

Keco Industries, Inc. and Douglas E. Gries, Kenneth Soult, Ralph Bedinghaus, and Bart S. Patten and James A. DeLaney and District Lodge No. 34 of the International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 9-CA-15891-1, 9-CA-15891-2, 9-CA-15891-3, 9-CA-15891-4, 9-CA-16414, 9-CA-16659, and 9-CA-16936

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 27 May 1982 Administrative Law Judge George F. McInerny issued the attached decision. Counsel for the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

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 exceptions¹ and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Keco Industries, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Counsel for 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), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The judge found that "all of the five September discharges had engaged, to a greater or lesser extent, in activities on behalf of the Union." However, he later found that "there is no clear indication that Patt[e]n, Patrick and Bedinghaus were engaged in any union activities." (Emphasis added.) This apparent inconsistency in no way detracts from the judge's ultimate finding, with which we agree, that the Respondent was unaware of these employees' union activity and that the activity played no part in its decision to discharge the employees.

DECISION

STATEMENT OF THE CASE

GEORGE F. MCINERNY, Administrative Law Judge. On September 26, 1980, two individuals, Douglas Gries and Kenneth Soult, filed charges in Cases 9-CA-15891-1 and 9-CA-15891-2 alleging that they had been discharged by Keco Industries, Inc. (Keco, the Company,

or the Respondent) in order to discourage membership in District Lodge No. 34 of the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union). On September 29, 1980, another individual, Ralph Bedinghaus, filed the charge in Case 9-CA-15891-3 alleging that Keco had discharged him and John Patrick in order to discourage membership in a labor organization. Also on September 29, Bart R. Patten¹ filed the charge in Case 9-CA-15891-4 alleging that he was discharged by Keco because of his activities on behalf of the Union.

On November 7, 1980, the Regional Director for Region 9 of the National Labor Relations Board, the Board, issued a complaint in these cases alleging that Keco had violated Section 8(a)(1) and (3) of the National Labor Relations Act, 29 U.S.C. § 151, 158(a)(1) and (3). Respondent duly filed an answer to this complaint, denying the allegations of said complaint.

Then, on February 5 and 27, 1981, James A. DeLaney, an individual, filed charges in Case 9-CA-16414 alleging that he was discharged by Keco on January 29, 1981, in order to discourage membership in the Union, and that Keco retaliated against employees for their union activities by stricter enforcement of existing plant rules. The said Regional Director issued an amended complaint on March 6, 1981, adding an allegation concerning Keco's change of policy regarding work rules. Respondent answered this amended complaint, again denying each of the allegations of the complaint.

Thereafter, on April 8, 1981, the Union filed the charge in Case 9-CA-16659 alleging that Keco had discharged William Brumley because of his activities on behalf of the Union, and, further, that Keco refused to supply information necessary and pertinent to the Union's function as the representative of Keco's employees. On May 11 the Regional Director issued a second amended complaint adding, to the matters previously stated, allegations that Keco had further violated the Act by the discharge of Brumley and the failure to furnish information. Respondent answered with another general denial.

Finally, on June 5, 1981, the Union filed the charge in Case 9-CA-16936 alleging that Keco's discharge of Neil Burkhardt was a violation of the Act. On June 30, the Regional Director issued a third amended complaint, adding the discharge of Burkhardt to the other allegations. On July 9 Keco filed an answer to the third amended complaint, again in the form of a general denial. On July 17 Respondent filed an amended answer, admitting some of the allegations of the complaint, but denying the commission of any unfair labor practices.

Pursuant to notice contained in the third amended complaint, a hearing was held before me in Cincinnati, Ohio, commencing on July 22, 1981, and continuing on July 23 and 24; September 28, 29, and 30; and October 1 and 2, 1981, at which all parties were represented, and all had the opportunity to present testimony and documentary evidence, to examine and cross-examine wit-

¹ "Patten" is described in the record as "Patton."

nesses and to argue orally. After the close of the hearing the General Counsel and Respondent filed briefs, which have been carefully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Keco Industries, Inc. is an Ohio corporation engaged in the design and manufacture of ground support equipment for military aircraft at its facility in Cincinnati, Ohio. In the 12 months prior to the issuance of the third amended complaint herein, Respondent in the course and conduct of its business purchased and received at its Cincinnati location products and materials valued at over \$50,000 directly from points outside the State of Ohio.

The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Union Organization

The events which constitute the facts of this case flow from the successful efforts of the Machinists Union to organize Keco's production and maintenance employees in the fall of 1980. These organizational efforts began sometime in September 1980. Although there are serious questions about just when and how the organization began, there is no question that union authorization cards were passed out, collected, and forwarded to the offices of the Union during the week of September 22. I find this to be so because a letter from the Union to Keco claiming to represent a majority of Keco's employees and demanding recognition was received at Keco on September 30. Such letters are written, generally, when a union has assembled a majority, or at least, a substantial number of signed authorizations by employees requesting representation.

During that same week Douglas Gries and Kenneth Soult were discharged on September 25. Bart Patten, John Patrick, and Ralph Bedinghaus were discharged on September 26.

The record is not clear on the further history of the campaign, but a petition for an election was filed by the Union with the Board some time early in October. An election was conducted by the Regional Office on December 10 at which the employees selected the Union as their collective-bargaining representative by a vote of 102 to 34. After this, objections to conduct affecting the results of the election were filed by Keco. Those objections were dismissed and the Union was certified as the exclusive bargaining representative for a unit of Keco's

production and maintenance employees on January 26, 1981.

B. The Discharges on September 25 and 26, 1980

The General Counsel alleges that the discharges of Gries and Soult on September 25, and of Patrick, Patten, and Bedinghaus on September 26 were effected because of the union activity of these employees. To establish these allegations as true, the General Counsel must, by a preponderance of the credible evidence, show that the employees engaged in union activities, that the employer was aware of such activities, and that the union activities were a motivating factor in the employer's decision to discharge the employees. Once the General Counsel has made a prima facie showing of these elements, then the burden shifts to the employer to demonstrate that the discharges would have taken place even in the absence of the union activities. *Wright Line*, 251 NLRB 1083 (1980).

There is no question in my mind that all of the five September discharges had engaged, to a greater or lesser extent, in activities on behalf of the Union. Gries testified that he obtained a number of union authorization cards from union officials George and Steve Carter;² that he took those cards to the plant on September 21 and handed some to Kenneth Soult, William Brumley, and another employee identified only as Andralia. They, together with Gries, passed the cards around and persuaded employees to sign them. The signed cards were returned to Gries, who brought them to the union hall. Soult corroborated this, indicating that they talked about the Union and passed out and collected the cards on free time during lunch or coffeekbreaks at the plant. Bart Patten said he signed a union card on September 23, and that he, in turn, delivered a card to Jim DeLaney's house. John Patrick said he signed a card in the first or second week of September. He returned the signed card to Gries, but he did not discuss the Union while at work. Ralph Bedinghaus testified that he received a card on September 12, took it home, and left it there. He did sign a card at a union meeting on September 24 after having accompanied Patrick to the meeting.

Despite the inconsistencies as to the time the cards were distributed and signed, I think it is reasonable to infer, and I do infer and find, that all of these employees had signed cards before September 25; that Gries and Soult had been prominent in passing out the cards and collecting the signed cards; and that all, except perhaps Patrick, had talked about the Union on their free time in the plant.

