

**Sidex Furniture Corporation and Printing and Graphic Communications Union No. 17, affiliated with International Printing and Graphic Communications Union, AFL-CIO-CLC. Case 25-CA-13569**

11 May 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 19 October 1982 Administrative Law Judge James J. O'Meara Jr. issued the attached decision. The General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief to the General Counsel's exceptions.

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

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions, as modified below, and to adopt the recommended Order<sup>2</sup> as modified.<sup>3</sup>

The General Counsel has excepted to the judge's failure to find that the Respondent violated Section 8(a)(1) by informing employees it would be futile for them to select the Union as their representative. While the judge described the content of, and made credibility resolutions concerning, two con-

versations during which the Respondent's expressions of futility are claimed to have been made, he did not explicitly reach a legal conclusion on the General Counsel's allegations.

Employee Benny Longworth initiated a conversation concerning disciplinary procedures with General Manager William Hurdle about 22 May 1981. According to the credited testimony, Longworth told Hurdle that he "was going to bring in a union if matters didn't straighten up" and that the employees would go on strike with the union and shut the plant down; in response to Longworth's assertions, Hurdle said the employees "wouldn't bring a union in" and "wouldn't shut [the plant] down." In a conversation between Longworth and Plant Manager Nikola Jevtic, after 29 May 1981 when Longworth was reassigned to new job duties, Longworth told Jevtic that he would not be able to switch Longworth's duties if the employees had a union and also said, "This is America and we can have a Union"; Jevtic responded that "this was America, but [Respondent] was a Yugoslavian company and the employees would not have a union."<sup>4</sup>

Contrary to the argument of the General Counsel, we do not find Hurdle's and Jevtic's statements to be expressions of futility of employees' selecting a union. Both statements were responses to Longworth's predictions about the likelihood and effect of unionization and were made without accompanying threats or other coercive statements. They were Hurdle's and Jevtic's expressions of opinion about the likelihood of employees opting for unionization. As such, these statements do not have a tendency to coerce employees in the exercise of their Section 7 rights and are protected under Section 8(c) of the Act. Accordingly, we dismiss paragraphs 5(a)(ii) and 5(b) of the complaint.

The General Counsel also has excepted to the judge's characterization of one complaint allegation as an act of surveillance, to his analysis based on the erroneous characterization, and to his failure to find, as alleged, that the Respondent violated Section 8(a)(1) by the Act of soliciting an employee to engage in surveillance. The factual predicate of the allegations was Secretary Loretta Thomas' credited testimony about a conversation between General Manager Hurdle and herself soon after the Respondent received the representation petition. At the end of their conversation, after Hurdle asked Thomas if she knew who was trying to unionize the factory and Thomas said, "no," Hurdle asked whether there was any way "we" or "you" could

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

We specifically note that no exceptions were filed to the judge's findings of unlawful interrogations and grant of benefits.

We correct the following errors and omissions in the decision. The description in sec. IV,A of the decision concerning a conversation between Benny Longworth and William Hurdle is corrected to reflect the date of the conversation as occurring "on or about 22 May 1981" instead of "on or about March 18, 1981." The discussions in sec. IV,D of the decision concerning the number of employees employed on and after 5 June 1981 is corrected to reflect that the production employee complement on 5 June before the discharges was nine permanent employees, one temporary employee (the employee with prior experience hired 29 May), and Supervisors Jevtic and Dzevad, and that the complement immediately following 5 June was five permanent production employees, one temporary employee, and Supervisors Jevtic and Dzevad. Dzevad transferred to another Respondent facility about July 1981. These errors and omissions do not affect the outcome of the decision.

<sup>2</sup> The judge's recommended Order did not include the bargaining order remedy sought by the General Counsel, as the judge concluded that such a remedy was unwarranted. We agree with his conclusion. However, we rely only on the fact that the violations found are insufficient to support a bargaining order remedy; accordingly, we find it unnecessary to rely on the remainder of his rationale.

<sup>3</sup> We have modified the judge's recommended Order by deleting reference to promising of benefits to employees during a union campaign. While the judge found, as alleged, an unlawful grant of wage increases, no unlawful promise of benefit was alleged or found by him. The attached notice has been conformed to our modified Order.

<sup>4</sup> The above quotations, which vary slightly from those described in the decision, accurately reflect Longworth's testimony.

find out,<sup>5</sup> to which Thomas again said, "no." We find that such evidence does not support the General Counsel's allegation inasmuch as Hurdle's comments were not clearly shown to be an effort to have Thomas actually engage in unlawful surveillance.<sup>6</sup>

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 4:

"4. Respondent has not violated the Act in any other respect."

