

Tyson Foods, Inc. and United Food and Commercial Workers, Local 425, AFL-CIO. Cases 26-CA-14731 and 26-CA-14821

May 28, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On July 24, 1992, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the General Counsel filed an answering brief.

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

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

The General Counsel has excepted to the judge's failure to find that the Respondent violated Section 8(a)(1) of the Act when its agent, Jean Andrews,² interfered with an employee who was attempting to discuss union business with a shop steward. For the reasons set forth below, we find merit in the General Counsel's exception.

As found by the judge, employee Melissa Smith asked employee Hilda Cunningham in the breakroom to tell her about the Union. Cunningham suggested that Smith speak to Union Steward John Foster, who was nearby. The two employees joined Foster and were discussing the Union when Andrews approached them and sat down near Cunningham. Cupping her hand, Andrews whispered to Cunningham, "I have to sit

down to keep John [Foster] from talking to her." Foster and Smith then stopped talking and left the area.

The judge found that Andrews' conduct would constitute a violation of the Act if it were "a constant or even frequent practice." However, the judge concluded that no violation had occurred because the conduct was "an isolated instance" and because "one of [the] persons involved was a long time Union steward who should not have been intimidated by Andrews." We disagree.

First, with respect to the "isolated" finding, we note that the judge found that earlier in the year Corporate Personnel Manager Tim McCoy and Regional Personnel Manager Chuck Yarbrough told a meeting of supervisors that one way to assist in the decertification of the Union was to isolate union supporters from other employees and to "scare off" union stewards. Viewed in this context, the Andrews incident was not an isolated occurrence, but rather was consistent with the Respondent's unlawful plan to oust the Union.

Second, the issue is not whether Foster should or should not have been intimidated by Andrews. "The test is whether Respondent has engaged in conduct which reasonably tends to interfere with the free exercise of employee rights under the Act." *Hanes Hosier*, 219 NLRB 338 (1975). Such a tendency is clearly present here because Andrews' conduct constituted an obvious and, indeed, admitted attempt to restrict employee Smith from receiving information about the Union. Therefore, we find that Andrews' conduct violated Section 8(a)(1) of the Act.

ORDER³

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Tyson Foods, Inc., Dardanelle, Arkansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as new paragraph 1(j), and renumber the present paragraph 1(j) as 1(k).

"(j) Interfering with employees discussing union business on nonwork time in nonwork areas."

2. Substitute the following for paragraph 2(b)

"(b) On request of the Union, rescind any or all of the changes it has unilaterally implemented on or after the date it unlawfully withdrew recognition from the Union, including, but not limited to, a performance bonus of between 2 and 3-1/2 percent, a wage increase, an increased shift premium, a new attendance policy, and a new service award and attendance award program."

³In his recommended Order, the judge apparently inadvertently ordered the Respondent to rescind changes unilaterally implemented "on or before" the date it unlawfully withdrew recognition, rather than "on or after" that date. We correct the judge's error.

¹The 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.

We note that in sec. III,B,2,a, par. 2 of his decision, the judge attributed certain testimony to former employee Ronnie Garner, when, in fact, the testimony was that of former employee Greg Jones. We correct this inadvertent error.

²We agree with the judge that there are two independent grounds for finding Jean Andrews to be an agent of the Respondent, neither of which requires a finding that she is a supervisor within the meaning of Sec. 2(11) of the Act. We agree, for reasons stated by the judge, that she had both actual and apparent authority from management to solicit employee signatures on the decertification petition and oppose the Union's effort to retain its support. We rely on the totality of the evidence and do not suggest that any employee who merely distributes personnel forms is thereby rendered a management spokesperson.

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

APPENDIX

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

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

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 direct, control, circulate, or assist in the circulation of a petition to decertify United Food and Commercial Workers, Local 425, AFL-CIO.

WE WILL NOT promise our employees wage increases, bonuses, and other benefits if they decertify the Union, and alternatively, WE WILL NOT threaten our employees with the loss of wage increases, bonuses, and other benefits if they do not decertify the Union.

WE WILL NOT tell our employees that the Union can do no more for them than Tyson Foods, Inc., and thus discourage support for the Union and encourage bypassing the Union and dealing directly with Tyson Foods, Inc.

WE WILL NOT surveil and interrogate our employees concerning their union sympathies and preference by observing them as they are solicited for their signatures on a decertification petition.

WE WILL NOT fail or refuse to bargain with the United Food and Commercial Workers, Local 425, AFL-CIO as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All production employees at the Tyson Food Poultry processing plant located at Dardanelle, Arkansas, excluding all maintenance employees, office clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

WE WILL NOT withdraw recognition of the Union as the exclusive collective-bargaining representative of our employees in the above-described unit.

WE WILL NOT unilaterally implement changes in wages and working conditions without first giving the Union an opportunity to bargain.

WE WILL NOT refuse to furnish the Union with information which it requested and which is necessary and relevant to its role as exclusive collective-bargaining representative of our employees in the above unit.

WE WILL NOT interfere with employees discussing union business on nonwork time in nonwork areas.

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

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of our employees in the above unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request of the Union, rescind any or all of the changes we unilaterally implemented on or after the date we unlawfully withdrew recognition from the Union, including, but not limited to, a performance bonus of between 2 and 3-1/2 percent, a wage increase, an increased shift premium, a new attendance policy, and a new service award and attendance award program.

WE WILL furnish the Union information it requested in its letter of July 9, 1991, and on request, furnish the Union any other necessary and relevant information which it may request in furtherance of its role as bargaining representative or our employees in the above unit.

TYSON FOODS, INC.

Bruce E. Buchanan and Susan B. Greenberg, Esqs., for the General Counsel.

Michael R. Jones and Joseph F. Gilker, Esqs., of Mountainburg, Arkansas, for the Respondent.

Carol Clifford, Esq., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On October 2, 1991,¹ United Food and Commercial Workers, Local 425, AFL-CIO (the Union or Charging Party) filed an unfair labor practice charge against Tyson Foods, Inc. (Tyson or Respondent) in Case 26-CA-14731. The Union filed an amended charge in this case on November 7. It filed a charge in Case 26-CA-14821 on December 4. Based upon these charges, the Acting Regional Director for Region 26 issued an order consolidating cases, consolidated complaint and notice of hearing (the complaint) on January 7, 1992. The complaint alleges that Respondent has engaged in conduct which violates Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent filed a timely an-

¹ All dates are in 1991 unless otherwise noted.

swer to the complaint wherein it denies that it committed any unfair labor practices.

Hearing was held in these matters in Russellville, Arkansas, on January 9–12 and April 13–15, 1992. At the hearing, the General Counsel moved to amend the complaint based upon an amended charge filed by the Union on January 31, 1992. The amendment sought to add the names of a number of supervisors to those already listed in paragraph 11 of the complaint. With the exception of Supervisor Brad LeMaster, whose name was made known to Respondent prior to hearing, I denied the amendment as it came without proper notice to Respondent and in fact, adds virtually nothing to the case as a number of supervisors are already alleged to have engaged in unlawful activity.

Briefs were received from the parties on or about June 2, 1992. Based upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits and I find that it is a corporation with, inter alia, an office and place of business in Dardanelle, Arkansas, where it engages in the processing of poultry products. It is now and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Overview of the Dispute and the Matters in Issue*

The Respondent operates a large poultry processing plant in Dardanelle, Arkansas, where the majority of its hourly employees have been represented by the Union since about the 1960s.² At the Dardanelle complex, in addition to the poultry plant, Tyson has breeder and broiler departments, hatcheries, a feed mill, transportation facilities and a gas company. The complex employs about 1500 people, of which about 1100 are employed in the plant. The manager of the complex is Kenton Keith, the plant manager is David Massey, and at all times material, the complex personnel manager was Ken Sanders. The plant operates on three shifts, with the first and second shifts also having personnel managers, who were Gene Eggman and Arlene Brown respectively. There are two

²The Union achieved recognition at the Dardanelle facility while it was owned by another company. Several years prior to the events in question, Respondent purchased the facility and continued recognition of the Union for its employees in the following appropriate unit:

All production employees at the Tyson Food poultry processing plant located at Dardanelle, Arkansas, excluding all maintenance employees, office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

The most recent collective-bargaining agreement between the parties was effective by its terms from October 2, 1990, to November 3, 1991.

shift managers, Mike Casto and Billy McNeil, and four shift superintendents, Robert Whitten, Brenda Thompson, John Mulligan, and Lucille Caraway.

Following the signing of the most recent collective-bargaining agreement between the Union and Respondent, there was evidently some discontent among the represented employees because of the manner in which a negotiated wage increase was put into effect. Respondent contends that this discontent fostered a decertification movement among its employees which resulted in the filing of a decertification petition in August. The decertification effort was started by employee Jean Andrews, who the General Counsel asserts was acting as an agent for Respondent in initiating and seeking support for the decertification petition.³ Until about April 1990, Andrews had been a unit employee and a union steward. Because of an injury to her hand, she chose to cease her work in the unit and was given a nonunit job as a custodian which required cleaning the facility's breakroom and executive offices. In about January 1991, she was unofficially, temporarily promoted to the position of trainer for the second shift, in which position she is responsible for giving new employees indoctrination with respect to Respondent's work rules, policies, and benefits.⁴ She also gives initial training to these employees in their actual job assignments. The training program, which was designed to improve Respondent's retention of employees and cut down on the substantial employee turnover it experiences, lasted initially about 3 weeks. It was subsequently cut to a 2-week program, then to a 1-week program, and in some instances when employees were urgently needed in production, to a 1-day program.

In the spring of 1991, Andrews sought information about starting a decertification effort at the facility from the National Labor Relations Board. She, together with two unit employees, then set about collecting signatures on a decertification petition. There is uncontroverted evidence that she made and distributed a number of handbills urging employees to decertify the Union. There is much controverted evidence that she actively pursued the collection of signatures on her petition on company time with the support of management. During the decertification campaign, which in its most active part ran from mid-May to mid-August, the Union began handbilling in opposition to the decertification effort. Shortly after the Union entered the campaign, Respondent began handbilling in support of the effort. During the campaign, Andrews is alleged to have committed a number of unfair labor practices and Respondent's supervisors are alleged to have engaged in unlawful and coercive surveillance of employees as they were solicited to sign the decertification petition by Andrews.⁵

Following the filing of the decertification petition, Respondent withdrew recognition from the Union and imple-

³There is no allegation that Andrews was a statutory supervisor.

⁴I use the word unofficially because no record of Andrews' promotion appears in her personnel file. As far as company records are concerned, she is still a custodian. Additionally, because there is no paperwork connected with Andrews' promotion to trainer, there is no certain date in this record as to when this event occurred.

⁵The complaint includes an allegation that Respondent violated the Act additionally by threatening an employee because she filed an unfair labor practice charge. This matter will be ruled upon, but is not related to the primary issues involved as it has nothing to do with the decertification campaign.

mented a wage increase and a number of new working conditions without notice to the Union and without bargaining. Additionally, because of its withdrawal of recognition, it refuses to supply certain information which was requested by the Union.

It is alleged that Andrews is an agent of the Respondent within the meaning of Section 2(13) of the Act and thus Respondent is alleged to have given unlawful assistance to and controlled the decertification petition drive. Respondent denies that Andrews is a statutory agent and that it had anything to do with her efforts. Within this broad context, the complaint raises the following specific issues:

1. Is Jean Andrews an agent of Respondent within the meaning of Section 2(13) of the Act, and did Respondent, acting through Andrews, give unlawful assistance to and control the decertification petition drive at its Dardanelle facility from on or about April 2, 1991, to date?

