

**J. P. Stevens & Co., Inc. and Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC.**  
Cases 11-CA-7088, 11-CA-7158, 11-CA-7474, 11-CA-7754, and 11-CA-7816

20 October 1983

**DECISION AND ORDER**

On 27 March 1980 Administrative Law Judge James L. Rose of the National Labor Relations Board issued his Decision in the above-entitled proceeding and on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. Thereafter, all parties filed exceptions and/or cross-exceptions to all or part of the administrative law judge's Decision.

On 13 October 1983 J. P. Stevens and Co., Inc., herein called the Respondent; Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, herein called the Union; and the General Counsel of the National Labor Relations Board entered into a Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order based upon the order set forth in the administrative law judge's Decision. The parties withdrew all exceptions and cross-exceptions to the administrative law judge's Decision filed with the Board.

Having considered the matter, the Board approves the Settlement Stipulation and the exceptions and cross-exceptions filed by the parties are withdrawn.

As no exceptions to the administrative law judge's Decision remain,

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified in the Settlement Stipulation, and orders that the Respondent, J. P. Stevens and Co., Inc., Westfield, North Carolina, and Stuart, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising employees that selecting the Union as their bargaining agent would be futile.

(b) Interrogating employees concerning their union activities and desires.

(c) Soliciting employees to revoke union authorization cards they have signed.

(d) Threatening employees with plant closure should they select the Union as their bargaining agent.

(e) Promising employees a benefit to cease activity on behalf of the Union.

(f) Advising employees to cease contacting other employees on behalf of the Union.

(g) Telling employees that signing union authorization cards can have "serious consequences."

(h) Inviting and/or encouraging employees to report the identity of union card solicitors.

(i) Promulgating, maintaining, and enforcing a rule inhibiting employees from talking to other employees.

(j) Discouraging union activity, membership in the Union, or any other labor organization, by discharging, refusing to reinstate, or issuing verbal or written warnings to its employees, or otherwise discriminating in any manner with respect to their tenure of employment or any term or condition of their employment.

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

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

(a) Offer Curtis Collins, Ralph Roberson, Eugene Rorrer, Gary Layman, and Maynard Lovell immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to any seniority and other rights and privileges previously enjoyed by them, and make them whole, with interest, for any loss of pay they may have suffered by reason of their unlawful discharges in the manner set forth in the remedy section of the administrative law judge's Decision.

(b) Expunge and physically remove from its records and files any warning notices and any references thereto relating to the warning issued to Gary Layman on 12 and 20 May 1977 and Maynard Lovell on 17 March 1977.

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

(d) Post in conspicuous places, including all places where notices to employees customarily are posted at Respondent's four United Elastic Division plants, one of which is near Westfield, North Carolina, and the other three near Stuart, Virginia, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of said notice will be furnished by the Regional Director for Region 11 and, after being signed by Respondent's representative, shall be posted immediately upon receipt thereof and maintained by Respondent for 60 consecutive days

<sup>1</sup> 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."

thereafter. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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

#### APPENDIX

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

WE WILL NOT advise employees that selecting Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, or any other labor organization, as their bargaining agent is futile.

WE WILL NOT interrogate our employees concerning their activities on behalf of the Union.

WE WILL NOT solicit employees to revoke union authorization cards they have signed.

WE WILL NOT threaten our employees with plant closure should they select the Union as their bargaining agent.

WE WILL NOT promise our employees benefits to cease their activity on behalf of the Union.

WE WILL NOT advise our employees to cease contacting other employees on behalf of the Union.

WE WILL NOT tell our employees that signing a union authorization card can have "serious consequences."

WE WILL NOT invite and/or encourage our employees to report the identity of union card solicitors.

WE WILL NOT promulgate, maintain, or enforce a rule inhibiting our employees from talking to other employees.

WE WILL NOT discourage activity on behalf of the Union by discharging, refusing to reinstate, or issuing verbal or written warnings to our employees or discriminate against our employees in any manner.

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

WE WILL offer Curtis Collins, Ralph Roberson, Eugene Rorrer, Gary Layman, and Maynard Lovell reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to any seniority and other benefits, and WE WILL make them whole for any losses they may have suffered as a result of the discrimination against them, with interest.

WE WILL expunge and physically remove from our records and files any warnings given to Gary Layman and Maynard Lovell.

All our employees are free to join or assist the Union or any other labor organization.

J. P. STEVENS & Co., INC.

#### DECISION

##### STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: These consolidated cases<sup>1</sup> were tried before me on various dates from November 8, 1978, through August 2, 1979. In general, the allegations are that the Respondent engaged in conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., in connection with an organizational campaign among its employees conducted by the Charging Party.<sup>2</sup>

The Respondent generally denied that it has engaged in any activity violative of the Act and affirmatively contends that the terminated employees were discharged for cause.

Upon the record as a whole, including helpful and exhaustive briefs, and arguments of counsel, I hereby make the following

##### FINDINGS OF FACT AND CONCLUSIONS OF LAW

###### I. JURISDICTION

The Respondent is a Delaware corporation engaged in the manufacture and sale of textile products at numerous plants located throughout the United States. The locus of this case is four United Elastic Division plants, one of which is near Westfield, North Carolina, and the other three near Stuart, Virginia. The Respondent annually receives raw materials at these facilities directly from points outside the State of North Carolina and the Commonwealth of Virginia, respectively, valued in excess of \$50,000. It annually ships directly to points outside the State of North Carolina and the Commonwealth of Virginia, respectively, finished products valued in excess of \$50,000. The Respondent admits, and I find, that it is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>1</sup> The substantive allegations litigated in this matter are contained in the amended second order consolidating cases in Cases 11-CA-7088, 7158, and 7474, amendments to which were granted at the hearing, and the consolidated complaint in Cases 11-CA-7754 and 7816. These pleadings are herein jointly referred to as the consolidated complaint.

<sup>2</sup> It was also alleged that the Charging Party had been designated by a majority of the Respondent's employees in an appropriate collective-bargaining unit and that the Respondent's egregious unfair labor practices required the entry of a bargaining order. The Charging Party requested leave to withdraw so much of its charge as alleged a violation of Sec. 8(a)(5) and the General Counsel likewise moved to amend the consolidated complaint to delete any allegations of a refusal to bargain and agreed not to seek a bargaining order as a remedy for any of the other alleged unfair labor practices. On this basis, the Respondent did not object and the amendment was granted.

## II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. Background

At the four plants here involved (herein Woolwine, Stuart, Rubber Thread, and Carolina) there are nearly 1500 production and maintenance employees. The Union commenced an organizational campaign among those employees in August 1976. The unfair practices are alleged to have occurred beginning in December 1976 through May 1977; and in May, August, and September 1978.

The allegations of unfair labor practices occurring in 1976 and 1977 were included in a petition for nationwide injunctive relief under Section 10(j) of the Act and were involved in the settlement of that matter, with four of the seven discharged individuals reinstated to their jobs.<sup>3</sup>

### B. Analysis and Concluding Findings

At the outset it should be observed that the General Counsel has the burden of proving the elements of each alleged unfair labor practice by a preponderance of the credible evidence. The fact that this is the twenty-fifth time, more or less, that the Respondent has been before the Board, and has been judicially held to be "the most notorious recidivist in the field of labor law,"<sup>4</sup> does not alter this basic principle. What the facts are must be determined here as in any other case—from credible testimony and reliable documentary evidence. However, the inferences and conclusions to be drawn from the facts found may reasonably include consideration of the Respondent's proclivity to violate the nation's labor laws and its unsavory history may be considered in determining the appropriate way to remedy those violations found. That is, years ago, as has been found repeatedly by the Board and the courts, at the very highest levels of management the Respondent set the atmosphere from which the acts of its agents and supervisors in this matter must be viewed.<sup>5</sup>

Some of the events upon which evidence was taken are alleged to constitute more than one unfair labor practice and are separately pleaded. Similarly, most of the substantive allegations of 8(a)(1) violations include more than one event. The alleged unlawful discharges occurred at various times throughout the entire period covered by this matter. Accordingly, the facts and analysis of each alleged violation pleaded by the General Counsel will be treated seriatim as it appears in consolidated complaint, as amended.

<sup>3</sup> *Morio v. J. P. Stevens & Co.*, Civil No. 787294 (S.D. N.Y. 1978).

<sup>4</sup> *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8, 13 (2d Cir. 1977), citing Bartosic & Lanoff, *Escalating the Struggle Against Taft-Hartley Contemners*, 39 U.Chic.L.Rev. 255, 256 fn. 4 (1972).

<sup>5</sup> The Respondent argues, unconvincingly, that its recent corporate-wide efforts not to violate the law should be considered. See the remedy section, *infra*.

## 1. The alleged violations of Section 8(a)(1)

### a. *Advised employees that selecting the Union as their bargaining agent would be futile*

Carson Wilson is the industrial relations director for the Respondent's United Elastic Division. It is alleged that on April 21, 1977, and again in early May 1977 Wilson told employees that selecting the Union as their bargaining agent would be futile. Similarly, John Mitchell, the plant manager of the Carolina plant, also in May 1977, is alleged to have violated the Act in this respect.

The April allegation involving Wilson relates to a meeting he had with employee Eugene Rorrer, along with the Woolwine plant industrial relations director, Donald Oxenrider. Rorrer testified that following an operation he had had in February, and during the period he was still off work and under the care of his doctor, he went to the Woolwine plant to speak to Oxenrider about hospitalization insurance. But because Oxenrider was new to the Company and was not totally conversant with the hospitalization plan, Wilson was called. The three then met later in the afternoon of April 21.

According to Rorrer's testimony, he told Wilson that when the employees were covered under the Blue Cross plan (sometime before) they were better off than currently. Rorrer testified that Wilson then said something about the Union was to blame, he thought, for the insurance being downgraded (meaning, presumably, discredited) and finally, "you know that the plants will have to negotiate with the Union and you know we won't do that." By this last statement the General Counsel contends that Wilson told Rorrer that selecting the Union as the bargaining representative would be futile.

Wilson generally corroborated Rorrer's testimony concerning their discussion of the insurance coverage, noting that there had been a change in insurance coverage on December 1, 1976. Wilson further testified that Rorrer said something to the effect that he understood the Union had better coverage, to which Wilson answered that the Union does not provide insurance benefits—insurance is provided by the Company and would have to be bargained for.

Wilson denied specifically that he told Rorrer that the Company would not bargain with the Union over insurance coverage, a denial which I credit.

Although I generally found Wilson to be a credible witness, beyond that I conclude on balance that it is unlikely Wilson used the precise words attributed to him by Rorrer. These very words (or words of a similar nature) in the context of this particular conversation are necessary to prove the unfair labor practice alleged.

Even in the context of the other unfair labor practices here and at other facilities throughout the years, stating that the Respondent would not negotiate concerning an economic benefit employees were already receiving does not fit the pattern. To find the unfair labor practice here alleged would require crediting Rorrer's memory concerning certain specific words used by Wilson a year and a half before the hearing, on a matter tangential to the subject of discussion. The meeting centered on how

much insurance coverage Rorrer was entitled to. Any mention of the Union was brief.<sup>6</sup>

In May, Wilson was called in to have a conference with Jimmy Eugene Culler, an employee at the Carolina plant who was dissatisfied with his job classification. During the course of this conversation, according to Culler's testimony, Wilson said, "I understand you are more or less pro-Union," and "ACTWU has nothing to offer you. You have better benefits than people in Roanoke Rapids. If you don't believe it, check on it." By this statement, denied by Wilson, it is alleged that the Respondent advised an employee that selecting the Union as their bargaining agent would be futile.

The Union was discussed between Wilson and Culler though with some substantial variance between their versions as to who said what. On this particular point, however, even if Wilson said precisely what Culler contends he said, such was not advising an employee that selecting the Union as a bargaining representative would be futile.

Nor has any case authority been suggested to indicate that an employer may not advise an employee that a union has "nothing to offer," or that employees have better benefits than employees of another plant, even where it is common knowledge that a given union is the bargaining representative for employees at the other plant. Accordingly, I conclude that the General Counsel has not sustained his burden of proving the allegations of paragraph 7(a) of the consolidated complaint as to Carson Wilson.

In April 1977 Mitchell had a conversation with Carolina employee Clarence Wilmoth and subsequently three other employees in the shipping department. At this time, according to Wilmoth's generally credible testimony, Mitchell was asked about the negotiations between the Union and the Company at the Roanoke Rapids plant. Mitchell said that the employees wanted dues checkoff (which he explained) and then said, "they knew damn well they wouldn't do that."

Mitchell also said, when asked whether he believed the Company and the Union would ever bargain together, "No, I don't believe so."

Although Mitchell testified to the fact of the conversation and the substance, including dues checkoff and arbitration as being the two principal issues in the Roanoke Rapids negotiations, he denied the specific statements attributed to him by Wilmoth. Mitchell did not, however, explain how it was that he as plant manager, during the course of an organizational campaign, would engage in a discussion with employees about matters at another of the Respondent's plants which at the very time were the subject of a complaint alleging bad-faith bargaining.<sup>7</sup> Given Mitchell's admission that the matter under discussion between him and Wilmoth involved the very issues being litigated concerning the Roanoke Rapids facility, and absent any explanation other than Mitchell's unperceptive categorical denial that he made the statements at-

tributed to him, I believe it more probable than not that he in fact suggested to employees that the Company would not negotiate with the Union on checkoff and arbitration.

Mitchell testified that he was aware that checkoff and arbitration were issues at Roanoke Rapids but "I was not aware the Company had a position one way or another. I thought we were still negotiating." I find Mitchell's assertion to be incredulous. Mitchell was, after all, the plant manager, and now is the general manager of the division. That he would not know the Company's position simply is not believable. And the Company's position was given, at least, in a letter to all employees signed by James Finney, the Respondent's chairman of the board, mailed sometime in 1976. He stated in the letter that the Respondent would not agree to checkoff or arbitration. The policy statements on these issues by the chairman of the board must have been known to Mitchell. Accordingly, I conclude that Mitchell did advise employees that selecting the Union as their bargaining agent would be futile and he thereby violated Section 8(a)(1) of the Act.

During a discussion Mitchell had with Culler, in early May, to discuss Culler's contention that his job title ought to be changed, Culler testified that Mitchell said, in referring to a notice the Company had put on the bulletin board involving the organizational campaign that, "I heard that you didn't like where we put the paper on the bulletin board. This is my plant I run my plant like I want to, and you, nor any other son-of-a-bitch is going to tell me how to run it."

