

**Peter Vitalie Company, Inc. and Sterling Billiard Company, Inc. and United Paperworkers International Union, AFL-CIO.** Case 11-CA-14881

March 29, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On November 3, 1992, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting 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 brief and has decided to affirm the judge's rulings,<sup>1</sup> findings,<sup>2</sup> 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, Peter Vitalie Company, Inc. and Sterling Billiard Company, Inc., Rosman, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent asserts in its exceptions that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that these contentions are without merit.

In its statement accompanying its exceptions, the Respondent asserts, *inter alia*, that it requested additional time before the hearing to prepare a defense. It appears that the Respondent is referring to its *second* request for a continuance which it filed on Friday, August 28, 1992, seeking a postponement of the hearing then scheduled to begin on Monday, August 31, 1992. Counsel for the General Counsel filed an opposition to the Respondent's motion. The judge denied the Respondent's motion, based on factors which the Respondent did not mention in its statement to the Board, namely that the Respondent had already requested and had already been granted a prior postponement in this proceeding from July 22, until August 31, and that the Respondent thus had ample time to secure representation but, with full knowledge of its responsibilities, elected to do nothing except seek "another eleventh hour postponement." The Respondent's statement filed with the Board does not controvert the judge's reasoning. Accordingly, we find no prejudice in the judge's denial of the Respondent's request for a second continuance.

<sup>2</sup> 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.

*Patricia Timmins, Esq.*, for the General Counsel.  
*Andee Atkisson*, President, for the Company.  
*John C. Scroggs*, Representative for the Charging Party.

**DECISION**

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. On February 19, 1992,<sup>1</sup> United Paperworkers International Union, AFL-CIO (the Union) filed an unfair labor practice charge<sup>2</sup> against Peter Vitalie Company, Inc. (Vitalie) and Sterling Billiard Company, Inc. (Sterling) (collectively the Company) alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). On April 1, after an investigation, the Regional Director for Region 11 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing (the complaint) against the Company pursuant to which I heard the matter in trial at Brevard, North Carolina, on August 31 and September 1. It is alleged in the complaint that the Company, through certain of its agents and supervisors, engaged in various acts that interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by Section 7 of the Act.<sup>3</sup> It is also alleged the Company violated Section 8(a)(3) of the Act by on or about February 13, issuing written warnings to its employees Tammy Crawford and Gerald Wood, and by on or about February 18, discharging and thereafter failing and refusing to reinstate its employees Crawford, Wood, Rose Baltezare, and Keith Powell.

Vitalie and Sterling filed timely answers which were subsequently amended in which it is admitted that Vitalie and Sterling separately engage in operations that are in and affect commerce, that the Board's jurisdiction is properly invoked on Vitalie and Sterling separately and that the Union is a labor organization within the meaning of the Act. Vitalie and Sterling deny that collectively the entities constitute a single-integrated business enterprise and a single employer within the meaning of the Act. Vitalie and Sterling deny all alleged wrongdoings and assert Crawford, Wood, Baltezare, and Powell were discharged for just cause.

I have carefully reviewed the trial record<sup>4</sup> and have studied the posttrial briefs. I have been influenced by my assessment of the witnesses as they testified. Based on the above, and as explained below, I will conclude that Vitalie and Sterling constitute a single-integrated business enterprise and a single employer within the meaning of the Act and that individually and collectively constitute employers within the

<sup>1</sup> All dates hereinafter are 1992 unless I indicate otherwise.

<sup>2</sup> The charge was amended on March 25.

<sup>3</sup> The specific 8(a)(1) complaint allegations are set forth elsewhere in this decision.

<sup>4</sup> Company President A. Atkisson submitted with her brief a request that I receive in evidence certain heretofore unoffered exhibits which she labeled and described as follows:

- SB#1—One page (time card Keith Powell)
- PV#7—Two pages (check and time card, Crawford/Wood)
- PV#8—Two pages (warning notices Morgan/Owen)
- PV#9—Three pages (Corporate Articles Sterling Billiard Company, Inc.)
- PV#10—Four pages (Corporate Articles Peter Vitalie Company, Inc.)
- PV#11—Three pages (Management Agreement)
- PV#12—Two pages (Commercial Rental Contract)

No explanation for the posttrial offerings was provided. Accordingly, I reject the Company's exhibits as outlined above; however, I have included a copy of each in a rejected exhibit file.

meaning of the Act and that the Company violated the Act substantially as alleged in the complaint.

#### FINDINGS OF FACT

##### I. JURISDICTION

Vitalie is a North Carolina corporation with a factory located at Rosman, North Carolina, where it is engaged in the manufacture of billiard, snooker, and pool tables. During the year preceding the issuance of the complaint, a representative period, Vitalie received at its Rosman, North Carolina, factory goods and raw materials valued in excess of \$50,000 directly from points outside the State of North Carolina. It is alleged in the complaint, the parties admit, the evidence establishes, and I find, Vitalie is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Sterling is a North Carolina corporation with a factory located at Rosman, North Carolina, where it is engaged in the manufacture of billiard, snooker, and pool tables. During the year preceding the issuance of the complaint herein, a representative period, Sterling received at its Rosman, North Carolina, factory goods and raw materials valued in excess of \$50,000 directly from points outside the State of North Carolina. It is alleged in the complaint, the parties admit, the evidence establishes, and I find, Sterling is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is alleged at paragraph 9 of the complaint that collectively Vitalie and Sterling constitute a single integrated business enterprise and a single employer within the meaning of the Act. The parties stipulated the directors of Vitalie and Sterling are the same for each Company with the same persons occupying the same positions at both companies. The directors for Vitalie and Sterling are as follows:

Gilbert Atkisson, Chairman of the Board  
 Andee Atkisson, President  
 James Brannigan, Executive Vice President and  
 Treasurer  
 Alice Dodson, Vice President of Administration  
 David Robinson, Vice President of Manufacturing  
 Nick Varner, Director  
 Hans Peter Schild, Director

The officers for Vitalie and Sterling are the same and are as follows:

Gilbert Atkisson, Stockholder  
 Andee Atkisson, President  
 James Brannigan, Executive Vice President and  
 Treasurer  
 Alice Dodson, Vice President of Administration and  
 Corporate Secretary  
 David Robinson, Vice President of Manufacturing

Gilbert and Andee Atkisson are the sole shareholders and 100-percent owners of both Vitalie and Sterling. Both Vitalie and Sterling manufacture pool tables. The Vitalie tables are "furniture high class tables" where as the Sterling tables are "commercial" types used in billiard parlors. Sterling also manufactures "mid-price ranged" tables priced from "two to three thousand dollars." The various styles of the midpriced tables are named after communities in North Caro-

lina. The two companies share an undivided building<sup>5</sup> where the supervision<sup>6</sup> for both companies share a common factory office and common front offices. The employees of both companies share common lunch, break, and restrooms, and a buzzer is sounded to announce break and lunchtimes for the employees of both companies. The employees of Vitalie and Sterling take their breaks and lunch at the same time. The employees share a common parking lot and a common timeclock. Employees from Vitalie and Sterling are interchanged as needed.<sup>7</sup> Employees from both companies have from time to time been permanently transferred from one of the companies to the other. For example, Coke Bayne was permanently transferred from the Vitalie rail department to the Sterling rail department and John Mallowitz was permanently transferred from the Vitalie cutting department to the Sterling laminating department. Various employees testified that when they were temporary assigned from one company to the other, they continued to receive the same wage rates and were paid by the Company they were permanently assigned to without having to keep track of the hours they worked at the Company they were not permanently assigned to.<sup>8</sup> There are also permanent transfers among management personnel. For example, before Keith Aiken became a supervisor for Sterling, he was an assistant supervisor at Vitalie. Before David Robinson became vice president of manufacturing in charge of the overall operations at both companies, he was a supervisor for Vitalie. The health insurance provided the employees of Vitalie and Sterling is the same and with the same carrier.<sup>9</sup> Vice President of Manufacturing Robinson, who testified he was in charge of "the complete running of the plant," orders materials for both plants and the finished products from both companies are shipped from a common shipping dock. Robinson testified shipments to certain customers from Vitalie and Sterling are combined on one truck because certain customers do business with both companies. Executive Vice President Brannigan testified both companies are represented at, and held out to be, separate companies at the annual Billiard Congress of America Trade Shows.

The Board in *Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1337 (1988), noted:

<sup>5</sup> Executive Vice President James Brannigan testified the building engineers and contractors did not want to construct a wall through the middle of the building for air flow and communication reasons as well as the fact it was anticipated that within 2 to 3 years, a separate building would be constructed to house Sterling.

<sup>6</sup> Vice President of Manufacturing David Robinson testified he is part of the management services that are provided to Sterling for a monthly fee.

<sup>7</sup> Vitalie employee Crawford testified that when she was caught up with her work, she would, from time to time, help out on the Sterling side of the facility. She said she had observed as many as three Sterling employees helping out on the Vitalie side at a given time.

<sup>8</sup> The employees were unable to say if management in some manner accounted for the hours they worked on loan to the other company.

<sup>9</sup> Executive Vice President Brannigan testified he secured the health coverage for both companies from Pacific Mutual because he was able to get a better rate by using just one health carrier with common employee coverage. He testified Vitalie pays for the overall policy and Sterling pays Vitalie for its share of the premiums.

The standards for determining the existence of a single-employer relationship are well settled and are concisely summarized in *Central Mack Sales*, 273 NLRB 1268, 1271-1272 (1984), as follows:

In determining whether two or more businesses are sufficiently integrated so that they may be fairly treated, for jurisdictional and other purposes, as a single enterprise, the Board looks to four principal factors: (1) common management; (2) centralized control of labor relations; (3) interrelation of operations; and (4) common ownership or financial control. *Radio and Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965); *Sakrete of Northern California, Inc. v. NLRB*, 332 F.2d 902, 905, fn. 4 (9th Cir. 1964). "The Board has determined that no single criterion is controlling, although it considers the first three, which evidence operational integration, more critical than the fourth, common ownership." *NLRB v. Triumph Curing Center and M. F. Lee d/b/a Lee's Sewing Company, Inc.*, 571 F.2d 462, 468 (9th Cir. 1978), enfg. 222 NLRB 627 (1976).