On the question of company knowledge of this union activity the evidence is less clear. Gries testified that on September 24, at the time of the shift change, 3:30 p.m., he left the plant and encountered George Carter, Steve Carter, and Bill Somma³ passing out union literature in

² Steve Carter, George's son, was a friend of Gries and a neighbor of Soult.

³ Somma is also referred to as "Bomma" and "Sommer."

front of the plant. He knew the Carters and stopped to talk to them for a while. As Gries was talking to the union people he could see Plant Manager Melio Cicchiani and Foreman Jim Kohl⁴ standing inside the plant entrance and watching him.

The only corroboration of this event is in the testimony of Soult who stated that as he was leaving the plant on September 24 he saw the three union representatives passing out leaflets to everyone who left the plant through the gate. Soult stopped to talk to George Carter and, while so engaged, observed Cicchiani, Cole, Company Chairman Adair and possibly President Andrews standing inside the shop by a garage door "watching everybody while they were leaving."

The only other testimony presented by the General Counsel bearing on this subject was that of Bart Patten, who stated, contrary to Gries and Soult, that he did not see any union representatives at the time of the shift change on September 24, but that he had seen Somma (or Somman) passing out cards and literature before the morning shift began on September 23. Patten gave no indication that he was observed by management people.

Of the management people named by Gries and Soult as watching the union activity on the afternoon of September 24, Cicchiani denied that he had seen any union activity on the 24th; Adair stated that he was in California, not in Cincinnati, on that afternoon; and Andrews denied that he knew of any union activity until the next day. Cole (or Kohl) did not testify at this hearing.

Thus I am confronted on this issue of company knowledge of union activity with a question of credibility between witnesses called by the General Counsel and those called by Respondent. In this regard I noted, and Respondent mentioned in its brief, the fact that no one from the Union testified concerning the distribution of literature on September 24, neither the three men identified by Gries and Soult as the participants, who did not testify at all, nor the two union employees who did testify, John Nickell and William Brumley.⁵ No copy of the literature allegedly handed out on September 24 was offered in evidence.⁶ These factors are interesting, but the question still must be resolved by a determination on credibility, not on the absence of corroboration. Gries and Soult were not, in my opinion, credible witnesses. I base this view primarily on the fact that I believe they lied about warnings given them by Supervisors Cicchiani, Hans Winia, and Ed Fitters, but I also noted their demeanor while testifying and I did not find them to be candid or truthful. Cicchiani, on the other hand, I found to be generally truthful if somewhat short of memory. Andrews appeared to be a credible witness although his testimony was rather short. The facts are clear that Adair was in Irvine, California, on September 24. Therefore, I do not credit the testimony of Gries and Soult that they were

observed talking to union officers on the afternoon of September 24 at Keco's plant.

Direct knowledge of employees' union activity is, of course, not necessary to establish company knowledge of such activity. Knowledge may be inferred from other circumstances, such as the timing of discharge, or the size of the plant, or the presence of an employee informer. But beyond the fact that I believe the Employer's witnesses that they had no idea that union activities were under way, there is no evidence which I can use to make an inference that Keco knew what was going on during the week of September 22, 1980. On the contrary, Brumley, who was one of the leading distributors of union authorization cards, a member of the employee organizing committee, and a regular attendant at union meetings, was able to conceal all this from Keco's management until the day of the election on December 10. This argues circumstantially but logically that Keco did not in fact know who was or who was not involved with the Union until sometime after the election when union supporters began wearing hats, jackets, T-shirts, and buttons advertising their support for the Union.⁷

Another circumstance which should be considered, particularly in view of the timing of the discharges on September 25 and 26, is the Company's attitude toward the Union. While Keco is a corporation, with a board of directors and corporate officers, it is clear from the evidence here that all decisions of any consequence are taken by or after consultation with Board Chairman Robert G. Adair. The evidence in this case shows that a sparrow could not fall to earth inside the Keco plant without Adair's knowledge,⁸ but the evidence does not convince me that he would engage in the kind of labor relations roughhousing involved in multiple discharges of union adherents at the beginning of a union campaign. Rather, the evidence shows, Adair has maintained a Fabian approach to industrial relations, avoiding direct confrontation but constantly wearing down the opposition. This attitude may be seen in Cicchiani's reply to Brumley around September 27, expressing no interest in Brumley's proffered excuse for attending a union meeting; in Adair's own testimony about his belief in the employees' freedom of choice; in the literature written by Adair and placed by his direction in the employees' pay envelopes;⁹ and in the correspondence beginning in February 1981 concerning the information requested by the Union.

It is, accordingly, my view that Keco certainly opposed the Union, but its tactics, as announced by Adair at a supervisors' meeting in late September or early October, were to operate just as the Company had been operating.¹⁰ Foremen were told not to harass employees and not to ask any questions.¹¹

⁴ Also described in the record as "Cole."

⁵ Nickell's testimony was confined to the allegation in the complaint that Keco failed to furnish required information, and Brumley, who became a union organizer after his discharge from Keco, testified only about his own problems.

⁶ I also note Patten's testimony that Somma was handing out literature on the morning of September 23, but Patten's testimony was, I find, completely unreliable.

⁷ Aside from Gries' self-identification with union activity at the time of his discharge.

⁸ Matthew 10:29. See also R. Exh. 8-99.

⁹ In the second of these, dated October 17, 1980, Adair stated his philosophy in regard to compulsory union membership to the effect that no employee would ever have to join a union to continue working at Keco. As he put it: "Keco has defended that right for more than 25 years."

¹⁰ See testimony of Personnel Director Marilee Burgess.

¹¹ See testimony of Foreman Steve Nourtsis.

Consistent with these views, and conformably to what I believe are the inherent probabilities of the situation, I find that Respondent did not know of the union activities of the five employees discharged on September 25 and 26, 1980; and, indeed, knew nothing of any union activity until Gries informed Cicchiani at the time of his discharge. Further, I do not find any evidence of antiunion hostility or animus during the time of the Union's election campaign from September to December 1980.

It goes without saying that in the absence of either knowledge of union activity, or of unlawful intent, the discharges of five employees on September 25 and 26 did not violate the law. I am aware that this is not an arbitration, where questions of just cause for discharges are critical, regardless of motive, but I am also aware of the fact that my findings and conclusions have from time to time been seen as incorrect by reviewing authorities. For this reason, and to show the source of my credibility resolutions, I shall examine briefly the facts of each individual discharge, indicating my conclusions on each.

At the outset, I should point out that neither the General Counsel nor Respondent introduced substantive evidence corroborative of their respective positions. The General Counsel maintained that the five employees were discriminatorily discharged, but offered no evidence that the treatment of these employees was any different from that accorded other, similarly situated, employees. Respondent presented witnesses, Burgess and Cicchiani, who averred that five discharges in a 2-day period was not at all unusual, but offered no documentation to back up the claim. From these circumstances I can only draw the negative inferences that five discharges in a 2-day period was out of the ordinary at Keco; but that the treatment of these employees was not substantially different from the norm at Keco.

