

American Thread Company and Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC.
Case 11-CA-10706

11 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

On 20 July 1983 Administrative Law Judge Hutton S. Brandon issued the attached decision. The Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts as its Order the recommended Order of the administrative law judge and orders that the Respondent, American Thread Company, Rosman, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

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

² In finding that the Respondent violated Sec. 8(a)(1) by illegal surveillance of employees during their breaks, the judge relied in part on animus evidenced in an administrative law judge's decision in Cases 11-CA-10358 and 11-CA-10531, in which the Respondent was found, inter alia, to have violated Sec. 8(a)(5) by improperly withdrawing recognition of the Union. Because that decision is presently before the Board on exceptions, we do not rely on the findings therein. Our review of the record and the judge's decision herein, however, convinces us that the other bases for the finding of surveillance are sufficient.

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge. This case was tried at Brevard, North Carolina, on April 11 and 12, 1983. The charge was filed by Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC (the Union), on December 1, 1982.¹ The complaint was

¹ All dates are in 1982 unless otherwise indicated.

issued on January 13, 1983, and alleges that American Thread Company (Respondent or the Company) violated Section 8(a)(3) and (1) of the National Labor Relations Act, in denying 4 hours of overtime work to its employee Virgil Ramey on August 23, and in suspending and discharging Ramey in October all because of his union activity and support. In addition to the issue of the legality of Ramey's suspension and discharge under the Act, additional issues regarding independent violations of Section 8(a)(1) of the Act are presented by complaint allegations alleging that Respondent interfered with, restrained, and coerced its employees in violation of Section 7 of the Act by: (1) discontinuing its practice of allowing employees to leave the plant prior to quitting time, (2) harassing employees by informing them that they could no longer discuss union-related matters in the plant, and (3) more closely watching employees during breaktimes because of their union activities.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, the Union, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, and Respondent by its answer admits, that Respondent is a New Jersey corporation engaged in the manufacture and sale of textile products with a plant at Rosman, North Carolina, the only location herein involved. It is further alleged and admitted that during the 12-month period prior to issuance of the complaint, Respondent received goods and raw materials valued in excess of \$50,000 at its Rosman, North Carolina facility directly from outside the State of North Carolina, and during the same period shipped goods and materials valued in excess of \$50,000 directly to points outside the State of North Carolina. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The complaint further alleges, Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

By way of background, the parties stipulated that in 1978 the Union was elected as collective-bargaining representative of Respondent's employees in a production and maintenance bargaining unit at Respondent's Rosman, North Carolina plant. Subsequently, Respondent and the Union negotiated a collective-bargaining agreement effective to September 15, 1981. On July 6, 1981, a new economic agreement negotiated pursuant to a wage reopener clause in the agreement became effective, and the parties commenced negotiations on non-economic issues on August 13, 1981. However, no agreement was ever reached, and on February 8, 1982, Respondent refused to recognize and bargain further with the Union claiming it had been presented with evidence

that a majority of employees no longer desired to be represented by the Union. That refusal to bargain became the subject of unfair labor practice charges in Cases 11-CA-10358 and 11-CA-10531. A consolidated complaint and notice of hearing issued on September 8, and a hearing was held on September 13 and 14 before Administrative Law Judge Lawrence W. Cullen.²

The alleged discriminatee in this case, Virgil Ramey, attended the hearing on September 13 and 14, although it does not appear that he testified in the proceeding. Ramey, who was employed by Respondent from 1962 until October 20 when he was discharged, became president of the local union in June after having served as vice president beginning in March and further having served on the Union's executive board beginning in April 1981. It was stipulated by the parties that the charge in Case 11-CA-10358, as filed, had included an allegation that Ramey had been discriminatorily suspended by Respondent for 3 days in February 1982. However, that allegation of the charge was dismissed subsequent to investigation.

Notwithstanding Respondent's refusal to recognize and bargain with the Union, Ramey continued in his union activities by distributing handbills approximately once a month and collecting union dues from employees in the plant. There is no contention that Respondent was not aware of Ramey's union activities.

B. *The Alleged 8(a)(1) Violations*

1. Discontinuation of the practice of allowing employees to leave the plant prior to quitting time

Ramey testified that his shift ended at midnight. It had been his practice for a long period of time prior to August to leave the plant 5 minutes early and proceed to his vehicle where he awaited the end of the shift and release of the employees. He remained in his vehicle in the parking lot until the parking lot was largely emptied in order to ensure that employees were able to start their cars and to be prepared for any other problems which might arise in connection with the employees' departure from the plant. There is no dispute that Respondent was aware of Ramey's practice in this regard and had condoned it. However, in early August, Ramey left the plant in accordance with his practice and awaited the end of the shift in his vehicle. However, upon the buzzer sounding for the end of the shift at midnight, he immediately proceeded to the plant gate where he started handbilling third-shift employees. According to Ramey's testimony, the following day he was called in to the office of his supervisor, Plant Engineer Hubert Dyar, who told him that he would no longer be allowed to leave the shop until the buzzer sounded. Ramey testified that Dyar explained that Personnel Manager Chester Kilpatrick stated that it was not fair to the other employees to allow him to leave early.