Of the above-mentioned first three criteria relating to operational integration, particular emphasis has been placed on centralized control of labor relations. *Stoll Industries*, 223 NLRB 51, 54 (1976).

Regarding common management, it is clear that Vice President of Manufacturing Robinson fully and closely manages both companies. Robinson testified he was in charge of "the complete running of the plant" which includes both companies. Robinson testified he is responsible for all lower-level supervision and that all employees ultimately answer to him. Robinson describes himself as the plant manager for both companies. Robinson said he has the overall responsibility for maintenance of the equipment and tools utilized by both companies and that he orders all materials utilized by both companies.

The officers and directors of both companies are the same. It appears Vice President of Manufacturing Robinson implements the labor relations policies of both companies. Sterling's supervisor, Aiken, and Vitalie's supervisor, Chapman, both testified they received instructions from Vice President of Manufacturing Robinson regarding what they could and could not do in the union campaign at the Company. It appears the labor relations policies for both companies are established by Chairman of the Board G. Atkisson and President A. Atkisson along with Executive Vice President Brannigan and Vice President of Manufacturing Robinson.

Both companies are owned by Chairman of the Board G. Atkisson and President A. Atkisson.

Regarding interrelation of the operations, I note the employees of both companies work in the same building where they share common lunch and break times and facilities. The employees work the same hours and punch the same time-clock. The employees park in the same parking lot and have the same health insurance coverage. Employees of the two companies share tools and equipment and employees are temporarily assigned between the two companies as needed.

In addition to temporary assignments from one company to the other, employees and supervisors have been permanently transferred between the two companies. Both companies produce pool tables that are shipped from a common shipping dock and on occasion in the same truck.

In light of the (1) common management, (2) common control of labor relations, (3) common ownership, and (4) close interrelationship of Vitalie and Sterling, I find, as alleged in the complaint, that Vitalie and Sterling collectively constitute a single integrated business enterprise and a single employer within the meaning of the Act. See *Geo V. Hamilton*, supra. *Airport Bus Service*, 273 NLRB 561 (1984), *Truck & Dock Services*, 272 NLRB 592 fn. 2 (1984), and *Alle Arcibo Corp.*, 264 NLRB 1267 fn. 1 (1982).

## II. LABOR ORGANIZATION STATUS

It is alleged in the complaint, the parties admit, the evidence establishes, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. A BRIEF OVERVIEW

The Union commenced an organizing campaign at the Company in early February. Talk of a union surfaced at the Company on or about February 2 and 3, and Union Representative John Scroggs contacted employee Powell on February 4. Powell thereafter arranged for Scroggs to meet with interested employees away from the Company on February 8. A second union meeting was held away from the facility on February 15. The Company held a meeting with all employees around mid-February at which the Union was discussed. The unfair labor practice allegations arose during, and grew out of, the organizing campaign.

## IV. THE ALLEGED UNFAIR LABOR PRACTICES

In attempting to establish or defend against the claims set forth in the complaint, the parties called some 14 witnesses and presented numerous documents. The testimony and responses thereto are set forth below for the most part in the order established by the complaint.

Inasmuch as credibility is a material issue in the instant case, I deem it appropriate to make some preliminary comments thereon. In deciding which of the conflicting versions of conversations or events is more credible, I have given considerable weight to the demeanor of the witnesses while they were on the stand. I have considered each witnesses' testimony in conjunction with established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. With respect to the testimony, I have borne in mind the tendency of witnesses in general to testify as to their impressions or interpretations of what was said or done, rather than attempting to give a verbatim account of what they heard, saw, or did. Further, I am not unmindful that even in the case of persons testifying about their own remarks or actions, they may well tend to express what they said or intended to say in clearer or more explicit language than they actually used in their discussions or conversations. As to any witness having testified in contradiction of the findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself unworthy of belief. All testimony has been reviewed

and carefully weighed in light of the entire record. As specific credibility conflicts arise, I may state more specifically my reasons for crediting or discrediting any particular witness on any particular portion of their testimony.

#### A. Threats of Discharge and Other Allegations

It is alleged at paragraph 13a of the complaint that Vice President of Production<sup>10</sup> David Robinson at the plant on February 11, and Supervisor Ricky Chapman on February 13, and Supervisor Terry Nicholson on February 14, threatened employees with discharge if they engaged in union activities.

Counsel for the General Counsel presented employee witnesses Crawford, Wood, Baltezare, and Powell in support of these allegations.

##### 1. Vice President of Production Robinson

Employee Crawford testified she along with the employees of Vitalie and Sterling attended a meeting conducted by the Company on February 11, shortly after the 7 a.m. work shift started. According to Crawford, Vice President of Production Robinson, Executive Vice President Brannigan, and all company supervisors attended the meeting. Crawford testified Robinson said "he wasn't going to put up with this union business and that if anyone was for the union, they would be fired." Crawford testified Executive Vice President Brannigan told the group "he was totally against the Union" and "didn't see why we needed a union."

Employee Baltezare testified Robinson said "any one there at the plant that wanted a union felt like . . . felt like that he wasn't doing his job" and "if he heard of anyone trying to organize or even talk about the Union would be fired." She said Robinson then stated Chairman of the Board G. Atkisson "would have some heads." Baltezare said Executive Vice President Brannigan told the group that whatever the supervisors told the employees "would go" and "he would not see them hurt."

Wood testified "Robinson started out by saying those who signed the Union card will be fired or terminated" and "he couldn't believe that certain people would want a union" and "[i]t hurt him to believe that or to know that." Wood testified Robinson said he had "bent over backwards" to help and get along with everybody. Wood testified Executive Vice President Brannigan told the employees it was their right to have a union but he was totally against it because it could hurt more than help the Company.

Employee Powell testified Vice President of Production Robinson started the meeting off by saying he had heard a rumor about the Union and it made him very angry because he was trying to do so much for the employees and it didn't mean anything to them. According to Powell, Robinson said the Company would not tolerate a union and that if "anybody had anything to do with the Union would be fired." Powell said Robinson told the employees changes had been made, more were going to be made, and that Executive Vice President Brannigan would announce some immediate promotions. Powell said Brannigan then announced some management changes and stated "it hurt him to know that there

<sup>10</sup> Throughout the record, Robinson is referred to as vice president of manufacturing or vice president of production. I find it unnecessary to conclude which (or if both titles) is correct.

was union activity going on in the plant and he hoped it would cease."

The Company presented employees Bobbie Owen, Barbara McCall, Mark Norton, Lisa Smith, and Dwayne Morgan as well as Supervisor David Stamey, Executive Vice President Brannigan, and Vice President of Production Robinson who testified regarding the company-called employee meeting at which the Union was discussed.

The Company contends the meeting took place on February 13.

Vitalie employee Owen testified she attended the meeting but could not recall the exact date it took place. Owen said the meeting was called because Vice President of Production Robinson "had just heard about the Union." Owen said Robinson "didn't threaten anybody's job" but she recalled he said "[i]f anybody don't like their job, there's the door." According to Owen, Robinson said he was hurt by the fact the employees had gone to the Union and added he "thought you'ns liked me better than that."<sup>11</sup>

Vitalie employee McCall attended the meeting but could not recall when it took place. McCall, who said the meeting was mostly about the Union, testified Robinson expressed his disappointment at the employees trying to get a union in at the Company in light of the fact he had been so good to the employees.

Vitalie employee Norton also could not recall when the meeting took place but stated Robinson told the employees he had heard they were trying to start a union and told them they did not need one because things were running pretty good without a union. Norton said Robinson told the employees that if they were not happy with their working conditions "there's the door" walk out. Norton testified Executive Vice President Brannigan told the employees he was "hurt" that they thought they needed a union "[b]ecause he tried to go out . . . and get us the best insurance and best benefits" he could find.

Vitalie employee Smith thought the meeting took place on February 13, but could not be sure. Smith testified Robinson said it hurt his feelings that the employees did not come to him with their problems and if we "didn't like our working conditions . . . we knew where the door was . . . there wasn't nothing . . . holding us, if we didn't like it." On cross-examination, Smith said she didn't really pay that much attention to what Robinson said about the Union because she was not in favor of the Union.

Sterling employee Morgan could not recall when the meeting took place but stated Robinson said he was hurt by what was going on and that with the Company's "open book policy" the employees could have explained their problems to their supervisors and if he and the other supervisors could not have worked the problems out, they could have taken the problems to Chairman of the Board G. Atkisson. Morgan testified Robinson told the employees if they were not happy with their jobs, they "could find someplace else to work." Morgan stated Executive Vice President Brannigan expressed his disappointment with the employees in that he had worked hard to get them the best retirement available. Morgan testi-

<sup>11</sup> Owen said on cross-examination that Robinson's speech took place so long ago she could not recall what, if anything, else was said.

fied no threats were made against employees' jobs or that the plant would close.

Current Vitalie Supervisor Stamey testified he could not recall when the meeting took place. Stamey said Robinson told the employees he was hurt that there were "hints of the Union" but the decision was the employees as to what they wanted to do about the Union. Stamey distinctly recalled Robinson saying that if the employees were not happy with their jobs, they could hit the door.<sup>12</sup>

Vice President of Production Robinson testified that approximately a week before he learned of union activity, he observed "a lot of unrest" among the employees in the plant. Robinson said the employees were not concentrating on their jobs. Robinson said goods were being shipped in a timely fashion but that the Company produced quality products by skilled labor and that the employees needed to be free of any distractions or disturbances so they could concentrate on their work. Robinson said "there was rumors out that there was a union trying to be formed." Robinson said he called a meeting of all employees on the morning of February 13, for a number of reasons, namely, "rumors of [a] union," "disturbances," "turmoil," and "unrest" in the plant. Robinson testified:

I can't say word for word what I said, but basically what I said was—the first thing was that—that I had noticed an unrest in—in—there was a lot of people upset and the plant was not working efficiently; that, you know, if—I would like to know what was going on, and nobody answered. And, then I also went on from there saying that if anybody is worrying about their jobs—because they had been complaints and stuff talking about people getting laid off and fired—I said, "if anyone has any complaints about being fired, or if this is what the trouble is you're worrying about your job," I said, "I'll tell you about it."