2. Did Respondent, acting through Jean Andrews, at Respondent's facility:

a. On or about the following dates, threaten employees with the loss of wage increases and bonuses if the Union continued to represent employees:

- i. between June and August 1991
- ii. late June or July 1991
- iii. late August 1991

b. On or about the following dates, threaten employees with the loss of bonuses if the Union continued to represent employees:

- i. May 20, 1991
- ii. late June 1991

c. On or about the following dates, promise its employees wage increases and bonuses if they decertified the Union:

- i. between June and August 1991
- ii. late June or July 1991

d. On or about the following dates, promise its employees bonuses if they decertified the Union:

- i. late June 1991
- ii. September 6, 1991

e. On or about the following dates, promise its employees a raise if they decertified the Union:

- i. May 1991
- ii. between June and August 1991
- iii. July or August 1991

f. On or about early July 1991, interfere with an employee who was attempting to discuss union business with a shop steward.

g. In late June 1991, solicit employees to bypass the Union and bring their problems directly to company officials.

3. Did Respondent, since or about September 9, and continuing to date, unlawfully fail and refuse to bargain with the Union as the exclusive representative of the unit?

4. Did Respondent, on or about November 5, 1991, unlawfully withdraw recognition of the Union as the exclusive collective-bargaining representative of the unit?

5. Did Respondent, on or about November 4, unlawfully make the following changes in wages or working conditions:

- a. Institute a performance bonus of between 2 and 3-1/2%.
- b. Implement a wage increase.
- c. Increase shift premiums.

6. Did Respondent, on or about January 1, 1992, unlawfully implement a new attendance policy and new service award and attendance award program.

7. Did Respondent, acting through David Massey, Ken Sanders, Arlene Brown, Gene Eggman, Billy McNeil, Mike Casto, Carlene Oliver, Flo Sherman, Steve Snyder, Virginia Caraway, Edward George Williams, Lisa Carter, Freda Mashburn, and Brad LeMaster, all admitted statutory supervisors, near Gate B of Respondent's facility, surveil and interrogate employees concerning their union activities on various dates between mid-July and September 1991, by observing them as they were solicited to sign a petition to decertify the Union and/or were handbilled?

8. Has Respondent unlawfully refused to supply the Union information which it requested in letters dated July 9, October 17, and October 22?

9. Did Respondent, acting through Night-Shift Personnel Manager Arlene Brown, an admitted statutory supervisor, on or about September 17, 1991, threaten an employee with loss of insurance claims assistance because the employee's insurance claim was the subject of a charge pending before the National Labor Relations Board?

B. Did the Respondent Unlawfully Withdraw Recognition from the Union Based on the Decertification Petition?

The crux of this case is whether the Respondent could lawfully withdraw recognition from the Union. If so, then its refusal to thereafter bargain with the Union or provide the Union with requested information is lawful. If not, then Respondent has violated the Act in these regards. Respondent withdrew recognition based upon the fact that the decertification petition filed with the Board in mid-August contained the names of a majority of the employees in the bargaining unit.⁶ An employer, before it may lawfully withdraw recognition from an incumbent union, must have actual proof that the union in fact no longer enjoys majority support, or it must possess a good-faith doubt, founded on a sufficient objective basis, as to the union's continuing majority status. *Process Supply*, 300 NLRB 756 (1990), and cases therein cited; and *Cypress Lawn Cemetery Assn.*, 300 NLRB 609

⁶As of August 13, the date of filing, the petition had valid signatures from 646 unit employees out of a total of 1081 such employees. On brief, the Respondent notes that more signatures were obtained after the initial filing and that ultimately, well over 900 signatures were obtained. In this regard I would note that considering Respondent's strong stance against the Union and its support of the decertification effort, any unit employee who did not sign up for decertification after the initial filing was a very ardent union supporter. Respondent was provided with the names of the signers by Andrews so it was aware of where each employee stood on the issue.

(1990), and cases therein cited. As the decertification petition constitutes the actual proof of lack of majority status, or the basis for Respondent's good-faith doubt of that status, its validity for this purpose is clearly brought into issue.

Where an employer aids or supports employees in withdrawing from a union or otherwise manifesting their disaffection with an incumbent representative, the Board has held that the evidence of withdrawal or disaffection thus procured by the employer cannot serve as the requisite objective basis upon which a lawful withdrawal of recognition must be predicated. *Texaco, Inc.*, 264 NLRB 1132 (1982). *American Linen Supply Co.*, 297 NLRB 137 (1989); *Walker Mfg. Co.*, 288 NLRB 888 (1988). The Act requires that an employer not give assistance to or control a decertification drive or risk tainting the resulting decertification petition. *Process Supply Inc.*, supra. An employer may not lawfully withdraw recognition in the context of its own unfair labor practices, especially if the withdrawal is based on a decertification petition which it circulated or was responsible for circulating. *Mariott In-Flite Services*, 258 NLRB 755 (1981), and cases therein cited.

As noted above, in this case, the Respondent is alleged to have unlawfully assisted and controlled the decertification effort primarily through the use of a statutory agent, Jean Andrews. Upon careful consideration, I believe the credible facts establish that Andrews was an actual agent of Respondent with respect to decertification movement, and in addition, further find that she was an apparent agent whose actions are attributable to Respondent. Credibility determinations are crucial in making these findings and I have carefully considered the arguments advanced by the parties in making such determinations. As will be discussed in more detail below, I have considered the demeanor of the witnesses, their probable motivations, conflicts within the testimony of individual witnesses as well as a number of other factors in deciding who was telling the truth.

1. Was Andrews an actual agent of Respondent in regard to leading the decertification campaign?

With regard to the matter of whether Andrews was an actual agent of Respondent, there are two so-called "smoking guns" in this record. The first is an alleged admission by a high ranking official with Respondent to Union President Benny Dollar that the Company intended to decertify the Dardanelle plant. The other is found in the testimony of Respondent's former supervisor, John Grinder, wherein he alleges that Respondent admitted that it was directing the decertification movement and had a person to front for it. Though a great effort was made by Respondent to discredit the testimony of Dollar and Grinder, a chain of uncontroverted events and actions of Respondent surrounding the decertification movement strongly supports their testimony.

Benny Dollar testified that the Union has represented employees at the Dardanelle facility for about 30 years. The Union has also represented employees at a Tyson Pine Bluff, Arkansas facility since 1968. In 1991, Tyson opened another facility at Pine Bluff which is nonunion. The Union has talked with its employees about organizing.

Negotiations for a new contract at Dardanelle began in or about August 1990. For the first time in the parties' bargaining history, Respondent proposed a 1-year contract. The

Union proposed a 3-year contract as had been the practice at Dardanelle. Respondent contends that its proposal was to get Dardanelle "off the cycle" with its organized Pine Bluff plant, which had a contract expiring just after the one at Dardanelle. However, a conversation between Dollar and William Jaycox, Respondent's group vice president of human resources, offers another explanation.

The two met, with Union Business Agent Willis Bartlette also present, for lunch in Fort Smith, Arkansas, on November 20, 1990. At this time, negotiations had been completed and the parties had reached agreement on a new contract. The Respondent had prevailed in these negotiations and the Union had agreed to a 13-month contract. With respect to wages, the Union had also agreed to take whatever Tyson offered to its nonunion plants following an annual October wage review which Tyson conducts. As a result of the 1990 wage review, Tyson gave its nonunion plant employees with a year or more of seniority a 20-cent-an-hour pay increase. Employees with less seniority received no wage increase. At its union plants, Tyson gave the involved unions the choice of following its lead on the 20-cent-an-hour increase for more senior employees, or giving a 15-cent-an-hour across-the-board increase to all employees. Dollar had selected the 15-cent across-the-board option and it had been implemented by Tyson at Dardanelle.

Dollar's choice had quickly proven to be unpopular, so one purpose of the Fort Smith meeting with Jaycox was to see if something could be done about the situation. Jaycox also wanted the meeting to secure some further understanding about the Union's use of handbills which angered Jaycox. During negotiations, the Union had issued a handbill which set out the company proposals in a manner Jaycox labeled "rockthrowing." He believed that he and Dollar had subsequently agreed that further action of this type would not occur without having a mutual discussion about the problem giving rise to a proposed handbill. However, the Union had issued another handbill without advance notice to Jaycox, which further angered him.

Thus, at the Fort Smith meeting, Jaycox was upset because the Union had issued another handbill about the wage matter which Jaycox felt was unfair. He said Dollar was upset because he did not believe the Company explained the wage options to him properly, causing Dollar to select the wrong option.

According to Dollar, the conversation went thusly:

We discussed the one-year agreement and Jaycox said, "You know the reason we wanted a one-year agreement is that we're going to decertify the union at the end of that one year." We talked about better communications. Jaycox told us, "If we're going to decertify you, we're going to tell you. If we're not going to, if we're going to work with you, we should tell you that." We went into the deal about the one-year agreement and he said—"That's the reason we wanted that one year." Then he went on into talking about the Pine Bluff plant. He said, "you know we're building this—got the Pine Bluff plant and if you let us get our feet on the ground, we might not decertify the union in Dardanelle." I told him, "Look, I've been offered deals before," and I wasn't interested in his deals. "If the employees in Pine Bluff want to organize, we'll be

there to organize it. If the people in Dardanelle want to decertify, that's up to them." When we were talking about decertifying, he told me that they didn't feel like they needed a union in their plants, that they would do what's right for the employees, and I made the statement to him, "Yeah, you'll do what you think is right for the employees, not necessarily what they think is right."

Jaycox denied any suggestion that he offered not to decertify the Dardanelle plant if Dollar would not organize the new Pine Bluff plant. On the other hand, he testified that Dollar had commented that he knew Tyson was going to try and decertify the Dardanelle plant because the Company had only proposed a 1-year contract. Jaycox testified that he replied, "Look Benny, if you were that worried about a decert, why did you counter with a 13 month contract?" Whether Jaycox actually offered not to decertify the Dardanelle facility in return for the Union's not attempting to organize the new Pine Bluff plant, or which man brought the subject of decertification up first, Jaycox's testimony makes it clear that he did not deny the accusation leveled at him about Tyson's intent to decertify the Dardanelle facility.⁷

John Grinder was employed at the Dardanelle facility from 1978 until he resigned his employment in September 1991. Until shortly before his resignation, he had been employed as third shift supervisor in maintenance. At the time of his resignation, he was employed as an hourly electrician, having returned to the hourly position as a matter of his own choice. He testified about two management meetings he attended in 1991. The first was around February 1991 and was held at Tyson's large training center located in Russellville, Arkansas. According to Grinder, this was a quarterly supervisors'