Dyar, in his testimony for Respondent, admitted that he had instructed Ramey not to leave the plant early but

placed the incident as occurring on June 17. To support the date of the incident, Dyar entered a note on Ramey's personnel records reflecting that Dyar had talked to Ramey about canteen breaks and leaving the workplace before the shift change signal. I find Dyar's notation is a more likely accurate reflection of the date of the event. In his testimony, Dyar stated that Respondent had conducted an attitude survey among its employees prior to June 17 and had ascertained that the employees were concerned about unfair or unequal treatment. Nevertheless, Dyar's testimony reflects, and I conclude, that he stopped Ramey from leaving early because it had been reported to him that Ramey had left early and went to the highway to hand out union literature. Based on Dyar's testimony, the timing of the curtailment of Ramey's early leaving privilege the day following Ramey's handbilling, and the failure of the record to reflect the date of the employee attitude survey, I conclude, and find, that Dyar's action was responsive to Ramey's early leaving in order to handbill.

The complaint alleges, and the General Counsel argues, that Dyar's action withdrawing Ramey's privilege of allowing him to leave work before midnight constituted an imposition of less favorable working conditions on him because of his union activities. This, the General Counsel contends, was an 8(a)(1) violation. Respondent argues initially that the change in allowing Ramey to leave early was not responsive to his union activity. This argument ignores Dyar's testimony as well as the timing of Respondent's actions which I have already found above clearly revealed that the action against Dyar was responsive to his handbilling. Respondent further argues that its action in curtailing Ramey from leaving early could not have interfered with his union activity because there was no showing that it would have been more difficult for Ramey to conduct activity on behalf of the Union by staying and working in the plant rather than, as before, hopefully working in the parking lot by attending to possible problems which might arise.

Since I have found above that Dyar's action was directly responsive to Ramey's handbilling, the issue with respect to the 8(a)(1) violation here is whether Ramey, by handbilling, breached the consideration for which the privilege of leaving the plant early was granted, i.e., to ensure that employees were able to start their cars and leave the premises without "problems." I conclude that he did not. While Ramey admittedly left the employee parking lot immediately at the shift change time on the night in issue, the record does not establish that his handbilling was so far removed from the parking lot that he could not have fulfilled his functions in assisting the employees with any "problems" which may have come up. There was clearly no evidence that "problems" arose which he did not attend to during the evening of the handbilling. Moreover, it appears that during the period of Ramey's handbilling, he remained available at the entrance to Respondent's parking lot while the employee parking lot was being emptied. It is, thus, not so clear that Ramey breached the consideration for which the privilege was granted, and indeed Dyar in his remarks to Ramey on the subject made no specific contention in this

² The administrative law judge issued his decision in the matter on May 10, 1983, finding, inter alia, that Respondent had unlawfully refused to recognize and bargain with the Union. See JD-(ATL)-35-83.

regard. Under these circumstances, I conclude that Respondent's reaction to Ramey's handbilling on June 17 was retaliatory in nature and thus constituted interference in violation of Section 8(a)(1) of the Act as alleged in the complaint. Cf. *K-Mart Corp.*, 255 NLRB 922, 925 (1981).

2. Alleged harassment of employees

The complaint alleges that Respondent, through Dyar on September 14, harassed its employees by informing them they could no longer discuss union-related matters in its plant. This allegation is based on Ramey's testimony that on returning to the plant on September 14, after having spent 2 days at the hearings in Cases 11-CA-10358 and 11-CA-10531, he was told by Dyar that Dyar knew that Ramey had been downtown and, "everybody wanted to know what was going on and he didn't want [Ramey] a-ganging up and holding no conventions."³ Dyar admitted that he had talked to Ramey after the prior hearing, but said he told Ramey that there was a lot of curiosity out in the plant and that people were going to want to know just what took place at the hearing. Dyar said he told Ramey not to "be bunching up talking, just to go ahead and run his job as usual."

The General Counsel views Dyar's remark as broadly prohibiting any discussions of the Union in the plant and, accordingly, argued that such broad prohibition violated Section 8(a)(1) of the Act. Respondent, on the other hand, argues in its brief that Dyar's statement was limited to "bunching up" and talking with the employees rather than running his job as usual. Accordingly, it urged that Dyar's remarks did not constitute a broad prohibition against soliciting or union discussion and, therefore, was not violative of Section 8(a)(1) of the Act.

