

The Kobacker Company d/b/a Pic Way Shoe Mart and United Food and Commercial Workers Union Local 1444 chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC. Cases 30-CA-10946, 30-CA-10958, and 30-CA-11091

July 31, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On November 18, 1991, Administrative Law Judge Donald R. Holley issued the attached decision. The Respondent filed exceptions, a supporting brief, and an answering brief. The General Counsel filed limited exceptions, a brief in support of the judge's decision, and 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 briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ to the extent consistent with this decision and to adopt the recommended Order as modified.

As described more fully in the judge's decision, these cases arise from events surrounding a 1990 effort to decertify the Union as the representative of the Respondent's employees at its Beloit, Wisconsin store and at its Janesville, Wisconsin store.

The judge concluded, and we agree, that the Respondent violated Section 8(a)(5) and (1) of the Act by: withdrawing recognition from the Union on April 24, 1990, and by refusing since then to execute a collective-bargaining agreement whose terms were fully agreed on on April 20, 1990; failing since April 24, 1990, to comply with the agreement's wage provisions; and by failing and refusing, since June 1, 1990, to remit union dues deducted from the employees' pay to the Union, as required by the agreement.

The complaint also alleged that the Respondent, acting through a labor consultant, Edwin D. Ricker, sponsored, supported, and encouraged a decertification petition, thereby violating Section 8(a)(1) of the Act. The

¹We agree with the judge that the Respondent did not present sufficient evidence to justify a withdrawal of recognition. In doing so, we do not rely on the judge's conclusion that "the evidence presented must unequivocally indicate that a union's support has declined to a minority." In *Laidlaw Waste Systems*, 307 NLRB 1211 (1992), we held that in a withdrawal of recognition case, an employer's burden to rebut the presumption of an incumbent union's majority status is satisfied by showing by a preponderance of the evidence "that there has been an actual loss of majority status or that sufficient objective factors support a reasonable and good-faith doubt of union majority status. Applying this "preponderance of the evidence" standard, we conclude that the Respondent did not meet its burden.

judge concluded that the Respondent merely provided its employees with ministerial aid in conjunction with the decertification effort, and that the Respondent therefore did not violate Section 8(a)(1). The General Counsel has excepted to this conclusion. We find merit in the General Counsel's exception.

We note that after employee Stephanie Adams had expressed to the Respondent her interest in getting rid of the Union and had sought advice about how to do so, the Respondent told Adams that it could not be involved as a company but that it might ascertain whether a third party could advise her. Later, the Respondent, rather than merely give Adams Labor Consultant Ricker's name and telephone number, contacted Ricker directly and requested him to call Adams regarding her desire to get rid of the Union. We also note that the Respondent, after receiving its employees' petitions, sent copies of them to Ricker. More specifically, the Respondent's store managers apparently mailed the employee petitions to its vice president for human resources, Michael Allen, who admitted that Ricker requested that Allen send him copies (or the originals) of the petitions. The judge concluded that it was likely that Allen, who had not received the second of the two employee petitions until April 12, sent the copies to Ricker. Ricker filed a decertification petition on April 16. He testified that he simultaneously telephoned Allen to tell him, inter alia, that he represented the Respondent's Beloit and Janesville employees. In our view, by contacting Ricker to request aid for the employees' decertification efforts, and by accepting the employees' petitions and forwarding them to Ricker, the Respondent did more than merely provide ministerial aid to its employees. Accordingly, we find that the Respondent violated Section 8(a)(1) of the Act.

The judge found, and we agree, that Respondent did not establish a reasonable and good-faith doubt of majority status or an actual loss of majority status. In addition, in view of our conclusion that Respondent unlawfully assisted the decertification effort, we conclude that Respondent could not in any event raise these matters in defense of its withdrawal of recognition.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, The Kobacker Company d/b/a Pic Way Shoe Mart, Columbus, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(e) and reletter the subsequent paragraphs.

"(e) Sponsoring, supporting, and encouraging the filing of a decertification petition."

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

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.