Another preliminary matter which should be noted is Keco's disciplinary process. The evidence shows that the Company, operating as it did on a nonunion basis, paid low wages, thereby limiting to some extent its appeal in the labor market. As a result many of its production employees were young, entry level people,¹² many of them in their first full-time job. Perhaps as a result, discipline was strict and sometimes arbitrary. Plant Manager Cicchiani took an intense and personal interest in production, moving constantly all over the plant, noting deficiencies in workmanship, malingering, attendance problems, and, without hesitation, issuing warnings to individual employees on what he viewed as their shortcomings.¹³ The evidence shows that there was no standard or uniform method in Keco's warning or discipline of employees. At some time before the events in this case, Keco employees had been represented by the Teamsters Union. During that period a warning form had been developed showing the name of the employee being warned, the date, and the nature of the infraction, with

spaces for the signature of the supervisor and the employee. A supply of these forms survived the departure of the Teamsters and was in use at least until the end of 1980. As stated on the forms, if they were used according to the way they were designed, they would be filled out in triplicate by the supervisor, one copy given to the erring employee, one copy to the union stewards and one copy to be forwarded to the personnel office. After the Teamsters left, this procedure was abandoned. In the period of time covered by this case there was no set procedure, but in most cases warning notices were given verbally, then a notation was made on a warning slip by the supervisor and that notation was forwarded to the personnel office for placement in the employee's file.

Finally on the subject of discipline, there was no dispute that no particular number of warnings was required before discharge, and the Company practice was, when an employee was discharged, to check the employee's toolbox and immediately escort him off the premises.

Turning to the individual discharges, the first was that of Douglas Gries. Gries was hired by Respondent on June 11, 1980, as an assembler at \$3.50 per hour. According to his own testimony Gries had had no work experience before coming to Keco, but was a quick learner. He stated that he had received no warnings about his work, or about absences from his work station. Rather, he stated, he had received a 25-cent raise a week before he was fired. The only incident Gries recalled in the nature of a reprimand was a conversation with his new foreman Ed Fitters, who arrived about a week before Gries was discharged. According to Gries, Fitters told him he was doing too much running around. Gries explained that Fitters was new and not familiar with the operation which required that Gries make frequent trips to the paint booth and supply rooms to get "stuff that was needed for assembly."

Gries became involved with the Union as described above during the week of September 22, and then, on the afternoon of September 25 he was called into Cicchiani's office. According to Gries, Cicchiani told him that his work was unsatisfactory, that Cicchiani had been watching him for some time, and that he was probably not cut out for the job. Gries then asked Cicchiani if he was being fired because of the Union. Cicchiani said he knew nothing about it. Gries then said he was going to complain to the Occupational Safety and Health Administration (OSHA) because the Company's machinery was unsafe.¹⁴

Respondent's description of Gries' employment history and discharge is somewhat different. Hans Winia, who was Gries' foreman from June until mid-September, testified that Gries' job performance and the quality of his work was mediocre. Winia discussed these deficiencies with Gries. With respect to the raise which Gries received shortly before his discharge, Winia discussed the matter with Cicchiani. Winia had evaluated Gries in July and found him ineligible for an increase at that time. The second review occurred on September 5. Winia and Cicchiani agreed that a pay increase might furnish Gries

¹² Four of the five employees discharged in September 1980 fit this category.

¹³ This sense of urgency was stressed by Cicchiani to his supervisors in monthly meetings and regarding individual cases of problem employees. The case of Neil Burkhardt, discussed below, shows that the pressure was passed on by the foremen to leadmen working in direct supervision of employees.

¹⁴ He never did file a complaint with OSHA.

with some incentive to improve his performance and dependability. Cicchiani testified that he spoke to Gries about this. Cicchiani also testified that on August 12 and 19 he had warned Gries about the quality of his work and his tendency to wander away from his work station. These warnings were noted on warning slips which were placed in Gries' personnel file (but not given to Gries).¹⁵

Ed Fitters succeeded Winia as foreman about September 15. When he took over, he was told by Cicchiani that there were "some problems" on his line. Cicchiani did not specify, but Fitters noted problems in the sense that many of the employees would not stay on the line at their work stations. He checked with Cicchiani on this and was informed that employees were supposed to stay on the line unless they were moving a finished unit, or were sent to get parts. After that Fitters spoke to several employees, including Gries and Soutl, about this problem. The other employees "came around" but Gries and Soutl continued to leave the line and wander about the plant. Fitters proceeded to issue warnings to Soutl on September 18 and to Gries on September 19 telling them to stay in their work areas.

Things did not improve and on the morning of September 25 Fitters discussed Gries and Soutl¹⁶ with Cicchiani. There is some inconsistency in the versions of this conversation given by the two participants, but I generally credit Fitters, who showed a good memory together with a candid and open demeanor. Cicchiani was, I believe, truthful, but his memory was not good, and in this as well as a couple of other places in his testimony his memory is not in accord with other facts. In any event it was decided that morning that Gries, Soutl, and Stamper would be discharged. In accordance with normal company routine, the actual discharges were to be made by Cicchiani at or close to the end of the working day.

Thus, about 3:20 p.m. that day Fitters told Gries to report to Cicchiani in the personnel office. When he got there Cicchiani told him he was being discharged for not staying at his work station. Gries became "boisterous and loud" and asked if the discharge had anything to do with union activities. Cicchiani responded that this was the first time he had heard of any union activity. Gries then said that Cicchiani had better watch his machinery and equipment. "You can't watch it all" he concluded "or its going to be damaged." Gries then left the office.

These last remarks about machinery were overheard by Personnel Director Marilee Burgess, who was in an outer office adjacent to where Cicchiani and Gries were meeting. Further corroboration came from Fitters, who checked Gries and Soutl out of the plant. Fitters stated that Gries stated at that time that equipment would be damaged, that "they couldn't protect it 24 hours a day."

In evaluating all of this I rely particularly on the testimony of Ed Fitters. He was no longer employed by Respondent at the time of the hearing, having voluntarily

quit to move to a better job. His memory was excellent and his demeanor convincing. I generally credit Burgess, as well, as she similarly demonstrated a good memory and a demeanor which inspired confidence. I also credit Cicchiani and Winia, the latter also an exemployee, who left the Company amicably to take a job nearer his home. Both Winia and Cicchiani had trouble remembering details, but their testimony in regard to Gries (and Soutl as well) is corroborative of Fitters and consistent with the policies of the Company and the documentary evidence in the record.

In view then of the testimony of Fitters and Cicchiani that Gries was warned on August 12 and 19 and September 19 for continually leaving his work station, I discredit Gries' assertions that he was never warned about his work activities. In view of Cicchiani's testimony that Gries was told when he received a 25-cent raise early in September that this was an incentive to do better work, I do not credit Gries' statement that he was told nothing, but merely received the raise. And in view of the testimony of Cicchiani, Fitters, and Burgess that Gries threatened that company machinery and equipment would be damaged I do not believe Gries' testimony that he merely said at the time of his discharge that he was going to complain to OSHA about dangerous equipment.

Since I believe Respondent's version of the Gries discharge, and I do not believe Gries, I find that he was warned about leaving his work area three times and he continued to do so. His discharge was the result of his continuing violation of company rules, and not attributable to his union activities.

Soutl's case is very similar to Gries'. Soutl was hired by Respondent on April 15, 1980, and was assigned to assembly. In June Soutl gave notice that he was quitting. Winia, his foreman at that time, considered him a good employee but for his habit of wandering off the line. Thus, on June 18, Soutl received a 25-cent raise. Winia spoke to him about his habit of leaving his work station, as did Cicchiani. The latter warned Soutl on August 7 and 27 about this. Fitters observed the same habit when he took over from Winia in mid-September and, as noted above, issued Soutl a warning about this on September 18.