I concur in the position of Respondent on this issue. Based on Ramey's own version of Dyar's remarks, all that Dyar prohibited was "ganging up and holding conventions." It cannot realistically be viewed as a bar to Ramey's talking specifically to employees about the Union or, for that matter, any subject matter in general. Furthermore, I credit Dyar's testimony, not specifically contradicted by Ramey in this regard, to the effect that he told Ramey to run his job as usual. Thus, in context, Dyar's admonition to Ramey not to "gang up" can only be considered as a bar to that discussion with employees which would interfere with Ramey's work. Since ganging up or discussions on Ramey's breaktime would not interfere with his work, Dyar's admonition cannot be said to entend to Ramey's breaktime. Accordingly, I conclude that the complaint allegation based on Dyar's statement lacks merit and must be dismissed.

3. The alleged close observation of employees during breaktimes

According to the complaint Respondent through three supervisors, Second-Shift Supervisor Keith Boley, Finishing Department Supervisor Leon Sheldon, and Shift Supervisor Ernest Galloway, during the period June

through October 18, more closely watched employees during breaktimes because of their union activities, desires, and sympathies. Ramey testified that when he assumed duties on the Union's executive board, he was called into the office of Dyar who told him that he could not have his whole second shift running around freely over the mill, and he was going to have to tighten the belt. He told Ramey, who as an electrical troubleshooter in the plant and who previously took his breaks whenever he decided to, that he would have to take his breaks at certain specified time periods. The second-shift janitor, Alfred Morgan, who was also on the Union's executive board, was also given specified breaktimes different from those of Ramey. According to Ramey sometime after he became president of the Union, Boley, Sheldon, and Galloway usually were present during the time that Ramey took his breaks. Ramey testified that one would sit in the smoking booth near the entrance of the canteen where Ramey would take his breaks, while another of the supervisors would pass through the canteen during the break, and the third would be in the employee hallway entrance as Ramey would leave his break. Ramey's testimony in the foregoing respects was corroborated by employee Martha Brown who is also recording secretary for the Union and with whom Ramey usually took his breaks. In addition, Brown testified that she overheard Boley tell employee Jack Lance once that they were watching Ramey and reporting everything to his supervisor. Both Ramey and Brown testified that they conducted union business between themselves during breaks and also collected union dues at such times.

Respondent did not dispute that its supervisors observed and checked on Ramey during his breaktimes. Thus, Galloway admitted that he had seen Ramey during practically each of Ramey's breaks during the course of Ramey's workday. Boley testified that he watched Ramey in the breakroom on occasion, but denied that he did it in collaboration with any other supervisor. While Boley had no specific supervisory authority over Ramey, Boley admitted that he conducted his observation of Ramey "strictly on my own or when I was instructed to." Sheldon also admitted to checking on Ramey in the canteen in order to see how long he was staying on breaks.

The General Counsel in his brief argued that Respondent, in more closely watching Brown and Ramey because of their union activities, violated Section 8(a)(1) of the Act, citing *Peavey Co.*, 249 NLRB 853, 857-858 (1980), enfd. as modified 648 F.2d 460 (7th Cir. 1981). While conceding to some close observation of Ramey, Respondent argues that its action in this regard was based on prior experience with Ramey in spending too much time on breaks and away from his work. Ramey as a troubleshooter had the run of the mill during the second shift when his direct supervisor, Dyar, who worked days, was not present. It was, therefore, necessary to have "contact men" to whom Ramey reported on the second shift so that his whereabouts could be known by supervision. Galloway served in the capacity as Ramey's contact man until October 1981 after which

³ Ramey filed a grievance on Dyar's statement claiming undue harassment even though Respondent refused to process the grievance due to its refusal to recognize the Union.

Sheldon became Ramey's contact. Respondent contends also that its observation of Ramey was not discriminatory because other employees had also been observed on their breaks. In this regard, Respondent pointed to notations in the personnel file of employee Jack Lance prepared by Boley and dated June 14, 1978, reflecting that Boley had timed Lance during his breaks on that day.

Entries in Ramey's personnel file maintained by Respondent and received in evidence show a warning to Ramey regarding excessive breaks in March 1979, as well as on June 17 when Dyar also suspended Ramey's privilege of leaving the plant early as related above. Because of the nature of Ramey's job, and the fact that he generally worked without immediate and direct supervision, monitoring of his breaktimes to some extent may have been warranted. However, the evidence here reveals that Respondent went far beyond occasionally checking on Ramey's breaktime. The testimony of Brown, who impressed me as a very candid and particularly credible witness notwithstanding an admitted close personal relationship with Ramey, establishes that the observation of Ramey and herself by Galloway, Boley, and Sheldon during breaktimes was only slightly short of constant.

