

Electro-Wire Truck & Industrial Products Group and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and Bonnie Lou Raines and Sharon Reynolds. Cases 9-CA-27600-1, -2, 9-CA-27600-3, and 9-CA-27853

December 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On August 30, 1991, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel 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 exceptions and briefs¹ 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 adopts the recommended Order of the administrative law judge and orders that the Respondent, Electro-Wire Truck & Industrial Products Group, Campbellsburg, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² The Respondent 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.

In sec. II.D.2, par. 29, of his decision, the judge rejected, as hearsay and incredible, Supervisor Kathy Gardner's testimony that employee Melissa Wilson was required to use a tape measure constantly and that there was a printed sign to that effect at her work station. We do not agree that Gardner's testimony was hearsay. However, this does not affect the result in this case. Even if we accept Gardner's testimony in this respect, we nonetheless adopt the judge's finding, based on other credited testimony, that the Respondent did not find out that Wilson was not using her tape measure until after the decision to discharge her had been made. Thus, Wilson's alleged failure to use the tape measure could not have been considered in the decision to discharge.

Donald A. Becher, Esq., for the General Counsel.
William C. Martucci, Esq., of Kansas City, Missouri, for the Respondent.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This case was tried in Carrollton, Kentucky, on February 25-26, 1991. The initial charges in Case 9-CA-27600-2, were filed against Electro-Wire Truck & Industrial Products Group (the Respondent) by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union) on June 11, 1990.¹ On June 12, Bonnie Lou Raines, an individual, filed the charge against Respondent in Case 9-CA-27900-3. On these charges the General Counsel issued an original consolidated complaint on August 1. Sharon Reynolds, an individual, filed the charge against Respondent in Case 9-CA-27853 on September 18. The General Counsel consolidated all of these charges and issued a second consolidated complaint (the complaint) on November 6. The complaint, as amended at the hearing, alleges that Respondent has committed certain unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The alleged conduct in violation of Section 8(a)(1) consists of threats and interrogations by several different supervisors and one solicitation of grievances. The alleged conduct in violation of Section 8(a)(3) consists of the discharges of employees Kenneth "Don" Peters and Melissa Wilson and discriminatory enforcement of a restroom pass policy. Respondent duly filed an answer to the complaint, admitting jurisdiction of this matter before the Board, admitting the status of certain supervisors within the meaning of Section 2(11) of the Act, and admitting that the employment of each alleged discriminatee "was concluded," but denying the other alleged conduct and denying the commission of any unfair labor practices. (I find herein that both employees were discharged, and I use that term throughout the narrative.)

On the entire record, and my observation of the demeanor of the witnesses, and after considering the briefs that have been filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation that has an office and factory in Campbellsburg, Kentucky, where it manufactures wiring harnesses for the automobile industry. During the year preceding the issuance of the complaint, Respondent, in the course of those business operations purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located at points outside Kentucky. Therefore, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FINDINGS AND CONCLUSIONS

A. Background

Respondent's plant opened in September 1989. At the time of the events in question, Larry Kelly was the manufacturing

¹ All dates are in 1990, unless otherwise indicated.

superintendent and M. B. "Tex" Harp was the labor relations and personnel manager. The plant had about 180 employees who manufactured wiring harnesses, all of which were sold to a Ford truck plant. The harnesses are groupings of electrical wires that are attached to the firewall of a truck and then connected to the cab's instrument panel and controls and other electrical accoutrements of the truck. No union has represented any of the employees at the plant. Respondent owns other plants which have had organizational attempts.

At the time of the events in question, Respondent operated a "first" shift which was regularly scheduled from 6:30 a.m. until 3 p.m. It also operated a "split" or "second" shift which was regularly scheduled from noon until 8:30 p.m. All employees were subject to a 90-day probationary period.

B. *The Prima Facie Case*

1. Discharge of Peters

Peters was hired by Respondent on May 7. He was one of three setup employees in the maintenance department at the time he was discharged on June 4. A setup employee adjusted dies for production line machines. As a maintenance employee, Peters reported to admitted maintenance supervisor (within Sec. 2(11) of the Act) Gary Woody, and when he was working in various production departments he would report to departmental supervisors, as well. There was a total of eight maintenance employees in the maintenance department at the time of the events in question. Peters and other maintenance employees testified, without contradiction, that before the week of Peter's discharge the maintenance employees had been working many hours of overtime. Peters, himself, worked both the first and second shift during the penultimate week of his employment.

On Friday, June 1, the Union stationed agents near an exit to Respondent's plant to distribute flyers to employees. The flyers announced that an organizational meeting would be conducted by the Union at a hall in Carrollton, Kentucky, on Sunday, June 3. About 10 of Respondent's employees attended the meeting. At the meeting, union representatives distributed authorization cards and UAW T-shirts and buttons; some employees took buttons to distribute to other employees. Peters did not attend the June 3 union meeting.

a. *Events of Monday, June 4*

On Monday, June 4, Peters reported to work at 6:30 a.m. At his morning break Peters was given a UAW button by fellow maintenance employee Tim Ellegood who had attended the June 3 union meeting. Peters put the button on his clothing and went to work. Ellegood, Peters, and maintenance employee Dominique Glover wore union buttons or T-shirts throughout the day. Only about 10 of Respondent's employees wore UAW insignia on June 3 and 4; only two probationary employees, Peters and Wilson, wore union buttons or T-shirts on those days.

The complaint alleges that on June 4, by admitted Press Line Supervisor Betty Bolin, Respondent:

- (i) Told employees that Respondent did not like unions and threatened that if the Union were voted in Respondent would close its facility.

- (ii) Threatened employees that Respondent would need only 30 days to move its equipment to a new location and to be operating anew if its employees selected the Union as their bargaining agent.

- (iii) Threatened employees that Respondent had already made arrangements for a new building in which to move its operations if the employees selected the Union as their bargaining agent.

Several employees testified to such conduct by Bolin on June 4, early and late in the day.

Glover testified that he was in a work area during the morning of June 4 when Bolin spoke to him and other employees. According to Glover:

She was sort of explaining how there had been a union at the Electro Wire plant in Shelbyville [Kentucky] and how it wasn't no good and how it didn't help them any. And how it wouldn't really help you get a raise or nothing like that. And that if the union was voted in at Electro Wire that supervision wouldn't go for it and that the plant would close.

. . . .

Uh, she has [sic] said something about the union at Shelbyville wouldn't let the company give them a raise when they wanted to. She said the company froze wages because the union wouldn't let them give one.

. . . .

She said something about a Mr. Wheeler, who . . . she said if it was voted in, he'd close the plant.

The complaint, as amended at trial, alleges that on June 4, by Woody and Harp, Respondent solicited grievances and impliedly promised to resolve them.

Glover testified that around noon on June 4 "we" (otherwise unexplained) were in a work area and Woody "just sort of stood around and didn't say much." Glover testified that he addressed Woody:

And I asked him, you know, "What did they do, send you out here to see what we wanted?" And he said, "Well, I ain't going to lie to you. Yeah."