The General Counsel alleges that by this statement Mitchell indicated to an employee the futility of selecting the Union as the bargaining representative. Mitchell denied the statement attributed to him although admitting that he did meet with Culler concerning the matter of Culler's job classification.

As in so much of this matter, there is a conflict concerning the precise statements alleged to be unfair labor practices although the parties are in general agreement concerning the surrounding circumstances. As to the conflict here, I credit Culler over Mitchell. This determination is based in part on the relative demeanor of the two. In addition, if in fact Mitchell, as a high level supervisor for the Respondent, was not in fact embarked upon a course of conduct to undermine the Union he would not reasonably have had meetings with employees during which the organizational campaign and the Respondent's campaign against it were discussed. I believe that Mitchell did in substance make the statements attributed to him and did seek to impress upon Culler the futility of selecting the Union as his bargaining agent. The Respondent thereby violated Section 8(a)(1) of the Act.

*b. Interrogated employees concerning their union activities and desires*

Supervisor James Ayers hired Culler in March 1976, according to Ayers' testimony, because he needed a man for receiving duties and Culler had such experience. Culler's job classification, however, was that of warehouse helper although according to his testimony, essentially undenied by Ayers, a more appropriate title would

<sup>6</sup> It is noted that I do not rely upon the testimony of Oxenrider in concluding that the General Counsel did not establish the factual predicate for this allegation. I found, as will be discussed in more detail, *infra*, that Oxenrider was an unreliable witness and that his testimony generally should not be credited.

<sup>7</sup> *J. P. Stevens & Co.*, 239 NLRB 738 (1978), the trial of which occurred on 17 days in December 1976 and April 1977.

have been receiving clerk. Thus, Culler asked Ayers, and ultimately Mitchell, for his job title to be changed to that of receiving clerk. Ayers and Culler had a number of discussions, both on and off the plant premises, concerning this general subject during which the allegations involving Ayers occurred.

During one, in mid-March 1977, Culler asked Ayers how his job classification was coming along with Ayers telling him that he had talked to the plant manager. Ayers then said, "By the way, did you sign a blue card?" Ayers denied that he asked Culler whether he had signed a "union card," or asked Culler, "By the way did you sign a blue card?" Ayers also testified that he never asked Culler any union-related questions and generally denied having interrogated him.

It appears from the record that Ayers was attempting to deny the statements attributed to him by Culler which, again, gives rise to a credibility conflict. I found Culler to be a generally credible witness, even though some of his actions, particularly concerning his job classification, seemed bizarre. Nevertheless, I found him believable and there was nothing in his demeanor which would indicate that he was not being candid. Further, it is noted that Culler is no longer an employee of the Respondent and has no apparent stake in the outcome of this proceeding. To the contrary, however, Ayers is a relatively long-term employee and supervisor for the Company. I note also that, while appearing to deny that he ever had any discussions concerning the Union with Culler, Ayers did later admit that, during the conversation at Culler's home, "I finally said, well for what its worth, I have found that working hard and being a conscientious employee that I felt like that would get him more of what he wanted than any relationship with the Union would. I used myself as an example of starting out in the mail set up crew working on machinery, eventually worked myself into the office and into the position I have at the time." Ayers did discuss the Union with Culler and having done so during the course of the organizational campaign it certainly does not stretch credibility to find that he asked if Culler had "signed a blue card." Accordingly, I conclude that Culler's testimony is generally more reliable than Ayers'.

The Respondent contends that even if this occurred as testified to by Culler, nevertheless it was a casual conversation between an employee and a supervisor who were friends, and since interrogation is not per se proscribed by the Act, no violation should be found in this case. I conclude, however, that given the totality of the Respondent's unfair labor practices in this matter, not to mention the proclivity of this Respondent to commit unfair labor practices, a policy of which senior supervisors must certainly be aware, that Ayers' interrogation of Culler was not a benign or casual remark, but in fact did interfere with employees' Section 7 rights. It was violative of Section 8(a)(1) of the Act.

Wanda Hughes has worked in the web putup department on the first shift at the Stuart plant since September 1975. The department foreman is Sherman Hubbard and his assistant is William Blackard. Hughes testified to several conversations between herself, Hubbard, and Blackard during the spring of 1977, including one in which

Blackard approached her at her machine and asked if she knew anyone who had signed a blue card. He then told her that if she knew anyone who had signed a card, and wanted to get out of it and did not want to vote for the Union, to let the Company know. He told her that such an individual could sign a piece of paper and that he would see to it that it got to the appropriate person in the front office. In this conversation it is alleged that Blackard interrogated an employee and solicited her to revoke her authorization card, both in violation of Section 8(a)(1). I find that on both counts the Respondent, through Blackard, violated the Act as alleged.

Basically, the Respondent contends that the conversation did not occur as testified to by Hughes, but was a fabrication on her part. Indeed, Blackard specifically denied ever having any conversation with Hughes concerning the Union, blue cards, or the like. He did admit to telling Hughes to read a notice on the bulletin board the subject of which was that employees at another plant of the Respondent had voted against the Union.

There is a direct credibility conflict which I resolve in favor of Hughes and against Blackard. This is based upon her positive demeanor and Blackard's unpersuasive denials. The Respondent contends that this event could not have happened because, in effect, Hughes testified that Blackard approached her "out of the blue" with the interrogation concerning blue cards and the statement to her that anyone who signed one and wanted to get out of it should sign a petition, which the front office would take care of. But in fact during this period a rather large number of employees who had signed authorization cards did sign a paper which they submitted to the office seeking to revoke their authorizations. Thus, I do not believe that Blackard's statement to Hughes was "out of the blue." Indeed, I believe it was quite consistent with the Respondent's general pattern of activity in the spring of 1977.

Janice Stowe also works in the web putup department at the Stuart plant. One morning during the spring of 1977 Blackard approached Stowe at her work station and asked her how she felt about the Union and if it came to a vote how would she vote. She responded by saying, "You wouldn't want somebody to ask you how you were voting for President." Then later that day he asked if she had changed her mind about the Union and she told him no. Finally, about 2 weeks later Blackard told her that she could go to the front office and take her name off the blue card if she liked, by signing a paper. Stowe responded by saying, "Who said I had signed one?" and that ended the conversation.

Blackard categorically denied that any of these three conversations took place and the Respondent argued that, in any event, such did not amount to unlawful interrogation or unlawful solicitation of an employee to revoke her authorization card. The Respondent contends that Blackard's denial of the conversations with Stowe should be credited because, "it strains the imagination to believe that a seasoned supervisor would make such basic mistakes some 7 or 8 months into a union campaign." Precisely because Blackard was a seasoned su-

pervisor for J. P. Stevens & Co., I believe that he could very well engage in the activity attributed to him.

Beyond that, however, I found Stowe's testimony and demeanor to be generally credible, whereas Blackard's categorical denials were unpersuasive. Blackard contends that the conversation in which the subject of withdrawing the authorization card occurred was initiated by Stowe. He testified that she asked him at the end of a work-related discussion, "By the way, if a person signs a blue card, how would you go about getting it back." Then he testified that he told her he did not know other than going to the person to whom she gave it but that if the card's solicitor would not return it, she might go to personnel, "and write a little note with her name to it, and put it in her file saying that she didn't want to be represented by the Union."

The detail which Blackard admits to with regard to revoking cards happens to be the method used by numerous card signers who apparently sought to withdraw their authorizations. Thus, I do not believe such was an instantaneous inspiration on his part. Rather, I believe that he had been instructed concerning this matter; and if, as I find he was, instructed concerning how to advise employees to withdraw their authorizations, it is not unreasonable to believe that he would initiate such a discussion. I find he did, not only with Stowe, but with Hughes and to be discussed subsequently, Larry Oglebee. I accordingly conclude that, as alleged in paragraph 7(b) of the consolidated complaint, Blackard did violate Section 8(a)(1) of the Act by interrogating Janice Stowe in March or April 1977.

Finally, with regard to the interrogation of employees, Hughes testified that during the spring of 1977 on one occasion she and Hubbard were together in the break-room. Hubbard asked her what she thought about the Union and she told him that it was like a presidential election, that she was going to listen to both sides and then determine which side she wanted to vote for. The Respondent contends that Hubbard's denial of this conversation should be credited over Hughes, in part because the reference to a presidential election was similar to an answer Stowe gave Blackard in connection with Blackard's interrogation of Stowe. I do not find such to be sufficient basis upon which to discredit a witness. To the contrary, I believe that the subject of the prospective union election was a matter of general discussion among employees during which the analogy to a political election could very easily have been made. There had been a recent presidential election.

As noted above, I found Hughes to be a generally credible witness and there was nothing in her demeanor which would indicate that she was not candid in this aspect of her testimony. Therefore, based primarily upon their relative demeanor, I credit Hughes' version of this conversation over Hubbard's categorical denial and conclude that, as alleged in paragraph 7(b) of the consolidated complaint, Hubbard did interrogate an employee concerning her union activity in violation of the Act. Again, this was not a benign or casual question but rather, in the general context of this matter, along with the Respondent's past history of systematically engaging in multiple

violations of the Act, I conclude that it was real interference with employees' Section 7 rights.

*c. Solicited employees to revoke the union authorization cards they had signed*

The General Counsel contends that on April 28 Ayers told Culler not to be "too hasty about my [Culler] decision about the Company versus the Union. He said that 'things had a way of working themselves out.' And said, 'don't tell anybody but there is a paper in the office that you can sign to nullify your blue card, and we will forget the whole matter.'" Although Ayers denied specifically that he stated the words attributed to him by Culler or in any manner attempted to solicit Culler to revoke his authorization card, I conclude, as noted above, that this event occurred substantially as testified to by Culler. In addition, Ayers did admit that on one occasion in a discussion with Culler, "I pointed out to him that any time that he so desired, he could put a note in the personnel file more or less stating his opinion that implied he'd changed his opinion or wanted the Company to know that he'd changed his opinion towards his Union activity." But Ayers disclaimed putting pressure on Culler concerning this matter. Given the totality of the Respondent's unlawful activity in connection with the employees' organizational campaign both here and at other facilities, I conclude that for an immediate supervisor to suggest to an employee that he could advise the Company that he had changed his mind concerning his prounion activity necessarily tends to interfere with employees' Section 7 rights. Ayers' conduct in this respect is clearly violative of Section 8(a)(1) of the Act notwithstanding his disclaimer that, "I never tried to put pressure on him at all in any way."

It is further alleged that on three occasions in April 1977 Blackard attempted to solicit employees to revoke their authorization cards. These events took place during the conversations discussed above between Blackard, Hughes, Stowe, and with Larry Oglebee. As noted above, I credit the versions of the conversations testified to by Hughes and Stowe and discredit Blackard's denial that he said words to the effect testified to by these employees. I conclude that, during the conversations set forth above, Blackard did in fact solicit these two employees on separate occasions in April 1977 to revoke their union authorization cards and he thereby violated Section 8(a)(1) of the Act.

Similarly, I credit Oglebee and find that during this same period Blackard approached him suggesting that he could revoke his authorization card by signing a paper to be submitted to the office. Again, that Blackard would make this solicitation is well within the bounds of probability and is more, rather than less, likely given the long acquaintanceship of Blackard and Oglebee. Further, their personal relationship makes Oglebee's testimony more, rather than less, credible.

*d. Threatened employees that the Respondent would close its plant if employees selected the Union as their bargaining agent*

This allegation concerns a conversation between Supervisor Willis Wall and employee Clifford Huff in Wall's office sometime in March 1977. Wall had been a supervisor with the Respondent since 1973 but since going on sick leave in October 1977 has no longer been in its employ.

Wall admitted on cross-examination that he had called Huff into his office pursuant to the instructions of his immediate supervisor, Jerry Hodges, in order to advise Huff (and individually the other 20 some employees under his supervision) that the Company was opposed to the Union. During the course of this conversation, Wall admitted, he did tell Huff that he was 100 percent opposed to the Union. Both Wall and Huff agree that Huff said he was too, noting that Wall had given Huff a job when Huff was out of work.

Huff, however, went on to testify that during the course of this conversation Wall advised him that in the event of a strike the Company could replace the striking employees, and that Wall would see to it that the strike replacements would be able to get to work by calling the sheriff's department. Finally, Huff testified that Wall ended the conversation by stating that if "Stevens had to, they would close the plant before they would let the Union come in." Wall denied that he made this or any similar statement or that he discussed with Huff what would happen if the Union was successful or in the event of a strike.

Again there is a direct credibility conflict. The Respondent urges that I credit Wall over Huff because Wall no longer works for the Respondent and is thus "an independent witness." The Respondent also contends that Huff's statement is a patent fabrication and is therefore incredible and, even if the conversation took place as testified to by Huff, it was an isolated conversation falling short of interference, restraint, or coercion of Section 7 rights.

Wall's conversation with Huff was not an isolated occurrence between friends, as argued by the Respondent, but rather was part of a systematic effort on his part to advise employees under his supervision that he and the Company were adamantly opposed to the Union's organizing campaign. Wall, however, it is noted, was unable to remember whether he had a similar discussion with all of the employees under his supervision although he did with some. Wall was further unable to recall if he wrote down and submitted to Hodges, or other higher level supervisors, whether the employees with whom he talked were for or against the Union, a failure of memory which I find incredible.

I am satisfied, based upon the totality of the record in this matter, that Wall, along with other supervisors, was instructed by management to find out who of their employees were in favor of the Union and to relate this to higher supervision. Indeed, Wall admitted that he could tell, at least in some instances, whether the individual employee was for or against the Union. Given this admission along with Wall's generally incredible testimony concerning the conversation with Huff other than that to

which he testified to on his direct examination leads me to conclude that even though he is no longer an employee of the Respondent his testimony concerning this event is not generally reliable.

On the other hand, I found Huff to be a credible witness and further, his testimony concerning what Wall told him is generally consistent with the event to which he testified—a one-on-one conversation, in a supervisor's office, instigated by the supervisor pursuant to instructions from management, for the purpose of telling an employee that the supervisor and the Company were opposed to the Union. During the course of such a discussion it is not unreasonable to believe that the supervisor would make conclusionary statements concerning the outcome of the organizational campaign. Indeed, many other supervisors at other of the Respondent's plants have made the same predictions. I therefore credit Huff over Wall and conclude that in fact in March 1977 Wall did make the threat attributed to him and such was violative of Section 8(a)(1) of the Act.