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sidex Furniture Corporation, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Granting employees wage increases in order to undermine employee support of Printing and Graphic Communications Union No. 17, affiliated with International Printing and Graphic Communications Union, AFL-CIO-CLC, or any other labor organization."

2. Insert the following as paragraph 1(c).

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

3. Substitute the attached notice for that of the administrative law judge.

<sup>5</sup> Thomas testified that she was not certain which of the two pronouns was used.

<sup>6</sup> We need not reach a conclusion on the interrogation allegation based on this same conversation, since the General Counsel did not take specific exception to the judge's failure to reach such a conclusion. We also note that any such finding would be cumulative in view of our Order remedying other findings of unlawful interrogations.

Member Zimmerman would reach the interrogation issue. It was fully litigated and the General Counsel's exception to the judge's treatment of the incident from which the issue arises is sufficient to place it, as well as the surveillance issue, before the Board. On the merits, Member Zimmerman would find that Hurdle engaged in interrogation in violation of Sec. 8(a)(1) when he asked Thomas if she knew who was trying to unionize the factory. No legitimate purpose attaches to such an inquiry. Any doubt as to this is dispelled here by Hurdle's then asking Thomas if there was any way "we" or "you" could find out who was trying to organize the factory. Clearly, both these questions were aimed at ascertaining who were the union leaders and adherents. As such, they had the tendency to be coercive and therefore unlawful. Further, Hurdle's latter inquiry constituted a request to Thomas to engage in actual surveillance of the employees' union activities or, at the least, for her to suggest a way the surveillance could be accomplished. In either case, the Respondent was asking Thomas to become a party to conduct that would interfere with the exercise of employee Sec. 7 rights. Member Zimmerman, therefore, concludes that Hurdle violated Sec. 8(a)(1) by unlawfully soliciting Thomas to engage in surveillance.

#### APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

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

WE WILL NOT interrogate employees regarding their union activities or sympathies.

WE WILL NOT grant employees wage increases in order to undermine employee support of Printing and Graphic Communications Union No. 17, affiliated with International Printing and Graphic Communications Union, AFL-CIO-CLC, 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 guaranteed you by Section 7 of the Act.

#### SIDEX FURNITURE CORPORATION

#### DECISION

#### STATEMENT OF THE CASE

JAMES J. O'MEARA, JR., Administrative Law Judge. The complaint in this matter was issued on July 17, 1981, and is based on an amended charge filed on June 8, 1981, by the Printing and Graphic Communications Union, No. 17. The complaint was amended at the hearing and alleges that the Respondent, through several of its supervisors, interrogated, exercised unreasonable surveillance, granted a wage increase, and discharged several of the Respondent's employees in order to discourage, and because of, the employees' concerted activities on behalf of the Union, and that such conduct comprises violations of Sections 7 and 8(a)(1) and (3) of the Act. The complaint also alleges that the Union was designated by a majority of the Respondent's employees as the exclusive representative of such employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Notwithstanding the foregoing, the Respondent has failed and refused and continues to fail and refuse to recognize or bargain with the Union as the exclusive col-

lective-bargaining representative of its employees in violation of Section 8(a)(5) of the Act. The complaint further alleges that the acts of the Respondent comprising violations of Section 8(a)(1) and (3) of the Act are of such a serious and substantial nature that a fair election among the Respondent's employees is precluded and, therefore, that a remedial order requiring the Respondent, among other things, to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees is an appropriate remedy.

The Respondent, by its amended answer to the amended complaint, denies that it has violated the Act in any such manner.

A hearing was held in Indianapolis, Indiana, on March 15, 16, and 17, 1982. At the close of the hearing oral argument was waived by the parties and they were given leave to file briefs which have been received and considered.

In consideration of the entire record in this case including all competent written and oral evidence, the demeanor of the witnesses, and the briefs and arguments of counsel, I make the following

## FINDINGS AND CONCLUSIONS

### I. JURISDICTION

The Respondent, Sidex Furniture Corporation, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, maintains its principal office and place of business at Boston, Massachusetts, and various other facilities in several States of the United States, including a plant located at Indianapolis, Indiana (the facility), and is and has been at all times material herein engaged at the facility in the manufacture, sale, and distribution of home furnishings. During the 12-month period ending June 1, 1981, the Respondent, in the course and conduct of its business operation, sold and shipped from the facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Indiana.

Accordingly, I find the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that it will effectuate the policies of the Act to assert jurisdiction in this case.