And, I said also that if this is the part about rumors of the Union, which no specific Union was mentioned, but if there was rumors of Unions that everybody in the plant did have a right to do and talk about a Union, but it had to be on break times; it had to be on—out of work or whatever, and it was their right, but that they could not do it here at work. . . .

I also—at the end of it I did say that—that I've always been the type that if—if I didn't like the place where I worked, I wouldn't work. And, then I also added that—that I felt like if anybody didn't like working here at this plant, then there was the door.

Robinson denied more stringently enforcing company rules. Robinson denied threatening employees with discharge at any time. Robinson said it was the Company's policy in the slow season [which included February] to cut the work week from 5 to 4 days. He said he mentioned at the meeting that "at the worst during the slow season . . . it might go down to either four-day work weeks or three-day work weeks." Robinson denied threatening the plant would for any reason close.

I credit the witnesses called by counsel for the General Counsel regarding what was said at the above-described

<sup>12</sup> Stamey testified Robinson had always been fair with him.

company meeting and when it took place. There are some variances among the General Counsel's witnesses, however, such does not warrant a rejection of their testimony. I note the employee witnesses called by the Company did not directly dispute the comments attributed to Robinson by Counsel for the General Counsel's witnesses. In fact, the overall tenor of the testimony of the employee witnesses called by the Company tended to lend credence to what counsel for the General Counsel's witnesses testified to. For example, the employee witnesses called by the Company indicated Vice President of Production Robinson was personally hurt by rumors of union activity, that he felt he had been good to the employees, and if the employees did not like their working conditions, they knew where the door was and they could leave. Additionally, Robinson did not specifically deny the comments attributed to him and even acknowledged telling the employees that if they did not like working for the Company, they were free to walk out the door.

It is against this backdrop that I am persuaded, as testified to by Crawford, Wood, Baltezare, and Powell that Robinson threatened the assembled employees that they would be fired for union activities and as such the Company, through Robinson, violated Section 8(a)(1) of the Act.<sup>13</sup>

## 2. Supervisor Ricky Chapman<sup>14</sup>

Employee Crawford testified that on February 13, her immediate supervisor, Chapman, spoke with her while he and she were alone in his office. Crawford testified:

He started out by saying that he couldn't believe that [Chairman of the Board] Atkisson was still sexually harassing me, and then we talked about the sexual harassment for a few minutes, and he asked me what we thought the union could do for us up there, and why we didn't come to him with our complaints, and I said that I knew that we'd be fired if we complained, and he said it would help me 100% if I would tear-up my

<sup>13</sup> Even if I only credited the testimony of the employee witnesses called by the Company, and Vice President of Production Robinson, I would conclude he violated Sec. 8(a)(1) of the Act when he suggested to the employees that if they were unhappy working at the Company there was the door through which they could leave. Robinson called the meeting because of rumors of union activity and he told the employees he was hurt they would seek assistance from a union without bringing their concerns to him. Robinson's comments suggests he had already concluded certain employees were unhappy and he, in effect, told the unhappy ones to leave. Such violates the Act. See *New Life Bakery*, 301 NLRB 421 (1991).

<sup>14</sup> I have included in this section the allegations related to Chapman as outlined in complaint pars. 13(a), (c), (d) and (e). Those subparagraphs allege Chapman, on February 13, created the impression among the employees their union activities were being surveilled, that he solicited employees to repudiate their support for the Union, and that he threatened employees with more stringent enforcement of company rules for engaging in union activities. I shall also include in this section the allegations contained at par. 13(e) that Supervisor Keith Aiken also threatened employees with more stringent enforcement of company rules for engaging in union activities. Inasmuch as these latter 8(a)(1) allegations relate to the 8(a)(3) allegations contained in par. 14 of the complaint, I shall also address those allegations at this section of the decision. It is alleged at par. 14 of the complaint that the Company, on February 13, issued written warnings to employees Crawford and Wood because of their support for the Union.

union card. And he said that I wouldn't be fired because he and David Robinson were over the hiring and firing then. And he said that he hated to do this, but he had give me a tardy notice, and I asked him what he wanted me to do with that, and he said sign it. So, I signed it,<sup>15</sup> and he said that if I saw I was going to be late, to be sure to call and he would cover for me. And he said after I got 2 of the tardy notices that if I come in tardy a 3rd time, I'd be fired.

Crawford testified she had been late for work at least one or two times per month since she has been employed at the Company but stated the only consequence of her tardiness was that her pay had been docked. Prior to the February 13, warning Crawford said she had never received any warnings. Crawford said she had never been spoken to about tardiness prior to that time. Crawford also said she had never heard of the rule Chapman announced regarding two warnings for the first two occasions when an employee was tardy and then discharge for any third and final warning.

Employee Wood testified his immediate supervisor, Chapman, called him into his office on February 13, where the two of them met alone. Wood testified:

Ricky [Supervisor Chapman] showed me an order form for an Ajax Elite. We talked about it for a few minutes.

Then he said, "This ain't the real reason I called you in here."

Then he gave me this white slip of paper that had Tardy Notice checked on it and he said,

"I hate to give you this, but I have to."

It had the date, the time and my signature—well his signature on it.

I said—I asked him if I had to sign it?

He said, "No, you don't have to sign it."

I said, "Well, I'm not going to sign it."<sup>16</sup>

He said that Gil [Chairman of the Board Atkisson] had told him that they would fire all the employees and let the supervisors do the work until they can hire new employees.

Then he started asking, "What's the real reason you'll wanted the Union?"

I said, "For job security and the way people's been treated."

He said, "What do you mean, the way people's been treated?"

I said, "Well, one minute you'll be patted on the back saying how good a job your doing, 30 minutes later you'd be fired."

He said, "You always got job security. I'll look out for you."

I said, "Well what about the rest of the people?"

That's all I can recall.

Wood said Chapman told him if he received two warnings for tardiness and then got a third one, he would be termi-

<sup>15</sup>The written notice reflects Crawford was 3 minutes late on February 13 (G.C. Exh. 2). Crawford acknowledged she was late for work on that date.

<sup>16</sup>The written notice reflects Wood was 3 minutes late on February 13 (G.C. Exh. 8). Wood does not deny being late on the date in question.

nated. Wood had never heard of such a rule prior to that time. Wood said he had been tardy two or three times per month since being employed with the Company and no supervisor had ever spoken with him about tardiness nor had he ever received any prior warnings regarding tardiness. Wood also said he had never heard of any employee receiving discipline for tardiness.

Employee Powell testified he reported for work a couple of minutes late on one occasion but that no one from management spoke with him about it. Powell was unaware of any Company rule concerning tardiness.

Supervisor Chapman did not specifically testify about any meeting with Crawford on February 13. He acknowledged expressing his views on the Union to the employees but denied more stringently enforcing plant rules because the employees engaged in union activities, he said, "I just told them, you know, that they was going to be wrote up for coming in late and stuff like that." Chapman explained that he made his comments not in response to union activity by the employees but rather in an effort to bring discipline back into the plant. Chapman testified, "We were getting a lot of people coming in late, standing around talking and stuff." Chapman said he had never counseled Crawford about tardiness prior to giving her a written warning on February 13.

### 3. Supervisor Aiken

Employee Baltezare testified she had been tardy for work 10 or 12 times during the past year and no one from supervision or management had spoken with her concerning her tardiness. She said she did not receive any writeups or discipline of any sort except that her pay was docked 15 minutes even if she was tardy for only 1 to 2 minutes. Baltezare said she heard a rumor at the plant in February that if an employee was tardy, the employee would be written up twice and then discharged for the third offense. She said that on February 13 or 14, she asked her immediate supervisor, Aiken, about the rumor. She said he told her in the presence of employee Shirley Eubanks that the rumor was true that "this is the way it's going to be from now, for a while, until things cool down." Baltezare said she had never, prior to Aiken's comments, been told of any such policy related to tardiness.

Supervisor Aiken denied threatening employees with more stringent enforcement of plant rules because of the employees' union activities. Aiken explained "this is something we do every so often to remind people that you quit work at 3:25 instead of 3:05 and you don't take longer breaks. This is done every so often by all of us." Aiken said that employees would otherwise take advantage of the Company. Aiken did not specifically testify about any February conversation with Baltezare regarding any tardiness policy of the Company.

Vice President of Production Robinson testified the Company has always, as needed, issued warnings and taken disciplinary actions against its employees. Robinson said that, for example, the Company at one time had a problem keeping the restrooms clean so warnings were issued to employees with the third warning resulting in discharge. Robinson explained the Company simply took disciplinary corrective actions when excessive infractions of a company rule surfaced. Vice President of Production Robinson testified the Company had a problem during the first week of February

with excessive tardiness, that led to corrective actions.<sup>17</sup> Robinson testified the problem involved “probably 10 employees” and added others were written up in addition to Crawford and Wood but that the other writeups were given by Supervisors Aiken and Chapman. Robinson distinctively remembered they told him they had written up a few others.<sup>18</sup>

#### 5. Credibility resolutions and analysis

I credit Crawford’s testimony regarding her meeting with Chapman on February 13. Chapman did not specifically refute Crawford’s testimony.<sup>19</sup> A detailed look at Chapman’s comments to Crawford establishes the unlawful allegations attributed to him in the complaint. To ask Crawford, as Chapman did, what the employees thought the Union could do for them and why the employees did not come to him with their complaints coupled with his telling Crawford it would benefit her to tear up her union card leaves an impression the employees’ union activities are under surveillance by the Company and I so find. It is clear beyond question that Chapman unlawfully solicited Crawford to repudiate her support for the Union when he told her it would help her 100 percent if she tore up her union card. Taken in context, it is just as clear that when Chapman told Crawford she would not be fired because he and Vice President of Production Robinson were in charge of the hiring and firing at the Company, he left the implication that if she did not tear up her union card as he suggested, she would be fired because he had the authority to do so. Thus, Chapman unlawfully threatened Crawford with discharge in violation of Section 8(a)(1) of the Act. Immediately following his above-outlined comments, Chapman issued a written warning to Crawford for being 3 minutes tardy and announced Chapman more stringently enforced the Company’s rules on tardiness because of Crawford’s union activities. Crawford, Wood, Baltezare, and Powell all credibly testified they had never heard of any such rule on tardiness before Crawford’s and Wood’s warnings. Furthermore, Crawford, Wood, and Baltezare had been tardy on occasions throughout their employment without disciplinary action taken against them. That it was more stringent enforcement is also demonstrated by the credited testimony of Baltezare that Supervisor Aiken<sup>20</sup> told her about the three warnings and then discharge for tardiness rule that “this is the way it’s going to be for now for awhile until things cool down.”<sup>21</sup> Still further evidence that the Company was more stringently enforcing its rules on tardiness is found in the

<sup>17</sup> Certain of the information the Company provides to all its new employees states, among other things, the following:

Tardiness will not be tolerated nor will excessive absence.