We will not refuse to recognize United Food and Commercial Workers Union Local 1444 chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC, as the exclusive collective-bargaining agent of employees in the following appropriate unit:

All full-time and regular part-time employees employed in the Beloit and Janesville, Wisconsin stores, excluding store managers, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to sign a written agreement embodying the terms of a tentative agreement reached with the Union on April 20, 1990.

WE WILL NOT fail to abide by the wage provisions of the agreement reached on April 20, 1990.

WE WILL NOT fail to remit union dues deducted from the pay of employees to the Union.

WE WILL NOT sponsor, support, and encourage the filing of a decertification petition.

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

WE WILL recognize the Union as the bargaining agent of employees in the appropriate unit and execute the agreement reached with the Union on April 20, 1990.

WE WILL give effect to the terms of the agreement reached on April 20, 1990, including the wage provisions, retroactive to April 20, 1990, and make whole employees for any losses they may have suffered in consequence of the failure to execute and abide by the contract, with interest.

WE WILL remit to the Union, with interest, all union dues withheld from the pay of employees, but retained by the Company since June 1, 1990.

THE KOBACKER COMPANY PIC WAY
SHOE MART

Rocky Coe, Esq., for the General Counsel.
G. Roger King, Esq., and *Matthew W. Lampe, Esq.* (*Jones, Day, Reavis & Pogue*), of Columbus, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. Upon original charges filed by the Union in Cases 30-CA-10946 and 30-CA-10958 on May 24 and June 4, 1990,¹ respectively, and upon a first amended charge filed in Case 30-CA-10958 on June 7, the Regional Director for Region 30 of the National Labor Relations Board issued a complaint on July 16 which consolidated the named cases for trial and alleged, in substance, that The Kobacker Company, d/b/a Pic Way Shoe Mart (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act by: sponsoring, supporting, and encouraging the filing of a decertification petition; refusing since April 24 to execute an agreed-upon collective-bargaining agreement; and refusing since April 24 to comply with the wage provisions set forth in an agreed-upon collective-bargaining agreement. Respondent filed a timely answer denying it had engaged in the unfair labor practices alleged in the complaint. The charge in Case 30-CA-11091 was filed by the Union on September 10. Thereafter, on November 14, the Region issued an amended consolidated complaint which consolidated all three cases for trial; realleged the matter set forth in the July 16 complaint; and additionally alleged that Respondent has violated Section 8(a)(1), (5), and 8(d) of the Act since June 1 by deducting union dues from the pay of employees, but failing to remit such moneys to the Union. Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged in the amended complaint.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation headquartered in Columbus, Ohio, with places of business in Janesville and Beloit, Wisconsin, is engaged in the retail sale of footwear, handbags, and related accessories. During the fiscal year ending January 31, 1990, it, in the course and conduct of its operations, derived gross revenue in an amount exceeding \$500,000, and, during the same period, it purchased and received at its Wisconsin operations goods and materials valued in excess of \$50,000 directly from points located outside the State of Wisconsin. Upon these admitted facts, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, 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. *Facts*

Respondent Kobacker owns and operates Pic Way Shoe stores. Its Beloit and Janesville, Wisconsin stores are involved in the instant proceeding. The Union has represented the employees employed in the described stores since 1972.

¹ All dates herein are 1990 unless otherwise indicated.

The complaint alleges, and it is admitted, that the appropriate bargaining unit is as follows:

All full time and regular part-time employees employed in Respondent's Janesville and Beloit, Wisconsin stores, excluding store managers, confidential employees, guards and supervisors as defined in the Act.

Respondent and the Union have maintained contractual relations since 1972, and the most recent 3-year agreement expired on April 1, 1990.