Even assuming that there was no concerted effort among the three supervisors to watch Ramey, they all admit to a degree of observation not shown to have been accorded to any other employee. The almost constant attention of the three supervisors to Ramey's breaks could hardly be warranted by only two prior warnings of Ramey for excessive breaktime. I conclude on the credited testimony of Brown, corroborated by Ramey and largely supported by the admissions of Galloway, Boley, and Sheldon that the close observation of Ramey was designed to interfere with his union activities as well as that of Brown since the two frequently discussed union matters and conducted union business during breaktimes. The fact that Ramey was not individually intimidated by this close supervisory observation and, indeed, conducted his union business and dues collections during his breaks to spite such observation, does not preclude the existence of the 8(a)(1) violation by Respondent which I find occurred. It is not the actual effect of Respondent's conduct which determines the violation but the tendency of such conduct to be coercive. See, e.g., *NLRB v. Huntsville Mfg. Co.*, 514 F.2d 723, 724 (5th Cir. 1975); *NLRB v. Camco, Inc.*, 340 F.2d 803, 804 fn. 6 (5th Cir. 1965). In the instant case, in view of Respondent's opposition to the Union reflected by its withdrawal of union recognition, the legality of which was pending litigation, Respondent's conduct in the close observation of Ramey was coercive and violative of Section 8(a)(1) of the Act as alleged.

C. The Alleged 8(a)(3) Violations

1. The alleged discriminatory denial of overtime to Ramey

Ramey was one of three "troubleshooter" electricians employed by Respondent, one for each of Respondent's three shifts. Ramey testified that usually if the third-shift electrician was going to be absent, Ramey as the second-

shift electrician stayed over for 4 hours on the third shift to cover for the electrician with the remaining 4 hours of the third shift being covered by the first-shift electrician who was called in early. When the first-shift electrician was absent, the third-shift electrician stayed over 4 hours and Ramey, as the second-shift electrician, was called in 4 hours early. Ramey testified, however, that this procedure changed on August 23, when the first-shift electrician was absent and Ramey was not called in 4 hours early to cover for the absent electrician although the third-shift electrician, Thomas Whitman, worked 4 hours' overtime on the first shift. Ramey's testimony regarding the practice was generally supported by David Briggs, the first-shift electrician, and second-shift electrician Whitman.

The General Counsel argues, and the complaint alleges, that denial of the 4 hours of overtime to Ramey on August 23 was discriminatory. In this regard, the General Counsel relies on the fact that Ramey was the only union officer of the three electricians, the fact that Respondent departed from its normal procedures, and the fact that Respondent demonstrated union animus as reflected in the violations alleged in this case as well as in the prior unfair labor practice cases.

Respondent through its witnesses denied that its failure to call Ramey in 4 hours early on August 23 was unlawful. Respondent contends that there was no obligation under the expired collective-bargaining agreement with the Union which it was still applying, notwithstanding its refusal to recognize the Union, which dictated that it assign an electrician overtime in the absence of another one. Moreover, Kilpatrick testified that at times the work of absent electricians was not covered by another electrician. Moreover, Dyar testified that, because the day shift employs more employees and maintenance personnel, there is less need to specifically call in an electrician because there are other people available on the shift who can pitch in and fill the void of the absent electrician. The parties stipulated that the day-shift electrician was absent for partial days on March 4 and August 11 without the position being filled by either the second- or third-shift electricians. Similarly, it was stipulated that the first-shift electrician was absent for a full day on April 3, a Saturday, which is not normally a workday, and his position was not covered by either Ramey or the third-shift electrician.

With respect to August 23, Dyar explained that it was necessary to hold over the third-shift electrician in the absence of the first-shift electrician because a specific spinning frame was down materially affecting production. This third-shift electrician worked for 3 hours getting the machine operative. And according to the third-shift electrician, Whitman, after he completed his work on the spinning frame, a roving machine went "down" and he stayed an extra hour at Dyar's request to get that running. He testified that as far as he knew all problems were taken care of at the time he went home. Respondent contends that this clearly shows that there was

simply no need to call Ramey in early.⁴ Finally, Respondent argues that, although it did not offer Ramey overtime on August 23, Ramey had previously told Dyar that he did not want overtime. This contention is based on Ramey's own testimony wherein he conceded that he may have told Dyar something to "that effect." Nevertheless Ramey testified that he was available for overtime work on August 23.

Respondent's knowledge of Ramey's union activities, its close observation of Ramey in violation of the Act as previously found, and its opposition to the Union generally when considered in light of its normal practices related by Ramey, Briggs, and Whitman, of calling electricians in for overtime to replace an absent electrician, I find, establish a prima facie case of discrimination against Ramey. Establishment of the prima facie case shifts to Respondent the burden of rebutting the General Counsel's case by demonstrating that it would not have called Ramey in for overtime on August 23 without regard to his union activities. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1982). I am satisfied here that Respondent has successfully rebutted the General Counsel's case. The stipulation that there have been at least three occasions when the first-shift electrician had not been replaced undermines the General Counsel's contention regarding the consistency of the past practice. Moreover, even if two of the absences involved in the stipulation were less than a full 8 hours in duration, it nevertheless serves to substantiate Respondent's argument that it was not always necessary to replace the day-shift electrician. And the General Counsel's evidence does not specifically contradict the absence of a need to replace the first-shift electrician on the afternoon of August 23. That Ramey may have had work waiting for him when he came in on that date does not establish that an emergency existed which warranted immediate attention on an overtime basis. Nor does it establish that Respondent consciously underwent a loss in production occasioned by a "down" machine simply to avoid calling Ramey in for 4 hours of overtime because of his union activity.