⁷On brief, Respondent correctly points out that Willis Bartlette was not called to corroborate Dollar's version of the conversation though Bartlette was in attendance throughout the hearing. For this reason, I reluctantly accept Jaycox's denial that he offered not to decertify the Dardanelle plant in exchange for Dollar's assurance he would not attempt to organize the new Pine Bluff plant. I say reluctantly because other factors strongly support Dollar. There had been an unsuccessful decertification effort at Dardanelle in 1987 conducted in conjunction with a similar, successful decertification campaign at Tyson's Waldron, Arkansas plant. The manager of the Waldron plant, David Massey, was promoted to the plant manager position at Dardanelle in January 1990. The Respondent, through Ken Sanders, began keeping close tabs on the Union's membership at Dardanelle by a reviewing dues-checkoff numbers on a regular basis. Based on this review, Respondent felt support for the Union was declining. Thus, Dollar's fear that the 1-year contract term proposed by Respondent was a prelude to a decertification effort appears well founded, and his description of Tyson's attitude toward the Union was shown to be accurate. Jaycox also testified that as a result of the involved conversation, he agreed to look into how much trouble would be involved in reversing the Union's wage decision. Yet, there is no evidence that any such effort was made, and the decertification effort began within 2 months of this meeting. Therefore, even accepting Jaycox's version of the conversation, the clear inference to be drawn from Jaycox's failure or refusal to deny Dollar's accusation that Tyson intended to decertify the Dardanelle plant is that it did intend to pursue this course of action. I draw this inference. I note that Jaycox was the Tyson headquarter's official who was in charge of the Company's actions during the decertification campaign. He lead a series of meetings at Dardanelle where supervisors were advised about what to do in such a campaign.

meeting attended by all Dardanelle supervisors, Plant Manager David Massey and Complex Personnel Manager Ken Sanders, and was held pursuant to a written memo. He testified that at this meeting, David Massey spoke, as did Vickie Hilliard, a former union business agent employed by Tyson. A topic discussed was union decertification. Massey told the supervisors that he would like to see the facility decertified and told them what they could and could not do. Massey mentioned he had been involved in a successful decertification at Tyson's Waldron, Arkansas plant. Massey jokingly described himself as the "union buster." Hilliard advised the supervisors not to approach the employees on the decertification issue, but to answer any questions put to them by employees. He also testified, after being shown an affidavit he gave to the Union, that Jean Andrews was at this meeting passing out I.D. badges.

He attended another meeting which was held at the plant at Dardanelle. This meeting was led by Massey, Corporate Personnel Manager Tim McCoy, and Regional Personnel Manager Chuck Yarbrough. He placed the date of this meeting in March. The topic of this meeting was also decertification. Yarbrough told the attendees that as far as they were concerned the meeting never occurred. At the meeting, what had happened at Waldron was discussed. The supervisors were told that they could not approach people, but that the Company would have somebody to get names on the petition. They were told that if they found out anything about a strong union supporter to report it to Massey. They were supposed to isolate such supporters from other employees and to scare off union stewards.⁸

Respondent put forth the testimony of a number of supervisors to establish two points with respect to these meetings. First, it contended that the Company did not have a quarterly supervisors' meeting at the Russellville Training Center in February 1991, and that the last such quarterly meeting held there took place in August 1990. The witnesses for Respondent uniformly denied that at the quarterly meeting held in August or the second meeting described by Grinder that anyone called Massey a "union buster," that anyone said the Company had someone to get signatures, that union supporters and stewards were to be isolated or run off, that the meeting was not supposed to have happened, and that Andrews was present at either meeting.

To decide who is telling the truth about these meetings, I have looked at a number of factors, obviously including the demeanor of the witnesses. On the matter of demeanor and the somewhat related matter of motivation for giving testimony, I would note that Grinder wins hands down. He was a reluctant witness appearing pursuant to a subpoena, and did not want "to stir up trouble." That is understandable as his wife is presently employed at the Dardanelle facility in a very good job and his brother is also employed there. Grinder testified credibly that this fact was pointed out to him by Ken Sanders in a phone conversation after his resignation, in which he told Sanders that the Union wanted to talk with him. He was not terminated by Tyson and left of his own accord, and was employed elsewhere at the time of hearing. Grinder's wife was given a promotion shortly after the Sand-

⁸Grinder also testified that he attended another such meeting about 6 weeks later. He testified that this meeting was chaired by Massey, and that he came in at the end of the meeting.

ers' call. Respondent's witnesses testified that the promotion occurred earlier, but the Company's personnel records indicate otherwise. Grinder quit in September and placed Sanders phone call at about a month later. Grinder's wife was promoted on October 28.

Grinder appeared credible when he gave his testimony. On the other hand, many of the supervisors that Respondent brought to the hearing to refute Grinder's testimony appeared to me to be very apprehensive and concerned about giving the wrong answer to questions. In addition, I also found the testimony of key witnesses Andrews, Sanders, and Second Shift Personnel Manager Arlene Brown, in particular, to be far less than candid.⁹

On less subjective grounds, I also find the testimony of Grinder supported by other factors. Grinder testified that the quarterly meeting he attended was set by a written memorandum. No one denied this, and Respondent did not produce

⁹There are conflicts in the testimony of Brown, Sanders, and Andrews with respect to affidavits given to the Board, and with each others' testimony, and with the testimony of other witnesses, both those presented by the General Counsel as well as Respondent. At points in this decision, I note some of these conflicts. Sanders, for example, testified during the first week of the hearing that he was the complex personnel manager, and again at the outset of his second appearance on the stand made the same claim. Toward the end of the case he testified that in fact he had been promoted or transferred out of this position in January 1992, prior to the hearing. Why Sanders would want to hide the fact of his promotion is of course speculative, but it is typical of the lack of candor exhibited by Respondent's primary witnesses in this case. Other testimony by these three that is lacking in candor and/or is in conflict will be pointed out, but there are too many examples to discuss them all. Based on my finding that Sanders, Andrews, and Brown are not credible, I specifically do not credit their denials of anything that another witness alleged them to have said or done, unless I specifically and affirmatively do so. Andrews was evasive in answering the questions of the General Counsel with respect to the decertification campaign and her role in it. He often had to refer her to affidavits given to the Board during the investigation of this case to get a straight answer. On several occasions her answer to a question would indicate a lesser involvement in the campaign than her affidavits showed. Her general denial of the numerous actions she is alleged in the complaint to have taken did not have the ring of truth to them. Moreover, there is absolutely no indication that the many employee witnesses who gave relatively detailed accounts of various statements she made and actions she took were telling anything but the whole truth. Andrews did not retake the stand after these witnesses testified and deny or explain their testimony. In my opinion, this failure, as well her demeanor when testifying, indicates that she was not telling the truth in her testimony. If Andrews was not acting as an agent for Respondent in the decertification campaign, she should have been willing to freely acknowledge her role in the campaign, including statements she made to employees she solicited for signatures on the petition. Her lack of candor is all the more suspect when one realizes that this lady almost singlehandedly pushed through a decertification petition with a zeal that is truly remarkable for one with nothing to gain by the effort. During the course of the campaign, she used all of her vacation and what passes for personal days at Tyson to further the decertification cause. She was at the plant engaged in decertification efforts for many hours beyond those she was required to be there to work. One would expect someone with this much commitment to be forthright about her activity, yet she was anything but forthright, failing even to offer any motivation for her activity in her testimony. She appeared to me to be someone with something to hide, and the only thing she would have any reason to hide is her agency status with Respondent.

any memorandum to demonstrate that a quarterly meeting was not held in February. Massey had been promoted to the position of plant manager at Dardanelle in January 1990, from a similar position at Tyson's Waldron, Arkansas plant, which had decertified the Union while Massey was its plant manager. The matter of the Waldron decertification was common knowledge throughout the Company and, given Tyson's antiunion posture, it is very believable that he would be referred to as the "union buster." The position of Tyson vis-a-vis a need for the Union as described by Grinder was affirmed by company officials in their testimony. Even Respondent's witnesses put Vicki Hilliard at the August meeting. She was hired by Tyson from her position as business agent for the Dardanelle plant and was evidently let go after the decertification petition was filed. Whether Jean Andrews was at this meeting is not so clear. At the hearing, Grinder had no present recollection of seeing her there. On the other hand, one of her acknowledged duties is the preparation of I.D. badges, the function he stated in his affidavit that she was performing.

With respect to the second meeting described by Grinder, Tyson officials agree that it took place, but date its occurrence in June rather than in March. I accept the June date.¹⁰ Respondent's witnesses uniformly remember Bill Jaycox speaking at this meeting about the mechanics and legalities of the decertification process. They remember Tim McCoy speaking about "TIPS," an acronym for what supervisors should not do, i.e., threaten, interrogate, promise, or survey employees during the decertification campaign. It was also admitted that Massey often closed supervisory meetings by telling employees that the matters discussed therein were confidential and should not be discussed with others. Thus, at least some of the alleged statements Grinder described can be confirmed or inferred from the testimony of the company witnesses.

On the matter of whether the supervisors were told to isolate strong union supporters and report such supporters to higher management, at least some of the subsequent actions of Respondent also support Grinder's description. Andrews was credibly accused of breaking up a conversation between a new employee and a union steward to keep the steward from persuading the employee to withdraw her name from the decertification petition. Employee Josiephine Nichols interrupted Andrews soliciting signatures for the decertification petition in the breakroom and engaged in an unsuccessful argument with Andrews to dissuade the employees from signing the petition. Shortly thereafter, she was called by her supervisor who said that Plant Manager David Massey had seen her and had expressed his concern. On the matter of identifying union supporters, Respondent's management, including Massey, Brown, Sanders, and a host of lesser supervisors, handbilled employees with antiunion messages, and

¹⁰No one had the exact date of this meeting, which Tyson witnesses stated was the first of two such meetings, the second of which took place in August, after Grinder had ceased being a supervisor. Respondent argues that Grinder could not have attended another such meeting for this reason. On the other hand, Massey held several meetings with supervisors between these two meetings to update them on the decertification effort. As Grinder testified that he came in at the end of third meeting, and did not offer any details about it, this third meeting he attended in part may well have been one of the Massey update meetings.

put themselves on at least two, perhaps more, occasions in a position to observe and overhear the success of Andrews' solicitation of employees for their signatures on the decertification petition.

With respect to Grinder's allegation that management said that it had someone to get signatures for it, the objective facts are even more in Grinder's favor. As noted in the overview portion of this decision, Andrews was promoted from a custodial position to the trainer position on the second shift in early 1991.¹¹ She was selected for this position by Sanders on the recommendation of Brown. Brown testified that she recommended Andrews because she was "good with people." It was also Brown who informed Sanders on an unspecified date in the same timeframe that Andrews wanted to decertify the Union. It was in this same timeframe that Sanders took Andrews to dinner at the Tyson Training Center in the company of his spouse and her boyfriend. These dinners at the training center are evidently significant events and are by invitation only. One of Tyson's top officials testified that hourly employees are not invited to attend such dinners. According to Sanders, he wanted to get better acquainted with Andrews. On the other hand, he also testified that he knew Andrews from his dealings with her when she was a union steward, and there is also no showing why he could not get to know her better in the plant, rather than treating her to what appears to be an extraordinary treat.¹² I obviously find the timing of Andrews' statement of desire to decertify the Union, her promotion from a custodial position to one of trainer, and her being taken to dinner at the training center to be suspicious. This is certainly not lessened by the fact that Andrews' personnel file does not reflect the appointment to the trainer position, though it reflects her previous bargaining unit position and her hiring in the custodial position. Sanders said that this was because the position was temporary. However, he also testified that it had at some point become permanent, yet no notation of the promotion is to be found and the personnel file still shows Andrews in a custodial position.

Andrews, in her direct testimony could not remember when she became a trainer, until I suggested that it might have been January 1991. Unlike her custodial position, which she testified that she applied for after an opening was posted in the plant, Andrews evidently did not apply for the trainer position. She was selected for this job by Brown. Given the vagueness of the testimony about why and when Andrews

¹¹ Tyson's Dardanelle facility, as do many other poultry processing plants, experiences a very large turnover in employees. According to one company witness, this can be as much as 100 percent within a year. The majority of new hires are hired on the second shift, with first-shift vacancies being filled on a normal basis by seniority.