*e. Promised a benefit to an employee if the employees ceased activities on behalf of the Union*

A matter of substantial concern to Jimmy Culler during the spring of 1977 was his job title. Culler felt that he was performing the duties of a receiving clerk and wanted to be so classified which, according to the testimony of Ayers, would include a 50-cent-per-hour increase in wages, though Culler appeared more concerned about the title. In any event, the various discussions Culler had with Ayers during the spring of 1977 involved his seeking to have his job classification changed.

One such occasion was when Ayers, after having purchased some furniture from Culler, came to Culler's home to pick it up. Culler testified that Ayers told him he would give him some advice and stated in substance, "Take the badge off and stop all of your union activities and keep your mouth shut and you might just get what you want." Ayers disclaimed making any statement like this but did testify that after Culler had repeatedly asked him for his opinion, he finally said, "Well, for what its worth, I have found that working hard and being a conscientious employee, that I felt like that would get him more of what he wanted than any relationship with the Union would." Ayers went on to use himself as an example of how one could progress with the Company, as described above.

The Respondent contends that Ayers' denial should be credited and that even if he made the statement attributed to him, it was noncoercive, given the close relationship between Ayers and Culler.

As noted above, I am constrained to credit Culler's version of this event over Ayers and conclude that Ayers did in fact tell Culler something to the effect that should he not be involved with the Union he might be successful in obtaining the change in job classification. Given the totality of the Respondent's unfair labor practices in this case, such is clearly not a statement protected by Section 8(c) of the Act nor can it be said to be uncoercive. Rather, it is, I conclude, a promise by a supervisor to one of his employees that the path to achiev-

ing a benefit he sought was to oppose the union activity rather than support it. Such clearly is violative of employees' Section 7 rights and is, I conclude, violative of Section 8(a)(1) of the Act.

*f. Criticized an employee for complaining that antiunion material voluntarily posted by Respondent had obscured a state notice relating to working conditions*

This allegation also involves Jimmy Culler and is alleged to have been committed by Randolph Hutchins in early May 1977. The essence of Culler's testimony is that, during a conversation he and another employee were having with Supervisor Donald Young, Culler stated that he felt his constitutional rights were being violated by the Company when the Company posted an antiunion notice over a Federal notice concerning employee rights. It is unclear from the record what type of notice of employee rights was supposed to have been covered up, but apparently it was a notice concerning the Federal Fair Labor Standards Act and was not, as alleged in the complaint, a "state notice."

In any event, Culler testified that somewhat later he was approached by Hutchins who Culler described as looking angry. Hutchins said something to the effect that he was greatly disturbed and was surprised that Culler would nitpick and find fault with the Company. Culler testified further that Hutchins said something to the effect, "I thought that you told me that you were a Christian. I don't see how anybody could support such an organization." Hutchins, while denying these particular statements attributed to him, did admit that he did talk to Culler upon learning that Culler had told another supervisor that his constitutional rights were being violated concerning the notice. He wanted to see, according to Hutchins, whether Culler was serious or not.

Thus, though there is a dispute between Culler and Hutchins concerning the precise words Hutchins used, there is no dispute concerning the substance of the event, namely, that Culler had claimed a violation of his "constitutional rights" by the Company when it posted antiunion literature over a Federal notice and that Hutchins had questioned him about this.

Accepting Culler's testimony as the way in which this event occurred, I do not conclude that Hutchins violated Section 8(a)(1) of the Act. Even in the context of the Respondent's other unfair labor practices and during the course of an organizational campaign, I do not believe that Hutchins interfered with, restrained, or coerced Culler. Nor has the General Counsel explained the theory upon which Hutchins' statement is supposed to be violative of employee Section 7 rights. Accordingly, I shall recommend that paragraph 7(f) of the consolidated complaint be dismissed.

*g. Harassed an employee because of his activities on behalf of the Union*

The allegation of this paragraph of the complaint concerns an instance involving Clarence Wilmoth and Plant Manager John Mitchell in March 1977. Although there are some minor, and in my judgment immaterial, var-

iances in their respective accounts of this event, in general they are in agreement concerning the matter. In brief, one day in late March, Wilmoth undertook to compile a list of employees in his department by copying their names off of timecards. Apparently Wilmoth was observed doing this by Supervisor Charles Hooker, who reported the matter to Jerry Hodges, the personnel manager. Hodges in turn reported to Mitchell who instructed Hodges to call Wilmoth into his office. The confrontation complained about occurred at this meeting between Mitchell, Hodges, and Wilmoth.

In essence, Mitchell told Wilmoth that they had learned he had made a list of employees and, according to Mitchell's testimony at least, he said such was confidential and he wanted the list. Wilmoth testified that he asked if he had such a list and if he turned it over would he be fired. Mitchell stated that he could not say. After a few minutes, and apparently some reflection, Wilmoth told Mitchell that he did not have the list. And that was the end of the incident.

The General Counsel contends that because Wilmoth was a known union adherent, a fact which was admitted by Hodges and Mitchell, to confront him in the manner testified to by Wilmoth amounted to harassment in violation of Section 8(a)(1) of the Act. I do not believe the General Counsel has sustained his burden of proving that the Respondent committed the violation alleged.

First, there is a substantial question as to whether Wilmoth had engaged in any activity protected by the Act. I generally discount and find unpersuasive Mitchell's testimony that the names of employees related to manning, which in turn was confidential, and that such would be detrimental to the Respondent should it fall into the hands of competitors. Nevertheless, I do believe the employees have a right not to have their names copied from their timecards. That is, while the Union does have a right to contact members of the bargaining unit, those individuals have a right not to be contacted. To an extent, the timecards are employees' property and they have a right not to have the information on the timecards taken.

Beyond this, however, during the Mitchell-Wilmoth confrontation, there were no statements made by Mitchell which would amount to a threat of reprisal. Wilmoth was not given an oral or written warning. Finally, Wilmoth admittedly lied to Mitchell by telling him that he did not have the list when in fact he did.

To find a violation on the state of this record would be tantamount to concluding that during the course of an organizational campaign any statement relating to potential union activity by an employer to a known union adherent is harassment in violation of the Act. I accordingly conclude that the General Counsel has not sustained his burden of proving that the Company harassed Clarence Wilmoth in violation of Section 8(a)(1) of the Act and will recommend that paragraph 7(g) of the consolidated complaint be dismissed.

*h. Promulgated, maintained, and enforced a "gag rule" restricting the conversation of shipping department employees with employees of other departments*

The General Counsel contends that when Supervisor Larene Hazelwood returned from a 2-1/2 months supervisors' training session in Greenville, South Carolina, she called her four shipping department employees together, including Clarence Wilmoth, and told them that they could no longer talk to other employees passing through the shipping department. She is also alleged to have told them not to talk to other employees when they were required to go to other departments for some work-related purpose.

To support this allegation, the General Counsel relies totally upon Wilmoth who testified that, prior to the Hazelwood meeting, shipping department employees were free to talk to other employees as they passed through the shipping department and never had they been prohibited from doing so. He further testified that she told him he was the worst offender. Wilmoth's impression of what Hazelwood said at this meeting and the import of her injunction to employees is uncorroborated.

Hazelwood testified that upon returning to the Carolina plant, after a 2-1/2 months' absence, she discovered that her employees were spending an inordinate amount of time talking with others passing through and loitering in the shipping department; and she sought to put a stop to this if she could, as she had in the past.

The parties agree that the shipping department is in the physical center of the plant and to an extent therefore is a crossroads through which many employees pass each day. Hazelwood, I believe credibly, testified that in the past she had had some difficulty with her employees spending too much time talking to others which, in her opinion at least, was a causative factor in some orders being mis-shipped. In any event, experience supports Hazelwood's contention that employees, particularly in an area such as she and Wilmoth described, would talk to each other in passing and that such is the type of thing management would from time to time try to eliminate. I therefore do not credit Wilmoth's statement that at no time in the past had Hazelwood or the Company attempted to restrict employees from talking to each other during working hours.

I note also that Wilmoth testified that he was not aware his immediate supervisor had been absent from the plant for 2-1/2 months, a fact which is otherwise uncontested and which I believe to have been the case. Given Wilmoth's questionable memory with regard to the situation involving his immediate supervisor and the probability that Hazelwood had from time to time instructed employees to curtail their talking to other employees, I conclude that the event probably happened substantially as testified to by Hazelwood, whom I otherwise found to be a credible witness. She testified simply that upon returning to the plant from South Carolina she discovered that employees were spending too much of their time talking and told them to "cut it out." This is not a "gag rule" which interfered with employees' Section 7 rights. Nor was it otherwise violative of Section 8(a)(1) of the Act. Indeed, not even Wilmoth testified that there was

anything involved in the alleged promulgation of the "rule" which had any relation at all to employees' union activity or their discussion of the Union. To the contrary, even Wilmoth's testimony was that the imposition of the "gag rule" applied during working hours would, therefore, under accepted standards concerning solicitation rules not be violative of employees' Section 7 rights. See, e.g., *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962).

I therefore conclude that the General Counsel has not sustained his burden of proving the allegations contained in paragraph 7(h) of the consolidated complaint and I will recommend that it be dismissed.

*i. Advised an employee to cease contacting other employees on behalf of the Union*

The parties are in general agreement that about 3 p.m. on January 13, 1977, Maynard Lovell was standing at the timeclock, preparatory to punching out, talking to Danny Thompson, an employee who was coming to work at 3 p.m. Company records disclose that Thompson punched in about 7 minutes until 3 and Lovell punched out about 3:05. The parties agree that Supervisor Richard Elgin confronted Lovell and Thompson. He told Thompson, in effect, that his shift began at 3 and to get to the knitting room; and he told Lovell that his shift ended at 3 p.m. and to punch out and leave. The parties also agree that, when Lovell punched out, he then turned to Elgin and told him that he did not like what Elgin had said "a god damn bit."

According to Lovell, Elgin went on to say, "All I did anymore was go here and there and bother people, and push stuff on people and I had better quit it. He said that I had been reported for being in other departments and talking to other employees, and pushing something on them, and I had better quit that; and I asked him who told him and he said Alvin Handy and Dolphas Fain."

While Elgin denied making this statement attributed to him by Lovell, the record amply shows that in fact Lovell did go around to various departments and did discuss the Union with other employees. Indeed, his job was such that he was required to move throughout the plant. Further, based upon their comparative demeanor, I tend to credit Lovell's general recitation of this event over Elgin's denial that he made any statement to Lovell other than to tell him to quit talking to Thompson and to punch out.

For a supervisor to tell a known union activist, in the middle of an organizational campaign, that he was known to be "pushing stuff" on people and to stop it, is clear interference with that employee's Section 7 rights and is therefore violative of Section 8(a)(1) of the Act and I so conclude.

*j. The notices*

In paragraphs 7(j) and (k) of the consolidated complaint, as amended at the hearing, the General Counsel contends that in notices posted by the Respondent at the four plants in question from on or about April 12 until August 30, 1977, and from on or about August 30, 1977, until January 30, 1978, the Respondent: (1) encouraged

employees to inform the Respondent of union solicitation activities of their fellow employees; and (2) threatened employees with adverse consequences not otherwise specified in the notices.

It is undisputed that the notices were posted on or about the dates alleged at the four plants.<sup>8</sup> The notices contain substantially identical language, format, and color but are somewhat different in size. Thus, one notice is approximately 19 inches wide by 24 inches high. In 5/16th inch black letters at the top: "NOTICE TO J. P. STEVENS & COMPANY EMPLOYEES." Below this in 5/8th-inch red block letters on two lines is the phrase "SIGNING AN ACTWU UNION CARD CAN HAVE SERIOUS CONSEQUENCES." There follows additional language in red and black lettering and a reproduction of an authorization card approximately 8 by 10 inches. This notice was posted on or about April 17 and removed on or about August 30.

On August 30, the smaller notice measuring approximately 10-1/2 inches wide and 19 inches long was posted. Again, at the top in block letters is the statement: "NOTICE TO J. P. STEVENS & COMPANY, INC., EMPLOYEES." Below that in 3/8th-inch red block letters is the statement: "SIGNING AN ACTWU UNION CARD CAN HAVE SERIOUS CONSEQUENCES," and so forth.

The General Counsel contends that the language in these notices "if anyone threatens you, harasses you or puts you under undue pressure to sign a card, let your supervisor know and we will put a stop to it," constitutes an attempt by the Respondent to persuade employees to inform management of the identity of union solicitors. The Respondent contends that this language is protected by Section 8(c) of the Act and, "Respondent submits that it had an absolute right to protect its employees from illegal harassment by union agents."

The General Counsel further alleges that the language "signing an ACTWU union card can have serious consequences" constituted a threat in violation of Section 8(a)(1). On this issue, the Respondent's counsel discoursed at length analyzing the distinction between the phrase "serious harm," which has been found in prior *Stevens* cases to have been threatening, and "serious consequences" which is argued to be benign and noncoercive phraseology.

The precise language under consideration here, if not the identical notices, was considered by Administrative Law Judge Claude J. Wolfe in *J. P. Stevens & Co.*, 245 NLRB 198 (1979). He concluded that the language, "If anyone threatens you, harasses you, or puts you under undue pressure to sign a card, let your supervisor know and we will put a stop to it," could reasonably be interpreted as inviting employees to identify solicitors and as such was violative of Section 8(a)(1) of the Act.

Judge Wolfe also concluded that the "serious consequences" language was functionally identical to the "serious harm" language which has previously been found by the Board to be an unlawful threat. He concluded that the distinction sought to be drawn by the counsel for the

Respondent is one without a difference. He accordingly concluded that the "serious consequences" language was a threat in violation of Section 8(a)(1). In its decision, the Board adopted these conclusions of Judge Wolfe. I therefore conclude that in posting the notices, the Respondent did in fact solicit employees to inform on the union activity of fellow employees and threatened employees with undisclosed consequences, both in violation of Section 8(a)(1) of the Act.

#### k. *The plant managers' speeches*

The General Counsel alleges that in the last week of May the Respondent threatened employees with unspecified adverse consequences by telling them that signing a blue card could have serious and long lasting consequences. This allegation arises from speeches given by each plant manager to groups of 20 to 40 employees of his respective plant. Except for those employees on leave of absence or otherwise out of the plant on the date the speech to his group was given, all employees were given the same message.