Finally, while Ramey contended he was available for overtime work on August 23, I find on his own admission, although reluctant and equivocal, that he had communicated to Dyar that he did not seek overtime work. In view of this, it can hardly be argued that Respondent sought to discriminate against Ramey by denying him that which it knew he did not want anyway. Accordingly, I find no discriminatory or unlawful denial of overtime to Ramey.

2. The alleged discriminatory suspension and discharge of Ramey

The events culminating in the suspension of Ramey on October 18, and in his discharge on October 20, which are alleged in the complaint herein to be in violation of Section 8(a)(3) of the Act, occurred in the late evening

⁴ Ramey, on the other hand, testified that, on arriving at work, he was assigned to repair a "breaker drawing" machine. He testified that judging from the heat of the motor, which he replaced, the machine had been down "a couple of hours anyway."

of October 15 and the early morning of October 16. Ramey testified that while his second shift normally ended at midnight, on weekends he worked over an additional hour in order to assist in the plant shutdown for the weekend. On Friday evening, October 15, consistent with his usual custom on Friday nights after making his initial shutdown round in the plant, he took his tool pouch out to his truck in the parking lot. Also consistent with his Friday night routine, he moved his truck "over to the front of the plant . . . to keep from having to walk [as far] back out to it" when he left work.⁵ After moving his truck, Ramey reentered the plant where he saw Supervisor Bill Sheffield who he briefly exchanged words with. Ramey testified that thereafter he proceeded to make his second and third shutdown rounds and at 1 a.m. he went home. He denied that he took anything home with him that evening other than his tool pouch.

When he reported to work on October 18, he was called to the office of Kilpatrick where he met Kilpatrick and Dyar. He was told that he had been observed by some hourly employees removing a can of oil from the plant, and the employees had reported the matter to Supervisor Boley. Kilpatrick then told Ramey that he was not accusing him of anything at that time, but that they were going to investigate the matter. Ramey denied to Kilpatrick and Dyar that he had taken anything out of the plant, and said he had only gone out of the plant around midnight to move his truck. Kilpatrick, according to Ramey, stated that it would be best if Ramey did not work during the investigation. Accordingly, Ramey did not work October 18 or 19. On October 20, Ramey was called to the plant by Dyar and met with Dyar and Kilpatrick. Ramey was told that the investigation had been completed and a decision had been made to terminate him. He was given a separation slip which reflected as the reason for discharge: "Removal of material from plant without authorization. Additionally, you have been disciplined in 1982 for other unauthorized conduct."

Respondent's evidence regarding the basis for the discharge of Ramey was related through employees Jack Lance and Brian Shook and Supervisors Boley and Sheffield. Lance testified with corroboration from Shook that the two left the plant shortly prior to their midnight quitting time on October 15. As the two were in the parking lot preparing to leave, they observed Ramey walk out of a service bay door and set down what appeared to be a 5-gallon can and then reenter the plant. Lance and Shook, although not knowing whether or not Ramey was authorized to take anything out of the plant, decided to report the matter to their supervisor. The two returned inside the plant where Lance told Boley what he and Shook had seen.

Boley testified that, following the report by Lance, he suggested to Supervisor Sheffield that they walk out to investigate the matter. Boley told Sheffield to proceed through the inside of the plant to the service bay door specified by Lance, while Boley would take the outside route. As he went outside the plant, Boley asked employ-

⁵ Ramey was unclear as to the exact time that he moved his truck but stated it was "about midnight."

ee Ray Gonce to accompany him. Boley and Gonce arrived at the service bay door about the same time as Sheffield. Boley testified with corroboration from Sheffield and Gonce that they observed a 5-gallon can of what appeared to be oil. Gonce lifted the can and determined by weight that the can was approximately two-thirds to one-half full. The time was about 5 minutes to midnight. The three went back into the plant leaving the can where they found it.

At midnight Boley left the plant, got into his car, drove it around the parking lot ascertaining with his car lights the fact that the oil can was still at the service bay door, and then proceeded outside the parking lot to a position on an adjoining road a distance of approximately 180 yards from the plant. Boley testified that after being parked for a few minutes, he observed Ramey come out of the plant, move his truck nearer the service bay door where the oil can was, get out of his truck, proceed to the service bay door, return to the truck, and lift a can into the back of his truck. Boley placed the time as around 12:10 a.m. After observing this, Boley proceeded home. The following day, Boley reported to Dyar what he had seen only to the extent of Lance's report and finding the can of oil at the service bay door.