Soutl denied that he had received any warnings but did admit that Fitters had told him on September 18 not to go into other areas of the shop unless he was authorized to do so. On September 25 according to Soutl, he was summoned to the personnel office. There he met with Cicchiani who told him that it was "time to do a little housecleaning and [Soutl's] name was on the list." Soutl said nothing and left the office.

As in Gries' case, I credit the testimony of Fitters, Cicchiani, and Winia, and for the same reasons applied there I find that Soutl was warned repeatedly about leaving his work station. I do not credit Soutl's denial that he had been warned about this.

There is some confusion in my mind about just what was said by Cicchiani in the discharge interview. Soutl said that Cicchiani said the Company was doing some housekeeping and Soutl's name was on the list. Cicchiani did not testify about the interview, and, since I do not

¹⁵ I have looked at all these warning slips, those concerning Gries and other employees, and I find no indication that they are not authentic, contemporary records of the warnings given by Cicchiani and other supervisors.

¹⁶ Along with another employee named Stamper. There is evidence that Stamper was discharged September 25, but no evidence of what his problems were. He has no further connection with this case.

credit Soult, based on my disbelief of his denials that he was ever warned, it is difficult to infer what Cicchiani really said at the final meeting with Soult. To add to the complication, or perhaps to help clear it up, Soult testified that he gave an affidavit to an agent of the Board on October 17 in which he stated that Cicchiani fired him for excess absenteeism from his work station and for not doing his job. Soult explained that he had been to the state unemployment office and that is what they told him. However, Respondent introduced a form from the Ohio Bureau of Employment Services setting out as the Company's reason for discharge that "claimant was absent from assigned work station without authorized permission." This form was mailed to Soult on October 27, 1980. Since there is no evidence in any of these discharges that Respondent's reasons given to employees for their discharges were in any way inconsistent, I find that in fact Cicchiani did mention to Soult that he was being discharged for leaving his work station, and I find further, in line with my resolutions on credibility, that this was in fact the reason for Soult's discharge.

After concluding these discharge interviews, Cicchiani reported his conversation with Gries to Company President George W. Andrews. Consistently with my findings concerning Adair's total control of Keco's operations, Andrews and Cicchiani took no action on Gries' revelations about a union and his threat of damage to company equipment. Rather they put in a call to Adair in California.¹⁷ In response to this information Adair instructed Andrews to call the Cincinnati police concerning the threats. With regard to the Union, Adair indicated that they did not know at that point whether Gries' talk about union organization was an idle claim by a disgruntled employee, and that they should just observe the conduct of employees and await further developments without assuming that there was, in fact, any union activity.

On the next day, September 26, Cicchiani fired three more employees, Bart Patten, John Patrick, and Ralph Bedinghaus. At this point the Respondent was aware of Gries' avowal of union activity, but was unaware whether the union activity was the real thing or just a parting shot by a discharged employee. There is, moreover, no evidence that Respondent was aware of union activities, such as they were of these three employees. All three stated that they had signed authorization cards for the Union and all had attended the union meeting on September 23 or 24. There is, however, considerable variation in the accounts each gave of his signing the cards. Bedinghaus said he received a card at work on September 12 but he took it home and left it there. He signed another card at the union meeting on September 24. Patten claimed that he got a card on September 23, in the morning before the start of his shift, from Bill Somman, who was passing them out in front of the plant entrance. Patrick stated that he signed a card during the first or second week of September. At another point in his testimony Patrick indicated that he had signed the card on the first of September.

¹⁷ Again Cicchiani's memory was faulty, as he recalled that Adair called them. I credit Adair and Andrews that the call was made from Cincinnati to Irvine, California.

Considering this testimony and noting my previous finding that the union activity did not begin until the week of September 21, and the fact that Patten's testimony about the morning distribution on September 23 was completely uncorroborated, I cannot find that the credible evidence shows that any of these employees signed cards or attended a union meeting before they were discharged.

Beyond this, I note that the General Counsel has presented no evidence that the treatment accorded these employees, however arbitrary, was different from that of others. Thus there is no clear indication that Patten, Patrick, and Bedinghaus were engaged in any union activities, and no evidence that they were treated differently from other of Respondent's employees.

Looking at each case individually, I consider first the situation of Bart Patten. Patten was not clear about when he was hired by Keco. On direct examination he identified the time as the end of July 1980, and on cross-examination said it probably was August 11. As I have noted I have serious doubts about Patten's testimony that he met a union representative in front of the plant on the morning of September 23. The only other incident which allegedly occurred before Patten's discharge was a conversation which Patten stated occurred between himself and Don Wellbaum. According to Patten, Wellbaum, who was a leadman and a member of the bargaining unit, asked him if he was going to vote for it. Patten replied that he was, and then he asked Wellbaum the same question. Wellbaum replied that he would take his action when it came time to vote. I have a couple of problems with this testimony. The first is that Patten did not identify the day the conversation allegedly occurred; and the second is that the conversation sounds like one which would occur during the course of an election campaign rather than at the very outset of the campaign, and before any petition had been filed. Here the Union demanded recognition in a letter received by Respondent only on September 30, 4 days after Patten's discharge. For these reasons I do not credit Patten's testimony about this conversation.¹⁸

Patten received no warnings about his work, but Wellbaum, who was his leadman, recommended and Foreman Steve Nourtsis concurred that he should be terminated. Nourtsis testified credibly that Patten was too slow, and needed constant supervision. Nourtsis recommended to Cicchiani that Patten be fired, and Cicchiani undertook to do so. On the afternoon of September 26 Patten was called into the personnel office where Cicchiani told him he was not putting out production and he had to let him go.

On the basis of this record, the lack of demonstrated knowledge by Respondent of Patten's union activity: the very real doubt about whether there was any union activity by Patten; and my disbelief of the alleged conversation with Wellbaum, I find that the reasons advanced by Respondent for Patten's discharge are legitimate business reasons and are in fact the reasons for the discharge.

¹⁸ I did not find Patten to be a credible witness generally. His demeanor did not impress me as candid, and the inconsistencies I have remarked caused me to discredit his substantive testimony.

John Patrick was hired on June 9, 1980. There is a 90-day evaluation of his work dated September 4 showing improvement in his work and a 15-cent raise. This evaluation was made out by a supervisor named Schonberger. The evidence also shows that he was warned on July 8 by Cicchiani for not producing and for standing around talking. He was warned again on September 12 by Nourtsis for not producing and for leaving his work station. After the second warning Patrick was transferred to the finalizing line under a supervisor named Breiner. On September 26 Breiner recommended to Cicchiani that Patrick be fired. Cicchiani called Patrick in and told him that he would be better off doing something somewhere else and that Cicchiani did not need him any more. Neither Schonberger nor Breiner was called to testify and explain why there was such a variance between the excellent to good evaluation made by Schonberger on September 4 and the fair to poor evaluation made at the time of the discharge by Breiner. I decline to draw any adverse inferences from the fact that these two supervisors did not testify. Both apparently had left the employment of the Company but there was no indication in the record that they were unavailable or unable to respond to Respondent's invitation to testify, as Ex-supervisors Fitters and Winia had; or the General Counsel's invitation, as did Ex-supervisor Wesley Montgomery.