Woody testified, but he did not deny this response. Glover told Woody that he thought the maintenance employees were being required to work too many hours in a week, and that he thought that Respondent should promote from within rather than hire new employees for some positions. Woody asked if the employees wanted to talk to anyone in higher management about these matters, and Glover replied that some of the maintenance employees would like to talk to Harp. (There was a meeting with Harp on June 5, as discussed, *infra*.)

Ellegood testified that it was he who was originally talking to Woody on June 4 and, at some point, Glover joined them. Ellegood testified that before Glover joined Woody and him, his conversation with Woody had begun by

I was sitting there doing the welding setup, and he came over and was talking to me and brung up and asked me why that—I wanted the UAW or the union.

Ellegood testified that he told Woody that there were different reasons, but the "main thing" was money. Then

Woody “asked if we would go in to talk to Mr. Harp about what we wanted and the reasons why we wanted a union.”

Although there are some differences in the accounts by Ellegood and Glover, Woody denied neither.

Peters testified that during the midafternoon of June 4, Woody spoke to him in a work area. Woody asked Peters if Peters had attended the union meeting the day before. Peters told Woody that he had not attended because of a family emergency, but that he would have attended the union meeting if he could have.

Woody did not deny this questioning of Peters. The complaint does not allege any violative interrogations by Woody.

The complaint alleges that, on June 4, in violation of Section 8(a)(3), Respondent “commenced discriminatory enforcement of its restroom [pass] policy against its maintenance department employees.”

Peters testified that at another point during June 4, when he and maintenance employees Tim Ellegood and Kevin Webster were in the restroom, Woody approached them and he:

told us that from now on we had to go to production department supervisors like everybody else and get a pass for the bathroom. And we kind of moaned about it and he said, “well, you should have expected it. It’s probably going to get worse.”

Peters testified that before this point, maintenance employees had not been required to get restroom passes from supervisors, although production workers had.

Woody did not deny any of this testimony, including the “get worse” remark.

As previously noted, the complaint alleges that, on June 4, in violation of Section 8(a)(3), Respondent terminated Peters. Also the complaint alleges that Respondent, by Woody on June 4, “told an employee that if the employee had not worn a union button, the employee would not have been discharged,” in violation of Section 8(a)(1).

Peters testified that around 4:30 or 5 p.m. on June 4 a group of maintenance personnel congregated around the “pull test” table,² a work area, as they prepared to clock out. The group included Supervisor Woody and maintenance employees Ellegood, Glover, Deon Smith, Kevin Webster, and Peters, all of whom wore union buttons or T-shirts on June 4. As they stood around, they talked about what they planned to do after work, which conversation apparently had nothing to do with the Union.

Peters testified that the group was approached by Bolin. Bolin asked Ellegood and Glover “what they wanted with the Union.” Ellegood replied that the employees wanted better working conditions. Bolin, further according to Peters, replied that, if the employees got a union in, Respondent would “lock the doors and move to [sic] the plant.” One of the employees in the group responded that, if Respondent did move the plant, it would take so long that respondent would lose its sole customer, Ford Motor Company. Bolin replied that it could be done in 30 days because Respondent already had another plant “lined up,” and “[t]hey wouldn’t lose nothing. . . . [T]hey done had a building located.” Further according to Peters, Bolin said that if the employees were

successful in obtaining representation “they wouldn’t pay us no more than minimum wage.” Bolin also told the employees that, at another of respondent’s plants, a union had been chosen by the employees and they “hadn’t had a raise since then and we wouldn’t get one until the plant solve he problem.”

The complaint does not allege, as a violation of Section 8(a)(1), a threat by Bolin that Respondent would pay no more than minimum wage if the Union were selected as the employees’ collective-bargaining representative; nor does the complaint allege that Bolin unlawfully interrogated any employees or threatened employees that their wages would be frozen if they chose the Union as their collective-bargaining representative.

Peters was discharged immediately after Bolin spoke to the employees who were gathered with Woody at the pull test table late in the afternoon of June 4. Peters testified that after Bolin finished the remarks quoted above, he replied that he did not like “the way they did these bathroom breaks.” Woody responded: “Well, it doesn’t really matter what you like anyway, because today’s your last day.” The gathered employees asked Woody why Peters was being terminated. Woody picked up a sheet that indicated the number of setups that had been done that day and stated, “We don’t need three set-up people on [the] line.” The employees argued the point with Woody. Peters testified:

I said, “You all know why I was fired is because I put this union button on.” . . . And Mr. Woody kind of looked at us and said, “[y]ou’re probably right. You’d still have a job if you didn’t put that button on.”

Maintenance employee Deon Smith, who was still employed by Respondent at the time of trial, testified consistently with Peters, except that Smith testified that, while Bolin, Woody, and the employees were gathered in the pull test area, both Woody and Bolin said that the Respondent would close the plant if the employees selected the Union as their collective-bargaining representative. Smith testified:

[Peters] said the reason he wanted the union was because of them stupid restroom passes. . . . Gary [Woody] said, “Little does he know, he doesn’t have to worry about those anyway. This is his last day.” . . . We kind of thought [Woody] was joking, but then he turned around and said, “Well, you can turn in your tools.” . . . Kevin [Webster] asked, “Was he terminated or was he laid off?” . . . [Woody] said, “He’s fired. We don’t need him. . . . Well, he was hired for the second shift anyway. And we’re not going to have that anymore.”

Mr. Peters then said, “I told you all if I put this pin on that I would not have a job at the end of the day, because my 90 days wasn’t up.” . . . [Woody] said, “You’re right, you probably shouldn’t have put it on.”

Ellegood, who is currently employed by Respondent, testified, consistently with Peters and Smith, that, at the end of the work day on June 4, as Woody and Bolin and several employees were gathered in the pull test area, Bolin told the gathering that if the employees chose the Union, “that they would close the plant and they could move it within 30 days and have it setup again somewhere else. . . . [T]hey would

²The transcript, at various places, uses “pool test” rather than “pull test.” It is accordingly corrected.

drop us to minimum wage and take our benefits and we'd have to start our seniority over again." Ellegood further testified that Peters said that "the reason why he wanted a union was he didn't like the pink passes . . . to go to the bathroom." Ellegood further testified that after Woody told Peters to turn in his tools, the group asked if it was Woody's decision or a decision by higher management. Woody pointed toward the office area. Then, according to Ellegood:

Don took his button off and laid it down and said, "Don't let them tell you anything different, boys. Right here's the reason why I got fired." And Gary said, "You're probably right."

On being told that he was discharged, Peters gathered his tools, and Woody walked Peters toward Woody's desk, out of the hearing of the employees who had gathered at the pull test table. Peters testified that

As we was walking up toward his desk, [Woody] said, "Life's a bitch and then you marry one." And then he said, "You shouldn't have put on the union button."

Woody denied the "probably right" remark at the pull test table, and he denied the "shouldn't have put on the union button" remark when he and Peters were out of earshot of the other employees.³

Peters, Smith, and Ellegood placed Glover at the scene when Peters was discharged. However, Glover testified that he was "back and forth" from the pull test area and that he did not learn of Peters' discharge until after the fact.