The record reveals that Respondent employs eight associates (employees) in the above-described stores. Those working in the Beloit store are supervised by Store Manager Arlene Rounds, while employees working in the Janesville store were supervised at all times material, by Barbara Schneider. The store managers are, in turn, supervised by District Supervisor William Rice. Two additional managerial employees are involved in the proceeding. They are: Michael Allen, a Respondent vice president in charge of human resources; and George Arnold, another Respondent vice president, who also serves as Respondent's secretary and legal counsel.²

During the month of February 1990, Stephanie Adams, one of the employees at the Beloit store, telephoned District Supervisor Rice to inform him that she would like to get rid of the Union. They both testified that Rice told her he could not help her; that she could call Respondent's human resources department in Columbus, Ohio, if she desired. Adams took no further action at the time, but spoke with Rice personally about her desire to get rid of the Union in mid-March. At about the same time, Lori Huber, an employee at the Janesville store, also approached Rice indicating she was seeking advice about how to get rid of the Union. Rice supposedly told both employees he could not help them; that they could contact human resources.

Michael Allen, Respondent's human resources person, testified that Rice reported his conversations with Adams and Huber to him in late March. Thereafter, at a time Allen places as March 27 or March 28, Adams telephoned him, informed him she worked in the Beloit store, and asked how could she get the Union out. He claims he told her that they could not be involved as a company; that she could call the NLRB; and, if possible, he could look into seeing if there was a third party that might be able to give her some advice. Allen testified that he reported his conversations with Rice and Adams to Respondent's legal counsel, George Arnold, asking Arnold if he knew a third party he might be able to refer Adams to for advice. He testified Arnold said he would look into it.

While the above-described activity was occurring, Allen and Arnold were engaged in contract negotiations with the Union. Thus, Arnold testified that he and Allen met with Union Representatives Stone and Lifer in Milwaukee on March 16 and all but two issues were resolved or withdrawn at that time. The unresolved issues were: the replacement of existing stores in the geographic area covered by the contract; and the drug, substance, and alcohol abuse policy proposed by the Company.

Arnold testified that after Allen reported to him that some of the associates in the stores had inquired about union rep-

resentation, indicating they had questions they wanted answered, he told Allen he would check for him to see if there was somebody that he might find that these folks might be able to talk to. He indicated that he had become acquainted with Edwin Ricker, who had a consulting business representing employees and management, over the years at employment relations conferences, and he decided to call him. He testified that, using a business card Ricker had given him, he telephoned Ricker's office and left a message with his secretary when he was informed Ricker was in Canton, Ohio. He described the message as follows:

So I told him that the purpose of my call was that we had, I had been told that we had had several of our store associates in the Wisconsin area that had questions concerning the continued representation of them by Local 1444. That I gave him, because Mike Allen had given me Stephanie Adams telephone number, I left the telephone number with his secretary, with Mr. Ricker's secretary, and she said that she would get the message to him.

Arnold testified that he did not speak personally with Ricker or communicate with him in any manner after leaving the above-described message. He denied that Respondent retained Ricker to provide assistance to the Company's associates, and claims Ricker did not contact him to report on what, if anything, transpired.

When Ricker appeared as a witness, he acknowledged he received a message from Arnold on his return from some activity in Ohio. He said the message was: "that an employee of a Kobacker store in Wisconsin was interested in receiving information about voting the union out, would I contact them." Ricker indicated the message prompted him to place a call to Stephanie Adams, the employee whose name had been given to him. Adams was not in, so he left a message on her machine and she called him back. When Adams returned his call, Ricker claims she told him a majority of the employees in their stores there no longer wanted union representation, and they needed to know what to do about it. He indicated he questioned Adams on the timing of the contract and explained the procedures under the National Labor Relations Act to her. Ricker testified he explained to Adams that he was not connected with the company; that he dealt in employee relations; and that he had previously assisted employees at the Chicago stores.³ He claims he told her he would be glad to provide her any information she felt she wanted, or answer any questions she had. Ricker testified the conversation was concluded after Adams thanked him for the information, and he informed her he would call back in a week or so to see if he could be of further assistance. Adams indicated during her testimony that Ricker called her again about a week after she first talked to him and told her if they wanted to decertify the Union they would have to write up and sign a petition.