By any reasonable standard, the speech given by the plant managers was a vitriolic, antiunion campaign piece filled with innuendos and statements of questionable veracity. However, the only statement in the speeches alleged to be unfair labor practices in this proceeding occurs about midpoint where on the typewritten script it is stated, "*SIGNING THE BLUE CARD CAN HAVE SERIOUS AND LONG LASTING CONSEQUENCES.*" (Original emphasis.) This statement preceded the stage direction to the plant manager to "hold a blue card blow-up."

As with the "serious consequences" statement on the notices, the Respondent contends that this statement in the plant managers' speeches was permissible. For the reasons given above with relation to the notices, and those set forth in Judge Wolfe's decision, *supra*, I conclude the contrary. I conclude that in the course of the speeches to each of the Respondent's employees at the four plants here, each of the Respondent's plant managers interfered with employees' Section 7 rights by threatening them with unspecified consequences should they sign an authorization card. The Respondent thereby clearly violated Section 8(a)(1) of the Act.

#### l. *The no-speaking rule*

In his second consolidated complaint,<sup>9</sup> the General Counsel alleges that on or about May 22, 1978, and thereafter, the Respondent promulgated and enforced a rule requiring employees to obtain permission from their supervisors before leaving their respective departments and requiring employees to obtain permission of their supervisors before speaking to employees in other departments. It is alleged that promulgation of this rule was violative of Section 8(a)(1).

The facts surrounding this allegation are generally uncontested, the argument being primarily one of emphasis. The Respondent contends that in early May, as a result of the settlement of the nationwide 10(j) petition, em-

<sup>8</sup> The notices were produced by the Respondent after the General Counsel prevailed in subpoenaed enforcement litigation in a United States district court, the Respondent having refused to comply with the General Counsel's subpoena of them.

<sup>9</sup> Cases 11-CA-7754 and 7816.

ployees at the Woolwine plant began spending more time outside their departments talking to other employees.

According to the testimony of Woolwine Plant Manager Blair Duncan, the fact of this increased talking between employees was reported to him by a number of supervisors and his personnel manager. Thus, he determined to have the supervisors document this, which they did. Following the documentation of numerous employee conversations with other employees at their work stations, Duncan advised all supervisors to "remind" employees of the rule prohibiting talking to each other during working time. But he also instructed the supervisors that there would be no discipline. The supervisors did in fact instruct employees whom they found talking to other employees of the company rule prohibiting this.

The General Counsel's witnesses generally testified that they knew of no rule prohibiting employees talking to one another at their work stations and to do so had been a longstanding practice. Indeed, the Respondent's witnesses agree that employees in the past had talked to each other even while at their work stations. However, they testified, as for instance in the words of Lonzie Alderman when asked whether he knew if there were more or fewer such casual conversations during the week he kept notes, "Well, Sir, I don't keep up with it, but there were enough more to where I could notice a noticeable difference just by being in my department and on the floor, that there was more."

Alderman remembered that, prior to the advent of any union activity, on one occasion Maynard Lovell brought his guitar to the plant and played it during working hours and that employees stood around to listen. Nothing was said to Lovell or the listeners.

The essence of the Respondent's argument is that it had a management right to advise employees of a rule prohibiting them from interfering with the work of other employees, that such had always been a company rule and, because of the increase in such talking on the part of employees following the 10(j) settlement, it was necessary for the Company to remind them of the rule. The Respondent contends that no disciplinary action was taken.

Among the employees who were seen talking and who were informed of this rule were Junior Wimbush and his son Leroy. Supervisor Glen Rakes approached them and said to Leroy, "The procedure is now that you have to have permission from your supervisor in your department before you can go into another department. When you go into another department, you have to also get permission from that supervisor before you can have any conversations with any of the employees." Rakes told Leroy and Junior that such is what he had been advised.

The next day when Junior Wimbush approached a supervisor in his department, John Johnson, and asked about this matter, stating that he had been employed for 15 years and had never heard of such a procedure, Johnson told him, "Well, we have to do something to stop this Union."

The Respondent contends that Johnson's denial that he made this statement ought to be credited over Wimbush because, "it simply does not stand to reason that Johnson would make such a remark after a two-year union cam-

paign." However, this event, including Johnson's statement, occurred in the context of the 10(j) settlement and remedy which affected three employees at the Woolwine plant (Maynard Lovell, Eugene Rorrer, and Gary Layman). It is certainly plausible that the Company would begin enforcing the rule against talking in order to demonstrate that the 10(j) settlement would have no effect on its antiunion campaign. Thus, rather than to suggest that Wimbush should be discredited, the timing here is more of an indicator that he should be credited over Johnson. I also note that Wimbush's demeanor in testifying to this event, as well as generally, was more positive than Johnson's.

I therefore conclude that in late May the Respondent did announce to employees a rule, the effect of which was to inhibit them from generally unrestrained freedom to talk among themselves. It goes without saying, of course, that employees cannot disrupt the work of other employees and that a company does in fact have a right to tell its employees not to do so. However, the Respondent did not have a right to impose more strict plant rules on employees than had theretofore been the case in order to restrain employees in the pursuit of their Section 7 rights, which I find was the case here. There is no demonstration in this record, despite Respondent's records, to show that in fact the conversations the Respondent complained about were more than casual exchanges between employees as they passed. There is no showing of any disruption of work on the part of any of the employees involved in this matter. I conclude that by announcing the rule to employees, in spite of the assertion that no "discipline" was levied, the Respondent nevertheless violated Section 8(a)(1) of the Act.

*m. Harassed an employee because of his union activities*

This allegation relates to statements made to Maynard Lovell on May 15, 1978, by Plant Manager Duncan and on May 19 by Lovell's supervisor, William Pilson. The substantive facts relating to these allegations are not in serious dispute.

In essence, on May 15 Duncan called Lovell into his office and at that time read a prepared statement to him to the effect that, as a result of the 10(j) settlement, a written warning which had been placed in Lovell's personnel file on March 17, 1977, would be removed pending the outcome of this trial concerning whether or not issuing that warning was an unfair labor practice. (I conclude it was, *infra*.)

Lovell testified that he believes Duncan added to the script by stating, in effect, that Lovell was being warned not to engage in such activity—loafing, talking and so forth—any more and that his work had been poor. Present at the meeting were Duncan, Personnel Manager Oxenrider, and Pilson. Present on behalf of Lovell as a witness was Ronnie Gillespie, a fellow employee who was not called by the General Counsel to testify to this event.

Duncan, Oxenrider, and Pilson all testified that Duncan said nothing more than was on the script offered

by the Respondent into evidence. They all testified, in agreement with Lovell, that Lovell said nothing.

While I generally found Lovell to be a credible witness and in certain particular respects have discredited Duncan, Pilson, and especially Oxenrider, on balance I conclude that in fact at the May 15 meeting Duncan said no more than was on the script given him. It is more plausible than not that at this specifically staged event Duncan would not deviate from the script. While it is not unreasonable to believe, given the Respondent's history, that Duncan would attempt to dissipate insofar as possible the effects of the 10(j) settlement, I do not believe he would choose such a time to do so. I therefore conclude that on May 15 Lovell was called into the plant manager's office and a statement was read to him concerning the removal of the warning from his personnel file. Nothing in the statement itself is alleged by the General Counsel to be violative of the Act nor does the General Counsel contend that the Respondent was not entitled to read the statement to Lovell.

The essence of the General Counsel's allegation with respect to May 15 is that Duncan deviated from and expanded on the statement and thus harassed Lovell, a known union adherent. Inasmuch as I conclude that Duncan did not expand on the statement, I conclude that the General Counsel has not sustained his burden of proving this allegation by preponderance of the evidence.

Similarly with the May 19 occurrence, the evidence is substantially undisputed. Lovell testified that he approached some employees at the break-bench and told them that Eugene Rorrer, as a result of the 10(j) settlement, was going to return to work. At this time he was approached by Pilson who told him that this is the sort of thing that they had been discussing, that Lovell was bothering fellow employees and not to do so. Pilson submitted that, "I was just trying to explain to him [Lovell] that it was not their [the other employees] regular break-time and I would appreciate it if they would stay on the job on other than their breaktime." Pilson further stated that nobody was going to be disciplined as a result of this.

The General Counsel contends that, because Lovell was the target of Pilson's statement and since he was the principal union activist at the Woolwine plant, such was harassment in violation of Section 8(a)(1). I conclude, however, that the allegation here really is identical to that treated in subsection 1, above, with regard to the Company imposing on employees a change in working conditions with regard to talking to fellow employees. I do not find anything in Pilson's statement to Lovell that goes beyond the Company's violation as already found. Accordingly, I conclude that paragraph 7(b) of the second consolidated complaint should be dismissed even though concluding that Pilson's actions on May 19 with relation to Lovell were violative of Section 8(a)(1) of the Act as alleged in paragraph 7(a) of the original consolidated complaint.

*n. Assigned an employee more onerous work and separated him from other employees*

As indicated above, as part of the 10(j) settlement, Eugene Rorrer was reinstated to his job as a mechanic at the Woolwine plant on May 22, 1978. It is alleged that shortly thereafter the Respondent, acting through Rorrer's supervisor, William Pilson, committed a violation of Section 8(a)(1) of the Act by assigning Rorrer to more onerous work and separating him from other employees. He was assigned the job of tearing down old knitting machines which were stored in the basement area.

Certainly to assign a leading proponent of a union during an organizational campaign more onerous work than his normal assignment and to assign him to a job apart from other employees in the plant, in the context of the overall factual situation here, would tend to interfere with his and other employees' Section 7 rights and would therefore be violative of Section 8(a)(1). However, I conclude on the record before me that the General Counsel has not sustained his burden of proving that in fact Rorrer was assigned more onerous work than normal or assigned to do work which separated him from other employees. To the contrary, I find from the record that, upon his return to work, Rorrer was assigned duties as a knitting machine mechanic in much the same way he had always been assigned work.

As Rorrer testified it was his, and presumably the other mechanics,' practice to clock in in the morning and then wait for a specific job assignment. If no particular job assignment was given, then he would return to the work that he had been doing the previous day. The import of Rorrer's testimony, as amplified by Pilson, is that the principal job of the knitting machine mechanics is to keep the active knitting machines running. There are six mechanics on Rorrer's shift at the Woolwine plant. To accomplish the task of keeping machines running sometimes requires the services of all six, but often does not. When not all of the mechanics are required to keep the machines operating, then the mechanics are assigned other duties such as tearing down the old knitting machines.

Although Rorrer seemed to imply that only he was assigned the job of tearing down the 10 old knitting machines in the basement, he testified that, in fact, from time to time all of the other mechanics did do some of this work. Indeed, some of the work was so heavy that it required more than one man in any event. Again, although Rorrer seemed to indicate in his testimony that tearing down the knitting machines was his steady job, implicit also in his testimony is that he worked on active knitting machines much of the time. Thus, he testified that it would take him 3 or 4 days to tear down two machines. Yet, to complete this job took from sometime in June or July until October, and others helped. To tear down two machines in 3 or 4 days would suggest that Rorrer would have finished the job by himself 15 to 20 days or substantially less than the 3 or 4 months.

Thus, I conclude from the totality of the record before me that in fact Rorrer was not assigned a duty substantially different from that of any of the other mechanics when he was assigned work, from time to time of tearing

down the old knitting machines. While the old knitting machines were physically placed in the basement where there was little contact with other employees, inasmuch as Rorrer was not working in the basement much of his time, it cannot be found factually that he was unlawfully separated from other employees.

I therefore conclude that the General Counsel has failed to establish that Rorrer<sup>10</sup> in fact was assigned more onerous work or was separated from other employees in violation of the Act and I will recommend that this paragraph of the consolidated complaint be dismissed.

*o. Told an employee to cease talking with other employees*

This allegation concerns an event which occurred on September 21, 1978. According to Rorrer's testimony, he and chief mechanic Henry Wright, who was assigned to work with Rorrer that day (presumably on tearing down the old knitting machines) were returning from having made some purchases in the break room. As they were walking through the warping department, they stopped to talk to some fellow employees, particularly a warping department employee and truckdriver. Rorrer was observed doing this by the warping department supervisor who apparently told Pilson.

According to Pilson's testimony, "I called to Eugene's attention the fact that I had had numerous complaints plus a couple of personal observations of my own with reference to his being out his department and interfering with the work of other people in other departments; and I asked that he please try 'to curb this and bear in mind that we all have to work under the same rules.'" Rorrer's testimony on this event was substantially in accord with Pilson's. Rorrer testified that the conversation he had with warping room employees lasted 3 to 4 minutes.

Rather than being a different violation of Section 8(a)(1), it appears that Pilson's act in telling Rorrer to cease casual conversations with fellow employees, which had been permitted by the Company for years, is simply another instance of the violation set forth in subsection 1, supra. In any event, I do believe that by telling an employee to cease casual conversations with fellow employees in other departments the Respondent violated Section

<sup>10</sup> In evaluating Rorrer's testimony with regard to these matters, I am persuaded that he is disposed to tailor his answers in what he perceives to be the light most favorable to his cause. This I conclude in part from the fact that Rorrer was substantially less than candid when he denied on cross-examination that he had received any compensation from the Union during the year that he was not employed by the Respondent. Rorrer testified in answer to counsel's question that sometimes the Union's business agent would buy him lunch but that was it. On being recalled to the stand by counsel for the Charging Party, Rorrer admitted that in addition to occasionally being bought lunch, he was reimbursed for his expenses but still did not elaborate. It finally came to light, however, that during the first 2 months following his discharge, he was reimbursed by the Union at the rate of \$50 a week and thereafter for the next 10 months he received \$75 a week. While Rorrer testified that he misunderstood the question, it was asked a number of times and I do not believe that one could be mistaken or overlook the fact that he was receiving \$300-a-month expense money. Thus, I am reluctant to credit Rorrer. However, I note that this testimony took place subsequent to his earlier testimony concerning his discharge. And, with regard to his discharge, infra, I did not rely on any uncorroborated testimony of Rorrer in concluding that the termination was violative of the Act.

8(a)(1). The type of thing that Rorrer was condemned for doing on September 21 is the type of activity the Respondent had permitted prior to the advent of the organizational campaign. Thus, the change, particularly directed to one of the principal activists and one who was reinstated pursuant to a settlement agreement, certainly tends to interfere with his and other employees' Section 7 rights and I so find.

