts is the way you vote tomorrow. /

(Slow)

A lot of big promises / and terrible threats / have been put out by the union. / The closer the voting day / the wilder they get / They remind me of the story / about the man / who went around promising people / a feather pillow / when all that he had / was a goose egg, / that came from a yard / where there wasn't any gander. / You've got too much sense / to be fooled by such promises / or threats. / When it comes to pay, / you know that Babcock's / pays the wages / —not the CIO / You know / that when Babcock's says it is going to pay good wages / it is going to stand by it, / and when raises come you'll get yours, / without any union. / I tell you, now, / that the Company has no thought of cutting your rate of pay, / as the union would have you believe. /

Most of you / have already made up your minds / and know what you are going to do. / You all know / what your friends over at Merry Brothers / did yesterday. / They told Widenhouse, / by a vote of 190 to 76, / that they didn't want the CIO. / From the stand that you people are taking, / I know / that you are going to tell Widenhouse the same thing / Only let's do it even better / than they did at Merry's / —instead of voting 190 to 76 against the CIO, / make it at least 10 to 1 here. /

Let's all get on the band wagon / We never needed a union before, / and we need it less now. / The men at Merry Brothers / saw that yesterday, / and I know that you feel the same way. /

(Slow)

A few years ago, / the workers at Riverside Mill, / here in town, / tried the CIO / They found / that the union could do them no good, / and forced it out. / You are not going to let Widenhouse, / Scott and the rest of that crew / come between you and us. / It is your turn now; / *when you are called tomorrow, / let your ballots speak for themselves.* /

(Pause)

I'm proud of this Company / and I'm proud of the men and women / who work for Babcock's. / You stand for something in the community. / Let's keep standing for something. / Let's go and keep making this plant / the best plant in Augusta to work in. / We need you / and you need us. /

We'll all know how we came out, / tomorrow night, / and I'm going to thank each of you, / in advance, for voting. / *We hope you know / that you and the Company / will always have the good feeling we have had in the past.* / Let's be right, / and let's vote right. / Check "No" / on the right hand side of the ballot. /

Conclusions

Standing individually, Claus' statements in his speeches to the employees and statements of Claus and Lemar in private conversations with Kettles before the election, though openly anti-Union, contain no language that on the surface exceeds the bounds of free speech. If they constitute a violation of the Act, it is because coercion is to be imputed to them from the circumstances under which they were uttered and which affect their meaning.

In *Matter of Clark Bros. Co., Inc.*,¹⁶ the Board held that compulsory attendance of employees at an anti-union speech by the employer, during working time paid for by the employer, constituted interference, restraint, and coercion within the meaning of the Act. The Respondent, in its brief to the Trial Examiner, argues that the attendance of the employees at Claus' speeches was not compulsory since precatory language was used in the announcements. Each of the announcements stated that "employees are asked to come to the Grinding Department" to hear the speeches. In form this is a request, but it is more than an invitation. For the employees on the shift for which the speech was given, it was a polite command. Had an invitation alone been intended, some indication of option should have been used. There was nothing in the notice of January 9 even

¹⁶ 70 N. L. R. B. 802.

to indicate that the "short talk regarding a matter of importance to all of us" was not one in which Claus intended to discuss some matter of business. If that had been the case, it is not to be expected that the employees would be given any choice in the matter. Furthermore, the exclusion of the kiln tenders suggests that no other employees were to be excused. But if any of the notices should be construed as optional, the directions of supervisors apparently left no choice.¹⁷ While the witnesses who testified to being notified of the speeches by their supervisors testified that the supervisor did not say that they "had to go," the supervisor apparently used language which assumed that they had no choice. Willie Curtis testified that when Assistant Foreman Scott announced the speech, "he told us, says we would knock off at 7:30 and go down in the grinding room and Mr. Claus is going to make a speech." As related by Luvenia Hunt Spry, Scott told them that Superintendent Claus was going to make a speech "and all of us go down and hear him." The undersigned concludes and finds that the employees did not understand that attendance at the speeches was optional. The decision in the *Clark Bros.* case is, therefore, controlling here.

But independently of the compulsory audience aspect of the case, Superintendent Claus' speeches are objectionable when considered in the totality of circumstances. In only one of his speeches, the first, did Claus reassure the employees that his opposition to the Union would result in no change of treatment if they chose the Union as their representative. On subjects of economic welfare, employees are keen to observe subtleties in the expressions of the one who holds the greatest power over their economic destinies.¹⁸ A dropping of such reassurance from the speeches after the first may well have had significance to those acutely conscious of such subtleties. Because of his economic power over employees, an employer should undertake effectively to dispel, so far as feasible, the coercive influence which the employees' consciousness of that power and the employer's expressions of bias combine to create.

Conceding the employer's privilege to express his bias against unions, when he takes advantage of the recognized privilege to work it into a concerted campaign of opposition to the organization of his employees, he stretches it to the point where he assumes the risk of its becoming coercive in character.¹⁹ In

¹⁷ This does not apply to Lemar's statement to Kettles that he would like to have him hear a speech by Claus which was scheduled to be given on a shift after Kettles' shift was through and when Kettles was no longer on company time.