### II. THE LABOR ORGANIZATION

Printing and Graphic Communications Union No. 17, affiliated with International Printing and Graphic Communications Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Proemial Facts

The Respondent, a Massachusetts corporation, operates a facility in Indianapolis, Indiana, where it assembles and finishes various types of furniture which it sells to retailers. The facility began production in November 1980. The employee complement, at the time material to the issues in this case, comprised Nicola Popovic, company president; William Hurdle, sales and general man-

ager; Kofric Dzevad, supervisor; Nikola Jevtic, plant manager; Loretta Thomas, office clerical; and eight production employees, namely, Jeff Shelton, William Vawter, Laurence Rice, Benny Longworth, Michael Henry, Edwin Parker, Victor McCarley, and Howard Moreland.<sup>1</sup> In April 1981, the employees had engaged in discussions among themselves regarding matters of common concern and particularly relating to wages and working conditions. One of the employees, Benny Longworth, was nominated as "spokesman" for the employees. In that month, Popovic and Hurdle asked Longworth about employee problems and requested that he draft a proposal relating to the solution of such problems. As a result of the proposal drafted by Longworth a memorandum to the employees was posted on April 20, 1981, regarding salaries, absenteeism, and other job-related conditions. Notwithstanding this action by management, the employees continued to be dissatisfied with several facets of their working conditions, namely, safety and firings without warnings. On May 18, Longworth contacted the Union in order to initiate organizational procedures. An organizational meeting was held between the employees and a union representative whereupon all those employees present signed union authorization cards. Those not present signed cards later the same day. After the meeting Longworth posted a "union notice" on the bulletin board at the Respondent's facility. On May 22, 1981, a Petition for Certification of Representation was filed by the Union, a copy of which was received by the Respondent on May 26, 1981.

On May 29, 1981, the Respondent held a meeting with all employees and informed them, among other things, that some or all of the employees would be transferred to different production work and that they would be given 2 days to learn their new duties and "make quota" or they would be invited to leave the Respondent's employ. Approximately a week later and on June 5, 1981, Longworth, Henry, McCarley, and Moreland were discharged.

#### B. Supervisory Status of Certain Employees

Section 2(11) of the Act defines the term "supervisor" as any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

#### 1. William Hurdle

William Hurdle was hired as "General Manager and Sales Manager." During his tenure with the Respondent, his duties included hiring of all employees. The proce-

<sup>1</sup> The Respondent has denied that Hurdle, Jevtic, and Dzevad were supervisors within the meaning of the Act. By stipulation, it was agreed that Popovic and Thomas were not members of the unit of employees allegedly represented by the Union and that the eight named production employees are of the unit.

dures with regard to hiring usually employed by the Respondent was that President Popovic would advise Hurdle that "We need two people, three people" upon which Hurdle would review filed applications and select from the applications those whom he felt best qualified to work. The decision to employ was solely that of Hurdle. Popovic admitted that Hurdle interviewed prospective employees and that Hurdle's "opinions" regarding the selection of an employee were given careful consideration by Popovic. Since the criteria setting out the definition of a supervisor are disjunctive the authority of Hurdle to select and hire, or effectively recommend the hiring of, employees is sufficient to bring Hurdle within the statutory definition of "supervisor." Notwithstanding the foregoing, Hurdle possessed several other indicia of a "supervisor." He was empowered to, and did, direct the work of employees; he signed all employee notices regarding wages and working conditions; he selected employees to work overtime when necessary; and he advised new employees that any problems they had were to be taken to Popovic or himself. Hurdle also wrote letters of recommendation for former employees and participated in management meetings. Hurdle acted on behalf of the president in several meetings with employees and in implementing management decisions. It is clear from the evidence that Hurdle was a "supervisor" as defined in the Act. Popovic's expressed position that only he had the authority to hire and fire is not borne out by the evidence which establishes that Hurdle, on frequent occasions, employed personnel without recommending such employment to Popovic. As part of "management," which included Popovic, Hurdle, Dzevad, and Jevtic, he discussed work problems with employees. In view of the significant matters of record above set forth, I find that Hurdle was, at the time material to the issues in this case, a "supervisor" as that term is defined in Section 2(11) of the Act.

## 2. Nikola Jevtic

Nikola Jevtic commenced employment at the Indiana facility of the Respondent in May 1981. He was introduced to the employees as the "new plant manager." The employees were advised to refer any problems or complaints they had to Jevtic and to follow his directions and orders. Jevtic assigned employees from one position to another when, in the judgment of Jevtic, such a move was practical. On one occasion an employee, Thom Shock, was discharged for failing to obey an order from Jevtic. It is clear from the testimony that Jevtic was employed at Respondent's facility because of his prior supervisory experience at the Respondent's facility in Memphis, Tennessee, and in Yugoslavia. Popovic also testified that Jevtic used independent discretion in assigning or reassigning employees and that he evaluated employees' work and consulted with Popovic regarding recommendations for discharge. Jevtic also kept daily production logs which the Respondent contends were reviewed prior to the decision to discharge the four discriminatees. Even though it could be argued that Jevtic's duties were limited to those of "recommending" to Popovic, it is clear that such recommendations were given high regard and therefore brings Jevtic within the

statutory criteria of possessing the authority "effectively to recommend" the actions comprising several of the criteria of the statutory definition of "supervisor." I, therefore, conclude that Jevtic was a "supervisor" as that term is defined in the Act.