2. The alleged violations of Section 8(a)(3)

*a. The warnings given to Eriann Bowman*

Eriann Bowman started working at the Carolina plant in April 1976. She was laid off in February 1977 and was recalled about a month later to work on the third shift under the supervision of Dallas Lyon.

In January 1977, while still on the first shift, she received a written warning for low production. She also received a written warning from Lyon on June 10, 1977, for unacceptable production and another on August 19. These warnings resulted from frequency checks which were done by the industrial engineering department to test the production efficiency of employees, the results of which showed that Bowman did not meet the Company's standards. Inasmuch as the General Counsel did not contend that any of these written warnings was violative of the Act, and since there is no evidence to rebut the reasonableness of the frequency checks, I conclude that Bowman was reasonably and appropriately warned for low production on the dates indicated.

The General Counsel alleges that on May 6 (alleged as May 5) and April 30 Bowman was issued oral warnings by Lyon because of her activity on behalf of the Union and such warnings were violative of Section 8(a)(3) of the Act. With regard to the events of May 5 and April 30 (alleged originally as occurring on May 12), there is no significant dispute between the versions of Bowman and Lyon.

On May 6, Lyon made a routine check of the mill and discovered that a number of machines under Bowman's charge were not operating. He asked a subordinate where she was and was advised she was in the restroom. He told the subordinate to have Bowman report to him in his office when she returned. About 20 minutes later Bowman came to Lyon's office and at that time, according to Bowman's testimony, "He [Lyon] told me that I was being called in there, that I had been staying in the bathroom too long." She replied to him "Okay, Dallas, I know that; that I have been staying in there too long; but so have a lot of other ones." Lyon asked her who the others were and she declined to tell him.

While employees are allowed to go to the restrooms between their regular breaks, the company policy is, and has been, that they cannot abuse this privilege by staying too long. Indeed, company documents show that in the past Lyon specifically has given oral warnings (in writing) to employees under his supervision for having spent too much time in the restrooms.

Lyon testified that on April 30 he observed Bowman talking to another employee during a period of some 25 minutes. He called her into his office and told her that

she was spending too much time talking to other employees and spending too much time in the restroom. At this time Bowman denied she talked to the fellow employee more than 5 minutes and that she was careful in watching the time she spent in the restroom. Lyon, according to both of their versions, declined to argue the point with her.

The unquestioned evidence in this matter is that Bowman was in fact overstaying the between breaks restroom privilege and she was in fact spending some time, at least, talking to fellow employees while some machines under her charge (about 100 to 150) were not running. The General Counsel contends, however, that inasmuch as Bowman was a known union activist for Lyon to mention these facts to her, even absent a formal warning, was necessarily motivated by her union activity. Thus, Lyon's statements to Bowman were violative of Section 8(a)(3) of the Act.

In order to make the inference argued for by the General Counsel and the Charging Party, I would be required to conclude that during the course of an organizational campaign management cannot manage. The unquestioned facts here are that Bowman indeed was exceeding her privilege of being allowed to use the restroom between breaks and was told not to do so. Other employees had also been told not to do so and in fact had been given more severe discipline, in the form of oral warnings, for having spent too much time in the restrooms. Further, not only did the Company, through Lyon, not tolerate employees overstaying their restroom breaks in the past, they also did not tolerate employees spending too much time talking to fellow employees. Again, Lyon had given oral warnings to employees prior to the advent of the union activity on this ground as well.

Given the fact that the Respondent, through Lyon, had a past history of talking to and even giving formal discipline to employees for abusing their restroom privilege and spending too much time talking to fellow employees, I cannot infer that when Lyon called Bowman into his office on May 5 and April 30 he did so with a discriminatory intent. It is noted that when these events occurred Bowman had been under Lyon's supervision for only about 2 months. While Lyon admitted that he knew, or at least suspected by a rumor, that Bowman was a union activist, that fact in and of itself does not support a conclusion that Lyon acted with a discriminatory intent. Indeed I believe he did not. Further, I generally credit Lyon's denial that Bowman's union activity had anything to do with his discussions with her on May 5 and April 30.

I therefore conclude that the General Counsel has not sustained his burden of proving that Respondent issued warnings to Eriann Bowman on May 5 or April 30 in violation of Section 8(a)(3) of the Act and I will recommend that paragraph 8 of the consolidated complaint as to Eriann Bowman be dismissed.

*b. The warnings to W. C. Haden and Ivan Gray Thomas*

While the allegations relating to Haden and Thomas are separately plead, and involve distinct events, the

warnings were given each of them by the same supervisor on the same day and thus they will be treated together.

In brief, both Haden and Thomas had been active in the organization campaign apparently since its inception in September 1976. Both of them wore union buttons beginning in May 1977, according to the testimony of Thomas.

It is alleged, and admitted, that on August 22, 1977, Thomas and then Haden were called into the office of Foreman Gary Heath, who on these occasions told them they were "talking too much." Or as testified to by Haden on cross-examination:

Q. You went in there, and they [Heath and Hubbard] in general told you that there was too much talking on the job, too much running around, you want to cut it back?

A. Right.

Haden testified that, during his conversation with Hubbard and Heath, he said something to them to the effect that he knew why he had been called into Heath's office, that it was because of his support of the Union. Hubbard and Heath denied to him that this was the case, that he had been called in simply because there had been too much talking on the job.

The General Counsel contends that because Haden and Thomas were known union supporters that to summon them to the office of a supervisor to tell them they were talking too much is prima facie a violation of Section 8(a)(3) and (1) of the Act. I disagree.

First, there is no indication that Haden or Thomas had been discussing union activity or that the purpose, even inferentially, of the August 22 event was to cause either of them to stop discussing the Union at the plant. Indeed, the suggestion by Haden that the reason he had been called in was because he was a union supporter was specifically denied at that time.

Neither Haden nor Thomas was disciplined in any way other than being called into Heath's office. They were given no written or oral warning nor is there any indication that Heath or Hubbard advised either that this discussion would be held against them in any manner in the future. There was no change in the company rules nor any indication that the Company was more strictly enforcing rules because of either their union activity or the union activity generally.

Finally, inasmuch as these employees were known union supporters and had been for some time, were Heath or Hubbard intending to discriminate against them because of this it would seem reasonable that such would have occurred substantially sooner than August 1977.

Given these factors, I do not believe that the General Counsel made out a prima facie violation of the Act in advising two employees they were talking too much, an assertion they did not deny. I accordingly conclude that the General Counsel has failed to establish by the preponderance of the evidence that on August 22, 1977, the Respondent issued discriminatory warnings to Haden or Thomas, and therefore will recommend that paragraph 8

of the consolidated complaint be dismissed as to Haden and Thomas.

*c. The warnings to Gary Layman*

Gary Layman was hired by the Respondent in September 1976 to work as a janitor in the Woolwine plant under the general supervision of Dolphus Fain, the maintenance supervisor. For about 1 week, Layman worked with his immediate predecessor, Dillard Smart, who showed him the duties he was to perform, and thereafter Layman was on his own. Layman's principal function, as had been Smart's, was to keep the various restrooms clean and supplied. He was also to perform other janitorial duties.

While Layman had been a supporter of the Union, his activity on behalf of the organizational campaign was not overt until May 2, 1977, on which day he began to wear a union button. He wore the button for about 1 week, a fact which was known by Fain and supervision generally.

On May 12, Fain issued Layman an oral warning<sup>11</sup> because the restrooms were found dirty when inspected by Fain and Oxenrider. On May 20, Layman was issued a "written warning" because, again according to Fain, the restrooms were inspected for cleanliness and were found to be dirty. Layman was advised at the time that should this occur again he would be replaced. Then on May 27 Layman was discharged because of the condition of the restrooms. (The discharge of Layman, alleged to be violative of Section 8(a)(3) of the Act, will be discussed infra.)

The General Counsel contends, and I agree, that the disciplinary warnings given to Layman, following almost immediately after his union activity became overt and known to the Company, were violative of Section 8(a)(3) of the Act. The warnings, I conclude, were motivated not by his alleged poor performance but by his union activity.

The Respondent argues that Layman was disciplined solely for sufficient business reasons which had nothing to do with Layman's union activity. In support of this contention, the Respondent offered the testimony of Fain and Oxenrider, neither of whom was particularly credible. Nevertheless, even their testimony demonstrates that the alleged poor work performance by Layman was a pretext.

Basically the Respondent's testimony is that, when Dillard Smart was in charge of the restrooms from May until September 1976, there were no complaints on their condition. Fain testified that the complaints from employees started in November and that he began counseling Layman about this. Thus, Fain testified that he talked to Layman in November because, "We had been receiving a lot of complaints about them [the restrooms] being dirty." Fain testified that he again talked with Layman in December.

Minutes of the Accident Prevention Committee dated January 4, 1977, offered into evidence by the Respond-

<sup>11</sup> The Respondent's formal disciplinary system provides first for an oral warning, which in fact is written, then a written warning, and finally discharge.

ent, suggest that in late 1976 there had been some problems with the cleanliness of the restrooms thus: "76-122 Restrooms must be kept cleaner, especially around commodes and other fixtures"; and, "77-2 Ladies restrooms (both) are unsanitary. You can write your name in the dust and dirt almost anywhere."

According to the testimony of Oxenrider, where the restrooms had been inspected by two members of the accident committee on rotating basis before, because of this problem Plant Manager Duncan assigned to Oxenrider and Fain the task of weekly inspection of the restrooms, and they did so. Both Fain and Oxenrider testified that the restrooms continued to remain in a state of basic uncleanliness, though with occasional improvement. Fain testified that he continued to talk to Layman about this matter on many occasions and that finally Layman was given the oral warning on May 12 followed by written warning and then discharged in successive weeks.

The state of cleanliness of the restrooms in early 1977 was described by Oxenrider: "Stalls were dirty, the commodes were dirty, dust and grease on the wall. You could tell he attempted to mop them and just mopped all the trash and what have you right up against the walls and stuff; he just mopped down the middle. The dispensers in there were dirty, trash cans hadn't been wiped off or cleaned in a long time."

This general description of the state of uncleanliness of the restrooms was presumptively meant to include the entire period of Oxenrider's inspection prior to the May 12.

In any event, according to Fain and Oxenrider, from at least November 1976, shortly after Layman began working, until May, Layman had never satisfactorily performed his job of keeping the restrooms clean. In short, the Respondent contends that from essentially the beginning of his employment Layman was an incompetent employee who was counseled on many occasions about his poor performance and that this culminated in his discipline in May. And the fact that the discipline occurred just after Layman wore the union button was a mere happenstance.

I simply do not believe the testimony of Fain and Oxenrider. Partly I found their demeanor to be negative and, where their testimony conflicted with Layman's, I credit Layman's version. Beyond that, the recitation of these events as set forth by Oxenrider and Fain is patently unreasonable.

If Layman was as terrible an employee as Oxenrider and Fain sought to demonstrate, Layman would certainly have been warned and discharged much sooner than he was. However, not only was he not disciplined, Fain even admitted that sometime prior to May 2, when Layman first became known as a union adherent, Fain attempted to help Layman secure a job promotion. Such is not the act of a supervisor who feels a subordinate has a long history of incompetence.

Thus, I credit Layman's denial that Fain counseled with him concerning the dirty restrooms on the many occasions testified to by Fain. It may well be that there were complaints concerning the restrooms from other employees. It is not unreasonable to believe that rest-

rooms can become dirty following their cleaning on a particular day.

The Respondent argues that the fact that a written job description was given to Layman on April 12 (prior to the time he wore the button) proves that the Company was dissatisfied with Layman's work at that time. Such does not necessarily follow. The job description was written, according to Fain's testimony, in 1973 or 1974. That it was not given to Layman until April 24, 1977, suggests that Fain had misplaced it or had neglected to give it to Layman when Layman was first employed.

The timing of the warnings shortly after Layman's first known union activity; the Respondent's animus towards the Union's organizational campaign; and the clearly fabricated story concerning Layman's allegedly incompetent work performance, all lead me to discredit Oxenrider and Fain and conclude instead that the Respondent was motivated by Layman's union activity when issuing him the disciplinary warnings on May 12 and 20. Accordingly, I conclude that in this regard the Respondent violated Section 8(a)(3) of the Act.

d. *The warning to Maynard Lovell*

As noted above, Maynard Lovell was one of the principal activists on behalf of the Union's organizational campaign at the Woolwine plant. He was an early supporter and spent a great deal of time soliciting others to sign authorization cards. The fact of his substantial union support was known to the Company although the precise nature of this knowledge was sometimes minimized by the Respondent's witnesses. Thus, Richard Elgin, the maintenance department supervisor, testified that he did not know that Lovell was a union supporter until March 17, 1977, during the course of his giving Lovell a disciplinary warning. Elgin did, however, admit that he had "heard rumors" as early as January that Lovell was a union supporter and was soliciting other employees. Likewise, Elgin denied having actually "seen" Lovell handbill the Woolwine plant on March 7 when, for the first time, employees engaged in such activity. Lovell's handbilling was undeniably seen by other company officials including Oxenrider. In any event, the fact of Lovell's substantial involvement on the part of the Union was well known to the Company from almost its inception.

In paragraph 8 of the consolidated complaint, the General Counsel alleges that on March 17, 1977, Lovell was issued a disciplinary warning in violation of Section 8(a)(3) of the Act. The Respondent admits that Elgin gave Lovell such a warning but contends that it was for good and substantial cause and was not violative of Section 8(a)(3).

In essence, the warning, which was read to Lovell by Elgin while those two along with Oxenrider were in Oxenrider's office, set forth a whole litany of undesirable conduct and breaches of company rules:

Talked to Maynard today about a deterioration in his work habits over the past 2 to 3 months. A typical work day for Maynard has become as follows:

Punches his timecard by 7 a.m., talks to another employee outside of Knitting Department for 10 to

15 minutes before reporting to the Knitting Department, loafs around in Knitting Department interfering with those who are trying to perform their job for 15-20 minutes; then goes "over" to the snack bar to warm a sandwich and get a drink, usually back to Knitting Department by 7:45-8 a.m. ready for work, if he had a let-off to work on. If no let-off to work on, he loafs over the Knitting Department talking to, and interrupting the work of department employees, or loafs in the shop area or put up or finishing department, anywhere he can find someone to talk to.