Glover testified that, after Peters was discharged, Woody and some other (unnamed) employees asked Woody whose decision it was to discharge Peters. According to Glover: "We had asked him. And at first he didn't want to say nothing. And then once he said, uh, Larry Kelly had told him to get rid of him." Woody did not deny this remark attributed to him by Glover.

b. *The events of June 5 and 6*

The next day Glover, Ellegood, and maintenance employee Keith Crouch went to Harp's office where they had a discussion with him about the Union. Glover and Ellegood testified about the meeting; Crouch did not testify. Glover testified that Harp told the three employees that he would answer their questions, but that he would not be asking them any questions (and he did not). Glover testified that the employees told Harp about several of their grievances, including having to work too many hours a week. Harp told the employees that Respondent was trying to cut down on the hours. Glover asked Harp if Respondent was eliminating the noon to 8:30 p.m. shift, as he had heard from other employees. Harp replied that "as far as he knew they wasn't. . . . [H]e said he didn't know of them ending the second shift then."

Harp testified, but he was asked nothing about this meeting.

Ellegood testified that he could not remember anything of what Harp had told the employees on June 5.

Glover further testified that during the morning of June 5:

³No witness was asked if Bolin had remained in the area to the point that Woody discharged Peters and said whatever he did.

[Bolin] called me to the side and asked my why I wanted to be in something I didn't know anything about. . . . I told her, "Well, you know, I may not know everything about the union, but I know enough that I thought I was interested in it." And then she sort of repeated [t]hat the plant would close if the union come in there . . . and that it wasn't too good.

The complaint alleges that on or about June 5, in violation of Section 8(a)(1), Respondent, by admitted Cutting Supervisor James Harper, coercively interrogated an employee and threatened the employee with plant closure, reduction of pay to the minimum wage, loss of seniority rights, and termination of other benefits, if the employees selected the Union as their collective-bargaining representative.

Smith testified that "a couple of days" after Peters was discharged, when he was again in the pull test area, he was approached by Harper. According to Smith

He . . . asked me why I wanted the Union. I told him I wasn't real sure that I did. And he said, "Well, I . . . been in a union and I've been against a union being a part of management. . . . I can tell you it never did do me a whole lot of good. I had to pay union dues." . . . I said, "Well, I'd rather pay union dues and make more money than not have one."

. . . .
And he said . . . if the union did come in there that the owner probably would shut the plant down. And if he didn't shut the plant down then our wages would go down to minimum wage and we'd have to fight for everything. And we'd lose all seniority. The seniority would start on the day the union got in.

Harper denied threatening any employees; he was not asked specifically what, if anything, he had said to Smith.

Ellegood testified that after Peters was fired, "they moved me from welding into setup in the press line" so that Respondent, as it had done before, continued its operations with three setup personnel. Ellegood further testified that Gene Lay, who had been hired on May 29, was trained to do setups while Peters was still employed. Smith also testified that Ellegood took over Peter's setup duties after Peters was discharged. Smith testified that, before Ellegood took on Peters' setup duties full time, "I just went over to help out whenever they got behind." Smith further testified that he did not work much overtime during the summer of 1990, "but towards September we started working 15 hours a day." Finally, Smith testified that the rest room pass policy for maintenance employees lasted for "about a week" after Peters was discharged. Glover testified that the policy lasted "[t]wo or three weeks, maybe. It could have been a little longer."

2. Discharge of Wilson

Wilson began working as a production line inspector on May 2, and she was discharged on June 5 by admitted Quality Control Supervisor Kathy Gardner.

Wilson was assigned to the 7 to 3:30 shift, but she regularly worked until 6 p.m. during her 5-week tenure. Wilson's job was to check harnesses as they progressed by her work station on a conveyer-belt assembly line. After Wilson's inspection function, the harnesses were sent to the molding de-

partment where grommets were attached. (The grommets create a seal when a harness is placed through a truck's fire-wall.) Then the harnesses went to a final inspection area before packaging for shipment.

Wilson attended the Union's meeting on June 3, and she wore a UAW T-shirt, with a UAW button on it, to work on June 4 and 5.

Wilson testified that on June 4, about 3 p.m., as she was working, she was approached by admitted Supervisor Glenn Roberts whom she had never met. The two engaged in a conversation during which Wilson asked Roberts who he was. Roberts identified himself as the second-shift quality control supervisor. According to Wilson:

He approached my work area and started asking me about what I had done and how I performed my job, checking the harness itself and I answered his questions and at the end of the conversation he asked me if we was having a union drive. And I said, "I can not talk on company time." . . . He said he knew that and walked off.

On the basis of this testimony the complaint alleges a violative interrogation. Roberts did not testify, and Wilson's testimony stands uncontradicted. Although Respondent's answer admits that Roberts was a quality control supervisor, Gardner was firm that Roberts was a production-line supervisor, not a quality control supervisor. (At trial, when Gardner was told that Respondent had admitted that Roberts was a quality control supervisor, Gardner said that the answer was in error. Gardner was probably right, no matter what Roberts told Wilson; this would explain why quality control department employee Wilson did not know who Roberts was when Roberts confronted her.)

Wilson testified that during the day on June 4, quality control technician Vicki Hall approached the inspectors and said that, from then on, inspectors had to get passes from the supervisors in order to go to the restroom. Wilson testified that the inspectors had never before been required to have such passes. Current employee, and inspector, Peggy McCullough corroborated Wilson's testimony in this regard. McCullough further testified that the restroom pass requirement was dropped after about a month.

The complaint does not allege the implementation of a discriminatory restroom pass policy in the quality control department, as it does in regard to the maintenance department. However, Respondent's witnesses testified fully about the issue, and I find that the matter was litigated pursuant to the express allegation of the complaint. Therefore, it must be decided if the June 4 implementation of a restroom pass policy for the quality control department violated Section 8(a)(3).

Wilson testified that on June 5, about 3 p.m., she was approached at her work station by her "immediate supervisor" Gardner.⁴ According to the uncontradicted testimony of Wilson, Gardner asked Wilson to follow her to the lunchroom, which Wilson did. Present as a witness in the lunchroom was Bolin. Gardner read the "Employment At Will" section of Re-

spondent's employee handbook to Wilson. That section states:

Employment at Electro-Wire Truck and Industrial Products Group is for an indefinite period of time and is terminable at any time, with or without cause being shown, by either the employee or the employer.

Gardner asked Wilson if she understood. Wilson said that she did. Bolin asked if Wilson would sign a voluntary leave slip. Wilson said that she would not. Gardner escorted Wilson out of the plant.

Wilson denied that she was ever told why she was being discharged; that testimony is not disputed. Wilson further denied ever being told that she needed to do better work; that testimony is disputed.

Current employee Peggy McCullough testified that a few days after Wilson was discharged, she witnessed a conversation that included Vicki Hall and several other employees. McCullough testified:

She [Hall] just said that she [Wilson] was just let go. And then the T-shirt came up in the conversation. . . . I can't really exactly tell you what words, but I do remember her saying something about her T-shirt.