. . . .

Habitual tardiness or excessive absence will result in termination. [R. Exh. 3.]

<sup>18</sup> Aiken and Chapman both testified but neither identified any employees other than Crawford and Wood that had been issued warnings for tardiness during the time in question in February.

<sup>19</sup> Additionally, what Chapman told employee Wood lends credence to Crawford’s testimony.

<sup>20</sup> Supervisor Aiken did not specifically refute Baltezare’s testimony on this point.

<sup>21</sup> I find Aiken’s statement to Baltezare constitutes, as alleged in the complaint, an unlawful threat to more stringently enforce the rules as a result of the employees’ union activities.

credited testimony of Wood regarding his meeting with Supervisor Chapman on February 13.<sup>22</sup> As noted earlier, Chapman gave Wood a written warning for being 3 minutes late and told Wood if he received two additional warnings, he would be discharged. Chapman also told Wood Chairman of the Board G. Atkisson had said he would fire all the employees and let the supervisors do the work until the Company could hire new employees.<sup>23</sup> Such indicates the Company was taking action and more stringently enforcing its rules because of the employees’ union activities.

#### 6. The written warnings

Did the Company violate the Act when it issued Crawford and Wood written warnings for their tardiness on February 13?

In *Wright Line*, 251 NLRB 1083 (1980), enf. 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 Board set forth its causation test for cases alleging violations of the Act that turn, as does the case herein, on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a “motivating factor” in the employer’s decision. Once this is established, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. An employer cannot simply present a legitimate reason for its actions but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct.

The classic elements commonly required to make out a prima facie case of union discriminatory motivation under Section 8(a)(3) of the Act are union activity, employer knowledge, timing, and employer animus.

Counsel for the General Counsel established a prima facie showing the Company issued written warnings to its employees Crawford and Wood on February 13, because of their union activities. First, the Company knew or suspected Crawford and Wood had engaged in union activities. In Crawford’s case, such knowledge is demonstrated by, among other facts, Supervisor Chapman’s asking Crawford what she thought the Union could do for the employees and by telling Crawford it would help her 100 percent if she would tear up her union card. That the Company knew or suspected Wood had engaged in union activities is demonstrated in part by the fact Supervisor Chapman asked Wood as he gave him his written warning what the real reason was that the employees wanted the Union. The Company’s motivation is demonstrated in part by Supervisor Aiken’s comments to employee Baltezare that the tardiness warnings were part of what would be happening until things cooled down. The Company’s animus is further demonstrated by other violations of the Act that Chapman and Aiken engaged in when they spoke with Crawford, Wood, and Baltezare. For example, Supervisor Chapman told employee Wood that Chairman of the Board G. Atkisson would fire all the employees and hire replacements.

<sup>22</sup> Chapman did not specifically refute Wood’s testimony regarding this conversation.

<sup>23</sup> I find this statement constitutes an unlawful threat to discharge employees for their union activities.

The warnings were issued 3 days after the Company held a meeting with its employees to discuss rumors of union activity and at which meeting Vice President of Production Robinson engaged in conduct found to violate Section 8(a)(1) of the Act.

I am persuaded the Company failed to demonstrate it would have issued warnings to Crawford and Wood on February 13, in the absence of protected conduct on their part. First, there is no credible showing the Company had a policy of issuing two written warnings for tardiness and then discharging employees for a third offense. Second, there is no showing anyone else was warned other than these two known or suspected union supporters. Vice President of Production Robinson testified others were given written warnings for tardiness during this same time period but he could not name any such employees assertedly because such warnings were given by Supervisors Chapman and Aiken. Supervisors Chapman and Aiken, however, did not testify about issuing any other such warnings for tardiness. The Company did not produce copies of any such warnings at trial.<sup>24</sup> Simply stated, the Company failed to demonstrate it would have taken the same action it did in the absence of any protected conduct on the part of Crawford and Wood. Accordingly, I find the Company violated Section 8(a)(3) of the Act by issuing written warnings to its employees Crawford and Wood on February 13.

#### B. Interrogation and Other Allegations

It is alleged at paragraph 13(b) of the complaint that on February 11 and 14, Supervisor Terry Nicholson unlawfully interrogated employees at the plant concerning their union sympathies and desires. Inasmuch as certain portions of the evidence in support of the interrogation allegations relate to other complaint allegations, I shall consider those allegations at this point in the decision. The other allegations that relate to Supervisor Nicholson are set forth at paragraphs 13(c), (f), (g), (h), and (i). These subparagraphs allege that on February 11, 12, and 14, Nicholson created an impression among the employees their union activities were being surveilled; that on February 14, he threatened employees with discharge, plant closure, a reduction in work hours, and other unspecified reprisals if employees engaged in activities on behalf of the Union and/or selected the Union as their collective-bargaining representative. It is also alleged that Nicholson advised employees it would be futile to engage in union organizational activities.

##### 1. The interrogation

Employee Wood testified he was in the plant's restroom on February 11 around 10:30 a.m. when Supervisor Nicholson entered and asked "What do you think of this union nonsense or business?" Wood responded he didn't know, it was the first he had heard about it and it surprised him. Nicholson responded, "well, I heard there's twenty-five cards signed . . . [t]hat only leaves 10 people that haven't signed a card." Wood told Nicholson "well, I must be one of the ten." Nicholson advised Wood that there were 250

<sup>24</sup> One of the posttrial exhibits (PV#8) that the Company attempted to offer which I rejected purported to be warnings issued to two employees on February 14, for being "late for work."

employees at American Thread and they couldn't get a union in. Wood said he left the restroom at that time.

According to Wood, Nicholson again, the next day (February 12), entered the restroom when he was there and asked, "What are you doing, union man?" Wood said he walked out without responding to Nicholson.

Employee Powell testified that after he had "clocked out" on February 14, Supervisor Nicholson approached him while he was alone in the shipping area waiting for his brother to get off work and asked if he was "one of the ring leaders of the union" and/or if his brother was. Powell said Nicholson also asked him, "What do you think of the union?" Powell told Nicholson he was with the majority of the employees. Nicholson responded, "Well, you know, the options of what will happen if a union . . . come[s] in here." According to Powell, Nicholson outlined the options as: (1) the Company would make it rough on the employees, (2) they would go to a 3-day workweek, (3) the Company would fire the employees and operate with supervision, or (4) the Company could move to Georgia. Nicholson told Powell that if the Company did all these things, "they probably wouldn't make enough to pay their power bill."

##### 2. Credibility resolutions

Supervisor Nicholson was not called as a witness nor was the failure to do so validly explained. I credit the unrefuted testimony of Wood and Powell as it relates to Nicholson's conversations with them on February 11, 12, and 14.

##### 3. Analysis and conclusions

I shall review these allegations of interrogation in light of the Board's decision in *Rossmore House*, 269 NLRB 1176 (1984), *enfd.* sub nom. *Hotel Employees & Restaurant Employees v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In *Rossmore House*, the Board held the lawfulness of questioning by employer agents about union sympathies and activities turns on the question of whether "under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act." The Board in *Rossmore House* noted the *Bourne*<sup>25</sup> test was helpful in making such an analysis. The *Bourne* factors are as follows:

- (1) The background, i.e., is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e., how high was he in the company hierarchy?
- (4) Place and method of interrogation, e.g., was employee called from work to the boss's office? Was there an atmosphere of "unnatural formality"?
- (5) Truthfulness of the reply.<sup>26</sup>

Supervisor Nicholson was not employee Wood's immediate supervisor and no valid reason was advanced regarding

<sup>25</sup> *Bourne Co. v. NLRB*, 332 F.2d 47 (2d Cir. 1964).

<sup>26</sup> The *Bourne* test has been cited with approval by various circuits. For a partial listing of those circuits, see *Teamsters Local 633 v. NLRB*, 509 F.2d 490 fn. 15 (D.C. Cir. 1974).

why he questioned Wood about the Union in the restroom. Wood had not openly demonstrated his support for the Union at the time.<sup>27</sup> Nicholson did not give Wood any assurance against reprisals if he responded truthfully (or otherwise) to his inquiries. Nicholson did not end his inquiry at seeking to ascertain Wood's views about the Union, he went on to tell Wood he had heard 25 employees had signed union cards with only 10 employees failing to do so. Nicholson also told Wood that employees at another company had been unsuccessful in attempting to secure union representation. For the above reasons, I find Nicholson's interrogation of Wood was coercive interference and as such violated Section 8(a)(1) of the Act. I also find Nicholson, as alleged in the complaint, left the impression the employees' union activities were under surveillance<sup>28</sup> and the employees would be unsuccessful if they attempted to have a union represent them.

Nicholson was not Powell's supervisor when he questioned Powell about the Union on February 14. No valid reason was advanced for Nicholson's inquiry. Nicholson not only failed to give Powell any assurance against reprisals if Powell answered his questions about the Union but Nicholson went on to outline for Powell the dire consequences of unionization. Nicholson not only wanted to know if Powell supported the Union as a ring leader but also wanted to know Powell's brother's position on unionization. For the above reasons, I find, the interrogation was coercive interference in violation of Section 8(a)(1) of the Act.