¹⁸ To an employee listening to an anti-union speech by his employer, the language of Claus' second speech—"If we do a good job, a good day's work, and if we work together, *and if you help the Company*, [emphasis added] you can be sure that the Company will do as it has always done—pay good wages and continue to make your jobs easier and more pleasant."—might easily be interpreted to mean that, if the employees wanted to continue to receive benefits, they should do as the Respondent wanted them to do, i. e. vote against the Union.

¹⁹ "The sanctions of the Act are imposed not in punishment of the employer but for the protection of the employees. The employer in this case is as free now as ever to take any side it may choose on this controversial issue. But, certainly, conduct, though evidenced in part by speech, may amount in connection with other circumstances, to coercion within the meaning of the Act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the Act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure in other ways. For 'Slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring that employer's strong displeasure'" *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, at 477.

Peter J. Schweitzer v. N. L. R. B.,²⁰ the Court, in finding some of the employer's language to be non-coercive, stated, "We do not hold that this justifies an organized campaign or a protracted distribution of propaganda." Considering all the evidence in this case, the undersigned believes that the Respondent was using his privilege of fair comment not merely to appeal to the employees' sense of reason but to exert a pressure on them through his position of economic seigniorage. The absence of express threats is not enough to unburden the employees' minds of constraint. Undue influence no less than duress can so overcome the will of a testator that a court may declare it to be not his free will. So here, the undersigned believes, the Respondent's campaign, combining pressure on the leading union advocate with four general speeches during paid-for working hours within a space of 22 days, was designed to coerce all but the more resolute, not so much by the reasonableness of arguments as by giving rise to a realization by the employees that the Respondent was so openly opposed to the Union and so stressed the futility of prospective bargaining that they might as well give in to the Respondent's will and hope for reward for doing so.

The efforts of Superintendent Claus and Foreman Lemar to convert Kettles can hardly be said to be limited to an appeal to reason. Starting with Claus' statement that he had thought Kettles was his friend (implying that advocating the Union was an unfriendly act), through Lemar's analogizing Kettles to a sinner and, when unable to convert him, stating that he would turn Kettles over to Superintendent Claus, and ending with Claus' statement to Kettles that if he could not "work with" the Respondent (obviously referring to Kettles' advocacy of the Union)²¹ the Respondent would rather not have him and with Claus' efforts to get Kettles to quit, pressure was exerted on Kettles not stopping with an appeal to his reason but extending to tormenting his mind. Because he advocated the Union, Kettles was inferentially threatened with being treated as a pariah. If the Respondent could not convert, it intended to prod recalcitrants to quit and it almost succeeded with Kettles.

The conduct of Assistant Foreman Scott in using a piece of scratch paper to show two employees how to vote "No" and in advising them that if he were they he would vote "No," standing in isolation and in view of his minor supervisory authority, might have had little significance. But in view of the other conduct of the Respondent, what might have passed as a personal opinion may well have been taken as a veiled threat backed by authority. Persuasively leading to such an inference is the statement in the first speech of Superintendent Claus. "If you have any further questions about this matter talk to your gang bosses. . . ." Thus Scott's speech was stamped as the Respondent's.

The undersigned concludes and finds that, comprehensively, the conduct of the Respondent interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby interfered with the election of January 31, 1946.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, 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.

²⁰ 144 F. (2d) 520, at 524-5 (App. D. C.)

²¹ See footnote 18, *supra*.

V. THE REMEDY

Since it has been found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, it will be recommended that it cease and desist therefrom and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

Since it has been found that the conduct and statements of the Respondent have so affected the Board-conducted election on January 31, 1946, that it may not have fairly reflected the free will of the Respondent's employees, it will be recommended that the election and result thereof be set aside.

On the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Stone and Allied Products Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the Respondent, The Babcock & Wilcox Co., at Augusta, Georgia, its officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist United Stone and Allied Products Workers of America, C. I. O., or any other labor organization, and to select a bargaining representative of their own choosing.

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

(a) Post at its plant in Augusta, Georgia, copies of the notice attached hereto marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for the Tenth Region (Atlanta, Georgia), shall, after having been signed by the Respondent's representative, be posted by the Respondent, immediately upon receipt thereof, and shall be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted, taking reasonable steps to insure that said notices are not altered, defaced, or covered by any other material;

(b) On receipt of said notices, assemble its employees in the manner in which they were assembled to hear Superintendent Claus' speech and read to such assembled employees the contents of said notice;

(c) Notify the Regional Director for the Tenth Region (Atlanta, Georgia) in writing within ten (10) days from the date of the receipt of this Intermediate Report of what steps the Respondent has taken to comply herewith.

It is also recommended that the election of January 31, 1946, and the result thereof be set aside.

It is further recommended that, unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof: and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203 65. As further provided in said Section 203 39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

JAMES R HEMINGWAY,

Trial Examiner.

Dated June 2, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist UNITED STONE AND ALLIED PRODUCTS WORKERS OF AMERICA, C. I. O., or any other labor organization, and to select a bargaining representative of their own choosing. All our employees are free to become or remain members of this union, or any other labor organization.

THE BABCOCK & WILCOX Co.

Employer.

Dated _____ By _____
 (Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.