¹² Sanders was in charge of directing the Company's part of the decertification effort at the Dardanelle facility. He participated in the drafting of handbills and scheduled supervisors to distribute them. The decertification petition was brought to him by Andrews before it was filed, and thereafter additional signatures to the petition were first given to him before filing with the Board. He coordinated the meetings with Tyson's Springdale, Arkansas headquarters officials and the Dardanelle supervisors and first reported the success of the petition drive to Springdale. I believe that his position with respect to the decertification effort adds significance to the dinner with Andrews, as does the fact that she brought the completed petition to him first before filing it with the Board.

became a trainer and the curious state of her personnel file, I believe that she either became a trainer at Sanders' or Browns' suggestion that she could have the position if she led a decertification effort or alternatively, was given the position after she mentioned the employees' desire to decertify the Union in order to put her in a more effective position to lead the effort. With respect to the matter of whether she actually expressed to Brown a desire to decertify the Union and the timing of this statement in relation to her promotion, one must consider the timing of the events that ostensibly gave impetus to the movement. These occurred in November 1990. Andrews testified that Ruth Payton, at the time chief steward on Day-Shift, discussed her dissatisfaction with the contract the Union had signed, as did unit employee Eva Brock.¹³ She testified that the union stewards were not happy with the contract and refused to sign it. Having heard the discontent about the contract, she talked with some of the employees to see if they wanted to decertify the Union and having found that they did, she testified that she went to see Brown in February 1991 and said that the employees wanted to decertify the Union. There was no reason given for the decision to attempt to decertify the Union taking some 3 months to crystalize when the dissatisfaction with the wage increase was immediate.

Moreover, Andrews herself did not give a reason for wanting to decertify the Union. She was not in the bargaining unit and all of her working conditions were established by Tyson without relationship to any bargaining relationship it had with the Union. Her salary and benefits were in no way tied to the union contract. Thus, she had no obvious benefit to gain from the decertification process, unless one considers her promotion to the trainer position to be quid pro quo for her efforts on behalf of the decertification movement.¹⁴ Be-

¹³ Respondent suggests that Payton and Brock were major participants in the decertification effort. This does not appear to be so based on the evidence of record. Andrews was shown by the evidence to be the driving force behind the effort and the other two employees appear only to be in supporting roles. Moreover, neither Payton nor Brock testified in this proceeding to corroborate Andrews' testimony about the circumstances surrounding the initiation of the decertification campaign or to describe their roles in the effort.

¹⁴ The promotion from custodian to trainer, in addition to being a more pleasant job, carried with it an approximate 20-cent-an-hour pay increase. Andrews' affidavits given to the Board acknowledge that the reasons she believes the unit employees would want to decertify do not apply to her. She wrote in the affidavit, however, that she was upset about the Union removing two former business agents from the plant, Lloyd Ringold and Vickie Hilliard, and that played a role in her decision to want to decertify the Union. However, in her testimony at the hearing, she denied that Vickie Hilliard was one of the reasons she wanted to be involved in the effort. Similarly, none of the numerous handbills that she prepared in the campaign even mentions the removal of these business agents as a reason employees should support the decertification effort. At one point in her testimony she offered that she became dissatisfied with the Union after the 1990 negotiations which ended in October or November of that year, and as a result quit the Union. However, she later admitted that, in fact, she quit the Union when she took the nonunit custodial job some months before negotiations began. She also testified that at one point in the decertification campaign, she helped a union steward pass out union handbills, certainly a strange move for someone who has a genuine personal reason for wanting the Union decer-

Continued

cause she personally had nothing to gain from the decertification of the Union, and based on the credited testimony of Dollar and Grinder, as well as all of the unusual supporting facts set out above, I find that Andrews was put in the trainer position to lead the decertification effort.

ERR14 Andrews moved right ahead with the decertification petition, attempting to file it in May, only to be told by the Board that it was premature.¹⁵ Dollar testified that he had a conversation at about this time with Jaycox. Dollar had been told by a Dardanelle employee that Andrews was passing a decertification petition. Dollar called Jaycox and told him that a company person was passing the petition. Jaycox said it was his understanding that no supervisory person was involved. Dollar reiterated his view that Andrews was a company person. Jaycox said he would look into the matter. Later, Dollar received a call from Jaycox or someone who worked for him saying that no supervisor was involved in the decertification campaign. These conversations were not denied by Jaycox.

Brown and Sanders both testified that after her initial statement of desire to decertify the Union in early 1991, Andrews never again discussed the decertification matter with them until she brought in a completed petition in August. Yet, Massey in one or more meetings with supervisors during the summer of 1991 was able to give the supervisors an "update" and report that the gathering of signatures on the petition was moving along toward an election. There is no explanation given in the record as to how he would come by this information, which was accurate. That is, other than the obvious inference that Andrews was reporting her progress to management. I draw that inference.¹⁶

Andrews was also shifted from the second shift to the first-shift in late July for about 3 weeks. This was an unusual move because new hires are normally hired for the second shift and the first-shift vacancies are filled by seniority. The Company's stated reason for the move was that there was an unusual demand for new employees on the first-shift. However, while on first-shift, Andrews only trained about 20 to 30 employees in the 3-week period. This seems far less than she normally trained on second shift and, if one believes Arlene Brown, these employees all were given just a 1-day

tified, but understandable if her motivation was provided by Sanders or others in Tyson's management.

¹⁵ Respondent argues that if Respondent was controlling the decertification effort, Andrews would not have made this abortive attempt at filing and would have had a better understanding of the law involved. Although this argument has some surface appeal, it is not persuasive. Respondent directed Andrews to the Board and could have presumed she would be given information about decertification and have understood it. Even if one believes, as I do, that Respondent put Andrews up to leading the decertification effort, there is obviously a limit to how closely it could be involved with the petition itself without risking discovery. Moreover, somewhere and somehow along the way Andrews did become fairly expert on the law involved as indicated by her answers to questions put to her by Respondent's counsel.

¹⁶ Respondent argues on brief that the fact that no supervisor is alleged to have violated the Act during the campaign, except for the group surveillance allegations, suggests that it was not controlling the campaign. Given Andrews' success at obtaining signatures, evidently reported to Massey or Sanders, there was no reason for supervisors to get involved in the campaign and a hands-off approach was the safest approach.

training program. Thus, she trained only about two employees a day. Of course, while on first-shift, she was able to and did solicit signatures for her petition from day-shift employees in the breakroom on their breaks, thus vastly increasing her potential for success in obtaining sufficient signatures.

On August 9, Andrews believed the petition had the signatures of a majority of the unit employees and brought the petition to Sanders before filing it with the Board. Sanders asked if he could make copies and did so. There is no reason given why she brought the petition to management prior to filing it. On August 13, Andrews went to the Regional Office of the Board in the company of two other women and filed the petition. The petition was signed by unit employee Eva Brock. Andrews testified that she did not sign the petition herself because of numerous adverse comments she was receiving because of her "company" position with Tyson. She did not want to cause any problems.

As noted earlier, the petition contained 646 signatures out of unit composed of 1081 employees. Of those employees who signed the petition, 288, or 32 percent, were new hires still within their 60-day probationary period. Sixty-one employees, or 7 percent, signed on their first day of employment and 139, or 16 percent, signed within their first week. These figures suggest to me just how effective Andrews was at soliciting signatures from her trainees. One would think that the new hires would be the least interested in the alleged cause of the decertification petition, that is, the decision by the Union to take an across-the-board wage increase rather than giving no raise to new hires and an additional nickel to the more senior employees. The new hires actually benefited by the Union's choice. However, as will be shown later, Andrews had an effective message for the new hires. She first told them that they had no need for the Union in her orientation, and then, on the same day or very shortly thereafter, told them that future raises and bonuses hinged on the decertification of the Union. I have no doubt that they believed her, as she was the company person who explained all the company policies to the trainees.

Jaycox inadvertently testified that subsequent to the filing of the decertification petition, he met Andrews in the company of some 10 other people (unknown to him) touring Tyson's corporate headquarters in Springdale. He did not know why she was there, but tried to explain that Tyson employees in its "Quality Review, or Quality Circle" program are regularly sent by the Company to tour the company headquarters. The Dardanelle plant did not have a quality review program in place, and in any event, Andrews was not part of any such program. Again, no one, including Andrews, gave a reason for this special treatment, and the only obvious inference to be drawn is that she was being rewarded for a job well done in the decertification drive.

Similarly, there appear to be other rewards resulting from the decertification effort. In January 1992, Sanders, Brown, and another personnel manager at Dardanelle, Gene Eggman, were promoted to higher positions.

For the reasons set forth above, I find that Andrews was an actual agent of Respondent in the decertification effort, having been put up to the effort and placed in a position to be effective in the effort by Respondent and as will be discussed below, given every opportunity to successfully circulate the decertification petition. Having done so, Respondent is responsible for her actions, including the circulation of

the petition, and the numerous unfair labor practices she committed while going about her decertification activities. *Cypress Lawn Cemetery Assn.*, supra.

2. Was Andrews clothed with apparent authority to act as Respondent’s agent with regard to the decertification campaign?

Also, as I wrote at the outset of this discussion, I would find that Respondent clothed Andrews with apparent authority to act in its behalf and thus is equally responsible for her actions even if it did not put her up to them. In *Technodent Corp.*, 294 NLRB 924 (1989), a case in which a rank-and-file employee named Hamilton mounted a movement to oust an incumbent union, the Board, reversing a contrary finding by an administrative law judge, found he possessed agency status within the meaning of the Act. Speaking to the considerations which gave rise to that finding, the Board stated:

The judge, in deciding the issue of Hamilton’s agency, examined whether, under all the circumstances, the employees would reasonably believe that Hamilton spoke for and acted on behalf of company management. See, e.g., as cited by the judge, *Futuramik Industries*, 279 NLRB 185 (1986); *Community Cash Stores*, 238 NLRB 265 (1978). Essentially, this test is one of determining whether the employee had apparent authority to act for the employer in the matters in question. Thus, the judge also cited *Corrugated Partitions West*, 275 NLRB 894, 900 (1985), in which the Board adopted a judge’s holding that:

[T]he Board has long held that where an employer places a rank-and-file employee in a position where employees could reasonably believe that the employee spoke on behalf of management, the employer has vested the employee with apparent authority to act as the employer’s agent, and the employee’s actions are attributable to the employer. [Citations omitted.]

See also *Sherwood Diversified Services*, 288 NLRB 341 (1988). Contrary to the judge, we find, for reasons set forth below, that Hamilton had apparent authority to act on behalf of management, with respect to the union campaign. Additionally, we find, applying the doctrine of ratification, that Hamilton acted as the Respondent’s agent. See generally *Service Employees Local 87 (West Bay)*, 291 NLRB 82, 83 (1988), in which the Board noted:

Section 2(13) of the Act provides that:

In determining whether any person is acting as an “agent” of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts

in question. *NLRB v. Donkin’s Inn*, 532 F.2d 138, 141 (9th Cir. 1976); *Alliance Rubber Co.*, 286 NLRB 645, 696 fn. 4 (1987). Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such belief. Restatement 2d, Agency Sec. 27 (1958, Comment). Two conditions, therefore, must be satisfied before apparent authority is deemed created: (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated action. *Id.* at Sect 8.