#### 4. Other violations by Nicholson

Additionally, I find Nicholson's comments to Powell, as outlined above, constituted other violations of the Act. That the Company would make it rough on the employees because of their union activities constitutes a threat of unspecified reprisals against the employees for their union activities and I so find. For Nicholson to tell Powell that the Company could go to a 3-day workweek or fire all the employee and operate with supervision constitutes unlawful threats to reduce the employees work hours and to discharge them. Nicholson's telling Powell the Company could move to Georgia if the employees unionized constitutes an unlawful threat to close the plant because of the employees' union activities. Finally, Nicholson's comments, taken as a whole, unlawfully conveys to the employees it would be futile for them to engage in union organizational activities. Such violates Section 8(a)(1) of the Act, and I so find.

#### *C. The Allegation of an Impression of Surveillance Attributed to Executive Vice President James Brannigan*

It is alleged at paragraph 13(c) of the complaint that the Company, through Executive Vice President Brannigan on February 14, created among employees the impression their union activities were being surveilled.

<sup>27</sup> The Company may well have believed or suspected Wood favored the Union at the time of this conversation but Wood had not openly demonstrated such support.

<sup>28</sup> I also conclude and find that when Nicholson commented to Wood on February 12, "What are you doing, union man?" he created the impression the employees' union activities were under surveillance.

Crawford testified Executive Vice President Brannigan came to the detail department on February 14, and in the presence of employe Wood spoke with her as follows:

He [Executive Vice President Brannigan] started out by saying that we knew how much he cared for us, and that we were like family to him. Then he asked me how far the union had gotten, and I told him that I didn't really know, and he asked me why we wanted a union, and I told him because of the way everybody was getting fired for nothing and the working conditions, and he said that he'd had one meeting that day with Gil [Chairman of the Board Atkisson] and Andy [President Atkisson], and he promised me that we wouldn't be fired, and then he said that he was going back and another meeting with them, and he would do everything he could to save our jobs, and also he said that Gerald [Wood's] and my name was the first names mentioned, and that we were considered the ring-leaders.

Crawford said she asked Brannigan why Chairman of the Board Atkisson had started issuing tardy notices. Crawford said Brannigan told her Chairman of the Board Atkisson had not started that policy that he and Vice President of Production Robinson started it and stated if the employees wanted a union, "they were going to go strictly by the Union."

Wood testified Executive Vice President Brannigan told them (Crawford and Wood) he had permission from management to speak with them and that he "started out by saying how much he cared for us and how much he loved us and we were like family and he'd do anything he could to help us." Wood testified Brannigan went on to say "that my name [Wood's] and Tammy Crawford's were the first two names mentioned in the union organizing" and that Rose Baltezare's name was "the third name mentioned." Wood said he left the detail department while Executive Vice President Brannigan and Crawford were still talking. Wood returned to the detail department about 15 to 20 minutes later while Brannigan and Crawford were still talking. According to Wood, Brannigan asked if he (Wood) had anything else to say. Wood told Brannigan he guessed Crawford had covered it all. Brannigan left saying he was going to a meeting with President A. Atkisson and Vice President of Production Robinson. Brannigan told Crawford and Wood he would get back with them and added they would not be fired for their union activities.

Executive Vice President Brannigan acknowledged speaking with Crawford and Wood on the afternoon of February 14. He said he told them they were entitled to a union if they wished but that he explained to them they had such great benefits and then asked them why they were "deliberately" being late for work. According to Brannigan, the only answer came from Crawford who told him they were out to get Chairman of the Board G. Atkisson.

Brannigan denied questioning Crawford and Wood about the Union or that he was interested in their union activities.<sup>29</sup>

<sup>29</sup> Brannigan testified on cross-examination he told Crawford and Wood "a union was fine" and added "we discussed what was going on." However, he stated "the main point I talked to them . . . about [was] the good benefits they had, what good, you know,

*Continued*

Brannigan said his sole interest with Crawford and Wood was that they could continue to have jobs with the Company and he wanted them to go to Supervisor Chapman and Vice President of Production Robinson and "iron this out" about their excessive tardiness.

Executive Vice President Brannigan denied at any time creating the impression among the employees their union activities were being surveilled.

I credit Crawford's and Wood's account of their February 14, meeting with Executive Vice President Brannigan. I am convinced Brannigan cared for the two employees in question and that overall he wanted things to turn out well for them but in his enthusiasm to have everything work out in a way he perceived best he made certain comments to Crawford and Wood that he was unable or unwilling to recall at trial. Specifically, I find Brannigan told Crawford and Wood, as testified to by Wood, that theirs were the first two names mentioned by the Company in relation to the union organizing campaign at the Company and that Baltezare's was the third name mentioned. For the Company, through its representative Executive Vice President Brannigan, to tell employees which ones were the ring leaders for the Union when the employees in question had not openly demonstrated their support for the Union leaves the impression among the employees that their union activities are being surveilled. Such violates Section 8(a)(1) of the Act, and I so find.

*D. Threats of Futility, a Reduction in Work Hours, and Plant Closure*

It is alleged at paragraph 13(f) of the complaint that the Company, through Vice President of Production David Robinson on February 14, threatened employees with reduction in their work hours if they engaged in union activity and/or selected the Union as their collective-bargaining representative. It is alleged at paragraph 13(g) of the complaint that the Company acting through Robinson and Supervisor Keith Aiken on February 14, threatened employees with plant closure if the employees selected the Union as their collective-bargaining representative. It is alleged at paragraph 13(h) of the complaint that the Company through Supervisor Aiken on February 14, advised employees it would be futile to engage in union organizational activities.

1. Vice President Robinson's comments

Employee Crawford testified that at approximately 1:30 p.m. on February 14, Vice President of Production Robinson came to her work station and asked that she and Wood meet with him in his office. Crawford testified:

[Vice President of Manufacturing Robinson] started out, he said that he didn't doubt that Gil [Chairman of the Board Atkisson] had been sexually harassing me, and we talked about the sexual harassment for 30 to 40 minutes, and then he started talking about the union, and he said that Andy [President Atkisson] had come out into the plant, and she was really mad, and that she said she would close the plant down and move it to Georgia before a union got in, and she said she didn't want to see Gil's feelings hurt. And he talked about

would a union be; and with the good retirement they had the good health that they had."

how he'd worked for 3 years to get the plant were it's at and make a good place for people to work, and he said that everything that's going on in the plant was my fault, and he talked about David Hudson and John Spraggs for a few minutes, how they worked, and he said he wasn't going to fire me, but if I didn't have any more trust than that in him that I didn't need to be working there.

. . . .

He said that Gil [Chairman of the Board Atkisson] said that they would cut the work week down to 3 days a week, so nobody could draw unemployment.<sup>30</sup>

Vice President of Production Robinson did not specifically address any meeting with Crawford and Wood on February 14. Robinson denied ever threatening the plant would close as a result of employees engaging in union activities. Robinson said he mentioned in the employee meeting that due to the fact the Company was in a slow production season, the workweek might be reduced to 4 or even 3 days per week but that his comments were based on the slow production season and not as a result of union activities by the employees.

2. Credibility resolutions

I credit Crawford's and Wood's account of their February 14, meeting with Vice President of Production Robinson. Crawford and Wood appeared to be telling the truth and I note Robinson did not specifically deny meeting with them on the date in question or discussing the matters they indicate he discussed.

3. Analysis and conclusions

Viewing the credited testimony, it is clear Vice President of Production Robinson threatened the plant would be closed before the Company would allow a union to represent its employees. Such violates Section 8(a)(1) of the Act and I so find. It is just as clear that Vice President of Production Robinson threatened that working hours would be reduced (the Company would go to a 3-day workweek) as a result of the employees' union activities. Again, such violates Section 8(a)(1) of the Act and I so find.

4. Threats of plant closure and futility

Employee Baltezare testified that around 2 p.m. on February 14, her immediate supervisor, Aiken, came to her work station and told her his father was prounion and noted he (Supervisor Aiken) would not have had a lot of the things he did as a child if his father had not been a unionized worker. Baltezare testified Aiken then told her the Company was too small for a union and added:

He didn't think it would do any good there and he said that if you all don't cut this stuff out . . . Andee [President Atkisson] and Gil [Chairman of the Board Atkisson] will shut this plant and move to Georgia.

<sup>30</sup>Wood's testimony about this meeting was essentially the same as Crawford's.

Aiken told Baltezare the employees were too smart to let that happen and commented that if anyone could make this Company work it was the Atkissons.

Supervisor Aiken said he talked to Baltezare and several other employees about his father's strong union sentiments and that he had more as a child because of his father's union affiliation. Aiken also acknowledged he told the employees he did not think his children would have the benefits he had as a child because of where he (Aiken) worked but that he felt the union could not help the employees herein. Aiken said he was just expressing his personal opinion. Aiken denied threatening anyone with plant closure or that he advised employees it would be futile for them to engage in organizational efforts for the Union.

#### 5. Credibility resolutions

I credit Baltezare's testimony. In doing so, I am not mindful that she has an interest in the outcome of this case and has very strong feelings about the Company. She nevertheless impressed me as a witness that was making every effort to testify truthfully to the best of her recollection.

#### 6. Analysis and conclusions

When Supervisor Aiken told Baltezare that if employees did not cut out their union involvement, the Atkissons would shut the plant and move to Georgia, he violated Section 8(a)(1) of the Act. In this same conversation, Supervisor Aiken told Baltezare the plant was too small for a union and it would not do the employees any good to attempt to organize. Taken in context, I find such constitutes an unlawful threat it would be futile for the employees to engage in union organizational activities.