General Counsel alleges, and Respondent denies, that Hall is an agent of Respondent within the meaning of Section 2(13) of the Act. The General Counsel contends that, as an agent of Respondent, Hall made a statutory admission when Hall referred to "the T-shirt." I find this testimony of McCullough to be so ambiguous as to be meaningless, regardless of whether Hall could have made admissions that would bind Respondent.

3. Turocy's testimony

Charles Robert Turocy Jr., who was still employed by Respondent at time of trial, testified that "three days" after the Union passed out literature announcing a union meeting at a truckstop in Campbellsburg, he and employee Laura Fewell had a meeting with Harp. On direct examination, Turocy was not specific about the date, but on cross-examination he testified that he first learned about the Union's organizational attempt in late summer, and he placed his meeting with Fewell (who did not testify) and Harp in September. According to Turocy:

[W]e asked [Harp] what the union was about, and we was told that they wanted money for promises that they couldn't keep. . . . And the advice would be, not to join it if it was at all possible. . . . We asked him about the man that owned the factory, would he close the doors down and he said that the man probably did not care about nobody, that if he wanted to he could shut them down and nothing would be said.

Harp was present throughout the hearing, and he testified on other matters, but he did not dispute this testimony by Turocy.

This conduct by Harp is not alleged as an independent violation of Section 8(a)(1). The complaint does allege an unlawful threat of plant closure by Harp in "May or June, 1990." Turocy was confident that his meeting with Harp was

⁴ At trial, the General Counsel added an allegation that Vicki Hall was a quality control supervisor. Obviously, Wilson did not consider Hall to be her supervisor.

in September. Much of the alleged violative conduct happened 3 days after the Union passed out literature announcing a meeting at a union hall in Carrollton, but that meeting was on June 3. Turocy was sure that the exchange with Harp happened 3 days after the Union announced a meeting at a truckstop in Campbellsburg, obviously a different union meeting. There being no evidence of any threat by Harp in "May or June, 1990," I shall recommend that that allegation be dismissed.

However, the evidence of Harp's undenied threat must be considered in deciding if the General Counsel has presented a prima facie case of discrimination against Peters and Wilson.

C. The Defense

1. Denials of the alleged 8(a)(1) conduct

Bolin first testified that on June 4 the "ladies" in her department had several questions about the Union's organizational attempt and what might happen. She testified that she told them of her prior (bad) experiences with a union at Respondent's Shelbyville, Kentucky, plant. Bolin was asked and testified:

Q. Did you have discussions with other individuals that way—that day as well? Did some of the men have questions for you about your experience at Shelbyville?

A. Well, some of the guys, I don't remember who all it was, was around the pull test table and Gary Woody was talking with them whenever that I walked up and they were questioning him and talking about the union and stuff and I ended up into that conversation.

The best I can remember Gary asked me something about telling them what happened at Shelbyville because he wasn't at the Shelbyville plant whenever that the union business was going on down there. And he wanted me to tell them from my experience what went on down there.

Q. And did you share with them your experience of what happened down there in Shelbyville?

A. Yes.

Q. Did you, at any time on that day of June 4, 1990, interrogate anybody or ask anybody questions that weren't in a discussion with you about how they felt about the union?

A. Not to my knowledge. I don't remember if I did.

Bolin was not asked about any other of the remarks attributed to her.

Harper was asked and testified:

Q. Did you ever make a statement during that day of June 4, 1990, or any time the next day, which was Tuesday, June 5, that if the union's—if the union came in and the employees voted for the union that the company would shut down its operations rather than face the union as such?

A. No, sir.

Q. Did you ever threaten an employee that if they selected the union and their bargaining representative that all their benefits would be terminated and their pay would be reduced to minimum wage?

A. No, sir.

Harper testified that Dominique Glover approached him at some point and asked if he, and others, could go to talk to Harp about the employees' grievances.

No other testimony was offered by Respondent in the way of denials of threats, interrogations or solicitation of grievances.

2. Defenses to the 8(a)(3) allegations

a. Reasons for Peters' discharge

Respondent called Plant Superintendent Larry Kelly to explain the reason for Peter's discharge. The relevant examination on direct examination was:

Q. Do you recall discussing with Mr. Harp and perhaps some of your managers on Saturday, June 2nd, the question of whether the twelve to 8:30 shift would continue and perhaps a discussion of the mini-shift which ran from 4:30 to 8:30 as well?⁵

A. Yes. . . . The concerns were addressed were that the—our conversations with the supervisors we had initiated the—what we called the split shift to support a final assembly operation.

And the supervisors were advising me that there was no longer a need for the split shift, that they were able to support it with the first shift.

. . . .

But when the decision was made to eliminate the split shift, then that necessitated one less set-up man.

Respondent called Woody, Peter's direct supervisor, who testified about his discharge of Peters:

There was probably only five or six people standing around over to the pull test machine and they was all over there standing, talking. Probably about quarter till, twenty till time to go home.

And I walked up to him and they was all standing talking. I think I said something to the effect, he probably, I probably wouldn't need him anymore and to hand in his tools and have them checked off to make sure they was all there. . . . Well, a bunch of them said it was because he had a button on. And I said, no, it ain't got nothing to do with it. I just told him—pulled up—they got a chart here that they write down what they do.

I turned it around and looked at them and said, you all done ten set-ups today with three men. One man can do that in half a day. I said, there's no sense in needing three people. So, I told him we was going to have to let him go.

Respondent's employee handbook states that all job classifications are divided into "direct" and "indirect" labor departments, and layoffs will be conducted "on the basis of seniority and qualifications with the employee with the least seniority being laid off first out of the departments being reduced." Maintenance is an indirect labor department. n di-

⁵ In answering counsel's questions, Kelly made no reference to the "minishift"; Gardner testified that the minishift was eliminated about the time she became a supervisor, a date she set firmly at May 1.

rect examination, after being asked to confirm what the handbook says in this regard, Kelly was asked:

Q. And is it true that seniority is by department and within classification within that department?

A. Yes.

No other supervisor (or employee) testified that seniority was by classification, as well as by department, and Respondent offered no documentation to that effect.

Peters was not the maintenance department employee with the least seniority. Gene Lay, who was hired on May 29, had less seniority than Peters who was hired on May 7. Woody, the direct supervisor of the department, was not asked why Lay was retained and Peters was discharged. Kelly was asked about Lay, but Kelly did not remember Lay. On being shown by his counsel Respondent's exhibit which listed Lay as "Gen. Maintenance," Kelly testified that general maintenance employees are required to have some abilities at welding, and electrical and construction work, and setup employees are not.

b. *Reasons for Wilson's discharge*

(1) Testimony of Respondent's witnesses

Gardner had six inspectors under her supervision, three on the production lines, and three in final inspection. On direct examination, Gardner testified that Wilson was supposed to stay at an inspection board at her work station.