Although no agreement on the terms for a new contract had been reached by Saturday, March 31, Union Representative Jeffrey Stone contacted Arlene Rounds, the manager of the Beloit store, on March 31 to inform her there was to be a contract ratification meeting in Janesville at 10 a.m. the

²The supervisory and agency status of the named individuals is not in dispute.

³Ricker testified he assisted employees in Respondent's store 3100, located in Chicago, in decertification proceedings in 1984.

following morning. Rounds telephoned employee Adams, who was working that day at K-Mart, and informed her of the meeting. Adams testified she attempted to reach Rice and Allen by phone but, when she was unsuccessful, she left messages to the effect that the Union was attempting to push a contract ratification vote through. Adams then went to the Beloit store where she prepared a document which stated (G.C. Exh. 1):

OUR CONTRACT HAS JUST EXPIRED & WE WOULD LIKE TO HAVE A VOTE ON WHETHER TO HAVE A UNION OR NOT. WE ARE THE EMPLOYEES OF KOBACKER 3122 & 3077.

Adams, Nicole Christiansen, Emilie Franz, and Karen Kasbohm signed the above-described petition.⁴ Adams then placed it in an envelope, sealed it, and gave it to Store Manager Rounds when she returned to the store.

After causing the employees in the Beloit store to sign a petition, Adams telephoned the Janesville store and dictated the wording for a similar petition to employee Judy Ward. Ward, Lori Huber, and Kimberly Magee then signed a document which stated (G.C. Exh. 12):

OUR CONTRACT HAS JUST BEEN EXPIRED AND WE WOULD LIKE TO VOTE ON WHETHER OR NOT TO HAVE A UNION. WE ARE AT KOBACKER # 3077 JANESVILLE.

Huber and Ward delivered the signed petition to Store Manager Schneider.

The record reveals the petition signed by the Beloit store employees was received by Allen in Columbus, Ohio, on April 5. Schneider sent the Janesville store petition to Allen on April 10, and he received it on April 12.

Ricker claimed during his testimony that, shortly after the above-described petitions were prepared and signed, Adams sent him copies and asked him to file a decertification petition with the Board.⁵ Ricker filed a decertification petition on behalf of Respondent's employees in Region 13—Chicago on April 16. He claims he simultaneously telephoned Allen to inform him he represented the employees in the Beloit and Janesville stores; that a majority of the employees had indicated they no longer wanted union representation; they wanted to have a vote; and that Allen should not sign any agreement as per instructions from Stephanie Adams. Allen replied he could not act on Ricker's information unless he had it in writing. Ricker, by memo dated April 16, informed Allen as follows (G.C. Exh. 13, Exh. V):

This note is to confirm my telephone conversation indicating that I have been retained by your employees in Janesville and Beloit, Wisconsin, to represent them.

A majority of these employees have provided to me, in writing, that they no longer want union representa-

tion. Therefore, you are instructed to close contract negotiations until the National Relations Board conducts an election.

To sign a contract or continue to negotiate, would be a violation of the National Labor Relations Act.

On April 20, Allen and Arnold for Respondent and Stone and Lifer for the Union, participated in a teleconference. Prior to that time, Allen had informed Stone that Respondent had received petitions from the Beloit and Janesville store employees, and that he had reason to believe a decertification petition had been filed. During the conference, the parties reached agreement on the inclusion of replacement stores language in the contract, and discussed Respondent's alcohol and substance abuse proposal. While no agreement on that proposal was reached during their original conference, a second conference was conducted about 45 minutes later, and the Union agreed to the policy as proposed at that time.⁶ Four days later, on April 24, the agreement reached by Respondent and the Union was ratified by the bargaining unit employees. After the agreement had been ratified, Union Representative Stone informed Allen of the ratification and demanded that Respondent sign the agreement. Allen informed Stone Respondent would not sign the contract until the issue of representation was resolved.

Some 10 days after he had erroneously filed a decertification petition in Region 13, Ricker, on April 27, filed the petition in Case 30-RD-993 with the Milwaukee Regional Office. After initially setting a hearing date for May 16, the Regional Director dismissed the petition when complaint was issued in the instant cases.