#### E. *The Discharge of Crawford, Wood, Powell, and Baltezare*

It is alleged at paragraph 15 of the complaint that the Company on or about February 18, discharged and thereafter failed and refused to reinstate its employees Tammy Crawford, Gerald Wood, Rose Baltezare, and Keith Powell because they joined, supported, or assisted the Union and/or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

#### 1. Crawford and Wood

##### a. *Crawford*

Crawford began working for the Vitalie part of the Company in July 1989. Crawford's job was to construct the railings around the top of pool tables. As is noted elsewhere in this decision, her supervisor at the time of her discharge was Ricky Chapman. Crawford earned \$8 per hour and had received a wage increase 1 week prior to her discharge.<sup>31</sup>

Crawford testified she learned of union activity at the plant on February 7, and attended a union meeting at the Union's offices in Pisgah Forest, North Carolina, on February 8.

<sup>31</sup> It is suggested in the record that the increase was part of a semi-annual quality review increase.

Crawford said Wood, Powell, and Baltezare and five or six other employees also attended the meeting. Crawford signed a union card at the meeting and took other cards to work the following Monday (February 10). She said she gave two union cards to employees at the first break and one card to an employee during lunch that day.<sup>32</sup> As far as Crawford knew, no supervisor or management personnel saw her giving out union cards and she did not wear any union insignia nor did she in any manner openly demonstrate her union sentiments.

Crawford, as noted elsewhere in this decision, attended the employee meeting on February 11, at which Vice President of Production Robinson, and Executive Vice President Brannigan spoke about the Union.<sup>33</sup> As noted elsewhere in this decision, Supervisor Chapman talked with Crawford about the Union on February 13, while the two of them were alone in his office. It was at this meeting that Crawford was given a written warning for being 3 minutes late and was told that if she was late two additional times, she would be fired. Again as is noted elsewhere in this decision, various Company representatives had conversations with Crawford and others on February 14, about the Union. For example, Supervisor Chapman spoke with Crawford in Wood's presence about the Union. Executive Vice President Brannigan spoke with Crawford and Wood in the detail department about the Union. Vice President of Production Robinson met on the afternoon of February 14, with Crawford and Wood at which time the three of them spent 30 to 40 minutes talking, among other things, about the Union and the Company's reaction thereto.

Crawford testified she was not scheduled to work on Saturday, February 15, Sunday, February 16; or Monday (President's day, February 17). Crawford said that when she and employee Wood, with whom she shared a ride, arrived at work on Tuesday, February 18, their timecards were missing from the timecard rack. Crawford said they went to Supervisor Chapman's office and after Chapman cleared everyone from his office, told him he "hated" to tell them but they were both fired for causing disturbances in the plant. Crawford testified Wood asked if it was for going to the union meeting. Chapman told them he did not know. Chapman then escorted Crawford and Wood as they retrieved their personal items and left the plant.

Crawford testified she decided they needed something in writing regarding their discharge so she returned to Chapman's office where he gave her a written notice that stated:

Gerald Wood and Tammy Crawford terminated for causing disturbances among other employees.

Supervisors Susan Aiken and Ricky Chapman signed the handwritten note. Crawford testified they were never told what disturbances they had caused.

Crawford testified that prior to her discharge, she had never been warned, criticized, or counseled regarding any disturbances. Crawford testified that in fact she had been told by Supervisors Chapman and Keith Aiken, as well as by Vice President of Production Robinson, that she was one of

<sup>32</sup> According to Crawford, Baltezare and Powell also had union cards at work on Monday, February 10.

<sup>33</sup> It is unnecessary at this point in the decision to restate Robinson's and Brannigan's February 11, comments to the employees.

the best employees the Company had. She said Supervisor Chapman told her shortly before she was fired that she was the only employee in the plant that stayed ahead of and caught up on her work.

b. *Wood*

Wood testified he commenced working for the Vitalie part of the Company in June 1989. At the time of his discharge, Wood worked in the cachet department under the supervision of Ricky Chapman. Wood's rate of pay was \$7.75 per hour and he had received a pay increase of 30 cents per hour on February 7. Wood testified Supervisor Chapman told him at the time "I got you a raise . . . I think you deserve a raise." Wood said Chapman told him the Company had placed him in the cachet department because he was "a good worker" who did "quality work."

Wood said he learned of union activity at the Company on February 7, and attended two union meetings (February 8 and 15) held away from the plant. Wood signed a union card at the first meeting and thereafter encouraged his fellow workers during break and lunch times to do likewise. Wood said that to his knowledge, no supervisor or management representative was aware of his union activities or sentiments.

Wood attended the company-held employee meeting on February 11, at which the Union was discussed. Wood was questioned about his union sentiments on February 11 and 12, by Supervisor Nicholson.<sup>34</sup> Wood was given a warning for tardiness on February 13, at which time Supervisor Chapman discussed the Union and, among other things, told Wood that on a third warning for tardiness, he would be discharged. Executive Vice President Brannigan talked to Wood and Crawford during the afternoon of February 14, at which time Brannigan told the two of them that they, along with a third employee (Baltezare), were the first names mentioned by the Company when it discussed the employees' union organizing efforts at the plant. Vice President of Production Robinson spoke with Wood and Crawford about the Union on February 14, the details of which are set forth elsewhere in this decision.

Wood testified he was not scheduled to work Saturday, February 15; Sunday, February 16; or Monday, February 17. Wood returned to work on February 18, and discovered his and fellow worker Crawford's timecards were missing from the timecard rack. The action Wood and Crawford took has been set forth under the employment history of Crawford and will not be repeated here.

Wood testified that prior to his discharge, he had never received any complaints from management about his work habits or attitude.

c. *Supervisor Chapman's role*

Supervisor Chapman said he talked with Vice President of Production Robinson on February 14, about Crawford and Wood. He said the final decision to terminate the two was made by Robinson but he believed the decision was made on February 14. Chapman said they were discharged for "causing disturbances." Chapman testified he observed some of the "disturbances" they were involved in. He said the "dis-

<sup>34</sup>The facts surrounding Nicholson's questioning Wood have been set forth elsewhere in this decision and will not be repeated here.

turbances" involved employees talking in groups. Chapman acknowledged he had seen groups talking in the plant that did not involve Crawford and Wood.

d. *Vice President Robinson's role*

Vice President of Production Robinson, who made the final decision to discharge Crawford and Wood, testified the "main reason" for their discharges was the "disturbance" or "unrest" they were causing in the plant. Robinson said "there was being pressure put on [employees] by the people that was trying to form the union." Robinson acknowledged he observed "groups of people" that were part of the disruption other than Crawford and Wood. Robinson said the groups that Crawford and Wood were part of broke up quicker than groups they were not part of. Robinson acknowledged employees have always talked in groups with each other and that the Company has no "strict regulations" against talking in the work place.

Robinson said his decision to terminate Crawford and Wood was not based "totally" on the plant disruptions but that their prior conduct was also on his mind. Robinson described Crawford's prior misconduct as wearing "spandex . . . tight fitting forming pants" with "nothing over them." He said he had spoken to Crawford about her misconduct at least twice prior to her discharge. Robinson said Crawford's misconduct had been ongoing for at least a year. Robinson said he had also spoken to Crawford and Wood about their lunch time activities which he described as their being in "a sexual position" with Crawford "feeling" of Wood.<sup>35</sup> Robinson said he had also spoken to Crawford and Wood about their being tardy and clocking in for each other.<sup>36</sup>

Vice President of Production Robinson said he did not make the final decision to terminate Crawford and Wood until February 17, although he said he told his supervisors on February 14, to terminate them. Robinson said he decided on February 17, that he was going to need to discharge some employees in order to calm the factory down. Robinson said he only put disrupting the work place on Crawford's and Wood's unemployment forms because he did not like to give lengthy explanations for discharging employees. Robinson stated the employees' union activities did not make up any part of his reason for discharging Crawford and Wood.

Executive Vice President Robinson said that in the past (he was not any more specific) two other employees had been discharged for causing disturbances in the plant. Robinson identified Jesse Nicks as an employee that "nobody could get along with" and that the Company moved from department to department before finally discharging him. Robinson identified David Guest as another employee that had been discharged for causing a disturbance at the plant. Robinson said Guest was always giving out "confidential in-

<sup>35</sup>The Company presented employee Lisa Smith who testified she had, in the past, seen Crawford and Wood "hugging and kissing and . . . touching each other . . . like a man and a female do." Smith said Wood would "have his arms around her ass and stuff like that."

<sup>36</sup>As is noted elsewhere in this decision, Executive Vice President Brannigan testified he spoke with Crawford and Wood about their "deliberately" being late for work. Brannigan testified he also spoke to Crawford "about her sexual promiscuity" and "about the clothes she wore." Brannigan said Crawford's and Wood's conduct had been ongoing prior to January 1992.

formation” about the plant and could not get along with any of his coworkers.

*e. Analysis and conclusions*

Examining the instant facts related to Crawford and Wood in light of the *Wright Line*, supra, principles, I am persuaded counsel for the General Counsel established a prima facie case.

First, Crawford and Wood were both perceived by the Company, and correctly so, to be supporters of the Union. The Company announced at its employee meeting on February 11, that it knew about union activity (or rumors thereof) in the plant. On February 13, Crawford’s immediate supervisor, Chapman, asked her what she thought the Union could do for the employees and advised her it would help her 100 percent if she would tear up her union card. On February 14, Supervisor Chapman told Crawford, among other things, that the employees were making a big mistake with the Union. Supervisor Nicholson asked Wood on February 11, what he thought of the Union and told Wood how many employees he (Supervisor Nicholson) heard had signed union cards. The very next day (February 12) Supervisor Nicholson called Wood a “union man.” On February 13, Supervisor Chapman asked Wood, among other things, “what’s the real reason you’ll wanted the union?” Perhaps the clearest indication of the Company’s perception that Crawford and Wood supported the Union comes from Executive Vice President Brannigan’s comments to Crawford and Wood on February 14, that their’s were the first two names mentioned by the Company in management discussions about the Union’s organizing efforts at the Company. Additionally, Vice President of Production Robinson told Crawford and Wood on February 14, that “it was all Tammy’s [Crawford] fault that all the union business [was] going on.” Clearly, counsel for the General Counsel established union activity on the part of Crawford and Wood and that the Company knew or correctly assumed the two of them were engaging in union activities.