Respondent provides production line inspectors with tape measures. Gardner testified that there is a sign on the inspection board that specifically states that measurements are to be checked with a tape measure, and against a blueprint, as well as checked by holding a harness against the board. Gardner testified that she had instructed Wilson to use the tape measure and the blueprint as she worked.

Gardner testified that Wilson did not have Respondent's tape measure when she was discharged. Respondent points to Wilson's lack of possession of the tape as evidence of a non-caring attitude toward her work. Wilson admitted that, at the time of the discharge, she did not have the tape measure. Wilson testified that she told Gardner that, when she came back for her last paycheck, she would bring in the tape measure. Wilson further testified that the only use that she ever made of the tape measure was to see that the inspection board was laid out according to the blueprints.

Gardner testified that on May 29, Respondent's liaison with the Louisville Ford plant "brought us in some harnesses that were bad that had went through [Wilson's] station. They had made it all the way to Ford and they were inoperable. They could not use them. . . . I took her back one of the harnesses that had come back from Ford and I showed her what was wrong with it and asked her if she'd please stay in her station. "Further according to Gardner, she composed and entered into Wilson's personnel file the following memorandum which is dated "5-29-90":

Melissa

Took aside to talk about her talking to others and not getting her work done correctly. I took her [sic] a harness back to her that was real bad. It was one that she had already checked 100, and missed everything.

Gardner testified that Wilson said nothing when she reprimanded Wilson on May 29. On cross-examination, Gardner added that this was the second time that she had spoken to Wilson about the quality of her work.

Gardner was asked on direct examination "what observations" she had made about Wilson's performance. Gardner responded, "I had numerous complaints that she would not stay at her work station." Gardner testified that other employees and supervisors complained that Wilson walked around the plant and interfered with the production work. The only supervisor she named was Roberts. She was asked and testified:

Q. And, as best you recall, what was the nature of Mr. Robert's complaint?

A. That she wasn't checking the harnesses the way she should and that she wasn't where she was supposed to be.

Gardner was asked if she had discussed with Hall "any problems with Melissa's performance with respect to inspection." Gardner responded that Hall kept records which indicated that Wilson was missing "quite a bit of stuff and that they'd been finding it back in final audit." Gardner did not testify that Hall stated that Wilson wandered away from her work station.

Gardner was asked on direct examination:

Q. What happened on June 5, 1990 with respect to Miss Wilson's employment and your involvement in that?

A. Mark Oshanski, our liaison for Ford, brought back a harness that Melissa had checked that had a connector on backwards and it would not mate to its mating part. . . . The connector has a front view and a back view and we put the wire in the back view and the mating connector goes into the front view. She had the connector turned around with the wire going into the front view.

Q. Were there any other problems with the harness?

A. With that one? No.

Q. What did the gentleman from Ford [Respondent's employee Oshanski] say about the harness when he presented it to you?

A. Only that the people in the [Ford Louisville plant] line were very upset that they'd gotten it.

Q. What, if anything, did you do as a result of these points being made by Mr. Oshanski to you on that day of June 5, 1990?

A. I talked it over with Tex and then me and Betty Bolin took her into the lunchroom and read the employment at will act to her.

Q. What did you discuss with Mr. Harp on that day of June 5?

A. I asked if it was all right if we let her go because she wasn't working out.

Q. Why did you want to let her go? What was your motivation? What were your reasons?

A. Because we kept finding harnesses back in final audit coming from her section that were not checked right [Tr. 246].

. . . .

A. Because we had asked prior if we could let her go, at a prior date, when we had another harness that was bad. And Tex told us to give her another chance.

Q. And did he give any reason why he wanted to try to give her another chance?

A. Because she was still new. [Tr. 255.]

Q. [W]hy did you decide to terminate her employment on June 5, 1990?

A. Because that was the day that Mark Oshanski brought in the harness with the reversed connector. [Tr. 248.]

Oshanski was not called to testify; Harp testified, but he was not asked anything about Wilson's discharge.

Hall identified certain documents purporting to indicate that final inspection caught many things that production inspectors did not; Hall acknowledged that the records did not indicate which errors had been made by Wilson.

Gardner testified that there were forms that Wilson would fill out each day that would reflect the errors that she found, but no such records were produced. Gardner testified that each harness has a tag that identifies which production inspector had inspected it, but that there would be no record of which final inspector(s) had inspected it.

(2) Rebuttal on Wilson's discharge

The General Counsel called Peggy McCullough who was employed by the Respondent at time of trial, but was on medical leave. McCullough testified that about November 1990, or several months after Wilson was discharged, she worked as an inspector in final audit, and employee John Baker worked as line inspector. McCullough testified that she and other final inspectors complained to management about Baker's work. Specifically:

We just told them that there was some harnesses coming back that hadn't been inspected that should have been inspected or that they were inspected, but not inspected properly.

McCullough also testified that Baker would wander away from his work station and the final inspectors also complained to supervision about that.

In response, Respondent questioned Gardner about Baker:

Q. And how would you describe his [John Baker's] performance, including what may be the good and the bad points.

A. He was slow at learning how to read the blueprint, but he caught on to the board really fast. And I didn't have any complaints, to me, that he wasn't doing his job.

Q. Did you receive complaints that he would visit with his girl friend from time to time?

A. Yes, I did. And I took disciplinary action on him.

Q. Did it change after that time?

A. Yes, it did.

Q. If you were to compare the performance of John Baker with that of Miss Wilson, what would you have to say in terms of describing the performance of each?

A. He's more worried about what he's doing. He always asks questions and if I can't answer them, he's always willing to go the next step higher and ask some-

body else. He's always willing to do whatever I ask him to do.

Q. How does that contrast, if at all, with your experience with Miss Wilson?

A. She never asked any questions. And she was never at her inspection board where she was supposed to be.

Further as evidence of discriminatory treatment, the General Counsel points to his examination of Gardner about employee Ron Stark. Gardner admitted that "some things" that Stark had inspected had been sent back from Ford. On redirect examination Gardner was asked to compare Stark's performance with Wilson's. Gardner testified: "When Ron wanted to work, he did and he did a real good job. He caught everything he was supposed to catch." There is no evidence that Stark was disciplined in any way for his deficient inspections of harnesses that were returned by Ford.

On cross-examination Wilson denied that Gardner had ever told her that she had not been doing her work correctly, denied that Gardner had ever told her that a harness that she had inspected was in bad shape or that any had been returned from Ford, and Wilson denied ever being told that she should do better at staying at her work station. Wilson did admit that she was never complimented about her work.

On redirect-examination Wilson testified that 2 weeks before her discharge, when she had left her inspection area to go help on the production line, Hall told her that "Larry Kelly might not like me down there and might think I might be disturbing the [production] workers." Later in the day she saw Kelly and:

I asked him if he'd mind if I was done with my inspection . . . if I helped the workers . . . get off them harnesses faster [from the production line], because they wasn't getting one off but every twenty minutes. [It was supposed to be every 7 minutes.]

And he said he did not mind. He said that he'd rather me do that than sit around and twiddle my thumbs.

Kelly did not deny this response to Wilson when he testified.