## 3. Kofric Dzevad<sup>2</sup>

Dzevad's supervisory duties included assigning work, maintaining quality control, instructing employees, and acting as management's representative when Hurdle, Popovic, or Jevtic were not at the facility. Dzevad's duties included reporting employees who were required to leave the job early or employees who reported late. His time was spent primarily in observing the operations of other employees as opposed to actually producing the Respondent's product. Dzevad had keys to the premises and was the management representative who opened the plant for the beginning of the day's production. In addition to the foregoing, Hurdle testified that Dzevad had the power to fire and to recommend firing an employee. According to the foregoing evidence, I conclude that Dzevad was a "supervisor" within the definition of that term in Section 2(11) of the Act.

## IV. THE RESPONDENT'S UNION ANIMUS

### A. Union Discussion

On or about March 18, 1981, an employee, Benny Longworth, discussed what may be characterized as "grievance" procedures with Hurdle. During this discussion Longworth said that he was "going to bring in a union if things didn't straighten out." Longworth suggested to Hurdle that a strike could result and the plant would be shut down. Hurdle responded that the employees would not bring a union in and that the employees would not shut down the plant.<sup>3</sup>

On May 29, 1981, Longworth was reassigned to a job upholstering furniture. Jevtic instructed Longworth how to perform the new job. During this time Longworth told Jevtic that if the employees had a union in the plant he would not be able to switch Longworth's duties. Longworth told Jevtic that "This is America and we can have a union." Jevtic replied, "But this is a Yugoslavian company and you will not have a union."<sup>4</sup>

### B. Respondent's Interrogation of Employees

On a day approximate to, but after, the Respondent had actual notice of the Union's organizational petition, Hurdle interviewed the office secretary, Loretta Thomas,

<sup>2</sup> Dzevad is not alleged to have participated in any unfair labor practices. However his status as supervisor is significant in determining the Union's majority among unit employees.

<sup>3</sup> Hurdle did not recall such a conversation but did not deny that it took place. Accordingly, I credit the testimony of Longworth that such conversation did take place.

<sup>4</sup> Although Jevtic denied ever talking to anyone at the Respondent's plant about a union or ever hearing anyone talking about a union it is not credible in view of the small size of the work force the fact that Jevtic spends much time with the employees in the plant and the admitted union organizational activity took place during the subject period. Accordingly, I credit the testimony of Longworth regarding his conversations with Jevtic.

as to her knowledge of "someone trying to unionize" the factory and if she knew who it was and how they could be identified. Hurdle also queried an employee, Edwin Parker, about union activity among the employees and Parker's involvement in such activity.<sup>5</sup>

On the same day another employee, Laurence Rice, was also questioned by Hurdle as to his knowledge of union activity among his coemployees.

#### C. *The Wage Increase*

On June 15, 1981, the Respondent granted a 20-cent-per-hour pay raise to all employees. Employee Rice, when told of the 20-cent wage increase, was told by Hurdle that "even though the company attorney advised me not to because of the union, the company is going ahead with the raise any how effective this week." Popovic acknowledges the raise being authorized by him in June 1981, and contends that the Company followed criteria set forth as company policy of April 20, 1981. This policy regarding pay increases did not schedule a 20-cent across-the-board increase to all employees since the wage increases there set forth are based on the length of employment of the individual employee.

#### D. *The Discharges*

On June 5, 1981, the Respondent discharged three production employees, Benny Longworth, employed on March 16, 1981; Victor McCarley, employed April 29, 1981; Howard Moreland, employed May 1, 1981; and one shipping clerk, Michael Henry, employed March 9, 1981. The Respondent contends that the reason for the discharge of these employees was solely economic.