Even in the absence of a resolution of this seeming inconsistency the question of Patrick's discharge can be resolved. His improbable and uncorroborated tale of signing a union card 3 weeks before they were distributed makes it impossible for me to find that he was engaged in any union activity. The absence of any evidence that the Company knew about such activity makes it impossible for me to infer company knowledge. And the absence, as I have found, of any tendency by the Company to fight the Union by discharging employees, as well as the fact that a discharge, as this one, following two warnings is completely consistent with other discharges in this case, leads me to infer and find that Patrick's discharge was not for union activities, but for substandard job performance.

Ralph Bedinghaus was hired on April 7, 1980, as a refrigeration mechanic. Unlike most of the employees involved in this part of the case, Bedinghaus had considerable experience in his trade. He had also had problems in getting to work on time, and had been discharged by a former employer, Cincinnati Sub-Zero, for tardiness.¹⁹ After beginning at Keco, Bedinghaus maintained a good record. On May 18 he was given a 15-cent increase, and rated by Supervisor Rondal Rhoden as good to excellent in all categories. In May, however, Bedinghaus had one unexcused absence, was late once, and left early once. In June he left early 3 days, was sick 1 day, and had family

¹⁹ Bedinghaus claimed that his attendance problems stemmed in large part from the fact that he has a child with cerebral palsy, and that he is frequently obliged to attend to the needs of the child. Respondent's view, as expressed to Bedinghaus at his employment interview by Cicchiani and Burgess, is that its production requirements take precedence over such human problems and they informed Bedinghaus that he was expected to maintain an excellent attendance record to remain employed. This may show a want of compassion, but it is not, at this point, illegal.

sickness on another day. For this he was sent a note by Burgess noting these absences and stating that if he wanted to keep his job he would "have to show immediate improvement." Despite this Bedinghaus was again evaluated by Rhoden on July 7 and, although under the heading of dependability he was described as "poor," he was awarded a 20-cent raise. The attendance record for July shows no absences, but according to the testimony of Rhoden, Bedinghaus was constantly 4 to 6 minutes late. The Company at that time allowed a grace period of 6 minutes, before employees would be marked as tardy. Accordingly, Rhoden issued a warning to Bedinghaus, revoking his grace period. Bedinghaus admitted receiving a warning slip, but stated that Rhoden told him to disregard it. For reasons given below, I credit Rhoden and do not credit Bedinghaus. In any case Bedinghaus' record improved. In August he left early only once, and assuming that his grace period had been revoked, he must have been right on time every day that month. In September, however, there were problems. Bedinghaus was late on September 6, was sick on September 17 and 19, and had an unexcused absence on September 18. He had another unexcused absence on September 22 and was late on September 23. On that date Rhoden gave him another warning for being late. Bedinghaus denied this but I do not credit the denial. Bedinghaus was late again on September 25 and 26. Rhoden then discussed the matter with Cicchiani and it was decided that Bedinghaus would be discharged. At 3:20 p.m. on September 26 Bedinghaus was escorted into Burgess' office where Cicchiani told him he was being discharged for absenteeism and tardiness.

This case is similar to the others in that I have a question whether Bedinghaus engaged in any union activity, and a further question whether it has been established that Respondent knew of any such activity by Bedinghaus. Beyond these questions, I find that the record adequately demonstrates that Respondent was concerned about attendance. The warning to Bedinghaus on July 1²⁰ and the warning of August 1 given Bedinghaus by Rhoden show Respondent's close attention to Bedinghaus' attendance. Since these warnings were given far in advance of the Union's appearance on the scene, it cannot be said that they formed a scheme to "get" Bedinghaus for union activity. I do not credit Bedinghaus' assertion that Rhoden told him to disregard the August 1 warning. Bedinghaus was a hostile and defensive witness, tending in his answers to justify himself. His demeanor did not impress me either as candid or truthful. Rhoden was generally a credible witness. I will not discredit him as urged by the General Counsel, based on inconsistencies in testimony between him and Burgess. Given Respondent's concern about attendance, I cannot find its action in discharging an employee who had been previously warned for attendance problems, and who compiled a record of four absences, two of them unexcused, and three latenesses in a period of 8 working days, to be unreasonable. Thus, I find that Bedinghaus was dis-

²⁰ Which Burgess testified was one of several sent to employees.

charged for legitimate business reasons, and not because of his activities, if any, on behalf of the Union.

C. The Discharge of Neil Burkhardt

Burkhardt began work for Keco as a leadman in the electrical department on March 23, 1981, and was fired by Foreman Lee Taulbee on May 22, 1981.²¹ When Burkhardt was hired the Union was already certified as the bargaining representative of Respondent's employees. Burkhardt proceeded to sign a card at the union hall on April 9, and attended a number of union meetings, the last being the night before his discharge. He wore a T-shirt, bearing the Union's name, to work from April 13 to about May 1 when Foreman Steve Nourtsis told him employees were allowed to wear only white T-shirts.²² Burkhardt also wore a cap bearing union insignia to and from work beginning about April 15. Nourtsis also indicated that the wearing of such caps was not permitted while on the job.

Burkhardt apparently started out as a good worker although he did not receive a pay increase which had been implied in his initial employment interview. Cicchiani informed Burkhardt at that time that if the Company was happy with his work he would get a raise in 30 days. Burkhardt testified that twice, early in April and again in mid-May, Cicchiani praised him and his work.²³ Despite this Burkhardt received no pay raise while he was employed at Keco. This circumstance makes me somewhat skeptical of Burkhardt's testimony. Burkhardt's opinion of his ability was not shared by Supervisor Lee Taulbee. The latter testified that Burkhardt began, after a few weeks, spending more and more time away from the line. In the latter part of April Taulbee stated he called Burkhardt in and told him that if he did not start spending more time on the line he, Taulbee, would have to take further action. Burkhardt identified this conversation as happening on May 4 and stated that he left the line to get parts which were not coming through in time.

There was considerable testimony about parts and about whose responsibility it was to arrange for ordering and seeing to their delivery. Burkhardt stated that he was continually frustrated by the fact that parts were not delivered on time. Taulbee claimed that responsibility for parts belonged to him and to expeditors employed on each line. I credit Taulbee in this regard, although it is clear even from his testimony that there was some problem in getting parts to the line for which Burkhardt was responsible.

Regarding Burkhardt's union activity, I have described his testimony about the T-shirts and caps. He also testified that on May 19, Don Wellbaum, by that time a supervisor, approached him and said he did not know Burkhardt was a union man. Wellbaum did not testify, but I do not credit this testimony. Burkhardt had been wearing the T-shirts and cap from at least mid-April. In fact he had been told on May 1 by Steve Nourtsis that

he was not to wear the T-shirts or the cap while he was working. Thus it is illogical that another supervisor, for no stated reason, would come up to Burkhardt and make a remark like that.