Wilson further testified that, in the course of her work, she filled out records that indicated which harnesses she had inspected.

c. Restroom passes

Gardner, the quality control supervisor, was not asked about the restroom pass policy for quality control employees. Nonsupervisor Hall testified that the policy had "always" been that the quality control employees were required to get rest room passes, and that in "May or June" Kelly told her to start enforcing it.

Kelly testified that the restroom pass policy had always existed for all departments, but that some employees, especially the maintenance department employees, had ignored it from time to time. Kelly was not asked about any alleged restroom time abuses by the quality control employees on June 4. Woody was asked on direct examination and testified:

Q. In the time frame of late May and early June, what was the policy, as you actually applied it to the folks who worked under your supervision, with respect

to what might be called plant passes, or rest room policy?

A. I didn't know anything about the plant passes until day was informed we were going to have to start using because they was getting abused.

Woody did not testify that there was any such alleged abuse on June 4, and he did not testify that any other supervisor made any such complaint to him on June 4.

Harper was asked and testified:

Q. Do you recall any specific discussions about that topic on June 4 or June 5, 1990?

A. I do remember that Betty Bolin was having trouble getting set-up men and she complained to—I don't remember who she complained to about not being able to get pink passes and she was enforcing it in her area and she couldn't get—her operators were running out of work to do and she thought it should be enforced against the set-up men.

I would say—I'm next to her department and I would say it's an on-going problem, okay?

Bolin testified that getting set-up employees to adjust her department's machines was "always" a problem, but she did not testify that there were any such problems on June 4 when the institution, or enforcement, of the policy in question here occurred. Also, Bolin did not testify that she sought to get the restroom pass policy enforced against the maintenance employees at any point.

D. Conclusions

1. Alleged violations of Section 8(a)(1)

The complaint alleges that a number of threats and interrogations were made by different supervisors. The most serious threat, plant closure, was denied only by one supervisor, Harper. Even there, Harper was asked only for a generic denial. Harper was not asked if he told Smith, after interrogating Smith about why he wanted the Union, that

... if the Union did come in there that the owner probably would shut the plant down. And if he didn't shut the plant down then our wages would go down to minimum wage and we'd have to fight for everything. And we'd lose all seniority. The seniority would start on the day the Union got in.

Harper's omnibus denial is meaningless when viewed against Smith's categorical, dramatic, testimony. Smith was fully credible, and I find and conclude that by these threats, and by the interrogation that preceded it, Respondent violated Section 8(a)(1) of the Act.

Bolin did not deny the threats and interrogations attributed to her. To the extent her testimony can possibly be construed as containing some form of denials, I discredit it. I found completely credible the testimony of Glover that, early on June 4, Bolin told him that Respondent would close the plant if the employees selected the Union as their collective-bargaining representative, and that choosing the Union as a collective-bargaining representative would be futile. I further found credible the testimony of Peters, Ellegood, and Smith that Bolin, late on June 4, threatened the employees gathered

at the pull test table with plant closure and removal if the employees selected the Union as their collective-bargaining representative. I further found credible Glover's testimony that on the morning of June 5 Bolin again told him that "the plant would close if the Union come in there."

By each of these threats Respondent violated Section 8(a)(1) of the Act.

I find that, by the undenied interrogation of Wilson by Roberts, Respondent violated Section 8(a)(1) of the Act.

I find that, as testified by Glover, and corroborated by Ellegood, that on June 4 Woody told the employees that he had been sent to find out why the employees wanted a union and suggested that they present their grievances to higher management. This action was a solicitation of grievances in violation of Section 8(a)(1) of the Act.

Finally, I credit Peters and current employees Ellegood and Smith that Woody told the group at the pull test table on June 4 that Peters would not be getting discharged but for his wearing of a union button. As current employees, Ellegood and Smith are especially vulnerable to employer re-creation, and even more so if they were not telling the truth. Woody was an unimpressive witness, and incredible on this point and in his denial of his repetition of the threat to Peters, individually.

Accordingly, I find that that by these threats by Woody, Respondent further violated Section 8(a)(1) of the Act.

2. Alleged violations of Section 8(a)(3)

In regard to the various allegations of discriminatory action, the law is that the General Counsel has initial burden of establishing a prima facie case sufficient to support an inference that union or other activity which is protected by the Act was a motivating factor in Respondent's action alleged to constitute discrimination in violation of Section 8(a)(3). Once this is established, the burden shifts to Respondent to demonstrate that the alleged discriminatory conduct would have taken place even in the absence of the protected activity. If Respondent goes forward with such evidence, the General Counsel "is further required to rebut the employer's asserted defense by demonstrating that the [alleged discrimination] would not have taken place in the absence of the employee[s'] protected activities." *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The test applies regardless of whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services*, 271 NLRB 1302 fn. 2 (1984). "[A] finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied on, thereby leaving intact the inference of wrongful motive established by the General Counsel." *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982).

Therefore, the first inquiry is whether the record discloses a prima facie case of discrimination, or credible evidence that the Respondent knew of the alleged discriminatee's union activity and that its decision to discharge or discipline employees was motivated, at least in part, by antiunion animus. *Chelsea Homes*, 298 NLRB 813 (1990).

Knowledge of the union activities, or sympathies, of Peters and Wilson is not disputed. Each was wearing union insignia at the times of the discharges; both were interrogated about

their union sympathies or activities before they were discharged. Also not in dispute is the fact that Peters and Wilson were the only probationary employees who wore UAW insignia on June 4 and 5.

There can hardly be stronger evidence of animus than a simultaneous statement that a discharge would have not occurred but for the union activity of the dischargee. That is what happened in the case of Peters when Woody told Peters, in a group and individually, that Peters would not have been fired but for his wearing of a union button that day. No such admission was made when Wilson was discharged, but independent evidence of animus abounds.

As well as the threats and interrogations, and the solicitation of grievances, that were made the subject of the complaint, there is other evidence that animus motivated the discharge of Wilson, as well as Peters.

Such evidence includes: (1) the interrogation of Peters by Woody; (2) the interrogation of Ellegood by Woody; (3) the interrogation of Ellegood and Glover by Bolin; (4) Bolin's threat to various employees that Respondent would pay them no more than minimum wage if they selected the Union as their collective-bargaining representative; (5) Bolin's threat to various employees that their wages would be frozen "until the plant solved the problem" of the Union's organizational attempt; (6) the threat by Woody, as well as Bolin, that Respondent would close the plant if the employees selected the Union; (7) Bolin's threat that Respondent would withdraw all benefits based on seniority if the employees selected the Union; and, most compellingly, (8) the threat by Respondent's chief personnel officer, Harp, to employees Turocy and Fewell that, if the employees selected the Union as their collective-bargaining representative

the man that owned the factory . . . probably did not care about nobody, that if he wanted to he could shut them down and nothing would be said.

As noted, Harp did not deny the remark attributed to him by Turocy.

Accordingly, I conclude that the General Counsel has presented a prima facie case that Peters and Wilson were discharged because of their demonstrated union sympathies.