At the inception of the Indianapolis facility of the Respondent in November 1980, a key employee engaged to perform the duties of plant manager was not available to the Respondent because of some undefined visa problems. As a result, no experienced plant manager was available until May 4, when Nikola Jevtic was obtained from the Respondent's Memphis facility. Jevtic had previously worked in his native Yugoslavia for a furniture manufacturer for a period of 20 years, 17 of which he worked as a plant manager. Upon coming to the United States on October 1, 1978, he was employed by the Respondent at its Memphis plant as a plant manager. In early May, on undertaking his duties as a plant manager at the Respondent's Indianapolis facility, he observed many defective and discarded chairs and what he characterized as a "second class" workmanship. During this period he surveyed the work of the production line employees and instructed them in the assembly of the various furniture products manufactured by the Respondent. During this period of time he "understood" the process of making such furniture. As a result of his observation he advised Popovic, the president, that a complete reorganization of the production process was necessary and that the employee complement should be reduced. He

<sup>5</sup> Parker denied his involvement in the union effort to unionize the Respondent. This denial, although untruthful, does not mitigate against the credibility of Parker, since Parker needed his employment and could well have perceived jeopardy of his tenure with the Respondent in the event he was known to be union active.

recommended to Popovic that Don Taylor, Howard Moreland, Victor McCarley, Benny Longworth, Edwin Parker, and Michael Henry be discharged to reduce the production complement to those he deemed could effectively perform the necessary work. Jevtic made the selection of those to be discharged on the consideration of which among the employees "understood" the making of furniture and could perform the work effectively. This conclusion applied to all those whom he recommended for discharge except Henry who was engaged as shipping clerk. Jevtic, in addition to his duties as plant manager, was to undertake the shipping phase of the operation and replace Henry. These discharged employees were notified of their discharge on June 5, 1981. Although the recommendation of discharge was made at the end of Jevtic's first week of employment, the actual discharge did not take place until after Jevtic had moved his residence from Memphis to the Indianapolis area. This occurred during the last week of May. Upon being available to undertake his position as plant manager without interruption it was deemed prudent to discharge the employees and effect the reduction recommended by Jevtic on June 5, 1981. These circumstances giving rise to the need to reorganize the production phase of the Respondent's business was prompted by a loss in excess of \$100,000 incurred by the Respondent in the first 6 months of 1981. Frequent complaints were received by customers of the Respondent as to both timeliness of shipment and quality of merchandise. Due to the inability of the Respondent to fill orders, a substantial number of orders were canceled. It was the judgment of the Respondent, based on Jevtic's recommendation, that both quantity and quality of the production would improve by a reduction of production personnel and the more qualified employees retained resulting in a lower labor cost and a higher production efficiency.

All the employees engaged on the production line at the time of the discharge of Longworth, Henry, McCarley, and Moreland had signed union authorization cards. Longworth, McCarley, and Moreland signed such cards at the union luncheon meeting at which Henry and one other employee were unable to attend. Henry and the other employee were solicited by Longworth and signed the union authorization card later that day. Jevtic denied talking to the employees about a union. The only reference in this record in this regard arises from the testimony of Longworth who stated that, while Jevtic was showing him how to perform on the production line, he told Jevtic that if there had been a union he could not shift him from one job to another. Jevtic stated that it was a Yugoslavian company and they would not have a union.

At the time of the discharge the employee complement of the Respondent at the Indianapolis facility comprised the president, Popovic; the sales manager, Hurdle; two supervisors, Jevtic and Dzevad; the office secretary; and eight production employees. After the discharges of the four production employees on June 5, 1981, and to the present time, the production complement of the Respondent's plant comprised five production personnel and Supervisor Jevtic. On May 29, and the week prior to

the discharge of the four employees, the Respondent engaged three other employees. On May 29, a prior experienced employee returned to the Respondent. On June 5, the day of the firing of the four other employees, an experienced Sidex employee, Kurt Assin, was employed. Another employee, Chip Holmberg, replaced an employee who had left the Respondent's employ later in June 1981. Each of these employees had prior experience and their capabilities to perform the production requirements of the Respondent were known to the Respondent. Notwithstanding the foregoing the production complement of the Respondent has been basically six including Supervisor Jevtic and such complement existed at the time of the hearing.

#### E. Discussion and Conclusions

The complaint charges that the Respondent unlawfully interrogated employees regarding their union activities, exercised unlawful surveillance of the employees, unlawfully granted an employee benefit in the form of a wage increase, and discharged four employees in order to undermine and reduce union strength and defeat the Union in the anticipated representation election.