Maynard has been told as were all maintenance men when their break and lunch periods were, and where they were suppose to take their breaks and eat their lunch, Maynard continues to disregard these instructions. He takes his breaks and eats his lunch most anytime and anywhere he pleases.

Maynard was told 6 weeks or so ago that he was neglecting his work [preventive maintenance on let-off] he admitted such, and said it would soon catch up with us to, however, he has made no effort to perform this preventive maintenance. He was told to stay out of other departments unless his job took him there. He still loafs in other departments. Even on days he has work to do, he seldom does any work after 2:30 p.m. In general, he shows little or no respect for plant rules and policies.

Following this recitation, Elgin listed several corrective action steps for Lovell to take. This was a "written warning," or second step discipline without there having been a first step warning.

The Respondent contends, correctly, that just because an employee has engaged in union activity does not give him "a license to loaf, wander about the plants, refuse to work, waste time, break rules, and engage in incivilities and other disorders and misconduct," citing *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 217, fn. 11 (1964), the Supreme Court quoting from the House Report on Section 10(c).

On the other hand, commencement of an organizational campaign does not give the Company a license to change its rules and make a disciplinary offense of something that was traditionally overlooked. Upon all of the credible evidence of record, I conclude that this is what the Company did with regard to Lovell.

Lovell had been employed as a mechanic for approximately 20 years, at least 10 of which were under the supervision of Richard Elgin and Elgin's immediate subordinate, Roy Turner. Even Elgin admitted that Lovell's primary duty was as the letoff mechanic though he was to be available for other work when needed. Elgin also admitted that in performing preventive maintenance on the letoff systems, which required taking these machines apart and soaking the parts overnight, Lovell would periodically have "free time." Elgin further admitted the nature of Lovell's work was such that he would have to go through various departments of the plant on a regular basis. Until the time of the organizational campaign, Lovell walked throughout the plant pretty much as he chose, so long as he was performing the work of preven-

tive maintenance or repair of the letoff systems. When a repair was not required and when he had a letoff system being soaked, Lovell would have substantial periods of time in which he could wander through the plant, sun himself outside, as Elgin noted he did, and indeed would have time to do personal work for Elgin and other supervisors. Thus, in 1970 or 1971 Elgin had Lovell put a carburetor kit on Elgin's truck, Elgin approaching Lovell and telling him that there was a "let-off" under the hood of his truck, and giving Lovell the carburetor kit. Also, at Elgin's request, Lovell built a stovepipe in 1974 and later a rack for Elgin's jeep. In short, prior to the organizational campaign, supervision not only tolerated Lovell not doing company work on 8-hour-a-day basis, but encouraged him.

However, Elgin contends that beginning in the fall of 1976, and the advent of the union activity, Lovell's talking to other employees became more frequent and the conversations longer. Elgin testified that these conversations Lovell had with other employees increased "10-fold." And it was for this reason that in March he gave Lovell the disciplinary warning.

Part of the Respondent's contention with regard to Lovell is that on two or three occasions Elgin saw Lovell go to his truck in the parking lot to get his lunch. This was, according to Elgin, a violation of company rules and was set forth in the March 17 warning; however, Elgin did not discuss the matter with Lovell at the time nor did he demonstrate how Lovell's failing to bring his lunch into the building was a departure at all from company rules or practice.

Elgin denied a conversation Lovell testified between them wherein Elgin stated, "I have to do as I am told just like you do." But Elgin did not deny that on May 17, about 2 months later, Elgin "told me that I was possessed with the Union and that I was going around talking to people about it, and things like that, that it was interfering with my job; and he said 'that they had to do something about it,'" as Lovell testified.

Given that Lovell was a known union activist; that the disciplinary warning given Lovell was a second step warning without there having been a first step; that it came within 10 days after Lovell's level of union activity increased such that he began handbilling the plant; that on the basis of this record, it cannot be found that Lovell's talking to other employees really did increase; and that undeniably Elgin told Lovell that the Company had to do something about his discussing the Union with other people, I conclude that the warning issued Lovell on March 17 was not because of his poor work performance. Rather the warning was disciplinary action motivated by Lovell's union activity and was given in an attempt to discourage union activity on the part of Lovell as well as other employees. I accordingly conclude that the Company thereby violated Section 8(a)(3) of the Act.

*e. Assigning Maynard Lovell more onerous or less agreeable tasks*

Lovell testified that following the January confrontation with Elgin, "I didn't have any free time after that. They kept me busy with something to do all the time. If I took a letoff to the basement to soak, usually they came

and got me or somebody else would tell me to help them do something else or something like that." Lovell also testified, "I worked on some little knitters, and I don't think that was my duty."

Lovell further testified that some several years previously, after he had returned from a tour in military service, "They put me on the letoff; and when they put me on, they said, they told me that that was all I had to work on, that I wouldn't do any more of the work; they said, 'Just let off and that would be it.'"

The totality of the General Counsel's case with regard to this allegation is Lovell's somewhat generalized testimony that, following January, he was assigned more work to do than he had been assigned previously. There is nothing in his testimony to indicate that any of this work would not normally be performed by a mechanic. The essence of his testimony, and of the General Counsel's argument, is that this was work which other mechanics usually had done and thus to assign Lovell to these jobs was discriminatory.

I conclude that the General Counsel has failed to prove factually that the Respondent assigned to Lovell more arduous work or made such work requirement of Lovell as to be discriminatory harassment. Working on the little knitters, whether Lovell may have thought this was his work or not, is generally mechanics work, as is the other work which Lovell testified he was called upon to do.

It may very well be that he was asked to do more and different work than he had in the past and therefore he had less free time. I do not believe, however, that free time was necessarily a working condition or that he had a vested right to do only letoff work. After all, Lovell was being paid for the entire work shift.

I further note that in February, or about the same time that Lovell testified the amount of work he was called upon to do increased, fellow mechanic Eugene Rorrer went on a leave of absence due to illness. And during this period another mechanic, Bernice Rorrer, also had a 10-day leave of absence. Inasmuch as there were only 4 knitting machine mechanics in 1976 and 1977, given the extended absence of Eugene Rorrer and the short absence of Bernice Rorrer, it is reasonable to conclude that the other mechanics would be called upon to do additional work. The mere fact that Lovell may have done more work following January does not in and of itself prove that such was more arduous, or less agreeable, or the assignment was discriminatorily motivated.

Nor is there any indication that Lovell was assigned a job which he refused to do and was therefore in any way disciplined. This, along with the rather generalized nature of Lovell's testimony concerning the increased work duties required of him, leads me to conclude that the General Counsel has failed to prove this allegation and I will therefore recommend that paragraph 9 of the consolidated complaint be dismissed.

*f. The alleged discriminatory discharges*

Litigated in this matter were the discharges of seven individuals alleged to have been in violation of Section

8(a)(3) of the Act.<sup>12</sup> The Respondent contends that the individuals in question either voluntarily ceased their employment or were discharged for cause, and that, in any case, the terminations of these individuals were not violative of the Act. It goes without saying that an employer, including this Respondent, can discharge an employee for any reason or indeed no reason at all, provided that no part of the motivation relates to the individual's union activity or activity generally protected by Section 7 of the Act. Thus, the mere fact that an employee engages in union activity does not insulate him from discipline or discharge. On the other hand, the Respondent cannot seize upon what might rationally be termed "good cause" to discharge an individual in order to discriminate against him because he is engaged in union or other protected activity.

Thus, the gravamen of an 8(a)(3) allegation is the Respondent's motive. And as has been recognized by the Board and the courts, seldom is there direct evidence of motive; rather, motive can, and usually must, be established by inference. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966).

#### Curtis Collins

Curtis Collins has worked for the Respondent off and on since, apparently, sometime in 1973. His current employment resulted from settlement of the nationwide 10(j) petition, Collins having been discharged on or about December 28, 1976.

Although the Respondent denies that any of the management personnel involved in the decision to terminate Collins had any knowledge of any union activity engaged in by him prior to December 28, generally the parties do not differ greatly on the material aspects of this situation.

On Friday, December 10, Collins approached his supervisor, William Shelor, to say that inasmuch as his wife was sick, he would probably have to have a leave of absence so that he could babysit his two young children. Collins testified that Shelor made no response to this statement. Shelor denied that Collins approached him at all on December 10 about needing a leave of absence.

In any event, on Monday, December 13, Collins called and spoke to James Akers, the rubber thread plant personnel manager. He asked Akers if he could have the leave of absence because his wife was going into the hospital and he needed to be able to stay home to take care of his children. Akers agreed that such a call was made by Collins but testified that he told Collins he could not grant a leave of absence—that only his supervisor could do so. Collins testified that Akers told him something to that effect but also stated that he would "fix it up." Akers denied making such a statement to Collins.

The following Friday, December 17, Collins came to the plant to get his paycheck. In Akers' office at this time were Akers, Shelor, and a secretary, Virginia Wigington. Akers, Shelor, and Wigington all testified that, upon receiving his check, Collins asked "if he still had a

job here." Akers responded that he thought Collins had quit, that he had told him he would have to contact his supervisor to get a leave of absence. Collins' version does not differ substantively. Collins stated that he overheard Akers and Shelor discussing the duties of his job which prompted him to ask, in effect, if he still had a job. He was told no, that he was deemed to have quit, that the leave of absence was not granted.

All agreed then that Collins made some threatening comment to Akers along the lines of "I'll quit you," by which Collins testified he meant that if given a chance he would probably black Akers' eye. Collins then left and did not return to the Rubber Thread plant or indeed to the Company for some several months.

The Respondent argues, and Akers testified, that as of December 17, the Respondent did not consider that Collins had been terminated from his employment. The Company, according to Akers' testimony, still considered him to be on the payroll and that he was not terminated until December 28, following his not reporting for work or making contact with the Company for 7 consecutive days. According to the company policy advanced here, when an employee does not show up for work or make contact for 7 consecutive days, he is considered to have voluntarily terminated his employment. And the Respondent submitted some documents into evidence which show that employees in the past, mostly of a very short tenure, have been deemed to have quit after not reporting for 7 days.

Even if one accepts at face value the Respondent's contention that as of December 17 Collins was still an active employee, the totality of this factual situation demonstrates clearly that at least Collins was advised, and had every reason to believe, that as of December 17 he was no longer an employee. All of the Respondent's witnesses testified that Collins asked if he still had a job. None of the Respondent's witnesses testified that he was told "yes" by Akers, Shelor, or anyone else. If the Respondent's contention is correct, that as of December 17 Collins was still considered to be an active employee, it stands to reason that upon asking management whether he still had a job he would have been told he did. He was not.

Thus, either the Respondent's contention is untenable and in fact Collins was considered not to be an employee as of December 17; or, by not answering Collins' question one way or the other, management officials sought to trap Collins into leaving and not returning for a period of 7 days so they could then consider he quit. In either case, I find that in fact the Company led Collins to believe that he was discharged on December 17. Therefore his termination was not voluntary.

Having rejected the Respondent's contention as to the circumstances surrounding Collins' termination, as well as Respondent's contention that it was not motivated even in part by his union activities, I infer the contrary. I infer that indeed the fact of the union organizing campaign in general, and Collins' participation in it in specific, were causative to the Respondent's actions on December 17.

<sup>12</sup> The alleged unlawful discharge of Moses Hegwood was withdrawn by the General Counsel.

While the Respondent's witnesses all denied any knowledge of Collins' union activities, I found them to be generally uncreditable witnesses. Indeed, as indicated above, had Akers and Shelor been candid, the results of the December 17 confrontation with Collins certainly would have been different. I think that they were then attempting to be cute; and the only logical reason for such action on their part would be the organizational campaign which was in its early stages.

Further, Collins did credibly testify that he was a participant in the organizational campaign; he carried authorization cards around the plant in his pocket; he left campaign material on the dashboard of his automobile, occasionally parking next to Shelor. Again, while knowledge of Collins' union activity was specifically denied by Shelor and Akers, I find them not to be credible, and I infer the contrary. I believe they knew, or at least suspected, that Collins was active on behalf of the Union and that such was prominent in their motivation to have him "quit" his job.<sup>13</sup>

I therefore conclude that in fact Collins was discharged on or about December 17, 1976, in violation of Section 8(a)(3) of the Act.

The General Counsel also contends that some months later Collins went to the Stuart plant and talked to a former supervisor, Sherman Hubbard, and asked him if he "needed a good hand" to which Hubbard responded that he already had two good hands. The General Counsel alleges Collins was seeking a job and Hubbard thus denied him employment in violation of Section 8(a)(3). Without resolving whether and to what extent Hubbard even had the authority to hire Collins or anyone else, in view of the fact that Collins was discharged in violation of Section 8(a)(3) on December 17, to find that sometime later the Respondent failed to hire him for a different job would add nothing to the remedy. I note in this respect that Collins also reapplied for employment some months later at the Rubber Thread plant from which he was terminated in December and was not rehired, which would theoretically also support an allegation of a discriminatory refusal to hire. This, however, was not alleged and also need not be found in view of the fact that such would add nothing to the remedy in this matter. I will therefore recommend that paragraph 11 of the consolidated complaint be dismissed.

#### Ralph Roberson

Ralph Roberson looks to be 60 years old or so, or as he testified he "had a little age on me." He is uneducated, elderly, and had some difficulty understanding the questions put to him. Also, in March 1976 he was diagnosed as having "the sugar" (diabetes). From my observation of Roberson, I conclude that while he was not a particularly reliable historian of events, and had no capacity with the subtleties of the language, he was truth-

<sup>13</sup> Collins also testified that on one occasion he had a conversation with his wife's first cousin, Foreman James Goins, wherein Collins told Goins that he supported the Union. Goins, as did the other supervisors who testified throughout this matter, denied this. While I credit Collins over Goins, this statement was not alleged to be violative of the Act, nor is it necessary in determining that Collins was discharged in violation of the Act.

ful to the extent that he could remember the events and understood questions asked of him. Thus, I discount the minor discrepancies in his testimony; and on material matters where his testimony differed from his supervisor, William Shelor, I credit Roberson's version. It is noted, however, there is little dispute surrounding Roberson's discharge.