Then, on May 21, came the incident which resulted in Burkhardt's discharge. His description of the events of that day are somewhat disjointed, but come together somewhat as follows: On the afternoon of May 21 about 3:20 p.m. the assistant plant manager asked Burkhardt to find a couple of electricians to stay and work overtime. Burkhardt could not find anyone. Cicchiani then approached Burkhardt and asked why he could not stay and work. Burkhardt replied that he had business at the license bureau where he had to transfer the title of his car from Indiana to Ohio. Cicchiani turned to Taulbee with what Burkhardt described as a "disgusted look" and remarked that none of Taulbee's electricians wanted to stay and work. Taulbee then, about 3:35, came over to Burkhardt and asked him why he could not stay. Burkhardt again explained about the automobile title, and Taulbee stated, "Title, hell" and accused Burkhardt of planning to attend a union meeting.

All this was on direct examination. Then, on cross-examination, concerning the same afternoon, Burkhardt testified that about 3 p.m. a junction box was delivered to the line and Taulbee said to Burkhardt that he wanted it installed before Burkhardt went home. Burkhardt then turned to two electricians and ordered them to install the junction box. A bit later Burkhardt asserted that it took him an hour to install the box.²⁴

Taulbee denied that he made any remark about the union meeting, but with regard to the afternoon of May 21 indicated that Burkhardt had told him about the automobile title, but Taulbee told him to continue working and take care of the title the next day. Burkhardt then continued to work installing the junction box. Taulbee observed him and it was apparent to Taulbee that he did not know how to install the box. After about 2 hours Burkhardt went home and the job was still not done. Burkhardt's timecard for May 21, which was introduced in evidence, shows that he worked until 5:01 p.m. This evidence is consistent with Taulbee's version of the day's events, and not with Burkhardt's. Because of this, as well as my impression of the respective demeanor of Taulbee and Burkhardt, I credit Taulbee's version and do not credit Burkhardt.

As a result of this incident Taulbee decided to fire Burkhardt. He went to Cicchiani, who agreed with this action and the next afternoon Taulbee called Burkhardt in and told him that he was not capable of performing the duties he was assigned and therefore he was being terminated. I do not credit Burkhardt's version of his discharge interview.

D. The Case of William Brumley

Brumley had been employed by Keco as a maintenance mechanic since April 14, 1979. His functions, generally, included the repair and servicing of machinery

²¹ There is no issue on Burkhardt's status as an employee and not a supervisor.

²² There are several allusions in the record to this rule but there is no allegation concerning the rule and I make no findings concerning it.

²³ From all the testimony about Cicchiani, and from my own observation of him as a witness, this description seems wholly out of character.

²⁴ He did not explain whether the electricians did the installation or whether he did it alone or together with the electricians.

and equipment in the plant, checking lighting and heat in the offices, and ordering parts. He was paid the comparatively high wage of \$6 per hour, and he usually worked from 5 a.m. to 3:30 p.m., with 6 to 8 hours on Saturday as well as occasional Sunday work. He was on call 24 hours a day. Early in the morning Brumley was accustomed to checking the lights, heat, or air conditioning in the main office. Adair was also an early riser and frequently the two would visit while Brumley was making his rounds of the executive offices in the early morning. There is no indication that they became personal friends, Adair struck me as too austere to enter that kind of relationship, but their relationship was apparently relaxed and conversational. The facts are clear that Brumley was a valued and trusted employee.

At the outset of the union campaign in mid-September 1980, Brumley became actively involved. He signed a card himself on September 19 or 20, beginning on September 21 he talked about the Union on his lunch and coffeekes, solicited signatures on authorization cards, obtaining 60 to 70 signed cards. Brumley attended all of the union meetings and was a member of the in-plant organizing committee²⁵ beginning right after the cards were signed.

After the discharges of five employees on September 25 and 26 Brumley apparently felt that his own job was in danger.²⁶ On September 27 he approached Cicchiani and said that he guessed Cicchiani wanted to know what he was doing "at the union meeting yesterday." Cicchiani answered that he was not concerned and that it was none of his business.²⁷ Brumley then went on to tell Cicchiani that he was afraid of the Union, and that he had had his car burned or damaged in a prior union campaign in another State. This last statement was, as Brumley admitted on the witness stand in this case, completely untrue. Indeed, Brumley had never before been involved in a union organization campaign. But with these words Brumley entered upon a course of deception which continued until his discharge on March 23, 1981.

I cannot say with certainty that the Union approved or was even aware of this conduct by Brumley. There are evidentiary factors which point that way. Brumley, as a member of the in-plant organizing committee, was in constant communication with George Buckholz, the Union's Grand Lodge representative. As a maintenance mechanic Brumley was able to move about more freely than others. He had access to the Company's executive offices at times when no one else was there.²⁸ Brumley

²⁵ Brumley stated that some of the original committee were fired and some left their employment with Keco, so a new committee was organized in November. I think it permissible to find from his testimony that Brumley was an active member of both the original and successor committees.

²⁶ I use the term "apparently" because Brumley's motivation at that time was not entirely clear.

²⁷ It is this conversation, reported in substantially identical terms by Brumley and Cicchiani, which convinced me of Respondent's basic posture of neutrality in the union campaign. Even the most cursory intelligence operation, or information volunteered by an employee, would have revealed Brumley's participation at least at the meetings.

²⁸ Adair testified that two documents introduced by the General Counsel (G.C. Exhs. 5(b) and 6) were internal documents of his, and Adair had no idea how they came to be in General Counsel's hands.

stated on the record that he "would have lied till hell froze over to help these people" (presumably his fellow union supporters). This would certainly indicate that his motives in lying to the Company might have been more complicated than simple self-preservation. Finally there is the fact that on the date after his discharge, Brumley went onto the Union's payroll as an organizer.

One factor pointing strongly the other way is Brumley's designation as the Union's observer at the December 10 election, almost, but not quite, blowing his cover. Thus, although I remain suspicious, I make no finding of, or inference as to, the Union's involvement or knowledge of Brumley's masquerade.

Going back to the conversation between Cicchiani and Brumley, the former notified Andrews, and Andrews in turn notified Adair, who was again out in California. When he returned on October 15, Adair had a meeting with Brumley in his office. It is evident from the report of this meeting, which Adair wrote for the file and which was introduced in the record here, that Adair understood that Brumley's fear of violence stemmed from the current campaign. Adair assured him that law enforcement agencies were available to protect him, but Brumley refused to name any of the people who allegedly had threatened him. Adair concluded the meeting by asking Brumley to report any "trouble" in which he became involved.²⁹

There was no further contact between Brumley and company officials on the subject of threats before the election on December 10. In this same period, according to Adair, there were "a variety of incidents involving damage to equipment and material" in the plant. None of these incidents were specified up to December 3 when a machine described as a DiAcro numerically controlled punch press (DiAcro) broke down. The DiAcro is a \$250,000 machine used in the fabrication of virtually all of the Company's products, and its loss meant a cost to Keco of \$10,000 to \$15,000 per day. Brumley was the person responsible for the maintenance of the DiAcro, but he was unable to repair it, and it was not fixed until December 15, after several visits by specialists from the manufacturer and from General Electric.

In a report to Adair from Maintenance Supervisor Wesley Montgomery dated December 19 the reason for the breakdown was ascribed to incorrect wiring by the DiAcro factory repairman.³⁰

This report did not satisfy Adair, who still suspected sabotage. Moreover, he suspected that the sabotage was done by Brumley. On December 10 Brumley acted as the Union's observer at the election. Adair was shocked at the fact that Brumley acted as the union observer after his expressions of fear and dislike of the Union. Adair expressed this surprise to Montgomery and ordered Cic-

²⁹ The fact that neither Cicchiani nor Adair solicited Brumley who, in Adair's words, was "upset and afraid," to give them any information about union supporters or union activity further supports my feeling that Respondent's policy was to allow the union campaign to take its course, and to deal with the problem later.