On the other hand, ratification is defined as “the affirmance by a person of a prior act that did not bind him which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.” *Id.* at Sec. 82. Section 83 defines “affirmance” as either (a) a manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized, or (b) conduct by him justifiable only if there were such an election. Finally, Section 94 states that “[a]n affirmance of an unauthorized transaction can be inferred from a failure to repudiate it.”

Following its recitation of the test it used to determine the question of agency status of Hamilton, the Board looked at a variety of Hamilton’s actions and those of management to determine that Hamilton was indeed an agent. Carefully looking at the credible evidence surrounding Andrews’ actions and related actions of management leads to a similar conclusion.

The trainer position is fairly new at Dardanelle, having been created after the arrival of Sanders about 3 years prior to the hearing. Prior to the creation of this position, training was accomplished by line supervisors. In the sanitation department, training is still accomplished by the supervisor, using a modified version of the program that Andrews uses.¹⁷ Andrews received no training herself before assuming the trainer position from her prior custodial position.

As a trainer, she enjoys all of the benefits accorded supervisors, except profit sharing and some life insurance benefits. She, unlike bargaining unit employees, can take vacation 1 day at a time rather than a week at a time. She enjoys substantially higher pay than most unit employees and a higher shift differential. Andrews enters the plant by an entrance used by management and other nonunit employees and parks in a lot used by these employees.

All employees at Tyson plants wear uniforms or smocks which indicate the employee’s position by color. All levels of supervision wear khaki uniforms, for example. Andrews’ smock is dark blue, the same color as those given trainees, whom she calls “smurfs.” She is called “Mama Smurf.” No one other than trainers and trainees wear this color. The ma-

¹⁷ long-time unit employee Peggy Garrison testified that she believed that Andrews was a representative of management because of her trainer position, a job that had been performed by a supervisor when Garrison was trained.

jority of employees who are involved in production wear light blue smocks.¹⁸

Most new employees are placed on the second shift, with about 8 to 22 employees being hired each week. In the period from May to August 1991, when the decertification drive was most active, Andrews was transferred for an approximate 3-week period in late July and early August to first-shift. For the summer months of 1991, there is a conflict in the testimony with regard to the length of the training program she conducted. The training program was designed in an attempt to retain new employees and cut down on the employee turnover that plagues the plant. It was originally given in a 3-week format, which was cut to 2 weeks, and then to 1 week. At times when demand for new employees is excessive, the program is accomplished in 1 day.¹⁹ I believe the most credible evidence suggests that the program was being conducted with a 2-week duration during the summer, with some periods of 1-day orientation taking place.

a. Andrews' duties as trainer

When new employees are hired, they first go to personnel and then report to Andrews in the training room, located in the personnel section of the office. Andrews is introduced to the new hires as their trainer by Arlene Brown, who then usually leaves and Andrews begins the program. In the full program, training time was split between classroom time and on-the-job training on the production line. In the classroom portion of the training, some top plant officials would participate in putting on portions of the program. These included Sanders and the plant's safety manager. Andrews' duties, as stipulated, included working with trainees on the line, showing them how to make cuts and perform other aspects of their job; instructing employees on job-related exercises; giving trainees tours of the plant, including management offices, production areas, breakrooms, locker room, restrooms and exits; showing employees how to use the timeclock and their location; setting up and operating a VCR to show videos on company information in the areas of safety, hazards, communications, and policies and procedures; making I.D. badges for new hires, and replacement badges lost by older employees; instructing employees on how to obtain supplies, and demonstrating how to wear equipment, gloves, sleeves; and, reading a 36-page orientation outline to the trainees.

This outline contains, inter alia, the Company's work rules, employment policies, wages, benefits, and other terms and conditions of employment, including grounds for discipline or discharge, and letters to new hires signed by Company President Don Tyson and Plant Manager David Massey. The trainees had to sign forms indicating they had received training from Andrews in various areas such as safety, company policy, the lockout policy, hearing protection and haz-

ard communication. After the trainees have signed such forms, Andrews gives them to a clerk in personnel. Andrews testified that she occasionally goes out on the line to get a trainee to sign forms they did not sign in the training class. Employee Hilda Cunningham believes that Andrews speaks for management because she gave Cunningham her orientation, telling new hires to "read this," now "sign it" and "let us know you understand it," and "give it back to Me." She believed Andrews was giving orders. Employee James Poole views Andrews as speaking for management because of her position as a trainer. Former employee Ronnie Garner believed that Andrews was some kind of supervisor because she never worked on the production line, took him to his job on his first day of employment, and talked with Brown in the personnel office.

After a trainee goes on the production line, she checks with them and their supervisor about their job performance. She testified, however, that she cannot do anything as a result of these checks except give advice to the trainee on how to perform the involved job. The limitations on her authority are not apparent to the trainees, however. Former employee Ronnie Garner, who was trained by Andrews, considered her part of management because she would come on the production line and give orders to trainees. Andrews herself admitted that employees ask her to help them transfer from one job to another, apparently in the belief that she can accomplish the transfer.²⁰

Andrews also advises trainees that there is a union in the plant, and it is the employees' prerogative whether they want to join or not. Employee Melissa Smith credibly testified that during her orientation, Andrews told her that there was a union at the plant, that she could join it or not at her choice, but that the Union did not do anything for the employees and the Company could do for the employees what the Union could. Another unit employee, James Poole, credibly testified that for personal reasons he went to personnel to see how to resign from the Union. Arlene Brown started to answer him, but Andrews stepped in and told him what he had to do.

For a period of time, she took company insurance forms around to employees on the production line and in the breakroom to see if they wanted the insurance. She testified that she got into trouble with Arlene Brown for doing this. Supposedly this was the function of another employee. Strangely, Andrews did this for some considerable period of time in the summer of 1991 before she got "chewed out" for it. There is no notice of the chewing out in her personnel file. These insurance forms were carried by her on her clipboard.²¹ Brown testified that she had Andrews help in insurance putting names and social security numbers on insurance cards to be passed out in the plant. Because of an insurance change in April 1991, the entire plant had to be resigned for insurance. Brown testified that Andrews had no interaction with employees with respect to insurance. Upon my asking

¹⁸Former employee Ronnie Garner believed that Andrews was some kind of supervisor because she wore a different color smock, among other reasons.

¹⁹Andrews testified that in the summer of 1991, she conducted a 2-week program normally, with some periods of 1-day sessions caused by unusual demand for employees. Sanders testified that the program was in the process of being cut from a 2-week to a 1-day program during this period. Brown testified that during this summer, only the 1-day training session was held, even though her affidavit given to the Board mentions only the 2-week program and does not even note the existence of a 1-day program.

²⁰See *Propellex Corp.*, 254 NLRB 839 (1981); *Technodent Corp.*, supra; *Benjamin Coal Co.*, 294 NLRB 572 (1989); *Corrugated Partitions West*, 275 NLRB 894 (1985).

²¹Andrews was evidently rarely without her clipboard, on which she carried various forms for employees to sign. She also carried her decertification petition on this clipboard, and there is credible evidence to the effect she would have employees sign work forms on the clipboard, then solicit their signatures on the petition, which was placed under the forms.

why a number of witnesses had testified that she carried insurance forms around on her clipboard, Brown reluctantly admitted that the Company's insurance counselor had asked Andrews to get beneficiaries names from the employees on second shift. Brown testified that she told Andrews to stop after she learned that she was getting this information. On the third shift, the superintendent was getting this information from employees working on that shift.²²

With respect to timecards, she regularly pulls trainees timecards to see that they are using them correctly. If she finds a mistake on one of their timecards, she corrects it herself. A supervisor must initial this correction. She simply turns the card in a fashion that will catch the attention of the supervisor, who approves her correction when the card is noticed. Rank-and-file employees are not allowed to handle anyone else's timecard in any manner. To do so is a dischargeable offense. Employee James Poole believed Andrews was a supervisor, *inter alia*, because she signs employee timecards and has instructed new hires that they could go home.

Union Steward Merle Pipes testified that Andrews has used a company computer to give him an "occurrence," a term utilized for recording incidences of employee absences or tardiness. Andrews denied that she has ever given occurrences to employees and denies any knowledge of how to use the computer on which such occurrences are given. I believe that this job is not one assigned to her as the Company has a clerk for this purpose. Andrews however was assigned to do many things which are not really within the job of a trainer, and the use of the computer to give occurrences seemed to me to be extremely easy. On this minor point, I am not sure who is right, though based on an overall credibility evaluation, I would believe Pipes over Andrews with respect to almost anything. Pipes did correctly testify that he had observed Andrews sorting payroll checks and pulling employee timecards from the timecard rack, both things that Andrews admits having done. In any event, I do not believe whether Andrews did or did not give an isolated occurrence bears significantly on the question of her agency status.

Andrews testified that for the first 2 weeks she was a trainer, she passed out employee paychecks, but was subsequently told not to do this. Brown denied any knowledge of this activity though it obviously happened and happened at a time when one would expect Brown, Andrews' supervisor, to be closely monitoring her activities.

b. Andrews' solicitation of signatures and handbilling

In the latter part of May 1991, Andrews began to circulate her decertification petition with one of the primary areas for circulation being the breakroom.²³ She carried the petition on her clipboard, on which she also carried forms and other items related to work. She testified that she circulated the petition during breaks and before and after work, but denied doing so on worktime. She admitted that she used the breakroom to do some of the paperwork her job required,

²² See *Benjamin Coal Co.*, *supra*; *Enterprise Aggregates Corp.*, 271 NLRB 978 (1984).

²³ The company breakroom is a large room capable of seating about 300 people. It is equipped with multiple television sets and hot and cold food service. It is used by all employees, supervisors, and management for breaks.

and went there at other times on worktime, while her training class was being addressed by another company representative on a subject such as quality control. She also used the breakroom to get insurance forms signed when she was performing that task. She also gave talks to the trainees in the breakroom and tried to take breaks with trainees. Thus, she could be in the breakroom at almost anytime, either on break or performing paperwork, or soliciting signatures on company forms, so no one could never really tell whether she was on breaktime or worktime unless they asked.

A number of witnesses testified that they were solicited for their signatures on the decertification petition at various times in the breakroom. According to the credible testimony, during the summer of 1991, Andrews on one occasion or another solicited signatures in the breakroom at almost any hour of the day or night. Employee Melissa Smith believed that Andrews had management's approval to solicit signatures because she could be in the breakroom at any time and had access to the plant as well. Employee Nora Duvall was solicited for her signature in her work area just prior to beginning work. Andrews also brought antiunion handbills into the breakroom and put them on the tables. Employee Hilda Cunningham observed Andrews, in July, coming to the breakroom with Brown. Andrews was carrying an armful of handbills which Andrews placed on the break tables. Brown denies this, yet her counterpart on the first-shift, Plant Personnel Manager Gene Eggman admits seeing Andrews in the hall leading to the breakroom with an armload of handbills.²⁴

According to Union Steward Mearl Pipes, he saw Andrews soliciting signatures for her decertification petition in the breakroom during the summer of 1991. On these occasions, there were company supervisors in the breakroom, including Arlene Brown. He complained about this activity to Brown who told him that Andrews was a bargaining unit employee assigned to production line 30. Pipes asked why a production employee was in the breakroom talking to people and Brown said it was in connection with Andrews' training duties. Pipes replied that Andrews could not be both an hourly employee and a trainer at the same time, and Brown said she did not want to continue the conversation. Brown denied this conversation, a denial which I do not credit. Brown also testified that Andrews did work on the line when not training. I find that she is incorrect in this belief as Andrews testified that she had done no line work since she became a trainer, apart from showing new hires how to do their work. Brown also testified that supervisors never work on the line, but at least one supervisor testified that he worked on the line whenever an employee scheduled to work was not present because of illness or other reason. Either Brown was not giving truthful testimony or she is not in command of the facts. In any event, I credit Pipes testimony that he complained to Brown about Andrews' solicitation efforts. His complaint is consistent with the one voiced by Dollar to Jaycox at about the same time, and is consistent with Andrews' admission that she received adverse comments from employees about her decertification efforts because she was a "company" person.²⁵

In or about May, Pipes saw Andrews distributing an antiunion handbill in the breakroom and pointed this out to

²⁴ See *Technodent*, *supra*; *Propellex*, *supra*.