Ricker testified that after he commenced to represent the Beloit and Janesville employees, he contacted Adams and employee Judy Ward at their respective stores and conversed with them. During such discussions, he learned they had questions about matters such as what would happen with respect to their wages, vacations, insurance, and other terms and conditions of employment if they elected to vote the Union out. Ricker testified that he requested that Allen furnish him with the names and addresses of employees in the Beloit and Janesville stores so he could correspond with them. Allen furnished such information to Ricker on May 17.⁷ The following day, Allen sent Ricker a letter, the body of which states (G.C. Exh. 20):

The following is in response to your questions concerning the Company's position in regard to the present associates of Local 1444 of the United Food and Commercial Workers Union should the Union be decertified as representative of the associates:

1) All benefits that are enjoyed by our existing associates (i.e. vacations, holiday pay, insurance coverage, etc.) will be grand-fathered if said benefits are better than non-union associates enjoy. If they are not better, then the Company will offer the better benefit to our associates.

⁴ Although all but Kasbohm placed the date March 30, 1990 after their signatures, it is clear that all employees signed the document on March 31, 1990.

⁵ Adams did not corroborate Ricker's claim. Allen admitted Ricker requested that he send him copies and/or the original of the petitions. Ricker and Allen were evasive when questioned about how Ricker received the petitions, and I conclude it is likely that Allen, rather than Adams, sent copies to Ricker.

⁶ Respondent admitted in its answer to the amended complaint that agreement was reached on the terms and conditions of a contract on April 20, 1990. See G.C. Exh. 1(LL) at 2.

⁷ See G.C. Exh. 21.

2) The Company will implement the wage scale agreed upon with Local 1444 for the Period 4/1/90-3/31/93 for all present associates or merit increase amounts during annual reviews, whichever is greater. In addition, any increases due to our associates during this period from contract expiration to election will be made retroactive to the original effective date.

3) In addition, the associates of our Picway stores in Beloit and Janesville will be eligible to participate in the Company sponsored 401(k)/Profit Sharing Plan. All associates will be given credit for the time they have been with the Company for vesting purposes. For example, if an associate has been with the Company for 10+ years, they would enter the program 100% vested in any Company contribution. I am enclosing a brochure which outlines our plan's provisions.

If you have any further questions please do not hesitate to call!

By letter dated June 1, Ricker posed additional questions and suggestions to Allen. The body of the letter states (G.C. Exh. 23):

This letter is to inform you of some of the employees' concerns if they vote the union out on June 13, 1990.

Will the items negotiated during negotiations be implemented if the union is voted out? You can not respond to this as it would be considered a promise. Would wages be retroactive to expiration of the contract? Again, you can not respond to this (ULC). I will address this in a letter to all employees.

Items such as the company has no intention of reducing any present employees' wages or benefits could be addressed by giving each employee a notarized affidavit to this effect. It would be best for the affidavit to be handed personally to each employee, by you; second best, by the store manager. You can then reinforce on a one on one when you visit the stores if you do prior to the election. (see attached)

- 1. Will those employees who are enjoying medical insurance remain covered? Judy Ward
 - 2. Will vacation schedule remain the same?
 - 3. Will eight (8) paid holidays remain?
- Call me if you have any questions.

The affidavit which accompanied the above-described letter was as follows:⁸

(COMPANY LETTERHEAD)

June 8, 1990

To: (Name typed In - Store number)

AFFIDAVIT

This document is a statement of our intentions should a majority of employees in stores 3077 & 3122 make the decision to remove UFCW Union, Local 1444, as their bargaining agent.

⁸Ricker indicated during his testimony that he sells various business forms and documents to clients.

We have no intention to reduce your wages or benefits while working for the Kobacker Co., should the UFCW Union be removed as your representative.

Signed: _____
(President of Company)

Notary Public language & seal
since out of the State.