Dyar, in his testimony, related that while employees are allowed to remove certain items from the plant with permission, Ramey had sought no permission for removal of any oil. Dyar, therefore, reported the matter to Kilpatrick. The two then talked to Plant Manager Larry Walker, and an investigation was initiated. It was not until later in the day when Walker was discussing the matter with Boley, that Boley revealed what he had seen from his parked car after midnight. Boley was hesitant to reveal what he had seen and requested that Walker keep the matter confidential because Boley felt himself vulnerable to possible reprisal by Ramey if Ramey were aware that Boley had made an accusation against him. In this regard, Boley explained that he was a trout farmer operating on a stream a short distance downstream from Ramey's property. Boley testified without specific contradiction from Ramey that he had once heard Ramey, angered by a fish barrier put up by another individual below Ramey's property, assert that if Boley's fish were not downstream from him, he would just poison all the fish in the stream. Accordingly, Boley requested that Walker keep quiet about what Boley had seen until Boley either sold his fish crop within the next 6 to 8 weeks or got it insured.

In the investigation of the incident Respondent was unable to ascertain that any specific quantity of oil was missing. In investigating the matter further, however, Kilpatrick and Dyar did take a joint statement from Lance and Shook on October 18 confirming what they had reported to Boley. On the same date, Kilpatrick interviewed Gonce who confirmed seeing the oil can outside the service bay door.

While Ramey denied having taken anything from the plant, Walker determined after reviewing Ramey's record and noting that Ramey had been found inside the personnel office behind a locked door in February, an of-

fense for which he received a 3-day suspension⁶ and after having been reprimanded in April for not keeping the supply room locked as instructed and a repeat of that offense in June, it was concluded by Walker that Ramey should be discharged. Walker cleared this decision with his superior, Roger Cathran, on October 20, and the discharge thereafter was effectuated.

The General Counsel asserts in arguing that Ramey was discriminatorily discharged in violation of the Act, that a prima facie case is established by Ramey's open union support, Respondent's knowledge thereof, Respondent's opposition generally to the Union, and Ramey's denial of any wrongdoing on October 15. Recognizing that the issue herein is not necessarily whether Ramey actually removed the can of oil from the plant without permission, but whether Respondent had a reasonable basis for believing that he did, the General Counsel argues that the evidence shows an absence of any such reasonable basis. The General Counsel contends that the absence of a reasonable belief by Respondent is reflected in a number of factors. First and primarily in this regard, it is contended that Respondent failed to conduct a thorough investigation of the matter as revealed by the fact that Ramey was never told the specifics of the accusations against him and his position thereon was never obtained. Respondent's failure to identify witnesses to Ramey was based, the General Counsel argues, on warrantless fears.⁷ The General Counsel further points to the absence of any evidence resulting from Respondent's investigation that there was an actual property loss by Respondent to substantiate genuine belief that a theft had occurred. Such investigation established also no motive for the theft by Ramey. The inadequacy of Respondent's investigation, the General Counsel further contends, was revealed by its failure to closely examine witnesses and its ignoring of inconsistencies in witnesses' statements.

Finally, the General Counsel argues that even if Respondent had a reasonable belief of theft by Ramey, such belief would not warrant his discharge in light of his many years of service to Respondent, the insignificance in value of the material taken and the leniency accorded other employees in similar situations in the past. Ramey's discharge under such circumstances, it is said, can only indicate Respondent's ulterior and discriminatory motivation. The General Counsel's argument in the foregoing respects is largely echoed in the Union's brief.

Respondent's defense can be simply stated. It had a reasonable basis for a belief that Ramey had taken a 5-gallon can containing oil from its premises without permission. That action when considered in context with

⁶ It was this suspension which the Union had alleged was discriminatory in Case 11-CA-10358, but the Region had declined to issue a complaint on the allegation.

⁷ In addition to assurances of confidentiality given Boley, Respondent had also sought to assuage concerns of Lance and Shook about disclosures of their observations. Lance and Shook were admittedly not union supporters, and Lance testified herein that he feared reprisal from union people. He based such fears on "general talk" about what union people do whenever they have a "disagreement on things," and the fact that unidentified people had twice previously tampered with his car causing a wheel to come off on one occasion.

Ramey's other infractions of Respondent's rules warranted his discharge. Respondent acknowledges that it was well aware of Ramey's union activity but such activity was of longstanding and there was no evidence of an increase in such activity prior to Ramey's discharge or any other evidence to show that union activities of Ramey were of great concern to Respondent in the final months of Ramey's employment. Lastly, Respondent claims that if it had been disposed to discriminate against Ramey it would have discharged Ramey rather than suspend him in February when it found Ramey behind a locked door in Respondent's personnel office after regular office hours.

Conclusions

I have carefully considered, examined, and evaluated the testimony of Lance, Shook, and Boley on the one hand, and Ramey on the other. I have also fully considered their demeanor in testifying. Boley impressed me as honest in his testimony regarding his observation of the events which culminated in Ramey's suspension and discharge. Boley's testimony is made more credible by the fact that he perceived himself to be vulnerable to retaliation by Ramey so that he was not likely to fabricate a false accusation against Ramey.⁸ However, his testimony of what he observed after leaving the plant is suspect because his observation of Ramey's actions were from a considerable distance and it was dark. Yet, the accuracy of his identification of Ramey is supported by the claim that he saw Ramey move his truck, and Ramey admits to having moved the truck closer to the plant. It is conceivable that Boley was in error in his identification of the object he saw put in the back of Ramey's truck as an oil can. However, Boley's testimony receives circumstantial support from Sheffield who testified he saw Ramey coming back into the plant after having moved his truck. Sheffield then went to the point where he had observed the oil can earlier and found that it was gone.