The Respondent received formal notification of the Union's organizational efforts on May 26.<sup>6</sup> Prior thereto, in April, the General Manager Hurdle had at least one discussion with employee Longworth regarding disciplinary procedures. During such conversation Longworth threatened to "bring in the Union" if Respondent did not react to the employees' request for relief. It was Longworth, not Hurdle, who characterized the advent of a union with "strikes" and "plant closures." Hurdle's response to Longworth was that, "You will not bring in a union; you will not shut down the plant." Management's response to Longworth's efforts was to issue a notice to employees regarding scheduled wage increases and other general policy matters not inconsistent with management's rights and of a controversial nature. The Respondent at this juncture, as reflected by Hurdle, was not receptive to union representation of its employees. At this point in time (i.e., prior to May 26), the evidence establishes that the Respondent was antiunion, however, no action was taken that can be construed to be an unlawful overt act or a threat to commit an unlawful overt act. Hurdle did not threaten Longworth or other employees with adverse action if organizational efforts were undertaken by the employees or the Union, nor did he or the Respondent act to limit or to interfere with its employees' exercise of their Section 7 rights; on the contrary, the Respondent reacted by publishing a policy memorandum regarding some of the matters concerning its employees.

On May 22, six of the eight production employees met at lunch with a representative of the Union where they signed and delivered representation cards to the Union. The two other production employees signed representation cards later that day at the solicitation of Longworth. Thus, the Union, in fact, had been designated as the sole collective-bargaining representative by 100 percent of the Respondent's production employees. On that day, May

22, the Union filed a petition with the Board for certification as exclusive collective-bargaining agent pursuant to Section 9 of the Act. Simultaneously with filing the petition, the Union sent a letter, dated May 22, notifying the Respondent of its interest. The letter and a copy of the petition was received by the Respondent on May 26, thus, the Respondent had knowledge of the Union's organizational effort on that date. Subsequently, Hurdle asked the Respondent's office secretary, Loretta Thomas (not a member of the proposed bargaining unit), if she knew who was involved in the union effort and if she could learn their identities. Thomas denied knowledge of employees involved in the union effort and the evidence does not disclose that she made any effort to inform herself or any member of Respondent's management regarding the identity of such employees. The record does not disclose that Thomas communicated the request of Hurdle to any member of the employees bargaining unit.

The other incident where a supervisory employee discussed the Union with a member of the bargaining unit was when Jevtic told Longworth that since the Company was a Yugoslavian company it would not have a union. Longworth's only response regarding this statement was that in America such employees can have a union.

On May 29, Hurdle interrogated two employees, Parker and Rice, about their knowledge of the union campaign and in Parker's case his personal involvement in such activity.<sup>7</sup> Such interrogation by Hurdle, the general manager of the Respondent, is productive of a harassing attitude. Parker and Rice denied knowledge even though they had signed representation cards for the Union. Their noncandid response is understandable and was prompted by their need and desire for job tenure. Thus, the effect of such interrogation on employees is demonstrated and constitutes a violation of Section 8(a)(1) of the Act.

However, I find no compelling evidence that any unlawful surveillance by the Respondent of its employees occurred. The discussion by Hurdle with Thomas when he questioned her regarding her knowledge of the identity of union participators and whether she had any way of identifying such individuals involved in the union campaign is not "surveillance" even if it may have been an attempt to so act. I find it significant that no evidence in this record discloses or suggests that she conveyed her discussion with Hurdle to any of the other employees.

On June 15, the Respondent granted its production employees an across-the-board 20-cent-per-hour wage increase. The wage increase was given against the advice of the Respondent's attorneys and was not, as Popovic contends, in accord with any previously scheduled raise program. The only scheduled raise at the Respondent's facility dealt with an increase in wages based on the em-

<sup>7</sup> Hurdle's nonabsolute denial of these conversations with Parker, Thomas, and Rice is not convincing. He was aware of the Union's petition and had attempted to enlist Thomas in his effort to identify union sympathizers. Thomas, a nonunion employee, with no direct interest in the union campaign, testified with a candid demeanor and is the touchstone of credibility as to the conversations of Hurdle. I credit Thomas, Parker, and Rice in this regard.

<sup>6</sup> All dates are 1981 unless specifically indicated otherwise.

employees' length of service and, since all employees had different commencement dates, the right to a raise, according to the published schedule of the Respondent, did not mature in each of the employees' cases on June 15. Such benefit is clearly unlawful since it attempts to undermine union efforts and is a subject for bargaining if and when the Union is certified. Regardless of the intention of the Respondent, the benefit was meant to, or could unlawfully and unfairly, compete adversely with the Union's effort to organize the Respondent's employees and, thus, violates Section 8(a)(1) of the Act.

Respondent contends that it discharged four of its employees on June 5 for economic reasons and not because they engaged in the exercise of their rights under Section 7 of the Act. Popovic testified that the discharges were made on the recommendation of Jevtic who based his recommendation on the fact that the product of the Respondent, both in quality and quantity, could be assembled with a small complement of employees and that three of the employees selected for discharge were the least qualified among the production complement. (Henry was discharged because his duties as shipping clerk were taken over by Jevtic.) Hurdle testified that the discharges were for economic reasons.