²⁵ See *Technodent*, *supra*.

Second-Shift Superintendent Mike Casto who was also in the breakroom. Pipes asked Casto if Andrews' activities were illegal as she was part of management. Casto said they were not supposed to do anything like that and would check on it. Casto approached Andrews and they went together to the personnel office. Shortly thereafter, Andrews returned to the breakroom and began picking up the handbills. However, Pipes thereafter observed her passing out handbills in the breakroom on several occasions. Casto essentially confirmed this testimony.

In addition to Andrews' solicitation and handbilling in the breakroom, she also performed these functions at Plant Gate B. Gate B is adjacent to the unit employees' parking lot and is used by them to enter and leave the plant. Andrews testified that she solicited signatures and handbilled at Gate B on several occasions in June, July, and August 1991. An affidavit given to the Board in August 1991 indicates she did this two to three times a week. At the hearing, consistent with her reluctance to admit anything that might be the slightest bit harmful, she changed this to indicate that she solicited at Gate B only three to five times during the entire summer. Upon being confronted with her affidavit, as well as other evidence indicating a greater frequency, she agreed with the frequency of two to three times a week.

On at least two occasions when she was soliciting signatures, there were supervisors present, including her immediate supervisor, Arlene Brown, standing nearby, about 10 to 12 feet away. Brown and other supervisors were distributing antiunion handbills. She could see the supervisors from where she was standing. She testified that she approached Brown on one occasion, but was rebuffed, with Brown telling her, "Get away from me." After first denying this, Brown later admitted this meeting. As will be discussed in more detail later, I find that the supervisory personnel were close enough to Andrews to both see who Andrews solicited and overhear conversations between Andrews and other employees.

During the summer of 1991, she used her vacation 1 day at a time to solicit signatures for the petition, and additionally, used several occurrence days for the same purpose, coming close to "occurencing out." At five occurrences, an employee gets a suspension and is terminated for six occurrences. She first testified that occurrences were like personal days and could be used for any reason. However upon being shown the company handbook, she agreed that occurrences were to cover illness, and she then testified that she told management she was sick on the days she took occurrences. Of course, on those days she was at the plant, obviously not sick, soliciting signatures. Occurrences are reviewed by Arlene Brown and she did not question Andrews use of occurrences for the purpose of soliciting signatures. Brown contradicted Andrews and testified that occurrences need not be taken just for medical reasons. If Andrews is telling the truth when she says she reported illness as the reason for her occurrences, then management knew she was lying as they observed her handbilling and soliciting signatures on at least some of these occasions. Logically, she should have been disciplined for lying. For that matter, if Respondent did not condone and endorse her decertification efforts, it should have at least said something about the use of occurrences to participate in decertification efforts as she was not doing

what she presumably was being paid to do, train employees, while she was taking an occurrence.

Twelve handbills passed out at the plant were identified as ones prepared by and passed out by Andrews. These were passed out on 10 or 11 separate occasions. Andrews is also accused of passing out handbills prepared by Respondent. I do not believe that the evidence adduced confirms this. On the other hand, the message contained in some of the company-prepared handbills parallels that contained in handbills prepared by Andrews. As the message is the same on both, it would make little practical difference which she passed out. The Company's so-called "Wooden Nickel" handbill reads, in part:

The Union handbills go something like this:

(1) "The Company is trying to get out of good faith negotiations."

The question is, "do you have any faith in the group who decided to give you a wooden nickel last year instead of the real nickel the company wanted to give you?"

(2) The Union says it will demand that Tyson workers at the Dardanelle plant receive the same bonus that is paid to all other Tyson workers. Maybe this is the most important statement of them all. Isn't it nice that the union is going to demand what 95% of Tyson Team members have received over the years without union harassment or having \$4.26 a week taken out of their checks? Also, they don't have to wait to see if the Union can turn their "demands" into more than hot air.

(3) The Union said that there is no provision in the contract for a wage increase and bonus. This is true and as long as the Union represents you, we will have to negotiate with them. The question is, "do you want Benny Dollar to negotiate for you, or stick with the other 95% of Tyson Foods?"

(4) A nickel is a nickel. Tyson wanted to give it to the people with more seniority. Do they really care about you or just your money?

An Andrews' handbill of the same vintage states:

In reference to the last handbill passed out by the Union, this only proves the point that the Union is only good at stirring up trouble and name-calling.

The people at the Dardanelle plant who are uniting together as a group to decertify the Union are interested in only one thing "Facts." We have not nor do we intend to stoop to the low point of name-calling or degrading any union steward or union representative by name. They have the right to their opinions and we have the right to ours.

The people here at Dardanelle have the sole right to either keep this Union or decertify them. This does not give the union the right to degrade any of us interested in the option of decertification.

Again, we are asking your full support in our efforts by signing the petition.

In no way do we have anything against Unions, but we do have a problem with the Local 425 who has failed to represent all of us in our best interest. They have failed to negotiate a bonus, and this plant received a lesser pay raise than other Tyson Plants.

This may not seem important to a lot of you, but multiply five cents per hour over the next several years of your employment and look at the amount of money you lost. As for a bonus, most of us live from week to week trying to pay our bills. During the thanksgiving and Christmas holidays an extra pay check comes in handy in the way of a bonus.

One other thing—the two wooden head puppets mentioned in the Union handbill used to be puppets for the union whose only interest was membership and \$4.26 per week to make sure their pockets were full. They certainly showed last year that they were not interested in our pockets by turning down an extra nickel raise. They could have at least tried to give us a wooden nickel!

The Company, by circulating handbills containing the same message as those circulated by Andrews, would in my opinion certainly reinforce a view that Andrews was speaking for the Company.²⁶

Before she submitted her decertification petition, she took it to Ken Sanders who made copies of it.

c. Conclusions with respect to the agency status of Andrews

Respondent put Andrews in a position where she was the first person to speak for management to new hires. Inter alia, she conveyed to them the Company's policies, philosophy and procedures, including the disciplinary scheme. She performed these duties in concert with persons obviously in top management at the plant, Arlene Brown and Ken Sanders. She was the first person to show the trainees how to perform their jobs, a function that then shifted directly to a supervisor. More senior employees realized that her job had previously been performed by supervisors and could easily draw the assumption that her position was supervisory in nature. Beginning in orientation, the new hires were told there was a union that they could join or not, but that the Union could do nothing more for them than could the Company. She followed this up almost immediately with a pitch to sign her decertification petition, stressing that future wage increases and bonuses were tied to getting rid of the Union.²⁷ Again, if the new employees believed, as they were supposed to, that Andrews was accurately relating company policy in the training sessions, why would they not logically believe that she was not accurately relating company policy when she made her promises and threats in her solicitation efforts.²⁸

²⁶ See *Technodent*, supra.

²⁷ In a following section of this decision, I find that she often induced employees to sign the petition with promises that by doing so they would receive wage increases and bonuses, or alternatively, threatened them that if they did not decertify the Union, there would be no wage increases or bonuses. It appears that Andrews knew what she was talking about. Concurrently with Respondent's withdrawal of recognition of the Union based on the decertification petition, it gave wage increases and increased shift differentials to the Dardanelle unit employees, and implemented a performance bonus. Though ratification is not necessary to a finding of agency status, it appears to me that Respondent did, in fact, ratify Andrew's unlawful promises made to prospective signers of the decertification petition.

²⁸ I believe that Andrews was in fact a conduit for management with respect to the trainees, and far more than a mere "translator"

Clearly management expected the new hires to listen to and heed what Andrews told them in the orientation. Indeed, they were required to sign forms indicating that they had listened to and understood what she told them about company policy and procedures. I find it difficult to understand how these same employees are to know that when Andrews urges them to sign a petition to decertify the Union, she is no longer speaking for management. As can be seen from the facts set forth above, many employees did, in fact, believe she spoke for management. This belief had to be reinforced by Andrews' seeming ability to solicit signatures at almost any time and any place in the plant. As Andrews herself admitted, her breaks could be at almost anytime, and thus, other employees with more rigid break schedules would conclude that she was soliciting on her worktime when they were solicited or observed her soliciting at different times of the day or night. She also had employees sign her petition on her clipboard, where she kept and had employees sign work-related forms, further reinforcing a belief that she was soliciting signatures for the petition as part of her work duties.

One should remember that Andrews did not sign her decertification petition because she did not want to cause problems, problems raised by the fact that she had been accused of being "company" by unit employees since the beginning of the decertification campaign. Her tireless efforts on behalf of the decertification effort could not have been comprehensible to unit employees, whether new hires or senior employees, unless they believed that she was speaking for the Company. She had nothing personally to gain from the effort. She was not in the unit, made more money than unit employees, had benefits closer to those of management than the unit employees, and was not in any way affected by the collective-bargaining agreement. Any benefit from the decertification effort would only inure to Respondent, not Andrews.

Management did nothing to dispel the notion that Andrews was speaking for it. Although Dollar and Pipes both complained to Tyson management about Andrews' involvement in the campaign, she was never stopped. Her solicitation efforts in the plant, and especially the breakroom, were evidently obvious and could be observed by management, including Brown, who regularly used the breakroom. Moreover, on several occasions, management handbilled in close proximity to Andrews while she handbilled and solicited signatures at company Gate B. As noted above, the message conveyed by Andrews' handbills and those of the Company were essentially the same. Though Andrews and the company personnel may have been separated by several feet on these occasions, the fact that she was regularly seen in the company of her boss, Arlene Brown, during working hours would seem to me to convey the message that they were working in tandem on the decertification petition just as they did in the training program. Brown was present on many of the occasions that management handbilled at the company gates. Company handbills and Andrews' handbills were also placed in the breakroom. The testimony of several witnesses

as suggested by Respondent. Most of her training was done without the presence of any other management official and therefore what she told the trainees would have at least the appearance of some management authority. In this regard, she appears to me to be more like a leadperson, especially when she followed her classroom training with her "hands on" training on the production line.

indicates that the employees believed that Andrews was distributing both. Though this belief may not have been accurate, it is certainly easy to understand how they would have this belief. Andrews did enter the breakroom with handbills from a hallway that led to, among other places, the personnel office.

I find that even if Respondent were not found to have deliberately induced and controlled Andrews' decertification activities, which I believe it did, Respondent gave Andrews apparent authority to convey its messages and policies to employees. When that message became "decertify the Union," it did nothing to dispel the clear implication that this was a management message. Accordingly, I find that it is responsible for her decertification activities, including the unfair labor practices she committed, and thus the decertification petition is tainted and may not be relied upon by Respondent to prove loss of majority status by the Union. *Sears Roebuck de Puerto Rico, Inc.*, 284 NLRB 258 (1987); *Community Cash Stores*, 238 NLRB 265 (1978); *Charles G. Watts, Inc.*, 300 NLRB 914 (1990); *Hohn Industries*, 283 NLRB 71 (1987); *Propellex*, supra; *Technodent*, supra.