Ricker testified that, while the decertification petitions were pending in Region 13 and in Region 30, he remained in contact with Adams and other employees in the unit. He indicated he telephoned Adams at the Beloit store three or four times to discuss the situation with her. Similarly, he indicated he telephoned employee Judy Ward at the Janesville store, when Adams indicated to him that Ward had questions she wanted to ask. Ricker recalled the questions posed by Ward related to the insurance coverage, profit sharing, and vacation, employees could expect if they voted the Union out. Ricker testified he was unable to answer Ward's questions immediately, but after obtaining the necessary information from Allen, he called her back and answered her questions. Finally, at one point, Ricker was scheduled to visit a Chicago area client, and he telephoned Adams to ask if she would like for him to visit with her and other employees when he came to Chicago. Adams agreed it would be a good idea. She discussed Ricker's anticipated visit with other employees and prepared some questions for him. When he completed his business in Chicago, Ricker made the hour and 20-minute drive to Beloit and met with Adams and three other employees in the store for 10-15 minutes, answering the questions they asked.

On May 30, and again on June 7, Ricker sent letters to the employees employed in the Beloit and Janesville stores. In the May 30 letter, after providing information concerning an anticipated June 13 election, he advised employees (G.C. Exh. 24):

The company has stated to me that they have no intentions of reducing anyone's wages or benefits if you decide to vote against further union representation.

Should any of you have any questions, please feel free to write to me.

In the letter dated June 7, after discussing election arrangements, Ricker informed employees (G.C. Exh. 25):

If you vote the union out, you will not have to pay any more dues and assessments. In addition, employees who are not yet members of the union, as well as all new employees, will not have to pay the union's initiation fee either.

The Company has, again, indicated that they have no intention of reducing anyone's wages or benefits if you vote against the UFCW Union. I researched what occurred when the employees voted the UFCW Union out stores 74, 100 & 101 a few years back. All employees retained the same wages and benefits they enjoyed prior to voting the union out. In addition, the company increased wages and benefits that had been planned for the employees as well. It seems to me you have everything to gain and nothing to lose by voting "No" on Wednesday, but its your decision to make.

Recently, the UFCW Union has been in the news because a group of this union's members are upset because of the huge salaries the officers are paying themselves. The National President has increased his base salary 110 percent since 1980- In 1989 he only made \$250,000.00. His expense accounts also only totaled \$71,000! (See attached).

I checked this union's financial report and found some interesting facts. Last year, they spent \$7,000,000 more than they took in. Could dues be going up soon to make up the difference? They also owed almost \$5,000,000 in loans obtained from 1st American Bank. They gave over \$2,000,000 to politicians for their campaigns and spent over \$14,000,000 on strikes.

Has the union ever provided you with this information? I have sent a complete copy of this report to S. Adams at Beloit, and J. Ward at Janesville, to show each of you for your own information.

If any of you have any questions about these facts on the elections, please feel free to contact me. Best of everything for your future.

By letter dated August 21, 1990, the Union complained to Respondent that they had been advised by members that dues were being deducted from the pay of Beloit and Janesville employees, but such moneys were not being remitted to the Union. By letter dated September 4, 1990, Allen responded, stating inter alia (G.C. Exh. 10):

At present, based upon petitions filed by our associates with the N.L.R.B., The Kobacker Company has sufficient reason to believe that Local 1444 of the U.F.C.W. does not have the support of the majority of the bargaining unit. Until this issue has been resolved by an election, the Company feels that it is in a fiduciary capacity to collect union dues and maintain them in trust. Based upon the outcome of said election, collected dues will be returned to our associates or paid to the union.

Ricker testified that he has owned his labor consulting business since 1971, and that since that time he and his staff have assisted over 1500 employees in various labor related matters. He claimed he expects no remuneration when employees seek to obtain information or advice from him, and he indicated about 3 percent of his business time is devoted to assisting employees. He, Allen, and Arnold uniformly claimed during their testimony that Respondent owes nothing for the advise and assistance Ricker provided to the Janesville and Beloit employees; that the only financial arrangement between them is that Respondent has agreed to compensate Ricker for expenses incurred as a result of his agreement to appear as a witness in the instant case. Ricker further indicated that Respondent paid him no moneys for rendering assistance to its Chicago area store employees in 1984. Regarding that representation, he claimed employees of that store contacted him directly after they learned of him through grocery store employees he had assisted in the same area.