On January 3, 1977, Roberson did not come to work because, he testified, it had been snowing, it was cold, and he was unable to walk the half mile or so down the hill from his house to the house of Richard King, another employee of the Respondent with whom Roberson sometimes rode to work (Roberson's car having been repossessed by a bank). When he also did not show up for work on January 4, Shelor called to find out what the problem was and Roberson told him that he had not been able to come to work because of the snow and cold and that he had no ride. Shelor told Roberson that he needed him to come to work and asked him to be sure to come the next day, January 5, which Roberson agreed to do. However, on January 5, again Roberson did not come to work. He called Shelor and said he was again unable to get to work. At that time, Shelor told Roberson he was discharged. Shelor testified:

Q. Why was Ralph Roberson discharged?

A. He was discharged for laying out from work and admitting to me on the telephone that he was drinking and didn't seem to be interested in coming back to work. That's the reason. [The "didn't seem to be interested in coming back to work" part of the answer was stricken.]

Again, Shelor testified, "He was discharged for being absent without notice, and he admitted to me over the telephone he'd been drinking. That was the reason for him being discharged."

Shelor testified that when he talked to Roberson on January 5 he asked Roberson if he had been drinking and Roberson said yes. Shelor admitted, however, that he did not follow up on this question to ask when he had been drinking, what, or how much. Roberson on the other hand denied that the question was asked of him and he further denied that he in fact had been drinking, presumably liquor, about the time indicated. Roberson did admit that in years past and specifically the year before when he was off work around New Year, he had drunk liquor. He testified, however, that since his hospitalization and diagnosis of diabetes in March 1976, he had not had any liquor.

In this respect, I credit Roberson's denial that the subject was brought up on January 5 and I specifically discredit Shelor. If in fact Shelor had asked Roberson on January 5 if he had been drinking in a serious attempt to find out whether or not intoxication was the reason Roberson had not come to work it follows that more than simply the vague question "have you been drinking" would have been asked. Rather, I believe Shelor then, or at least at the hearing, assumed that Roberson had been drinking because of the event which took place the year before.

While the Respondent, of course, may discharge an employee for any reason or no reason at all, where the alleged reason is without rational foundation, that fact is some evidence that it is advanced to disguise the true motive behind the discharge. Such is, I conclude, the case here with regard to Roberson's alleged "drinking." If Shelor had in fact learned from Roberson that he had been "drinking," surely before effecting a discharge he would have wanted some evidence of the nature and extent to which the drinking was supposed to have occurred. The absence of Shelor's attempting to learn more than Roberson "had been drinking" leads to the inescapable conclusion that this "fact" was an excuse rather than a reason.

The second, or perhaps, the primary cause/reason for which Roberson was terminated was, in the language of the Respondent's brief, "he laid out of work for 3 consecutive days without giving the requisite notice."

The Respondent, however, does not explain why Curtis Collins and others who worked in the same department as Roberson were allowed to be off work 7 consecutive days before discharge or termination as a result of a "quit," while Roberson was fired after only 3 days. Thus, Shelor testified concerning the company policy:

Q. Let's say that an employee is out for 6 consecutive days, and comes in and wants to go to work. Okay?

A. Yes sir.

Q. Is any inquiry made as to why he has been out?

A. Yes.

Q. And a determination is made at the time what? As to whether he may be allowed to go back to work?

A. If he's out and he reports to work on the 7th day?

Q. Right.

A. He is allowed to go back to work.

Q. Regardless of why he was out those 6 days?

A. I wouldn't say regardless, but policy states 7 consecutive days, and everything is taken into consideration. If a guy reports back to work in good faith, he goes back to work. That's what the policy states.

Q. So regardless of whatever reason he had to be out those 6 days, as long as he gets in before the 7th day, he can go back to work?

A. He goes back to work.

Thus, it is clear from Shelor's testimony that Roberson was treated differently in January 1977 from other employees whose termination slips were in evidence with regard to the Collins allegations and from the company policy as Shelor knows it. The presumed explanation for this, although unarticulated by Shelor, is that in addition to Roberson having been off work, he admitted to have been "drinking," an admission which I conclude did not occur.

Further, the Respondent appears to argue that the situation with regard to Roberson in January 1977 was similar to 1971, when he had been discharged from the

Stuart plant for drinking on the job and also similar to 1976 when he had not reported to work for a few days after New Year. However, after the 1971 discharge, Roberson was rehired and, in 1976, Roberson was given a verbal warning. According to the Company's disciplinary policy, a second offense would have resulted in a written warning rather than a discharge. The Respondent does not explain why Shelor undertook to discharge Roberson rather than follow the Company's progressive discipline system.

There is no direct evidence that any of the Company's management personnel knew Roberson was an active supporter on behalf of the Union, although he did discuss the Union with fellow employees at the plant and did carry authorization cards. Specific evidence of company knowledge of a particular employee's union activity, particularly in this type of situation, is not a necessary condition to find a violation. It is sufficient, and I conclude, that the discharge was a reaction to the organizational campaign in general which I believe Roberson's was. And specifically, I conclude that absent the organizational campaign, Roberson would not have been discharged. Indeed, under almost identical circumstances in January 1976 he was not.

Finally, I discredit Shelor's testimony wherein he minimized his knowledge that there was any union activity at all going on at the Rubber Thread plant or in his department specifically. He testified simply that he had heard a rumor about the union campaign but had not discussed it at all with other management employees. I find this to be totally incredible given, particularly, the Respondent's policy with regard to organizational campaigns by this Union and I find it utterly unbelievable that a supervisor would not be knowledgeable about the union campaign generally and specifically where his employees were involved. Indeed, other of the Respondent's witnesses in this matter testified candidly that they did know of the union activity generally and in their departments specifically.

From all these factors, I conclude that the reason claimed by the Respondent for discharging Roberson on January 5, 1977, was not because he laid off work for 3 days or had been "drinking." Having concluded that the true reason was not that as set forth by the Respondent, I infer that Shelor's true motive lay elsewhere, and specifically I conclude that it related to Roberson's known or suspected union activity and the organizational campaign in general. I therefore conclude that by discharging Ralph Roberson on January 5, 1977, the Respondent violated Section 8(a)(3) of the Act.

Ronald Dalton and Darrell Goad

The discharge of Ronald Dalton and Darrell Goad on February 28, 1977, will be treated together because they occurred together and arose out of the same factual situation occurring during the early morning hours of February 5.

Dalton and Goad both worked on the third shift (11 p.m. to 7 a.m.) in the needle division of the Stuart plant. Dalton was a material handler and Goad's job was tying

in needle looms, although for the shift of February 4-5 he had been assigned the job of material handler.

The mutually corroborated, but not particularly credible, testimony of Dalton and Goad is that sometime in the area of 2:30 a.m., Goad asked Dalton to go down to the basement with him to look for rubber warping. This material is normally to be found in the area of the needle-loom department; however, Goad testified he could not find any rubber that particular night. He stated he had gone to the basement once before that night to look for rubber warping but had found none. He saw that Dalton was caught up with his work, thus, he asked Dalton if he would go along to look. They went to the basement, looked around, and unable to find any warping, decided to smoke a cigarette, inasmuch as, according to Goad, it was about time for a cigarette break. Rather than return to the break area in their department, which was just a short distance away but up a flight of stairs, they determined to smoke their cigarettes in the basement in an unauthorized smoking area. They both testified that Goad lit up a "Marlboro" and just as Dalton was reaching for a pack of cigarettes they heard and/or saw Supervisors Harold Dalton and Glenn Hylton approaching. Thus, as Ronald Dalton testified:

You see, when they came through the door, Darrell [Goad] just had had his cigarette long enough to take 2 or 3 draws off of it, I would say, something like that; and I was reaching in my pocket to get my cigarettes out to light one of mine; and everything was quiet in the basement, and we heard the door open, and I stopped, you know; I still had my hand in my pocket, I think; and when they came around the corner, see; and we seen who it was; we just took off, took off towards the break area; and when Darrell went by; he just put his cigarette out; and he put it out in that cigarette container; and we went on up the steps, up the stairs to the break area; there were 2 or 3 of the others up there taking a smoke break; and we just stopped and taken our smoke break and then went back to work.

Harold Dalton and Hylton testified that they were making a routine inspection tour through the basement when they smelled a strange odor. They then saw Ronald Dalton and Goad who quickly left the area, one of them throwing down a cigarette and crushing it out on the floor. They thereafter retrieved the remnants of the cigarette. It was a roll-your-own, which they put in a plastic container and gave to Marion Wood, the plant manager.

Wood subsequently contacted the highway patrol to have the smoking material analyzed. Wood testified that he suspected the smoking material was marijuana and if such was confirmed by laboratory tests, he determined to discharge Dalton and Goad. If it was found not to be marijuana, he determined to reprimand them for smoking in an unauthorized area.

The results of the highway patrol's laboratory test were received in late afternoon February 25 (Friday) and did show that the smoking material was marijuana. Thus, on the morning of February 28, Wood had Ronald

Dalton and Goad come to his office at which time he discharged them for smoking marijuana on company property. Both Dalton and Goad denied that they had smoked marijuana and in testifying in this matter, stated that neither had ever smoked marijuana on company premises.

The General Counsel contends that the assertion that Dalton and Goad smoked marijuana is a pretext to cover the Respondent's true motive in discharging employees who were known to be union supporters. However, the General Counsel agrees that neither Dalton nor Goad was particularly active in the organizational campaign. At most they had signed authorization cards and had perhaps discussed the Union occasionally with other employees. Goad testified that he had participated in a union discussion in the plant one evening, and had put up a union meeting notice in a local grocery/store filling station.

Although evidence of any company knowledge of whatever union activity Dalton and Goad may have been engaged in is at best sketchy, this issue really need not be resolved. I conclude from the totality of the evidence, and particularly my observation of the witnesses, that the Respondent reasonably believed that Dalton and Goad in fact were smoking a marijuana cigarette during their shift on February 5 and that such is ample cause for discharge. Whether they in fact were smoking marijuana cigarettes also need not be resolved, though the evidence, and the unpersuasive denials of Dalton and Goad, supports that conclusion. At a minimum, I am satisfied that the evidence is such that the Respondent reasonably could believe they had been smoking the marijuana cigarette. Under analogous circumstances, where an employer prior to discharging two employees for an alleged timecard falsification first sought the opinion of a handwriting expert, the Board concluded that the discharge of the two union activists was not violative of Section 8(a)(3). *Rock Tenn Co.*, 234 NLRB 823 (1978). And the mere fact of an organizational campaign does not prohibit this Respondent from discharging employees for cause. *J. P. Stevens & Co.*, 239 NLRB 738 (1978).

In this case from the perspective of Harold Dalton, Glenn Hylton, and other management representatives, the facts are: No employees were working in the basement on the morning of February 5 and while Dalton and Goad testified to a plausible reason why they were in the basement in the first instance, they were not convincing about why they had stayed in the basement after failing to find the material they were looking for. The fact of the matter is that the basement was not fully lighted, there being just enough light so that one could walk around. Thus, when they stopped to take their smoke break in the basement, they were, as Ronald Dalton admitted, "back in behind [the scales]; you see, just kind of in between the scales and the winders, standing back in the shadow like if somebody passed by, you might not see us if they weren't looking, or if you wouldn't expect us to be standing there they wouldn't; they would just pass on." Neither Dalton nor Goad explained why it was that they were taking a smoke break in the "shadows" of the basement rather than in the area

designated for such a short distance away. They were from the Respondent's perspective, and I believe, hiding. It is not reasonable that these two individuals would hide simply to smoke a regular cigarette. Thus, the inescapable conclusion is that they were smoking something other than a regular cigarette. Marijuana was found at the scene.

Further, I found Harold Dalton to be credible and his testimony concerning the strange odor believable. It is uncontested that in fact Harold Dalton and Hylton found smoking material which later was analyzed to be marijuana. It is possible, of course, that somebody else smoked a marijuana cigarette in the basement that evening, the odor was still present, and that Dalton and Goad were victims of unfortunate circumstances. However, given the fact that they were standing in the shadows smoking and then quickly left when discovered indicates, at least from the Respondent's perspective, that they were the culprits. Finally, there is no particular reason to believe, from the record before me, why Harold Dalton, Hylton, or other supervisors would undertake to "frame" either Ronald Dalton or Goad or try to set up a situation in order to have a pretext for discharging them. Indeed, if the Respondent was simply of a mind to discharge either Dalton or Goad because of the union activity and was looking for a pretext, smoking in an unauthorized area would seem to suffice.

Accordingly, I conclude that the Respondent's discharge of Ronald Dalton and Darrell Goad on February 28, 1977, was for good and sufficient cause, and was not motivated in whole or in part by their union activities or the organizational campaign in general. I therefore conclude that these discharges were not violative of Section 8(a)(3) of the Act, and I will recommend that these allegations of the consolidated complaint be dismissed.

#### Eugene Rorrer

Eugene Rorrer has worked for the Respondent since 1956 as a mechanic in the knitting department of the Woolwine plant. On February 24, 1977, he was granted a leave of absence in order to have an operation for a hiatal hernia which was in fact performed by Dr. Manuel Tayko.

Although Dr. Tayko testified that such patients are usually able to return to work in about 8 weeks following the operation, Rorrer had some complications which required his hospitalization to be extended somewhat and which prolonged his period of recuperation.

Thus, on May 2, Dr. Tayko signed a disability statement wherein he stated that his last treatment of Rorrer was April 12, and that as of May 2, Rorrer continued to be totally disabled for an indefinite period of time. Similarly, on May 3, Dr. Tayko signed another disability statement (apparently for a different insurance company) wherein he stated that Rorrer had been totally disabled from February 23 to "indefinite." Dr. Tayko stated on that form, in answer to when Rorrer would be able to return to work, "indefinite this time."

Although unclear whether Don Oxenrider, the Woolwine personnel manager, had the May 2 form, he did have the May 3 form on which he wrote notes of a telephone conversation he had on May 4 with Dr. Tayko.

Oxenrider testified that when he called Dr. Tayko on May 4 concerning Rorrer's status, Dr. Tayko said that he had not seen Rorrer on May 2, though Rorrer said he had. Dr. Tayko testified concerning this telephone conversation. He told Oxenrider he had not seen Rorrer on May 2 but he had seen him on May 3, to sign a disability form.