The timing of Crawford’s and Wood’s discharge is suspect. Approximately 10 employees met away from the plant with representatives of the Union on Saturday, February 8. The Company meets with its employees on Tuesday, February 11, to discuss “rumors” of a union at the Company. On February 11, 12, 13, and 14, the Company, through various of its representatives, committed various unfair labor practices. A decision was made on Friday, February 14, to dismiss four employees, two of which were Crawford and Wood. Crawford and Wood were told of their discharge on February 18. I note employees were not scheduled to and did not work, on February 15, 16, and 17.

The Company’s antiunion animus is demonstrated by the various comments found to be unlawful that its representatives made. For example, Vice President of Production Robinson told the entire work force on February 11, that he was not going to put up with this union business and that he would fire anyone that was for the Union. The Company directed some of its antiunion animus specifically at Crawford and Wood. Crawford and Wood were, as is set forth elsewhere in this decision, given unlawfully motivated written warnings on February 13. Supervisor Chapman specifically told Crawford on February 14, that the Company could not support a union and would probably close its doors. Vice President of Production Robinson told Crawford and Wood

that Company President A. Atkisson was angry about the Union and would close the plant and move it to Georgia before a union would be allowed in at the Company. Robinson told Crawford that everything that was going on regarding the Union was her fault.

In summary, I find counsel for the General Counsel established an extremely strong, clear case that a “motivating factor” in the decision to terminate Crawford and Wood was their union activities.

I am persuaded the Company failed to demonstrate it would have taken the same action it did even in the absence of any protected conduct on the part of Crawford and Wood.

To meet its burden, the Company attempted to show that Crawford and Wood caused disruptions in the workplace. The Company, however, acknowledged employees were permitted to talk with each other while working. The groups of employees the Company observed talking during the time in question involved employees in addition to Crawford and Wood; however, there is no showing the other employees, except Baltezare and Powell, were disciplined in any manner. In fact, Vice President of Production Robinson noted groups that Crawford and Wood were with disbanded quicker than the groups they were not involved with. The Company tried to raise other considerations for discharging Crawford and Wood. However, it could not escape the fact it told the employees they were being discharged for causing a disturbance. The Company even put that reason in writing and advanced that reason at the North Carolina unemployment hearings for Crawford and Wood. I am persuaded it was nothing more than an afterthought on the Company’s part to suggest that Crawford’s style of dress or Crawford’s and Wood’s tardiness or other alleged activities formed a basis for their discharge. These other infractions, alleged or real, had admittedly been ongoing for at least a year.<sup>37</sup>

For all the above reasons, I find the Company violated Section 8(a)(3) of the Act when on February 18, it discharged and thereafter failed and refused to reinstate its employees Crawford and Wood.

2. Keith Powell

Powell began working for the Sterling part of the Company on July 22, 1991, as an assembler. Powell’s supervisor at the time of his discharge on February 18 was Keith Aiken.

Powell testified the Union was discussed “a little bit” on February 2 and 3, and added he was contacted by Union Representative John Scruggs on February 4. Scruggs asked Powell how he felt about unionization at the Company. Powell told Scruggs he would go along with whatever a majority of the employees wanted. Powell then arranged for the first meeting of employees with the Union’s representative at the Union’s Pisgah Forest, North Carolina office on February 8. Powell signed a union card at the meeting and got one other card signed away from the plant. Powell said he talked to employees about the Union but to the best of his knowledge the Company was not aware of his efforts on behalf of the Union.

Powell attended the company-called employee meeting on February 11. As noted elsewhere in this decision, Supervisor

<sup>37</sup> The Company’s contention it tolerated Crawford’s other infractions because she is a single parent is nothing more than post hoc rationalization which I reject.

Nicholson spoke about the Union with Powell on February 14, and in that conversation Nicholson wanted to know if Powell was one of the "ring leaders" for the Union.

Powell testified he reported for work as usual on February 18, and started performing his regular duties when Supervisor Nicholson informed him that Supervisor Aiken wanted to see him (Powell) in the office. Powell went to the office where Supervisor Aiken told him "I have some bad news for you . . . I'm going to have to let you go." Powell responded, "Well, they finally singled somebody out . . . for [u]nion activity." According to Powell, Supervisor Aiken "read off" the reason for his discharge which was "disturbance . . . agitation and loss of production in the work place." Powell testified Supervisor Nicholson asked during the termination meeting if he was the "ring leader." Powell told Nicholson no. Powell testified "they said they had to make some believers out of somebody."<sup>38</sup> Powell testified Aiken and Nicholson did not tell him what "the disturbance" or "agitation" was that he allegedly caused nor did they tell him what production had been interfered with.

Powell testified that prior to his discharge, he never had any complaints from management about his work, attitude, or production nor any complaints about causing disturbances or agitation in the plant.

#### *a. Supervisor Aiken's role*

Supervisor Aiken testified he hired Powell as a favor to Powell's brother, Gerald, who is also employed by the Company. Aiken made the decision to discharge Powell on February 14, and said he did so because of Powell's "poor workmanship," "causing disturbances," and because his fellow workers said he "complained" about work in general and about his fellow workers. Aiken said that "quite a few" times he had to take work Powell had performed back to Powell and tell him his work was not up to the standards of quality the Company needed and that he had to explain to Powell how his work assignments should be accomplished. Aiken said Powell consistently performed his job poorly and added he could not recall any work Powell had performed properly. Aiken said the quality of Powell's work was the same on January 1, and earlier as it was on the day he was discharged. Aiken said he only listed "disruption" as the reason for Powell's discharge on unemployment forms he provided the State of North Carolina because he did not take time to list all the reasons on those forms. Aiken acknowledged the only reason he gave Powell at the time of his discharge for his discharge was that he was causing disturbances and was out of his workplace.

#### *b. Vice President Robinson's role*

Vice President of Production Robinson testified Powell was not discharged any sooner than he was because his brother worked for the Company and they did not wish to create "hard feelings" with the brother.<sup>39</sup>

<sup>38</sup> Powell did not say whether Supervisor Nicholson or Supervisor Aiken (or both) made the above comment.

<sup>39</sup> Executive Vice President Brannigan testified he first learned of the poor quality of Powell's work when he "chanced upon" Supervisors Aiken and Nicholson discussing Powell's work. Brannigan speculated Powell's brother Gerald may have been able to cover Powell's poor workmanship.

#### *c. Analysis and conclusions*

I am persuaded counsel for the General Counsel established a prima facie case with respect to Powell's discharge.

Powell was the employee who made the arrangements for the first union meeting. Powell signed a union card at the meeting and although he did not perceive his activities were known to the Company, it appears they were. On February 14, Supervisor Nicholson asked Powell if he was one of the "ring leaders" for the Union and also asked what he thought about the Union. Powell was asked again by Supervisor Nicholson at his termination if he was a ringleader for the Union.

The Company's antiunion motivation and the timing of the discharges at issue herein have been addressed earlier and need not be repeated here except for certain evidence of the Company's unlawful motivation specifically directed at Powell. For example, when Supervisor Nicholson asked Powell on February 14, if he was a ring leader for the Union, he (Nicholson) outlined for Powell certain options the Company had if unionization efforts continued at the plant, namely, that the Company could close and move to Georgia, it could fire all the employees and operate with supervision and/or it could make it rough on all the employees. Perhaps the most revealing evidence of the Company's motivation for its action against Powell is found in Supervisor Nicholson's and/or Supervisor Aiken's statement to Powell at the time he was discharged that the Company "had to make believers out of somebody."

I find the Company failed to demonstrate it would have discharged Powell even in the absence of any protected conduct on his part. The Company, through Supervisor Aiken, testified Powell was discharged for "causing disturbances," "causing a breakdown in morale" and "instituting bad feelings among co-workers" "among other problems." Supervisor Aiken acknowledged he only told Powell at the time he discharged him that he was being discharged for "causing disturbances and being out of his work place." Aiken, however, testified the precipitating factor that immediately led to Powell's discharge was his "workmanship" and his "attitude" toward his work and his coworkers. The Company, however, acknowledged Powell's work habits had existed every since he had been employed by the Company and that he had never performed quality work. The Company acknowledges it never took any prior action against Powell.<sup>40</sup> The Company produced no records to show that production was down or that quality suffered as a result of Powell's actions (or inactions) at the time in question. Vice President of Production Robinson's testimony that he did not take action against Powell any sooner in deference to Powell's brother who is employed by the Company is simply unbelievable and I am convinced was an afterthought on Robinson's part.

In light of all the above, I conclude and find the Company violated Section 8(a)(3) of the Act when on February 18, it discharged and thereafter failed and refused to reinstate Powell.

<sup>40</sup> Powell credibly testified he had never been counseled or warned about his workmanship or his attitude.

### 3. Rose Baltezare

Baltezare started working for the Company in January 1990 and at the time of her discharge was head of the sanding department<sup>41</sup> where she “[m]ostly train[ed] workers . . . how to sand” and to make sure the tables were ready for delivery to the customers. Her immediate supervisor was Keith Aiken.

Baltezare testified Crawford asked her about trying to bring a union in at the Company on February 7. Baltezare said she attended the first union meeting on February 8, and signed a union card at that meeting.<sup>42</sup> Baltezare said she took “a few extra cards” back to the plant and gave “a few” to a coworker before her work shift started on February 10. Baltezare said that to her knowledge, no one from management saw her giving out union cards. She said she talked with the sanding department employees during break times about signing cards for the Union.

Baltezare attended the company-called employee meeting on February 11, at which the Union was discussed. As noted elsewhere in this decision, Supervisor Aiken spoke with Baltezare on February 14, about the Union in which he stated, among other things, that a union would not do the employees any good and warned Baltezare that if the employees did not “cut this stuff out” the owners would “shut the plant and move to Georgia.”