The General Counsel argues that the testimony of Popovic and Hurdle is contradictory and that such contradictions support the contention of the General Counsel that among the reasons, or a motivating factor, for the discharge of the four employees was their union activity.

I do not find the testimony of Popovic and Hurdle regarding the reasons for the discharge of the four discriminatees contradictory. The Respondent's Indianapolis facility began operations in November 1980. No plant manager was available to this facility because of a visa problem encountered by the person who, it was anticipated, would fill the position. The Company lost \$100,000 during the first half of 1981. During this period orders were canceled because of the inability of the Respondent to produce and deliver products to fill such orders in a timely manner. The quality of the assembled chairs was demonstrably poor. The spoilage rate was excessively high. Upon Jevtic's arrival, a plant manager experienced in the Respondent's products and methods, changes were recommended designed to remedy the low quantity and poor quality of production. He recommended to Popovic, the president, that several employees be discharged because of poor quality and low quantity workmanship. No replacements of the discharged employees were made and the complement of the production staff of the Respondent remains at five production employees and Supervisor Plant Manager Jevtic. Henry, the shipping clerk, was among the dischargees because Jevtic undertook to perform the duties previously assigned to Henry in the shipping department. The evidence establishes that the discharges of three production employees and Henry were undertaken because of production problems which effected the economic well-being of the Respondent.

The General Counsel further argues that the discharges were effected, in whole or in part, because of the exercise of rights under Section 7 of the Act by the four dischargees. He seems to base his argument on the

fact that they were union sympathizers and the Respondent was expressly antagonistic to the unionization of its employees, and that a motivation factor was the exercise by the dischargees of protected activity. This contention is without merit. The evidence preponderates in favor of the contention of the Respondent that it had a compelling need to produce its product in an efficient cost-effective manner. Jevtic, on arrival at the facility and undertaking his duties as plant manager, deemed that the production needs of the Respondent could be satisfied by a small complement of efficient production employees. He observed the employees during the first week in May. He identified to the president those candidates for discharge. He based his nomination of the candidates for discharge on their "understanding" of the furniture manufacturing business and on their capabilities. Those selected and recommended for discharge were those he deemed least competent among the production employees. There is no evidence to suggest that Jevtic's recommendations were based on factors other than those testified to by Jevtic. Further, the fact that the Respondent's gross production in May amounted to \$200,000 does not mitigate against the alleged economic reason for the discharge in view of the Respondent in the first 6 months of 1981. It is not deemed insignificant that the Respondent, since the discharge of these employees, has continued to operate with a reduced production employee complement.

Having concluded that the reasons assigned by the Respondent for the discharge of the three production employees and Henry comprised the motivation for the discharge it becomes necessary to examine the evidence tending to support the argument of the General Counsel that the discharges were undertaken and the employees so discharged were selected because of their union activities. It is apparent from the evidence that the Respondent could not discharge any production employee without discharging a union supporter as disclosed by the fact that the Respondent's entire production complement signed a union authorization card. By innuendo it can be argued, as I assume the General Counsel does, that Longworth, because of his history of speaking out, was suspected of union activity. He was also deemed by Jevtic to be a poor worker. I cannot conclude from this record that "motivating factor" for the discharge of the Respondent's employees was motivated by their exercise of protected activity. The timing of the discharge, approximately 10 days after the Respondent received notice of the Union's petition, is suspect. However, this suspicion is negated by the uncontradicted evidence that Jevtic's arrival in May and his immediate evaluation of the production complement at the plant gave rise to the circumstances culminating in the discharge of these employees on June 5. Jevtic was to be an integral part of the production force of the Respondent and remains so as of this day. It was necessary that he move his family and belongings from his Memphis residence to an Indianapolis residence which move took a week at the end of May. The reduction of the Respondent's production complement was delayed until such time as Jevtic's move had been accomplished and he would be regularly

available to manage the Respondent's plant. The engagement in union activity does not, in itself, give job tenure to an employee so engaged. The allegation that an employee was discharged because of engagement in protected activity must be proven by a preponderance of the evidence. It is not presumed.

The evidence in this record establishes that the Respondent would have taken the same action had the Union not commenced its organizational campaign. The Respondent's operations were woeful. It acquired the services of Jevtic to manage and reorganize its production staff. Jevtic, a key employee, was not steadily available until the first week of June because of his need to move to the Indianapolis area. The undertaking to reduce its labor force in the face of the circumstances was not precluded by the union organizational campaign. Prudent business judgment mandated the reduction of production personnel. *Wright Line*, 251 NLRB 1083, 1091 (1980). The inference raised by the recency of the union petition and the exercise of protected activity by Longworth and the Respondent's opposition to the Union's representation of its employees evaporates in the face of substantial evidence that Respondent's economic well-being, perhaps survival, required the reduction in personnel undertaken.