³⁰ In his testimony Montgomery really could not say whether or not the DiAcro was sabotaged because there were too many different people involved. No one asked him his opinion of why it broke down in the first place.

chiani to tell Montgomery that Brumley was not to be allowed into the plant early, and was not to remain on overtime unless Montgomery was there to supervise him.³¹ From this time on Brumley's overtime was severely curtailed.³²

Brumley, however, was undeterred by this exposure. On December 11 he met with Adair and assured him that he had not volunteered to act as the union observer, but had been selected for the job at a union meeting he had not even attended. Adair was at least partly mollified by this story, but continued to harbor suspicions about Brumley. The sabotage, meanwhile, continued. Adair testified that between December 10 and Christmas a pre-cooler coil on one piece of equipment was damaged, a clutch on another was severely damaged, and fresh paint was scraped off several units.

With this continuing sabotage, Adair became more and more suspicious of Brumley. On December 31 he called Brumley in and presented him with a copy of the memorandum he had written as a recapitulation of their October 15 meeting, and asked Brumley to sign a statement that the memorandum was true and correct. Adair assured Brumley that he was under no compulsion to sign, and would not lose his job if he refused. Brumley declined to sign at that time but he went home, and, over the New Year's holiday, determined that he would sign. He made an appointment to see Adair on January 2, when he signed the paper.

At about this time Keco filed a charge against the Union.³³ In connection with this charge Brumley was interviewed by, and gave a sworn affidavit to, an agent of the Board. In this affidavit he repeated his untrue statements that his property had been damaged in other union campaigns and that he was chosen as the union observer without his knowledge.

The Company was seriously concerned about the sabotage. All of the products manufactured by Keco at Cincinnati are destined for the Armed Forces of the United States or its allies. Under the procurement contracts between the Company and the Government, payments are made as materials are purchased by the Company. Thus, according to Adair, title to these materials, as well as the products fabricated therefrom, is in the Government. Neither the FBI nor the Cincinnati police was of any help with the problem, so sometime early in 1981, the Company hired a private detective agency to investigate the sabotage problem.³⁴ Operatives from the agency

were put into production jobs with instructions to check for clues on the sabotage. Montgomery mentioned in his testimony that at the interview with the detective agency Cicchiani gave the agency representatives a list of "strong union organizers" who, Cicchiani suspected, might be sabotaging equipment. I do not believe this statement is reasonable under the circumstances. By this time the Union had already organized the plant. The Company's lack of interest in who the leaders might be is demonstrated by its lack of knowledge of Brumley's connection, and by the failure of Adair or Cicchiani to ask for information after Brumley approached them. This together with my skepticism about Montgomery's testimony generally leads me not to credit this testimony.³⁵ The remainder of Montgomery's testimony, as well as that of Cicchiani, is in agreement that the agency was hired to look for sabotage only. I credit Adair's statement that the detectives were "enjoined not to spy on or report union activity." The detectives apparently turned up no evidence that anyone was engaged in sabotage.

Then, on March 19, Montgomery asked Brumley to remain after his shift ended to change the oil on a Kinney vacuum pump. Brumley did so, then left about 4 p.m. He assured Montgomery that the pump was O.K. The pump was used throughout the night. In the morning it was unplugged from one location, moved to another place, and plugged in again. At that point the pump locked up and would not run. Montgomery had the pump examined and a hexagonal nut and a roofing nail were found inside. Montgomery then asked Brumley if he knew how this happened and he indicated that he did not. Further work on the pump on May 22 revealed that it was irreparably damaged.

There was a lot of testimony about this incident, but there are only a few important facts. The incident was sabotage because neither the hexagonal nut nor the roofing nail were parts of the pump. In order to open the oil filter, through which the nail and nut were introduced to the inside of the pump, special tools were needed. The pump could run from 1 hour to 6 months depending on how long it took the foreign material to get from the oil filter hole to the cylinder. Brumley had put in less oil than required, which facilitated the movement of the foreign material to the cylinder. Brumley was the last person to change the oil.

Adair was notified of these facts and received oral reports from Montgomery and from Mike Enderle, a maintenance leadman, on March 22. On the basis of this, Adair determined that Brumley had sabotaged the pump and ordered that he be discharged. Cicchiani relayed the message to Montgomery, who notified Brumley on the morning of March 23 that he was being discharged for suspicion of sabotage, and for absenteeism.

These facts as reported here are largely undisputed, except for minor discrepancies, in the testimony of Montgomery, Brumley, Adair, and Cicchiani. As I have already remarked, I look upon Montgomery as a biased

³¹ Montgomery appeared as a witness for the General Counsel and stated that Cicchiani first told him to fire Brumley, but later told him to hold off because Adair had not yet made up his mind. Montgomery was later discharged by Keco as the result of a nasty incident involving his son, who also was fired by the Company. At the time of the hearing he was involved in litigation before the Ohio Rights Commission. I found Montgomery to be an equivocal witness, and I believe that he may have tended to shape his testimony to further his own personal case against Keco. Thus I do not generally credit him where his testimony is contradicted by Respondent's witnesses.

³² In addition, Brumley was given a warning slip on December 15 for absenteeism. However, Montgomery admitted that he reviewed all the employees under his supervision in maintenance, cleaning, and security, and issued several of these warnings at that time.

³³ Probably Case 9-CB-4765.

³⁴ Montgomery placed this in March or April, but I think it must have been before that.

³⁵ The detectives' reports, which would certainly have shown whether they were instructed to report on union activities, would have made interesting reading. But these reports were not subpoenaed by the General Counsel, nor offered by Respondent.

witness and I do not credit his testimony where it differs from that of Adair and Cicchiani. The General Counsel has gamely attempted to rehabilitate Brumley, but the latter's mendacity is a long way from a fearful employee's denial of union affiliation, an activity which could justify an untruthful response. Brumley's actions were broader and more complex. Thus, I do not credit Brumley in any matter which is not specifically corroborated, or is the subject of credible documentary evidence. Adair, I find, was a credible witness. His testimony was clear and precise; his memory was good; and his demeanor was candid and frank.

On the basis of these findings, I conclude that Respondent's actions against Brumley, the deprivation of overtime in December, and the discharge in March derive exclusively from the suspicions of Adair and Cicchiani that Brumley was responsible for the sabotage which was then going on. On this record I cannot, of course, find that Brumley was in fact the saboteur, but I do find that Respondent's officials had reason to suspect him, particularly with respect to the DiAcro and the Kinney vacuum pump. There is no factual evidence, even in the testimony of Montgomery or Brumley himself, that Brumley's union activities, at least his legitimate union activities, were responsible for the actions taken against Brumley.³⁶ There is no question that Adair and Cicchiani were surprised and upset at Brumley's "surfacing" as the union observer at the December 10 election, but this was due to the deception by Brumley, rather than the fact of union affiliation revealed at that time. The order banning further overtime was based, not on a desire to punish Brumley for his union activities, but to avert further sabotage. Brumley's discharge was directly related to the sabotage of the vacuum pump and, in all the circumstances, was reasonable and understandable. I find and conclude that the disciplinary actions taken against Brumley were not the result of his union activities.