Discussion and Conclusions

The principal issue posed by the pleadings in this case is whether Respondent had sufficient objective considerations

to support a good-faith doubt that the Union enjoyed majority support on April 24, 1990, when it refused to execute an agreed-upon contract. Board law is clear. Thus, in *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039 (1989), the Board stated:⁹

In order to establish good faith doubt as to majority status, the evidence must demonstrate a clear intention by employees not to be represented by the Union.

As contended by Respondent, the issue of whether an employer has questioned a union's majority in good faith must be resolved by consideration of the totality of all the circumstances involved in a particular case. *Sofco, Inc.*, 268 NLRB 159 (1983); *Celanese Corp.*, 95 NLRB 664 (1951).

In the instant case, Respondent contends the following objective facts caused it to doubt that the Union enjoyed majority status on April 24, 1990: February and March statements made by Adams and Huber to Rice and/or Allen, which were to the effect that such employees wanted to get rid of the Union; Adams' March 31 messages to Rice and Allen, which indicated she felt the Union was trying to "ram" through a ratification vote; the March 31 petitions signed by seven of the eight unit employees, which noted the contract had expired and that those signing wanted to vote whether or not to have a union; and Kobacker's receipt of instructions from the employees' representative "to close negotiations with the Union pending a Board election." Respondent contends that the petitions, standing alone, warranted the formation of a reasonable doubt of majority support, and that the enumerated factors, considered together, conveyed the message that employees wanted Respondent to cease recognizing the Union as their bargaining representative until a Board election had been conducted.

I find the Respondent's contention that it has proved it had adequate reasons for the formation of a good-faith doubt that the Union represented a majority of the employees in the unit to be without merit. The petitions, standing alone, merely indicated the contract had expired and the employees wanted to vote whether or not they wanted union representation. Thus, by their express terms, the petitions indicated a desire to vote for or against union representation—they did not unequivocally repudiate the Union. See *Phoenix Pipe & Tube*, 302 NLRB 122 (1991); *Destileria Serrales, Inc.*, 882 F.2d 19, 21 (1st Cir. 1989); *Bryan Memorial Hospital*, 279 NLRB 222, 225 (1986), *enfd.* 814 F.2d 1259 (8th Cir. 1987). Similarly, I find Respondent's claim that the employees inferentially, and their representative directly, requested that negotiations with the Union be halted until an election could be held warranted a conclusion that a majority of the employees no longer wanted the Union to represent them to be without merit. Evidence presenting only an ambiguous inference of a lack of majority support is not enough. *N.T. Enoloe Memorial Hospital v. NLRB*, 682 F.2d 790, 795 (9th Cir. 1982). Instead, the evidence presented must unequivocally indicate that a union's support has declined to a minority. *Ming Tree Restaurant*, 736 F.2d 1295, 1297 (9th Cir. 1984). I find Respondent has failed to sustain its evidentiary burden.

⁹See also *AMBAC International*, 299 NLRB 505 (1990). *Parkview Furniture Mfg. Co.*, 284 NLRB 947, 969 (1987); and *Gregory's, Inc.*, 242 NLRB 644, 648 (1979).

Having found that Respondent has failed to prove that it had objective reasons for the formation of a good-faith doubt that the Union lacked majority support on April 14, 1990, it follows, and I find, that it violated Section 8(a)(5) and (1) of the Act by refusing to sign the agreement reached by the parties on April 20, 1990, and by failing since April 24, 1990, to effectuate the terms and conditions of such agreement, by, inter alia, failing to grant wage increases provided for in the agreement, and by failing to remit union dues deducted from the wages of employees to the Union as required by article 11 of the agreement.