The first thing to be noted about Peter's termination is that Peters was discharged, not laid off.

The complaint alleges a discharge of Peters; the answer ambiguously admits only that "Peters' employment with Respondent was concluded." At the moment of discharge, Supervisor Woody was asked by Webster: "Was he terminated or was he laid off?" Woody replied, "He's fired." Later in the day, Woody told Glover that: "Larry Kelly had told him to get rid of him."

And Peters was treated as if he had been fired. Even when the employees started working overtime 15 hours a week in the fall of 1990 (when the annual automotive change-over period had ended), Peters was not called in to work. Respondent offers no explanation for its failure to recall Peters, assuming that Peters was laid off.

A one-employee layoff is an inherent improbability,⁶ but, assuming that Peters was laid off, Respondent offers no explanation of why Peters had to be laid off on June 4. Kelly

⁶ According to this record, no other employees were laid off as a result of the decision to terminate the entire second, or "split," shift.

testified, "when the decision was made to eliminate the split shift, then that necessitated on less setup man. "But the split shift was not eliminated until June 16; Respondent suggests no reason of why "Peters' employment with Respondent was concluded" 2 weeks before then.

No reason for a layoff has been advanced. Although work for the maintenance employees was comparatively slack on June 4, the maintenance employees had been complaining before that date, and they continued to complain after that date, that they were being required to work excessive hours (10 and up) each day. Also, after his discharge, Respondent was required to shuffle other employees around to cover for the absence of Peters (an obvious demonstration of the fungibility of employees in the maintenance classifications that Kelly sought to deny).

Finally on this point, if Respondent did conduct a one-employee layoff in the case of Peters, it went out of its established, written, seniority policy to reach him. The policy as stated in Respondent's handbook is that layoffs will be by departmental seniority. However, Peters had more seniority than employee Lay, who had been on the job only 3 days. Kelly was blatantly led to testify, incredibly, that seniority was also by classification, but in absence of any documentary or testimonial corroboration, the Board cannot accept such bare statements of justification. (Moreover, assuming that there was the slightest element of truth in Kelly's testimony, there was no hint of testimony that Lay actually possessed any skills not possessed by Peters.)

Respondent offers no reason for discharging Peters; it only offered testimony that the decision to terminate Peters was made before Peters wore union insignia to work on June 4.

Kelly was lead to testify, incredibly, that the decision to end the second shift was at a supervisory meeting that was conducted on June 2. No other supervisor who was supposedly present at the meeting was called to buttress this testimony of Kelly. As late as Wednesday, June 5, Harp was denying to employees that any such decision had been made; see the testimony of Glover, *supra*. Moreover, if the decision to terminate the second shift, and one maintenance employee along with it, had been made on Saturday, June 2, Peters would have been discharged before putting in a full, 10-hour day on Monday (the start of a new payroll period). I find that the supposed Saturday meeting did not happen; if it did, no decision was made to discharge Peters then.

I find that no decision was made to discharge Peters, the ostensibly vulnerable probationary employee, until he demonstrated his sympathies by wearing a union button.

I find, and conclude, that the real reason that Peters was discharged was that he had worn insignia demonstrating sympathy for the Union, the insignia that caused Woody first to interrogate Peters, then to emphasize, twice, that the discharge would not have happened if Peters had not worn it.

By the discharge of Peters, Respondent violated Section 8(a)(3) of the Act.

Respondent did come forward with reasons for the discharge of Wilson. Respondent contends that, as a production line inspector, Wilson was derelict in her work and that she interfered with the work of others.

Gardner was Respondent's principal witness on the discharge of Wilson; Gardner was not there to tell the truth, as evidenced by immediate contradictions in her own testimony. About Baker, Gardner testified, "I didn't have any com-

plaints, to me, that he wasn't doing his job." Then, immediately, Gardner testified that she received complaints about Baker visiting his girlfriend when he was supposed to be working. Gardner admitted that harnesses that Stark had inspected had been returned from Ford; then she almost immediately stated: "He caught everything he was supposed to catch."⁷

Gardner testified about Wilson: "And she was never at her inspection board where she was supposed to be." Employers seldom put, or keep for 30 days, poor employee-material in quality control jobs. As Respondent's counsel stated at the first of the hearing, "Melissa Wilson was in one of the more important jobs in the facility." The proposition that Respondent allowed an inferior employee to hold such an important position for 30 days, and wander around the plant for 30 days, is inherently implausible. But there are other reasons for rejecting the defense.

Gardner testified that she was Wilson's supervisor for a full 30 days. However, not once did Gardner testify that she ever saw Wilson away from her work station when Wilson should have remained there. When asked what she had "observed" about Wilson's alleged wanderings, Gardner could cite only (hearsay, and incredible) reports. The only supervisor whose report she could cite was that of Roberts. Respondent did not call Roberts, even though he was named in the complaint as committing an interrogation in violation of Section 8(a)(1). I would discredit Gardner's testimony about getting such a report from Roberts on this basis alone. As well, it is to also be remembered that Gardner insisted that Roberts was an production line supervisor, not a quality control supervisor; because the harnesses necessarily went to inspection after being produced, it is unlikely to the point of disbelief that Roberts ever complained that Wilson⁸ "wasn't checking the harnesses the way she should," as Gardner testified.

On the basis of reports, not observations, Gardner concluded that Wilson was "never" at her work station when she was supposed to be. This testimony was necessarily false. I find that Respondent's defense that Wilson was "never" at her work station, or its defense that Wilson was even chronically missing from her work station, to be a complete sham.

Wilson credibly denied that she was ever warned about her performance. I am convinced that the "5-29-90" note to Wilson's personnel file was a fabrication. Gardner wrote that Wilson had "missed everything" on a harness, and, as a result, she asked Harp if she could discharge Wilson. Had there been any truth to that testimony, Harp would have been called to corroborate it. As noted, Harp was present throughout the hearing, and testified on other matters, but he was not asked to support Gardner, and he was not asked to dispute Wilson's testimony that she had never been warned.

⁷ Also, in a faint-praise damnation of Stark as an employee, Gardner added, "When Ron wanted to work, he did, and he did a real good job."

⁸ The only supervisor who testified that she saw Wilson stray from her work station was Bolin; Bolin was not one of the supervisors whose reports Gardner cited. Bolin was incredible on this point, as well. Bolin testified that Wilson's activities had caused her entire department to work overtime. If anything remotely like that had happened, there would have been better evidence on the point, and Gardner would have, at least, mentioned it.

Moreover, there was no contradiction of Wilson's testimony that Plant Manager Kelly personally told Wilson that he would rather have her going to help on the production lines than doing nothing at her own work station.

I further do not believe the testimony of Gardner that, on June 5, Oshanski returned from the Ford plant with a bad harness that had been inspected by Wilson, and that this was the sole reason that Wilson was discharged on that date. Certainly, Respondent's employee Oshanski was not called to support Gardner on the issue of timing. Moreover, Gardner admitted that employee Stark had more than one harness returned from Ford. According to this record, Stark was not disciplined in any way. Assuredly, if the offense had been as grave as Respondent sought to portray, Stark would have suffered some discipline, even if he was past the probationary period.