For the reasons above stated, I conclude that the four discriminatees were discharged because of an economic need of the Respondent to produce its product in a more efficient and cost-effective manner and that the three production employees who were discharged were deemed by the plant manager to be least qualified among the production employees and that Henry was discharged because his duties of shipping clerk were taken over by Jevtic. I further conclude that the General Counsel has not established by a preponderance of the evidence that the exercise of any protected activity on the part of the discharges was a motivating factor in their discharge.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Board has jurisdiction over the subject matter and the parties hereto, and it will effectuate the policies of the Act to assert such jurisdiction in this case.
2. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by interrogating its employees in regard to their union activities and the activities of fellow employees and by granting a general wage increase to its employees during the period commencing on the filing of the Union's petition for certification and the resolution of such petition, and that such acts comprised an interference with the right of its employees to exercise those rights guaranteed by Section 7 of the Act.

4. The General Counsel has failed to establish by a preponderance of the evidence that the Respondent has

violated the Act by unlawful surveillance or by discharging four of its employees.

#### THE REMEDY

The General Counsel has urged that a bargaining order be entered requiring the Respondent to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. Whether a bargaining order should issue is determined by whether the employer's unlawful conduct has a tendency to undermine majority strength and impede the election process.<sup>8</sup> The General Counsel argues, and I agree, that the Union enjoyed a majority among the employees constituting the bargaining unit and notwithstanding the discharge of four such employees for economic reasons the inference maintains that the Union continues to enjoy a majority of such employees among its constituents. In order to justify imposing a bargaining order on the Respondent, and resulting in union representation on the employees constituting the bargaining unit, it must be concluded that the Respondent's unlawful conduct had a "tendency" to undermine the Union's majority. The unlawful conduct undertaken by the Respondent comprises two relatively insignificant actions by the Respondent. The interrogation of its employees regarding their union sympathies was not accompanied by any threat of retaliation by the Respondent. It comprised an effort, on the part of the Respondent's supervisor Hurdle, to obtain knowledge of the Union's strength among its production unit employees. Although this is, as noted above, a violation of Section 8(a)(1) of the Act, it is not one which should give rise to a tendency to undermine the Union's strength nor intimidate a member of the unit in the exercise of his free choice. The same conclusion is drawn with regard to the across-the-board wage increase of 20 cents per hour granted to the unit employees by the Respondent. While this too constitutes a violation of the Act in that it is a benefit granted during the critical period to the unit employees and is a matter which should have been relegated to the bargaining table in the event of certification of the Union as a result of its petition, it is not deemed to give rise to sufficient influence on the unit employees to affect their vote. It is deemed significant that 16 months have passed since the employees have designated the Union by their signing of the union cards. The unit complement, which comprised eight employees in May 1981, now comprises five such employees. It is not shown, and no reason exists to assume, that the five remaining production employees comprising the unit are the same individuals. It is concluded that the conventional remedy in cases of such violations of Section 8(a)(1) will sufficiently preserve the integrity of the election without the imposition of a bargaining order on the Respondent which in itself would impose on the five remaining unit employees union representation for which they may or may not have previously opted.<sup>9</sup> Further, this case does not present the

<sup>8</sup> *Ellington Halvorson, Inc.*, 222 NLRB 534 (1976).

<sup>9</sup> The Respondent has entered into a stipulation with the Union for a Certification Upon Consent Election.

circumstances of the *Gissel Packing Co.* case, where the Board found that the "possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 614-615 (1967).

I conclude that the remedy comprising a bargaining order is not warranted in this case because of the nature of the unfair labor practice acts of which the Respondent is guilty and the fact that such an order would not only affect the Respondent but certainly would also affect the current members of the employee bargaining unit.

Accordingly, it is recommended that the Respondent be ordered to cease and desist from engaging in certain unfair labor practices or from engaging in any similar or related conduct, and that it take certain affirmative action to effectuate the policies of the Act.

On the foregoing findings of fact and conclusions of law and on the record in this case, I recommend the following<sup>10</sup>

<sup>10</sup> 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.

## ORDER

The Respondent, Sidex Furniture Corporation, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their union activities or sympathies.

(b) Granting or promising to grant a benefit to its employees comprising the bargaining unit during the pendency of the union campaign.

2. Take the following affirmative action which it has been found will effectuate the policies of the Act.

(a) Post in conspicuous places at its plant copies of the attached notice marked "Appendix."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees, eligible to vote, 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 the Respondent has taken to comply.

<sup>11</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."