In any event, Oxenrider questioned Tayko concerning his conclusion that Rorrer would be disabled for an indefinite period. Dr. Tayko replied that such was his policy with regard to individuals having a hernia operation where their work requires them to do any heavy lifting. When Oxenrider advised that all Rorrer had to lift was a pair of plyers (which was not an accurate characterization of Rorrer's duties), Dr. Tayko then stated that Rorrer could be released to return to work with the limitation that he lift no more than 25 pounds. At Oxenrider's request, Dr. Tayko wrote a letter to the Company indicating that Rorrer could return to work on May 9 with that limitation.

Oxenrider then wrote Rorrer the following letter:

Dear Eugene,

Contrary to what you told us, we have received official notice from the doctor stating that you can return to work on Monday, May 9, 1977.

On Tuesday, May 3, 1977, you told me you had seen Dr. Tayko on Monday, May 2, 1977 and the doctor told you it would be at least June 1, 1977 before you could come back to work. Dr. Tayko says he did not see you on Monday, May 2, 1977. Please be prepared to explain this matter when you return to work on Monday, May 9, 1977.

Your leave is extended until Monday, May 9, 1977 as indicated on the enclosed leave of absence form. Please report to me before beginning to work.

On Monday, Rorrer did return to work and did meet with Oxenrider. After a short discussion, Oxenrider went to the office of Plant Manager Blair Duncan, who was with Richard Elgin, Rorrer's immediate supervisor, and recommended that Rorrer be discharged for having given false information concerning his visit to the doctor. Duncan and Elgin concurred and Rorrer was discharged with the following statement on the termination of employment form, "He was terminated because he gave false information about the visit to the doctor."

And in the testimony of Oxenrider:

Q. (By Mr. King) Mr. Oxenrider, why was Mr. Rorrer discharged?

A. For saying he went to the doctor when he didn't.

The fact of the matter is that Rorrer did not give Oxenrider false information concerning his visit to the doctor or what the doctor advised him concerning his disability status. Further, I conclude that Oxenrider knew that Rorrer had not given the false information alleged.

First, I totally discredit Oxenrider's testimony. I find his demeanor to be untrustworthy and his testimony, par-

ticularly on cross-examination, evasive. Indeed, I believe that he purposely misled both Rorrer and Dr. Tayko in his conversations with them during the early part of May using "see" to be synonymous with "examined" whereas Rorrer, a layman, would reasonably understand that to "see" a doctor does not necessarily mean to be examined by him.

The fact is that Rorrer did see Dr. Tayko on May 2 and 3 and had Dr. Tayko sign his insurance forms. At least the May 3 form if not both the May 2 and May 3 forms were in front of Oxenrider when he called Dr. Tayko on May 4. Oxenrider admitted that the reason he called Dr. Tayko was Rorrer's statement to him that he would continue to be disabled at least until June 1, a period which Oxenrider felt would be too long particularly inasmuch as, "I had heard a lot of rumors about him going around turkey hunting climbing these mountain roads, and things like that. I just felt that it ought to be documented and followed up on, because of his unwillingness to come back to work and still going out turkey hunting."

When Oxenrider talked to Rorrer on May 3 and Rorrer indicated that he had seen the doctor on Monday and the doctor told him that he would not be able to return to work until June 1, which is not substantively different from the doctor's notation on the insurance forms, Oxenrider undertook to call Dr. Tayko. After telling Dr. Tayko that Rorrer's job duties did not involve any lifting, which was a clear mischaracterization of Rorrer's job duties, Dr. Tayko stated that Rorrer could be released to return to work with the 25-pound lifting limitation. In short, after he talked with Dr. Tayko, Oxenrider knew that in substance Rorrer did not misinform him concerning what Dr. Tayko had said earlier that week.

I find Oxenrider knew that Rorrer had seen Dr. Tayko and that Dr. Tayko continued to view him as being disabled. Thus, Oxenrider's letter to Rorrer on May 5 was a purposeful attempt to misrepresent what Oxenrider knew the true facts to be. Further, it is inconceivable that the Company would discharge an employee of over 20 years service when, at best, there was a semantic misunderstanding.

I therefore conclude that Oxenrider's documentation and ultimate recommendation to discharge Rorrer was not because he had given the Company "false information" about his medical status. Concluding that the discharge of Rorrer for the alleged reason was a clear pretext, reaffirmed at the hearing of this matter by Oxenrider's unbelievable testimony, I infer that the true reason the Respondent discharged Rorrer was because of the organizational campaign in general and Rorrer's activity on behalf of the Union in specific. Indeed, even Oxenrider admitted that he was suspicious that Rorrer favored the Union prior to the discharge, although he claimed that he did not know such to be the case until following Rorrer's discharge.

I conclude that the Respondent's discharge of Eugene Rorrer on May 9, 1977, was violative of Section 8(a)(3) of the Act, and I will recommend an appropriate order of reinstatement and backpay notwithstanding that during a subsequent stage of the hearing in this matter, I

found Rorrer to have given some misleading testimony. See fn. 10, supra. Rorrer's unfortunate testimony does not alleviate the Respondent's full responsibility to remedy its unfair labor practice.

#### Gary Layman

As described more fully above, on May 12 and again on May 20 Layman was issued disciplinary warnings in violation of the Act. Inasmuch as his discharge on May 27 was predicated in substantial part on the unlawful warnings, it necessarily follows the discharge was similarly violative of Section 8(a)(3) of the Act.

In concluding that the Respondent's true motivation was Layman's union activity rather than the professed poor work, it is noted that the Company's whole defense rests upon the subjective opinions of Fain and Oxenrider concerning their discovery that the restrooms were in an "unacceptable" condition. There was no reliable objective evidence that Layman had not in fact done acceptable work. In addition, as noted above, I found both Oxenrider and Fain generally to be unreliable and uncreditable witnesses. Finally, in Fain's 10 years as a supervisor, he had never before discharged an employee. Thus, to believe Fain's testimony would be to conclude that Layman was a substantially more incompetent employee than any other who had worked under his supervision for 10 years, a conclusion which is difficult absent any objective evidence. Rather, I conclude that Layman's work was not sufficiently worse than any other employee doing this particular job. Fain's determination to discharge Layman, with the advice and consent of Personnel Manager Oxenrider, was a result of the union activity. Prior to any union activity at the plant, the work standards were not as high as Fain professed them to be.

#### Maynard Lovell

Maynard Lovell has worked for the Respondent since 1959 and except for the written warning which was withdrawn by the Respondent pursuant to the settlement of the 10(j) proceeding (see sec. 2,d above) had never been warned or otherwise disciplined. In short, Maynard Lovell was a long-term, competent employee. He was also, however, the leading proponent on behalf of the Union at the Woolwine plant. He was discharged on August 22, 1978, according to the Respondent, for gross insubordination to Supervisor Roy Turner on August 16. I conclude, however, that the reason asserted by the Respondent is a pretext to cover its true motive and that in fact Lovell was suspended on August 16 and discharged on August 22 because of his union activity.

The facts surrounding the precipitating event are largely undisputed and may be briefly summarized. Throughout the organizational campaign both pro and antiunion employees had been accustomed to leaving literature supporting their respective positions on the counter in the canteen. Also, for at least a year preceding the events of August 16, 1978, from time to time this literature, both pro and antiunion, would be torn up and thrown in a wastepaper basket although occasionally the torn pieces of literature would end up on the floor. Thus, Doralene Anderson, an employee of Piedmont Vendors,

for some months had been picking up torn paper off the floor of the canteen.

Early in the morning on August 16, Maynard Lovell went into the canteen and noting there were some antiunion literature, tore it up and threw it on the counter, admitting that some of it may have gone on the floor. Lovell apparently felt, although erroneously, that pursuant to the 10(j) settlement, antiunion literature either was not allowed on company premises or if it was there, such was with the blessing of the Respondent. Thus, he thought the presence of antiunion literature was wrong, a matter which he and another employee took up with Supervisor Roy Turner sometime later in the day of August 16 (but prior to his suspension).

Lovell then returned to the canteen about 9 o'clock or so and again saw antiunion literature on the counter. He folded the pieces a couple times, tore them, and threw the pieces on the counter. At this time Turner was in the canteen. Turner testified that on hearing the paper being torn, he turned around and told Lovell "not to throw the paper on the floor." Turner testified that Lovell's response to this was to throw the paper up in the air. Turner testified, "I said, 'Just don't throw the paper on the floor,' and as he finished tearing up the paper he just flipped it in the air and the paper fell on the floor." Turner testified that he then went to see Plant Manager Duncan about this matter.

Lovell testified that he did tear up the paper; he did throw the pieces on the counter, and possibly some did go on the floor. He testified, however, that he threw the paper before Turner told him not to do so. While I tend to credit Lovell and conclude that he did not throw any paper on the floor after being told not to do so by Turner, even if the events occurred precisely as testified to by Turner, such was not an act of insubordination which absent the union activity would have meant Lovell's discharge. I believe Lovell's act was seized upon by the Respondent as a pretext for the discharge of the principal union activist.

In characterizing Lovell's conduct, counsel for the Respondent stated, "Turner told Lovell not to throw the paper on the floor and Lovell responded by defiantly flipping the paper into Turner's face." There is patently no evidence in the record to support such a contention but such is the thrust of the Respondent's argument. That is, what Lovell allegedly did was, again in the words of counsel's brief, "unruly behavior" of such a nature as to strip him of the protective mantle of the Act.

None of the Respondent's witnesses testified that Lovell's act was of such character. Thus, even Supervisor Elgin testified that he saw Lovell tear up the paper, flip it in the air and "the paper drifted down on the counter and on the floor." Jo Anne Hilton testified, "and then Maynard picked up the paper ripped them up, and threw them in the air and they fell on the table and on the floor."

Given that this type of literature had been torn up before and was generally on the floor of the canteen for some many months without any supervisor having made any comment to employees about it leads to the conclusion that such was not particularly serious. Further, if in

fact Turner felt that Lovell's having caused some of the paper to be on the floor was an offense of any significance, surely Turner would have told Lovell to pick up the paper. That he did not indicates an acquiescence in the event. I believe it became a matter of "gross insubordination" only after Turner discussed the matter with his supervisors and a determination was reached that such might be sufficient justification to discharge the leading union activist.

Given that the Company has a progressive discipline system, such an act by a 20-year employee in the normal course of events would have merited at most a disciplinary warning rather than a discharge. That the Company responded to this rather minor act of aggression on the part of Lovell with the extreme sanction of discharge, where its policy is to use a progressive discipline system, raises an inescapable conclusion that insubordination was not the true motive.

Finally, it is noted that Duncan, who generally appeared to be a credible witness on behalf of the Respondent, testified only that he recommended Lovell's discharge to yet higher authorization. That he did not testify to the reason Lovell was discharged raises the inference that had he done so such would have been adverse to the Respondent's position in this matter—that Lovell's union activity played a significant part in the discharge.

For these reasons I conclude that Lovell's act of tearing up antiunion literature and causing some of it to end up on the floor of the canteen on the morning of August 16 was a pretext. I conclude that the Respondent suspended and discharged Lovell to discriminate against him because of his interest in an activity on behalf of the Union and thereby the Respondent violated Section 8(a)(3) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with its operations in Virginia and North Carolina have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

#### V. THE REMEDY

Having concluded that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action including offering reinstatement to Curtis Collins, Ralph Roberson, Eugene Rorrer, Gary Layman, and Maynard Lovell to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without loss of seniority or other rights or benefits, and make them whole for any loss of earnings they may have suffered, in accordance with the formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950),

with interest as provided for in *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>14</sup>

The General Counsel and the Charging Party pray for the entry of extraordinary remedies in addition to the Board's standard remedies for the violations found. The Respondent contends that in the event it is found to have engaged in one or more unfair labor practices, in the fall of 1977 it commenced a program to insure that supervision and management comply with the various Board orders and court decrees and such should be taken into consideration when fashioning a remedy. Specifically, the Respondent contends that its attorneys have held numerous meetings with supervisory personnel to explain employees' rights under the Act and supervisors were instructed not to interfere with those rights under jeopardy of themselves being disciplined or discharged. Apparently the Respondent argues that the nontraditional remedies which have heretofore been applied by the Board in cases against this Respondent should not attach here. In rejecting the Respondent's contention in this regard, I note that the evidence of supervisory meetings and the corporate efforts alleged by the Respondent was presented through the testimony of Carson Wilson, the United Elastic Division personnel manager. While the essence of the Respondent's argument concerning remedy is that there has been a change in corporate policy which should be taken into consideration in forming a remedy, Wilson testified specifically that there had been no change in corporate policy. He stated rather that it is his understanding the policy is the same as always and that the Respondent never has violated the Act. I believe that the Respondent's program, including the alleged "voluntary" aspects, is more form than substance and in any event would not affect the remedy of the Respondent's substantial unfair labor practices here. Indeed, the substantially same argument was made and rejected by the Board in *J. P. Stevens & Co.*, 247 NLRB 420 (1980). Ad-

<sup>14</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ministrative Law Judge Robert Giannasi, noted to this argument in that case, "Plus ca change, plus c'est la meme chose."

In addition to the extraordinary remedies prayed for by the General Counsel and the Charging Party, *infra*, I conclude in accordance with the Board's Order in the last cited case that the Respondent should be ordered to reimburse the Board and Charging Party for litigation costs. Traditionally the Board has awarded litigation costs only where the respondent's defenses were frivolous. *Tiidee Products*, 194 NLRB 1234 (1972). However, in *J. P. Stevens & Co.*, 239 NLRB 738 (1978), the Board has also recognized as an appropriate basis for awarding litigation costs the "willful and persistent defiance of the law" test. It goes without saying that no other entity so qualifies for the epitaph of a willful and persistent violator of the law than this Respondent. And the point has long since been reached where the Respondent's willful defiance of the national labor policy is as burdensome on the Board and counts as frivolous litigation. Thus, even though a number of the allegations I find were not sustained by preponderance of the evidence, in general, the Respondent's reaction to the Union's organizational campaign and employees' rights under the National Labor Relations Act was as it has been at other facilities for almost two decades. I therefore conclude that an award of litigation costs in this matter is appropriate and I will so recommend although noting that neither the General Counsel nor the Charging Party specifically requested such an award.

In addition, I shall also recommend the nontraditional remedies prayed for by the Charging Party and the General Counsel such as companywide notice posting, the reading and mailing of notices to all employees, and access to company property by union organizers in the event the organizational campaign should recommence. I find that these remedies are particularly appropriate in this case.

[Recommended Order omitted from publication.]