Assuming that Wilson did fail to find the one thing wrong with the harness in question, it is to be noted that the harness went by at least one final inspector before it was sent to Ford. Nothing happened to the final inspectors other than a talking-to, as a group, according to Gardner. Usually, final inspections are more important than production-line inspections. I do not believe Gardner's testimony that, although derelict production-line inspectors can be identified, Respondent was at a loss to determine which final inspector had sent the harness on to Ford.

Respondent's failure to discipline any other employees involved in the alleged production of the faulty harness is evidence that Wilson suffered discriminatory treatment. There is more of such evidence.

Respondent freely gave written warnings to employees, including probationary employees. The General Counsel introduced 10 such warnings during the 9 months that the plant had been open, including 1 that was given a probationary employee who was warned that, if any other bad production was returned from Ford, the employee would be terminated. Respondent argues that the warning notice step of its progressive disciplinary system was optional with the supervisors for probationary employees. However, if Respondent really had desired better production from an employee "in one of the more important jobs in the facility," a written warning notice would assuredly been tried in Wilson's case.

Gardner testified that Wilson was required to use a tape measure constantly, and that there was a printed sign to that effect at her work station. I reject this hearsay,⁹ and incredible, testimony. Respondent found out that Wilson was not using her tape measure after the decision to discharge Wilson had been made. That is, Wilson had been allowed to work all day without using it once, and nobody noticed. (Respondent does not contend that Wilson conducted any improper inspections on June 4 without using the tape measure.)

Similar to the case of Peters, I believe, and find, that Respondent singled out the one employee in the production chain that was most ostensibly vulnerable to use as an example to other employees who might show union sympathies, probationary employee Wilson.

I find, and conclude, that the discharge of Wilson was not designed to get rid of an inferior employee; it was designed to manifest of Respondent's great degree of animus to other

⁹ No copy of any such sign was offered in evidence.

employees who might otherwise share Wilson's demonstrated sympathy for the Union.

Accordingly, I find and conclude that Respondent discharged Wilson in violation of Section 8(a)(3) of the Act.

Restroom Passes

Although other departments had required restroom passes since the plant opened in September 1989, the maintenance and quality control departments had no such requirement until Peters and Wilson wore their UAW insignia to the plant on June 4.¹⁰ The interrogations and threats had already begun when Woody found Peters, Ellegood and Webster in the restroom. He announced a new pass policy, and, when the employees "moaned," Woody responded, it is undenied, "Well, you should have expected it. It's probably going to get worse."

In view of the widespread, and serious, expressions of animus as found herein, reason compels the conclusion that Woody's "you should have expected it" remark was a reference to Respondent's hostility to the UAW buttons and T-shirts that were then being worn by the maintenance employees. However, the processes of deduction need not be taken even that far. Woody added, "It's probably going to get worse." Woody could not have been referring to alleged loafing; he could only have been referring to something that was potentially ongoing, activity on behalf of the Union.

Of further significance is that, to impose the new workrule, Respondent chose a day when there were only 10 setups to be done (or about one-half day's work for one man, according to Woody as he discharged Peters). Respondent's testimony that there was a sudden need for such a rule is therefore, demonstratively false.

As was the case in the maintenance department, the restroom pass policy that was imposed on the quality control department was quickly lifted after the crisis of the union activity had evidently passed. In view of this factor, and Respondent having adduced no credible need for the sudden imposition of the rule on the quality control department employees, I conclude that the animus that caused imposition of the rule on the maintenance caused the imposition of the rule on the quality control employees.

I conclude that, by imposing the disciplinary rule regarding restroom passes on the maintenance and quality control employees, Respondent violated Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. By the following acts and conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act:

(a) Threatening its employees with plant closure and plant removal in order to discourage its employees from selecting International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), as their collective-bargaining representative.

(b) Interrogating employees about their union memberships, activities and desires.

¹⁰ Kelly's testimony to the contrary was false; even Woody admitted that the use of restroom passes was new to him on June 4.

(c) Soliciting grievances of employees in order to dissuade them from becoming or remaining members of the Union or giving any aid or support to it.

(d) Threatening employees with discharge because they displayed union insignia.

(e) Threatening its employees with termination of seniority rights, reduction of wages, and loss of other benefits in order to discourage its employees from selecting the Union as their collective-bargaining representative.

2. By the following acts and conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act by:

(a) Discharging Kenneth "Don" Peters because of his union membership, activities or desires.

(b) Discharging Melissa Wilson because of her union membership, activities or desires.

(c) Imposing disciplinary rules on employees in order to discourage their union memberships, activities or desires.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged employees Kenneth "Don" Peters and Melissa Wilson, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest to be computed as specified in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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

ORDER

The Respondent, Electro-Wire Truck & Industrial Products Group, Campbellsburg, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with plant closure or plant removal in order to discourage its employees from selecting International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), as their collective-bargaining representative.

(b) Interrogating employees about their union memberships, activities or desires.

(c) Soliciting grievances of employees in order to dissuade them from becoming or remaining members of the Union or giving any aid or support to it.

(d) Threatening employees with discharge if they display union insignia or give other aid or support to the Union.

(e) Threatening employees with termination of seniority rights, reduction of wages, or loss of other benefits in order

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

to discourage its employees from selecting the Union as their collective-bargaining representative.

(f) Discriminating against employees, by discharging them or by imposing disciplinary work rules on them, in order to discourage their union activities, memberships, or desires.

(g) 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.

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

(a) Offer Kenneth "Don" Peters and Melissa Wilson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges of Kenneth "Don" Peters and Melissa Wilson and notify them in writing that this has been done and that their discharges will not be used against them in any way.

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

(d) Post at its Campbellsburg, Kentucky facility copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 9, 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 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.

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

¹²If 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."

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 threaten you with plant closure or plant removal in order to discourage you from selecting International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), as your collective-bargaining representative.

WE WILL NOT interrogate you about your union membership, activities or desires.

WE WILL NOT solicit grievances from you in order to dissuade you from becoming or remaining members of the Union or giving any aid or support to it.

WE WILL NOT threaten you with discharge if you display union insignia or give other aid or support to the Union.

WE WILL NOT threaten you with termination of seniority rights, or reduction of wages, or loss of other benefits in order to discourage you from selecting the Union as your collective-bargaining representative.

WE WILL NOT discriminate against you by discharging you or by imposing disciplinary work rules on you, in order to discourage your union activities, memberships, or desires.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights that are guaranteed to you by Section 7 of the Act.

WE WILL offer Kenneth "Don" Peters and Melissa Wilson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings and other benefits suffered as a result of our discrimination against them.

WE WILL remove from our files any reference to the unlawful discharges of Kenneth "Don" Peters and Melissa Wilson and notify them in writing that this has been done and that the discharges will not be used against them in any way.

ELECTRO-WIRE TRUCK & INDUSTRIAL PRODUCTS GROUP