Remaining for discussion is the allegation that Respondent "acting through Edwin D. Ricker . . . sponsored, supported, and encouraged a petition seeking decertification of the Union" and thereby violated Section 8(a)(1) of the Act. Careful review of the record causes me to conclude General Counsel has failed to prove the allegation.

In sum, the record reveals: that employees Adams and Huber instigated the decertification process by discussing their desire to get rid of the Union with Respondent management and requesting assistance; that Allen informed Adams Respondent could not get involved, but he might be able to provide a third party who could give her advice; that Arnold contracted Ricker and requested that he telephone Adams to give her advice on voting the Union out; that Ricker spoke with Adams two or three times during March, and during those conversations he advised her of the Board's decertification procedures, described generally what the wording in a petition should be, informed her that signed petitions should be delivered to the store managers; and, during his last March conversation with the employee, asked if the employees had changed their minds about seeking an election. Significantly, the record reveals that Ricker spoke only with Adams prior to the time the petitions were prepared by Adams and employee Ward, and it is clear that Ricker played no role in the actual preparation or distribution of the petitions. In the circumstances described, I find that Respondent, through Ricker, merely provided its employees with ministerial aid. I therefore find that Respondent did not violate Section 8(a)(1) of the Act through Ricker's conduct as alleged. See *Times-Herald*, 253 NLRB 524 (1980).

CONCLUSIONS OF LAW

1. Respondent, The Kobacker Company d/b/a Pic Way Shoe Mart, is an employer engaged in commerce within the meaning of Section 2(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 following employees of Respondent constitute an appropriate bargaining unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed in the Beloit and Janesville, Wisconsin stores, excluding store managers, confidential employees, guards and supervisors as defined in the Act.

4. At all times material, the above-named labor organization has been the exclusive representative of all the employees in the appropriate unit within the meaning of Section 9(a) of the Act.

5. By withdrawing recognition from the Union on April 24, 1990, and by refusing since that date to execute a collective-bargaining agreement, the terms of which were fully agreed upon on April 20, 1990; by failing since April 24, 1990, to comply with the wage provisions set forth in the agreement; and by failing and refusing, since June 1, 1990, to remit union dues deducted from the pay of employees to the Union, as required by the agreement, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. Respondent has not violated the Act except as specifically found herein.

THE REMEDY

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

Such affirmative action shall include immediate recognition of the Union as the bargaining agent of unit employees; execution by Respondent of the agreement reached on April 20, 1990; making whole of employees for wages lost as a result of Respondent's failure to abide by the wage provisions of the agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); and remittance to the Union of the dues deducted from the wages of employees, but withheld by Respondent, since June 1, 1990, with interest as prescribed in *New Horizons for the Retarded*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, The Kobacker Company d/b/a Pic Way Shoe Mart, Columbus Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize United Food and Commercial Workers Union Local 1444 chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC, as the exclusive collective-bargaining agent of employees in the following appropriate unit:

All full-time and regular part-time employees employed in the Beloit and Janesville, Wisconsin stores, excluding store managers, confidential employees, guards and supervisors as defined in the Act.

(b) Refusing to sign a written agreement embodying the terms of a tentative agreement reached with the Union on April 20, 1990.

(c) Failing to abide by the wage provisions of the agreement reached on April 20, 1990.

(d) Failing to remit union dues deducted from the pay of employees to the Union.

¹⁰If 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.

(e) 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) Recognize the Union as the bargaining agent of employees in the appropriate unit and execute the agreement reached with the Union on April 20, 1990.

(b) Give effect to the terms of the agreement reached on April 20, 1990, including the wage provisions, retroactive to April 20, 1990, and make whole employees for any losses they may have suffered in consequence of the failure to execute and abide by said contract, with interest, as set forth in the remedy section of this decision.

(c) Remit to the Union, with interest, all union dues withheld from the pay of employees, but retained by the Company since June 1, 1990.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel

records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its stores located in Beloit and Janesville, Wisconsin, copies of attached notice Appendix.¹¹ Copies of the notice, on forms provided by the Regional Director for Region 30, 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 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.

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

¹¹ 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."