Baltezare said she reported for work as usual on February 18, and after about 20 minutes, Supervisor Nicholson told her Supervisor Aiken wanted to see them in Aiken’s office. According to Baltezare’s credited testimony, Supervisor Aiken told her it was “really hard” because “she was such a valuable employee” but he was going to fire her. Baltezare asked for something in writing and as Aiken was preparing a written note, Nicholson asked Baltezare “You were involved in the Union, weren’t you?” Baltezare acknowledged she had been and Nicholson asked, “Why?” “Why didn’t you listen to Keith [Supervisor Aiken]?” Baltezare told Nicholson it had not done any good in the past and stated the employees had no job security. Baltezare said Supervisor Aiken then handed her a written note indicating she was discharged for causing disturbances and agitation throughout the plant and for causing a loss of production.<sup>43</sup> Baltezare asked Aiken to explain what the disturbances and agitation were. Aiken told her “Ah, you know.” Baltezare insisted she did not but Supervisor Aiken refused to answer any further. Baltezare left the plant at that time.

#### a. Supervisor Aiken’s role

Supervisor Aiken testified he made the decision to terminate Baltezare and did so because she caused disturbances in the plant, broke down morale among the employees, and instigated bad feelings among her coworkers. Aiken said Baltezare had “always” shown these traits. When asked why

<sup>41</sup> There is no contention that she was a supervisor within the meaning of the Act.

<sup>42</sup> She said she attended a second union meeting on February 15.

<sup>43</sup> The actual discharge slip reads as follows:

Rose Baltezare was terminated on 2-18-92 at 7:30 a.m. because of causing disturbances and agitation in the factory which caused loss of production.

Keith Aiken

her longtime misconduct had not resulted in her discharge earlier,<sup>44</sup> Aiken testified:

Well, maybe it should have, but it just built up to a point and I just finally decided that was the best thing to do because she was just causing too much trouble and too many bad feelings in the plant.

Supervisor Aiken testified he only told Baltezare at the time he discharged her that she was being discharged for causing a disturbance.

#### b. Vice President Brannigan’s role

Executive Vice President Brannigan testified Baltezare “had gotten to the point as a supervisor where she couldn’t keep employees working with her.” Brannigan said Baltezare was “dictatorial” and “harsh” with the employees that worked for her. According to Brannigan, certain employees quit rather than work with Baltezare. Brannigan said Baltezare had been “a constant complainer” ever since she had been employed with the Company. Brannigan said Baltezare complained that the tools were not always in working order that the employees had to work with. He said she also complained that a lack of ventilation in the sanding department was not good for the employees. Brannigan said Baltezare was so “belligerent” about everything that he started calling her “Sarge.”

Executive Vice President Brannigan testified he represented the Company at the State of North Carolina unemployment hearing for Baltezare. He said the Company took the position in its documentation before that tribunal that Baltezare was discharged solely for causing disturbances and agitation which resulted in a loss of production.

#### c. Analysis and conclusions

I am persuaded counsel for the General Counsel established a prima facie case with respect to Baltezare’s discharge.

It is clear from Executive Vice President Brannigan’s comments to employees Crawford and Wood, as credibly testified to by Wood, that the Company had concluded Baltezare was one of the chief supporters of the Union. Brannigan told Crawford and Wood that Baltezare’s was the third name mentioned in management discussions concerning the Union’s organizing activity at the plant. Additionally, Supervisor Aiken told Baltezare the Company was too small for a union and “if you all don’t cut this stuff out . . . [the owners] will shut this plant and move to Georgia.” Not only does the above comment of Supervisor Aiken establish knowledge, it also demonstrates the Company’s strong antiunion animus.

The timing of Baltezare’s discharge and other evidence of antiunion animus on the part of the Company has been noted elsewhere and will not be repeated here.

I find the Company failed to demonstrate it would have discharged Baltezare even in the absence of any protected conduct on her part. At best, the Company only demonstrated that Baltezare complained, perhaps often, about

<sup>44</sup> Vice President of Production Robinson testified Baltezare was not discharged earlier because she needed the work and even worked a job other than the one she had with the Company herein.

working conditions in the sanding department. It is beyond dispute that Baltezare had "always" voiced concerns regarding working conditions in her department. Baltezare's complaints only became of concern to the Company when union activity, which it perceived Baltezare was at least in part responsible for, surfaced at the plant. I reject the Company's contention that employees could not work with Baltezare. If Baltezare had such a problem, it had been tolerated from the beginning of her employment. I conclude and find the Company violated Section 8(a)(3) of the Act when on February 18, it discharged and thereafter failed and refused to reinstate Baltezare.

#### CONCLUSIONS OF LAW

1. Peter Vitalie Company, Inc. is an employer within the meaning of Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Sterling Billiard Company, Inc. is an employer within the meaning of Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Peter Vitalie Company, Inc. and Sterling Billiard Company, Inc. (collectively, the Company) constitute a single-integrated business enterprise and a single employer within the meaning of the Act, and individually and collectively constitute an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. United Paperworkers International Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

5. By engaging in the following conduct, the Company violated Section 8(a)(1) of the Act.

(a) Threatening its employees with discharge if they engaged in union activity.

(b) Interrogating its employees concerning their union sympathies and desires.

(c) Creating an impression among its employees that their union activities were being surveilled.

(d) Soliciting employees to repudiate their support of the Union.

(e) Threatening its employees with more stringent enforcement of its rules for engaging in union activities.

(f) Threatening its employees with a reduction in their work hours if they engaged in union activity and/or selected the Union as their collective-bargaining representative.

(g) Threatening its employees with plant closure if the Union were selected as the employees' collective-bargaining representative.

(h) Advising its employees it would be futile to engage in union organizational activity, and

(i) Threatening its employees with unspecified reprisals for engaging in union activities.

6. By issuing written warnings to its employees Tammy Crawford and Gerald Wood on or about February 13, 1992, because they joined, supported, or assisted the Union and/or engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities or other concerted activities, the Company engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

7. By discharging its employees Tammy Crawford, Gerald Wood, Rose Baltezare, and Keith Powell on or about Feb-

ruary 18, 1992, and thereafter refusing to reinstate them because of their union concerted and protected activities, the Company engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found the Company has engaged in violations of Section 8(a)(1) and (3) of the Act, I shall recommend it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Company discriminatorily issued written warnings to its employees Tammy Crawford and Gerald Wood, I shall recommend that the warnings be immediately expunged from their files, that they be notified in writing this has been done, and that evidence of the unlawful warnings will not be used as a basis for any future personnel actions against them. Having also found the Company discriminatorily discharged employees Tammy Crawford, Gerald Wood, Rose Baltezare, and Keith Powell, I shall recommend they be offered immediate and full reinstatement to their former positions of employment or, if their former positions of employment 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, with interest. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>45</sup> I also recommend the Company be ordered to expunge from all files any references to their discharges and notify them in writing this has been done and that evidence of the unlawful actions against them will not be used as a basis for any future personnel actions against them. Finally, I recommend the Company be ordered to post an appropriate notice to employees for a period of 60 days in order that employees may be apprised of the rights under the Act and the Company's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>46</sup>

#### ORDER

The Respondent, Peter Vitalie Company, Inc. and Sterling Billiard Company, Inc., Rosman, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with discharge if they engage in union activity.

(b) Interrogating its employees concerning their union sympathies and desires.

<sup>45</sup> Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.

<sup>46</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Creating an impression among its employees that their union activities were being surveilled.

(d) Soliciting employees to repudiate their support of the Union.

(e) Threatening its employees with more stringent enforcement of its rules for engaging in union activities.

(f) Threatening its employees with a reduction in their work hours if they engaged in union activity and/or selected the Union as their collective-bargaining representative.

(g) Threatening its employees with plant closure if the Union were selected as the employees' collective-bargaining representative.

(h) Advising its employees it would be futile to engage in union organizational activity.

(i) Threatening its employees with unspecified reprisals for engaging in union activities.

(j) Discharging, warning, or otherwise discriminating against its employees because of their membership in, or activities on behalf of, the Union or because they engaged in other protected concerted activities.

(k) 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) Expunge from the files of employees Tammy Crawford and Gerald Wood the discriminatorily motivated warnings given them on or about February 13, 1992, and notify them in writing this has been done and that evidence of the unlawful actions will not be used as a basis for any future personnel actions against them.

(b) Offer Tammy Crawford, Gerald Wood, Rose Baltezare, and Keith Powell immediate and full reinstatement to their former jobs or, if their 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 this decision and expunge any reference to their discharges from their work records.

(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 Rosman, North Carolina, facility copies of the attached notice marked "Appendix."<sup>47</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Company's authorized representative, shall be posted by the Company 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 Company 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 Company has taken to comply.

#### 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 discharge or issue warnings to our employees because of their activities on behalf of the United Paperworkers International Union, AFL-CIO.

WE WILL NOT threaten our employees with discharge if they engage in union activity.

WE WILL NOT interrogate our employees concerning their union sympathies and desires.

WE WILL NOT create the impression among our employees that their union activities were being surveilled.

WE WILL NOT solicit our employees to repudiate their support of the Union.

WE WILL NOT threaten our employees with more stringent enforcement of our rules if they engage in union activities.

WE WILL NOT threaten our employees with a reduction in their work hours if they engage in union activity and/or select the Union as their collective-bargaining representative.

WE WILL NOT threaten our employees with plant closure if the Union is selected as the employees' collective-bargaining representative.

WE WILL NOT advise our employees it would be futile to engage in union organizational activity.

WE WILL NOT threaten our employees with unspecified reprisals for engaging in union activities.

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

WE WILL expunge from the personnel files of Tammy Crawford and Gerald Wood the unlawfully motivated written warnings we issued them on or about February 13, 1992, and WE WILL advise them, in writing, this has been done and that evidence of our unlawful actions will not be used as a basis for future personnel actions against them.

WE WILL offer Tammy Crawford, Gerald Wood, Rose Baltezare, and Keith Powell immediate and full reinstatement to their former jobs or, if their 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 ben-

<sup>47</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

efits suffered as a result of our unlawful conduct, with interest.

WE WILL notify Tammy Crawford, Gerald Wood, Rose Baltezare, and Keith Powell that we have removed from our

files any reference to their discharges and that their discharges will not be used against them in any way.

PETER VITALIE COMPANY, INC. AND  
STERLING BILLIARD COMPANY, INC.