C. Did Respondent, through Andrews, violate Section 8(a)(1) of the Act, as alleged in the complaint?

1. Did Respondent, acting through Jean Andrews, threaten employees with the loss of wage increases and bonuses if the Union continued to represent employees, and alternatively, promise wage increases and bonuses if the Union were decertified?

Former employee Greg Jones, who was trained by Andrews, testified that Andrews solicited his signature on four or five occasions, the first of which was about a week after he started work. In her solicitation, she asked that he sign the petition so he could get raises and bonuses. She indicated that if the Union was not decertified, there would be no raises or bonuses.

Employee Melissa Smith testified that about a week after starting work, Andrews asked her to sign the petition, explaining that in the past year, while the other Tyson plants got raises and bonuses, the Dardanelle plant did not because of the union contract. Smith signed the petition to get such raises and bonuses.

Employee Nora Duvall was solicited in late June or early July by Andrews. She is a weigher and was solicited in her work area before beginning work. Andrews said the employees would not get a bonus unless the Union went out. Duvall did not sign.

Third shift employee Kathryn Ann Coats had a conversation with Andrews in the breakroom in June, wherein Andrews asked her to sign the decertification petition. Coats asked why she should sign and Andrews said she needed enough signatures to get rid of the Union. Andrews added that if she was unsuccessful, the employees would not get their bonuses. Andrews said, "if we did not get rid of the Union, that we would not get our bonuses." She then asked Coats, "Don't you want to get your bonus." Coats testified that she did receive a bonus in the fall of 1991, after the decertification petition was filed.

Employee Thomas Martin was solicited by Andrews in late May, and she told him that employees in Tyson's Russellville plant make 5 cents an hour more than employees at

Dardanelle and they have a company picnic where Dardanelle employees do not.

Former employee Ronnie Garner testified that Andrews approached him. About 3 days after he started work, Andrews approached him in the breakroom before his shift and asked him to sign the decertification petition. She told him that if he did, he would get bonuses and raises. On one occasion Andrews chided him for making a paper airplane out of a company handbill, telling him he was wasting company money.

Hilda Cunningham was employed at the Tyson Dardanelle plant from March 11 until December 1991, when she quit for personal reasons. Cunningham was solicited by Andrews to sign the decertification petition in the breakroom in May 1991. She was sitting with fellow employee Mike Hastings. Andrews told them that if they signed the petition, they would get a 15 to 25-percent raise, noting that all the plants that had decertified had gotten such a raise. Cunningham signed the petition which was on Andrews clipboard, underneath some other papers.

Sanitation department employee Rodney Ballain testified that Andrews approached him in the breakroom after the end of his shift, and asked him to sign the petition. He also observed her soliciting signatures from new hires, telling them they would get raises if the Union was decertified.

Employee Kathy Holt was solicited by Andrews in the breakroom in August prior to beginning her shift. In response to Holt's question as to what she would get out of it, Andrews replied, raises and a bigger bonus.

Larry Ford is a production worker at Dardanelle and works on the second shift. He had been employed there about 16 months at the time of the hearing. Ford's wife was employed by Tyson, but lost her job there in June 1991. In September, Andrews spoke to him near the nurses station and asked him when his wife was coming back to work. He said they were working on it and thought it would be soon. The next day he again spoke with Andrews, who said, "If you will see about getting out of the Union, I'll see about getting Laurie (his wife) back on, we'll see about getting Laurie back on."

During the summer of 1991, Ford spoke with Andrews in the breakroom about three or four times while he was on break. On these occasions, Andrews was trying to induce him to sign a decertification petition and said he would get a 25-cent pay increase if the Union went out.

In the summer, long-time unit employee Josiephine Nichols heard Andrews ask a group of employees in the breakroom to sign the decertification petition so they could get a raise and bonus. Nichols interceded and told the employees they would be signing their lives away. However, Andrews convinced the employees and the employees signed the petition, saying they needed the money.

I credit the testimony of these employees and former employees over the general denial of Andrews. Not only did I not find Andrews credible, the message that future wage increases and bonuses would result from decertification was clearly conveyed in almost all of the handbills she prepared. Although the complaint treats the Andrews' threats of no increases if the Union is not decertified and promises of increases if it is decertified as separate violations, I view them as but opposite sides of the same coin. Her message, and as an agent of Respondent, Respondent's message is clear, future wage increases and bonuses are tied to the decertifica-

tion effort. Andrews', and thus Respondent's, actions in this regard would clearly tend to coerce, restrain, and interfere with an employee's choice of whether he or she wants representation or not. Accordingly, such action violates Section 8(a)(1). *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964); *Process Supply Inc.*, supra.

2. Did Respondent, through Andrews, unlawfully interfere with an employee who was attempting to discuss union business with a shop steward?

Employee Melissa Smith had a conversation with Hilda Cunningham, a fellow employee, in the breakroom. Smith asked Cunningham to tell her about the Union because she was interested in learning more about it. Cunningham suggested she speak to John Foster, a union steward, who was nearby. She and Cunningham went to where he was sitting and began talking. Foster began speaking to her about the Union in an attempt to persuade her to withdraw her name from the decertification petition. Andrews approached the three employees and sat down near Cunningham. Cunningham testified that Andrews cupped her hand and whispered to Cunningham that "I have to sit down to keep John from talking to her." The tactic worked as Foster and Smith ceased talking and left.

If this activity by Andrews was shown to be a constant or even frequent practice, I would find it violated the Act. See *Hawthorne Co.*, 166 NLRB 251 (1967). However, this was the only instance of this type recorded in this proceeding. Not only was it an isolated instance, one of persons involved was a long-time union steward who should not have been intimidated by Andrews. Under the circumstances, I do not find that Respondent violated the Act by this conduct of Andrews.

3. Did Respondent, through Andrews, solicit employees to bypass the Union and bring their problems directly to company officials?

The General Counsel relies on two factual elements to support this complaint allegation. First is two lines in the Employer's Pledge contained in the outline which Andrews reads to trainees. These lines read: "With Friendliness, we will meet with any Tyson person to discuss any problems in conditions, hours, policies, or practices." The next two lines read: "Any grievance will be fairly and promptly settled by means of our grievance procedure."

The second factual element is found in the testimony of employee Melissa Smith. As noted earlier, she testified that during her orientation, Andrews told her group of trainees that there was a Union at the plant, that she could join it or not at her choice, but that the Union did not do anything for the employees and the Company could do for the employees what the Union can.

I feel certain that the language of the Employer's pledge is the same at all Tyson facilities, union or nonunion. By itself, I do not believe that it is an open invitation to bypass the Union and bring grievances to management directly. The next sentence in a sense refutes the first as it references the grievance procedure which involves the Union. However, the statement made to the group of new employees by Andrews is a clear attempt by her, and as its agent, by Respondent, to discourage membership in the Union. Given as it was in

the official orientation of the new employees, it clearly cannot be said to be just an offhand opinion of a nonmanagement employee. Thus I do find that the statement is violative of the Act as it tends to discourage support for the Union, suggests that the role of the Union is futile, and invites direct dealing with Respondent.

4. Did Respondent, acting through David Massey, Ken Sanders, Arlene Brown, Gene Eggman, Billy McNeil, Mike Casto, Carlene Oliver, Flo Sherman, Steve Snyder, Virginia Caraway, Edward George Williams, Lisa Carter, Freda Mashburn, and Brad LeMaster, all admitted statutory supervisors, near Gate B of Respondent's facility, unlawfully surveil and interrogate employees concerning their union activities on various dates between mid-July and September 1991, by observing them as they were solicited to sign a petition to decertify the Union and/or were handbilled?

The credible evidence establishes that on a number of occasions in the summer of 1991, Andrews alone, and in the Company of one or more other persons, handbilled and solicited signatures for the decertification petition at Gate B of the Dardanelle plant. As noted this is the gate used by the unit employees to enter and leave the plant. On at least two and in all probability, several more instances, supervisors and other management persons were stationed about 10 to 20 feet away, either handbilling employees themselves or observing.²⁹ All of the supervisory personnel named in the complaint with the possible exception of Virginia Caraway engaged in this activity.

The Respondent takes the position that it began handbilling in response to the Union's handbilling, that it did not coordinate its handbilling with the handbilling and solicitation of Andrews at Gate B, and that its surveillance and interrogation was the mere observation of an open public activity. While I agree that Respondent's handbilling followed the Union's, it went beyond simply responding to union handbilling.³⁰ On the occasions when Andrews was soliciting signatures and handbilling at Gate B and management officials were nearby, the management officials could see and hear what transpired between Andrews and the employees she solicited.³¹

²⁹The testimony of a number of witnesses would suggest that there were more than two occasions when Andrews was soliciting signatures or handbilling when supervisors were present. It is admitted that it occurred on at least two occasions. There is no way to be absolutely certain how many times this situation existed. However, even if there were only two such occurrences, I believe that would have been sufficient to have support a finding of an unfair labor practice having been committed. The time at which the joint handbilling efforts took place was when the bulk of the unit employees entered or left the plant, and was at the location they used for this purpose.

³⁰On the matter of whether Andrew's handbilling was coordinated with that of management, or vice versa, there is no way of knowing one way or the other. Sanders coordinated the management handbilling and Andrews ostensibly coordinated her own. She was in contact with Sanders on a daily basis as part of her job and what he told her would be known only to them.

³¹As might be expected, Respondent's witnesses were reluctant to admit that they saw or paid any attention to Andrews. They professed difficulty in hearing conversations between Andrews and

Continued

Not only do I believe that engaging in such decertification efforts in tandem could reasonably lead employees to believe that Andrews and management were acting in concert, I believe it is also highly coercive. Although there had been a decertification effort at the plant some years before, this was the first time in the history of the plant under Tyson management that management had engaged in handbilling. That fact alone would get the employees' attention. Moreover, all of the plant's management wear khaki uniforms which are easily recognizable. Generally about four members of management handbilled at the gate at the same time. Thus, employees approaching the gate to go to work were faced with Andrews, whom they could reasonably believe was working for management in the petition drive, asking them to sign the petition, with full knowledge that only 10 or 20 feet away were supervisors and top Tyson plant officials watching to see what they did.

They did not have to guess what management wanted them to do. Management's handbills clearly spelled out management's desire that they decertify the Union, and as noted earlier, said much the same thing as did Andrews' handbills. The employees approached by Andrews under these circumstances had to make an observable choice to support the Union or the Company and the coercion inherent in this situation is obvious. For that reason, I find that Respondent's handbilling and observing employees solicited by Andrews was violative of Section 8(a)(1) of the Act, and in and of itself tainted the decertification petition. See *Pillowtex Corp.*, 237 NLRB 746 (1978); *Tappan Co.*, 254 NLRB 656 (1981); *Schwartz Mfg. Co.*, 289 NLRB 874 (1988). In this regard, I do not find Respondent's handbilling in and of itself unlawful. It is only in the manner it did so on the occasions when Andrews was soliciting signatures at the same location that is objectionable. Had Respondent wanted to remove the coercive nature of its activity, it could have postponed its handbilling activity until Andrews left, or moved to a place not in close proximity to Andrews.