Lance was a less impressive witness. It is quite clear that he gave a statement to the General Counsel on March 23, 1983, in which he stated that he had told Kilpatrick that he did not see if Ramey had anything in his hands when he came out of the service bay door on the night in issue. This is a clear and specific contradiction of the statement he had given the Company in which he had said he saw Ramey with what appeared to be a 5-gallon oil can.⁹ Nevertheless, Lance was corroborated in his testimony with respect to what he saw in Ramey's possession by Shook. Shook impressed me as credible, and aside from the fact that neither he nor Lance was a member of the Union, there was no evidence of any reason why he would have a reason to prevaricate concerning what he had observed. On the contrary, by returning into the plant and reporting what they had observed, Lance and Shook left themselves open to disci-

plinary action for having left the plant early. Indeed, both were given oral warnings on October 18 for having been outside the plant on October 15 prior to shift change.

Contrary to the contentions of the General Counsel and the Charging Party, I can find no significant or material inconsistencies or variances in the testimony of Respondent's witnesses regarding the events of October 15-16. On the contrary, Boley, Lance, Shook, Sheffield, and Gonce mutually corroborated each other. Their testimony was cohesive and reasonable.¹⁰ In the face of this evidence, the General Counsel's case is based on the uncorroborated and contradicted testimony of Ramey, the interested party, who stands to benefit from an award of reinstatement and backpay. Such testimony may not constitute substantial evidence. *F.W. Woolworth Co.*, 204 NLRB 396, 397 (1973). In any event, weighing the testimony of Lance, Shook, Boley, Sheffield, and Gonce against the testimony of Ramey, I credit the former. I find, and conclude, that Respondent had a reasonable basis to believe that Ramey had removed a 5-gallon can with its contents without permission. I do not find it necessary to conclude that Ramey actually removed an oil can from Respondent's premises. It is only necessary here to decide whether Respondent's actions against Ramey were predicated on a genuine belief that he was involved in the unauthorized removal of Respondent's property. See *Greenhouse Restaurant*, 221 NLRB 50 (1975).

Having found that there was a reasonable basis for a genuine belief by Respondent of misconduct on the part of Ramey, the issue nevertheless remains whether Respondent acted on its belief in this regard or simply used it as a convenient excuse in order to discharge Ramey for union considerations. Both the General Counsel and the Union contend that Respondent's investigation of the events of October 15 and 16 was so inadequate as to reflect Respondent's discriminatory intent particularly when considered in light of Respondent's union hostilities. I find nothing inadequate with respect to Respondent's investigation. There is no good reason shown why Respondent should have not believed Lance and Shook particularly when their stories were substantiated by what Boley subsequently observed. It is true, on the other hand, that Respondent's investigation did not reveal the loss of any specific can or volume of oil. However, this was not surprising in view of the absence of a detailed inventory maintained on such material. But the failure to ascertain a specific loss does not preclude the belief that a loss had occurred in light of what Respondent's witnesses had reported. Moreover, if Respondent had been inclined to fabricate a basis for discharging Ramey, it is more likely that it would have insured that its investigation revealed a specific loss.

⁸ The record reflects that Boley's fish crop was valued in excess of several thousand dollars.

⁹ Confronted with this contradiction, Lance asserted that Ramey was with counsel for the General Counsel at the time the statement to the General Counsel was given, although Ramey remained in another vehicle. Lance feared revelation of whatever he told counsel for the General Counsel to Ramey.

¹⁰ Contrary to the arguments of the General Counsel and the Union, I see nothing illogical or unreasonable in Boley's failure to take the oil can back into the plant after he first saw it or in his failure to prevent Ramey from removing the oil can after he observed Ramey put the can in his truck. After all, the oil can and its contents were not of great monetary value, and it was not clear to Boley at the time that Dyar had not given Ramey permission to take the can. The absence of such permission was only established the next day.

Further with respect to the argument of inadequacy of Respondent's investigation of the affair, the General Counsel and the Union contend that Respondent never gave Ramey a meaningful opportunity to express his side of the story. While it is true that Ramey was not advised of the names of his accusers, he was advised that he was accused of an unauthorized removal of a 5-gallon can and its contents on the evening of October 15-16. That information was clearly sufficient to allow Ramey the opportunity to deny the specific accusation and he, in fact, entered such a denial. I find Respondent's failure to specifically identify to Ramey his accusers was not unreasonable in light of the concerns expressed by Respondent's witnesses Boley and Lance. Accordingly, I find that Respondent's investigation was not so superficial or inadequate as to warrant an inference that the basis for Ramey's discharge was pretextual and discriminatorily motivated.