E. Alleged Violations of Section 8(a)(1)

Several allegations in the complaint charge that admitted Supervisor Steve Nourtsis interrogated and threatened employees. Former employee James DeLaney testified that on December 9 Nourtsis asked him how he was going to vote in the election. DeLaney was a poor witness. He first did not remember whether Nourtsis had asked him how he was going to vote, then, after being shown his affidavit, did remember. DeLaney was further reminded that he had said in an affidavit that Nourtsis had stated that if the Union came in Adair would shut the plant down. I do not credit DeLaney, who did not impress me as candid or knowledgeable. I do credit Nourtsis' denial that this conversation occurred.

Both DeLaney and another employee named Harlan Caldwell testified that at a meeting on December 17 Nourtsis told a group of employees that since the Union was voted in the rules at Keco were going to be more strictly enforced. Nourtsis admitted that he spoke to an assembly of employees on December 17 about enforce-

³⁶ Montgomery stated, as his opinion, that union activities were responsible for Brumley's discharge, but he was unable to point to any factual basis for this opinion.

ment of the rules, and admitted that he had used the expression "you brought it on yourselves" but explained that the employees had brought it on themselves by laxity in observing Respondent's rules on hair length, uniforms, and smoking.

Caldwell had a better memory than DeLaney, and seemed to be a candid and credible witness. However I think he must have been mistaken about the precise words Nourtsis used at the meeting. There was a great deal of evidence in this record about the rules, from the employee handbook through testimony of Burgess, Cicchiani, Adair, and Nourtsis, to the numbers of memoranda from Adair on housekeeping problems. This makes it clear that Respondent, perhaps as a result of its dealing exclusively with military customers, is a "spit and polish" outfit. Uniforms are supplied and laundered by the Company. Hats and T-shirts are restricted to certain types. Hair length is a problem, as is smoking in restricted areas. Thus the fact that Nourtsis summoned the employees to a meeting on December 17 to discuss the rules was not in retaliation for their representative.

The other instances of alleged 8(a)(1) violations are supported only by the testimony of William Brumley. Since I will not credit Brumley's unsupported testimony, I do not believe these incidents occurred.³⁷

F. The Refusal to Furnish Information

As I have noted, Respondent has in my view followed a cautious and delaying policy in labor relations. Once the Union was certified on January 26, 1981, this policy became manifest. On February 27, 1981, David L. Patterson, the Union's business representative, wrote to Adair requesting certain information including names, rates, and classifications of all employees and company policies on hours, schedules, vacations, holidays and other leaves, and fringe benefits.³⁸ On March 13 Adair responded, noting first that he had just returned from an "extended business trip." He sent the Union an employee handbook which was responsive to questions about shifts, schedules, holidays, vacations, and other fringe benefits. As to the request for employee names, wages, and classifications, Adair stated that "upon receipt of employee authorizations to do so, the requested wage information will be supplied to you." In addition, Adair requested information from the Union, including copies of its International and Local constitutions; copies of resolutions and public statements on equal employment opportunity, affirmative action and civil rights, information on programs dealing with these matters; charges brought under civil rights law against the Local Union and its

³⁷ Nourtsis did testify that in response to questions by Brumley he did say that the Union could not work at Keco unless they got a "closed shop" and that Adair would close the plant down before he would permit a closed shop. This statement is somewhat ambiguous in the sense that a closed shop is illegal, but Nourtsis may have meant a union shop, which is not illegal. However, in the absence of any allegation in the complaint on this, I will not make any findings thereon.

³⁸ While Respondent denied the appropriateness of the bargaining unit alleged in the complaint, Respondent's counsel stated at the hearing that Respondent did not disagree with, nor would it contest, that allegation in the complaint. Accordingly, I find the unit described in the complaint to be an appropriate unit.

International; and statistical data on the numbers of union members and minority group members.

Patterson responded to this on March 17 complaining about the delay in opening negotiations, and stated that if the information requested in the February 27 letter was not forthcoming, he would file charges with the Board. The exchange of letters continued with Adair, on April 1, still insisting that information regarding wage and classification data on employees would be transmitted only for employees who provided Respondent "with appropriate authorization to do so." On April 8 the Union filed the charge in Case 9-CA-16659 alleging the failure to supply that information as one of the elements of the charge.

The parties finally got down to negotiations in the summer of 1981. Much of the requested information was received about July 15. By September 28, when the hearing resumed, negotiations had broken down and the employees were on strike.

There has been no representation made that the information requested on February 27 was not relevant nor reasonably related to the Union's proper performance of its role as bargaining representative. Indeed the Respondent's brief admits that, under the law, the Union is entitled to information on wages and classifications. There is some question on whether Respondent has supplied appropriate information on the subjects of pensions and insurance. The testimony of Union Business Representative John Nickell is really not clear enough to allow me to make a finding on that issue, especially since negotiations were in full progress when he testified on July 23, 1981. This may be left to the compliance stage of this proceeding.

I can and do find that the delay in furnishing relevant information from February 27 to July 15 was unreasonable and constituted a violation of Section 8(a)(1) and (5) of the Act. *Murphy Printing Co.*, 235 NLRB 612 (1978); *Colonial Press*, 204 NLRB 852 (1973).

IV. THE REMEDY

Having found that Respondent has violated Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. Specifically I shall recommend that Respondent:

Forthwith furnish to the Union the names, wages, and classifications of all bargaining unit employees here found appropriate, together with such information as will enable the Union to understand and interpret other information previously supplied to it, and bargain in good faith with the Union as the exclusive representative in the unit here found appropriate for a period of 60 days following the furnishing of such information.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union is the exclusive bargaining representative in the following appropriate unit:

All production and maintenance employees employed by the [Respondent] at its Cincinnati, Ohio facility including sheet metal, electrical, assembly, paint finish, packaging and spare parts, but excluding all administrative, procurement, purchasing, inventory control, production control, engineering, test laboratory, date and publication, accounting, sales, quality assurance, traffic and office clerical employees and all professional employees, guards, and supervisors as defined in the Act.

4. By failing and refusing to furnish relevant information to the Union, Respondent has violated Section 8(a)(1) and (5) of the Act.

5. Respondent has not violated the Act in any other manner.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁹

ORDER

The Respondent, Keco Industries, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith by refusing to provide relevant information in a reasonable time to the exclusive representative of its employees in the unit found appropriate herein.

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

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

(a) Forthwith furnish to the Union the names, wages, and classifications of all employees in the bargaining unit, here found appropriate, together with such information as will enable the Union to understand and interpret other information supplied to it, and bargain in good faith with the Union as the exclusive representative in the unit here found appropriate, for a period of 60 days following the furnishing of such information.

(b) Post at its place of business in Cincinnati, Ohio, copies of the attached notice marked "Appendix."⁴⁰ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to the employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³⁹ 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.

⁴⁰ 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."

(c) 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 all allegations of unfair labor practices not found herein are dismissed.

APPENDIX

**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.

WE WILL NOT fail and refuse to bargain in good faith with the representative of our employees.

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

WE WILL supply information to District Lodge No. 34 of the International Association of Machinists and Aerospace Workers, AFL-CIO, and WE WILL bargain in good faith with the Union for 60 days following the supplying of such information.

KECO INDUSTRIES, INC.