5. Did Respondent, acting through Night-Shift Personnel Manager Arlene Brown, an admitted statutory supervisor, on or about September 17, 1991, threaten an employee with loss of insurance claims assistance because the employee's insurance claim was the subject of a charge pending before the National Labor Relations Board?

Employee Kathryn Coats is the employee involved in this complaint allegation. Around March 1, 1991, she was pregnant and had some medical services performed which she be-

other employees, either because of distance between themselves and Andrews, or because of some construction which was underway nearby. Several of the employee witnesses testified that management could clearly see and hear Andrews' solicitations. Supervisor Lisa Carter testified that she distributed antiunion handbills near Gate B. Present with her were Personnel Managers Eggman and Brown and Superintendent Billy McNeil. About 20 feet away was Andrews. In the investigation of this matter, Carter gave an affidavit to the Board in which she swore that she could hear Andrews asking employees to sign the petition. At the hearing she attempted to modify this admission somewhat, but I do not credit the modification. I find, based on evidence submitted through Carter and the employee witnesses, that management could see and hear what Andrews was doing when both were present at Gate B.

lieved were covered by her company health insurance. She encountered a problem with her company medical insurance, caused in part because the insurance company would not pay for one claim and in part because the Dardanelle plant insurance clerk did not turn in another claim. Though Coats urged the clerk to submit the claim, she would not do it even though Arlene Brown had told Coats to tell the clerk to do so.

Because of the difficulties she was encountering with this claim, she filed a grievance with the Union about it.³² Nothing happened, so she filed a charge with the Board at the urging of the Union.³³ About a week later, she had another conversation with Brown. According to Coats, Brown called her into the office and said, "Kathryn, I understand that you filed a charge with the Labor Board about this insurance problem." Coats replied that she had. Brown said, "Well, why did you do that?" Coats said, "Because I couldn't rectify the problem before." Brown said, "Well, I was trying to work it out. Well, I don't know how much I can help you with this now that you've filed this charge with the Labor Board. I just have all this paperwork." Coats then threatened to go the State Attorney General, and Brown indicated that she would work the problem out. She interpreted Brown's comment to mean that since she filed the charge, Brown had a lot of extra work to do.

With respect to the Coats situation, Brown testified that in the second conversation with Coats, the benefits had already been paid, and she simply told Coats that since a charge had been filed based on the fact that she had dealt directly with Coats without the presence of a union official, she was not sure she could deal with her further. She denies being mad at Coats or expressing anger in her meeting with Coats. She testified that Coats said she had filed a grievance, but she never saw any grievance over the situation.

Because of the way the charge is worded, I do not believe that Brown violated the Act. The Union did object to her dealing with Coats directly, and for her to thereafter refuse to do so or express doubts about doing so is understandable. The charge was filed by the Union and it is likely that Coats did not know specifically what it alleged. Thus she may well have been unaware that direct dealing was involved. I would dismiss this complaint allegation.

6. Did Respondent violate Section 8(a)(1) and (5) of the Act by:

a. Since or about September 9, and continuing to date, unlawfully failing and refusing to bargain with the Union as the exclusive representative of the unit?

b. On or about November 5, 1991, unlawfully withdrawing recognition of the Union as the exclusive collective-bargaining representative of the unit?

³²There is no record of a written grievance actually being filed, though one of the information requests which the Respondent refuses to comply with deals with the subject of pregnancy benefits.

³³This charge alleges:

Since on or about August 16, 1991, by its officers, agents, and representatives, has refused to bargain with UFCW, Local 425, by refusing to provide information concerning the disposition of an insurance claim by employee Katherine Coats and by dealing directly with employee Katherine Coats thereby circumventing the collective bargaining representative.

c. On or about November 4 unlawfully making the following changes in wages or working conditions:

i. Instituting a performance bonus of between 2 and 3-1/2 percent

ii. Implementing a wage increase

iii. Increasing shift premiums

d. On or about January 1, 1992, unlawfully implementing a new attendance policy and new service award and attendance award program

e. Unlawfully refusing to supply the Union information which it requested in letters dated July 9, October 17, and October 22?

Respondent admits that it withdrew recognition from the Union, refused to bargain with the Union, and implemented the changes in wages and working conditions alleged in the complaint. It did these things based on its doubt of the Union's continuing majority status. This doubt was based upon the decertification petition, which as of August 13 had the signatures of a majority of the unit employees. However, as I have found that Respondent, through its agent, Andrews, directed, controlled, and otherwise unlawfully influenced the decertification campaign, I find that the decertification petition is tainted and cannot be relied upon to demonstrate loss of majority status. Moreover, as I have found that Respondent, through Andrews, and through the unlawful surveillance and interrogations of its supervisors and management has committed a number of unfair labor practices which would have a direct bearing on the decertification effort, I cannot find that Respondent's good-faith doubt of majority status arose in a climate free of unfair labor practices. Therefore, I find that Respondent could not lawfully claim a good-faith doubt of the Union's majority status and thus, its subsequent withdrawal of recognition, refusal to bargain, unilateral implementation of changes in wages and working conditions, and refusal to supply information based upon a lack of a bargaining relationship to be in violation of Section 8(a)(1) and (5) of the Act. *Process Supply*, supra; *Marriott In-Flite Services*, supra.

In addition to refusing to supply information requested by the Union based upon a lack of a bargaining relationship, the Respondent contends, with some justification, that without further elaboration of need, it has no obligation to supply the information requested in paragraphs 23 and 24 of the complaint. It admits that it refused to supply the information noted in paragraph 22 of the complaint as the Union indicated that the information was necessary for negotiations for a new contract. As it took the position that it did not have to bargain with the Union, it refused to supply this information. As I have found that it did and does have an obligation to bargain with the Union, Respondent will be ordered to supply this information. There is some evidence that providing the information in the exact format sought by the Union would be extremely costly and burdensome. However, before the request was flatly refused, the Union indicated in correspondence that it was willing to explore alternate ways of getting the information needed. Thus, at this stage, I will assume the parties can find a way to work this problem out to their mutual satisfaction.

With respect to the information sought in paragraphs 23 and 24 of the complaint, the Union sought this information stating only that it is needed "in order . . . to fulfill its responsibilities as collective bargaining representative." The

Respondent introduced evidence which indicates providing this information is not only burdensome, but that there are no pending grievances or contractual disputes to which the information sought could be related. The Union offered no evidence beyond the requests themselves concerning why the information was relevant and necessary. Although I have found that the Company has a continuing bargaining relationship with the Union, and must supply information to the Union which is relevant and necessary to its role as the representative of the unit employees, I do not find that the Union can simply rely on the presumption of relevance of the information sought in the face of the evidence offered by Respondent. Therefore, at this stage of the proceeding, I will not order Respondent to provide this information. The Union is obviously free to again request the information and demonstrate some need for it, and if Respondent does not supply it, file a new charge with the Board.

CONCLUSIONS OF LAW

1. Respondent Tyson Foods, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Food and Commercial Workers Union, Local 425, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is, and was at all times material to this proceeding, the exclusive bargaining representative of Respondent's employees in the following appropriate unit:

All production employees at the Tyson Food Poultry processing plant located at Dardanelle, Arkansas, excluding all maintenance employees, office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

4. Respondent's employee, Jean Andrews, was at all times material to this proceeding, an agent of Respondent within the meaning of Section 2(13) of the Act.

5. Respondent, through its agent, Jean Andrews, directed, controlled, circulated, and assisted in the circulation of a decertification petition filed with the Board on August 13, 1991, in violation of Section 8(a)(1) of the Act.

6. Respondent, acting through its agent, Jean Andrews, violated Section 8(a)(1) of the Act during the course of the decertification drive at its Dardanelle facility in the summer of 1991 by:

a. Promising employees wage increases, bonuses, and other benefits if the employees would decertify the Union, and by alternatively threatening employees with the loss of wage increases, bonuses, and other benefits if the employees did not decertify the Union.

b. While engaged in the training of new employees, telling these employees that the Union could do no more for them than the Respondent and thus discouraging support for the Union and encouraging bypassing the Union and dealing directly with the Company.

7. Respondent, acting through a number of its supervisors, at its Dardanelle Plant Gate B, on a number of occasions in the summer of 1991, surveying, and interrogating employees concerning their union sympathies and preference by observing them as they were solicited by Respondent's agent, Jean Andrews, for their signatures on a decertification petition violated Section 8(a)(1) of the Act.

8. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act by:

a. Since on or about September 9, 1991, and continuing to date, failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of its employees in the above-noted unit.

b. Since on or about November 5, 1991, and continuing to date, withdrawing recognition of the Union as the exclusive collective-bargaining representative of its employees in the above-noted unit.

c. Since on or about November 4, 1991, unilaterally implementing the following changes in wages and working conditions:

i. Instituting a performance bonus of between 2 and 3-1/2 percent.

ii. Implementing a wage increase.

iii. Increasing shift premiums.

d. Since on or about January 1, 1992, unilaterally implementing a new attendance policy and a new service award and attendance award program.

e. Since on or about July 9, 1991, refusing to furnish the Union with information which it requested and which is necessary and relevant to its role as exclusive collective-bargaining representative of the Respondent's employees in the above-noted unit.

9. The violations of the Act set out above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

10. The Respondent did not otherwise violate the Act as alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I recommended that it be ordered to cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁴

ORDER

The Respondent, Tyson Foods, Inc., Dardanelle, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Directing, controlling, circulating, and assisting in the circulation of a decertification petition.

(b) Promising employees wage increases, bonuses and other benefits if the employees would decertify the Union, and by alternatively threatening employees with the loss of wage increases, bonuses, and other benefits if the employees did not decertify the Union.

(c) Telling its employees that the Union could do no more for them than the Respondent and thus discouraging support for the Union and encouraging bypassing the Union and dealing directly with the Company.

³⁴ 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 by Sec. 102.48 of the Rules, by adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Surveying and interrogating employees concerning their union sympathies and preference by observing them as they are solicited for their signatures on a decertification petition.

(e) Failing and refusing to bargain with the United Food and Commercial Workers Union, Local 425, AFL-CIO, as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All production employees at the Tyson Food Poultry processing plant located at Dardanelle, Arkansas, excluding all maintenance employees, office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

(f) Withdrawing recognition of the Union as the exclusive collective-bargaining representative of its employees in the above-noted unit.

(g) Unilaterally implementing the following changes in wages and working conditions:

i. Instituting a performance bonus of between 2 and 3-1/2 percent.

ii. Implementing a wage increase.

iii. Increasing shift premiums.

(h) Unilaterally implementing a new attendance policy and a new service award and attendance award program.

(i) Refusing to furnish the Union with information which it requested and which is necessary and relevant to its role as exclusive collective-bargaining representative of the Respondent's employees in the above-noted unit.

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

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

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the above unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request of the Union, rescind any or all of the changes it has unilaterally implemented on or before the date it unlawfully withdrew recognition from the Union, including, but not limited to, a performance bonus of between 2 and 3-1/2 percent, a wage increase, an increased shift premium, a new attendance policy, and a new service award and attendance award program.

(c) Furnish the Union information it requested in its letter of July 9, 1991, and, on request, furnish the Union any other necessary and relevant information which it may request in furtherance of its role as bargaining representative of the employees in the above unit.

(d) Post at its facility in Dardanelle, Arkansas, copies of the attached notice marked "Appendix."³⁵ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized rep-

³⁵ 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."

representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken

by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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