Turning to the General Counsel's argument that even assuming a reasonable basis existed for a belief of misconduct by Ramey, his discharge was nevertheless unwarranted, it must initially be noted that within the 9 months preceding his discharge, Ramey had received three serious warnings regarding his actions. One involved the serious offense of being found in Respondent's locked personnel office. That offense in itself was sufficient to raise Respondent's doubts as to Ramey's integrity notwithstanding his long prior employment. Respondent's discipline of Ramey on that occasion was not urged by the General Counsel to be discriminatory. Nor was it contended that the two warnings of Ramey for his subsequent failure to lock the supply room containing valuable materials were discriminatorily motivated. These prior infractions cannot be dismissed as insignificant or insubstantial. Objectively viewed they clearly tend to support, I conclude, Respondent's decision to terminate Ramey in light of its reasonable belief that he had removed company property without authorization.

With respect to disparate treatment in deciding on discharge of Ramey rather than the imposition of a lesser penalty, the undisputed evidence does establish that Respondent some 10 years earlier had discharged, but then rehired, an employee who had been involved in a more serious theft, more serious in the sense of the greater value of the items stolen. Respondent through Dyar explained, however, that the employee there involved had ultimately admitted his involvement in the theft and was reinstated after considering his prior work record with no warnings and considering his needs which prompted the theft. That situation Respondent would distinguish from the case sub judice on the basis that here Ramey had never admitted his involvement in any theft. Moreover, Ramey did not have the clean record that the other employee had.

Dyar also testified that Ramey was involved in prior accusations involving theft 12 years earlier. In this regard, Dyar testified that Ramey had reported to him the theft of certain metric tools by named employees and directed Dyar to where the tools were hidden in the plant. Upon investigation, the persons identified by Ramey denied any theft and, on the other hand, accused Ramey of having stolen a metric chain from Respond-

ent's supply room. Ramey denied the accusation. Dyar testified he was unable to resolve the counteraccusations and, therefore, took no disciplinary actions against anyone involved except that he warned each that any recurrence would result in a discharge.

I do not view Respondent's response to the prior incidents of theft as reflecting disparate treatment of Ramey in the instant case. Since Ramey acknowledged no wrongdoing, discipline short of discharge would serve no remedial or correctional purpose. Furthermore, the imposition of the discharge penalty here is not disproportionate to the misconduct when considered in the context of Ramey's more recent employment record. Respondent's argument that if it had desired to rid itself of Ramey because of his union activities, it would have done so in February when his unauthorized presence in the personnel department was discovered also has considerable merit. Although Ramey occupied the position of neither president nor vice president of the Union in February, he was still on the Union's executive board at the time. And, finally, the incident involving Ramey and a counteraccusation of theft several years earlier, rather than showing disparate treatment of Ramey in the instant case, reflects that his discharge was wholly consistent with Dyar's earlier threat on the prior occasion. Moreover, and in any event, it is clear that Dyar entertained doubts as to the accuracy of the counteraccusations of all the employees involved in that incident. Accordingly, I can discern no disparate treatment of Ramey in the instant case.

Considering all the foregoing, I find and conclude that Respondent had a reasonable basis for its belief that Ramey had engaged in misconduct by the unauthorized removal of an oil can and its contents from Respondent's premises. Under these circumstances, I further find and conclude that Respondent has successfully rebutted the General Counsel's prima facie case under the principles of *Wright Line*, supra. I shall, therefore, recommend dismissal of the 8(a)(3) allegation of the complaint with respect to Ramey.

CONCLUSIONS OF LAW

1. American Thread Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. By discontinuing its practice of allowing Virgil Ramey to leave its plant early in order to be prepared for employee parking lot problems, and by more closely observing Ramey during his breaktimes, all because of his union activities, Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent did not violate Section 8(a)(3) of the Act in its failure to grant overtime to Ramey on August

23, 1982, or its suspension and discharge of Virgil Ramey on and after October 18, 1982.

6. Respondent has not violated the Act in any other manner not specifically found above.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall recommend to the Board that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act to include the posting of an appropriate notice to employees.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, American Thread Company, Rosman, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discontinuing any practices which may be deemed beneficial to its employees in order to interfere with employee activity on behalf of Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, or any other labor organization.

(b) More closely observing employees during their breaktime in order to interfere with their activities on behalf of a labor organization.

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

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

(a) Post at its Rosman, North Carolina facility, copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹² 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."

consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint be dismissed to the extent it alleges any unfair labor practices not specifically found herein.

APPENDIX

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

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

The Act gives employees the following rights.

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from any or all such activities.

WE WILL NOT discontinue any practice which may be beneficial to employees in order to interfere with their activity on behalf of Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT more closely observe you during your breaktime in order to interfere with your activities on behalf of the above-named labor organization, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

AMERICAN THREAD COMPANY