

Beaird Industries, Inc. and United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 15-CA-11334-1, 15-CA-11513-1, 15-CA-11513-2, 15-CA-11513-4, 15-CA-11513-6, 15-CA-11537, 15-CA-11555-1, 15-CA-11555-2, 15-CA-11596-2, 15-CA-11709-1, 15-CA-11709-2, and 15-CA-11709-6

May 28, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On July 14, 1992, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions, a supporting brief, and a response to the General Counsel's exceptions. The General Counsel filed exceptions, a supporting brief, and a brief in response to the Respondent's exceptions. The Charging Party filed exceptions, a supporting brief, and an answering brief to the Respondent's exceptions.

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

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified and set forth in full below.³

1. We agree with the judge that Raymond Paddie and C. B. Shaw unlawfully solicited employees to sign

¹ The Respondent and Charging Party have 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Although the General Counsel alleged that Supervisor M. O. Green threatened that the Respondent would not allow the Union to continue as the collective-bargaining representative of its employees, the judge did not find, nor is there any evidence, that M. O. Green made such a threat. Accordingly, we shall delete from the judge's Conclusions of Law, recommended Order, and notice any reference to a finding that the Respondent violated Sec. 8(a)(1) of the Act by making such a threat.

³ The judge found, and we agree, that the Respondent violated Sec. 8(a)(3) by transferring employee Leroy Mack from the evening shift to the day shift because of its suspicion that Mack was engaged in union activity. Mack declined, however, the Respondent's subsequent offer to return to his former shift. Accordingly, we shall delete from the judge's recommended Order and notice the provision requiring the Respondent to reinstate employee Leroy Mack to his evening shift position.

We shall modify the judge's recommended Order by adding language requiring the Respondent to make whole its employees for any loss of earnings or other benefits they suffered as a result of the Respondent's unilateral changes, and by conforming the language of the Order to that of the notice.

a petition to oust the Union and engaged in other conduct in violation of Section 8(a)(1) of the Act. Paddie and Shaw were promoted from leadmen, who are unit employees, to foremen, who are supervisors. The Respondent rescinded their promotions as part of a settlement agreement concerning charges filed by the Union over the vacancies created by the promotions. The Respondent argues that Paddie and Shaw were not supervisors during the time they solicited employees to sign the antiunion petition and engaged in other antiunion activity. After the settlement agreement was implemented, however, and during the period when Paddie and Shaw engaged in the allegedly unlawful activity, Paddie and Shaw continued to wear the same hat and uniform that foremen wear. Their tasks did not change because foremen and leadmen do similar work. Further, while employees were informed that some foremen were being returned to leadmen positions, the Respondent never informed employees that Shaw and Paddie were no longer supervisors. Accordingly, we find that when they engaged in antiunion activities, including soliciting employees to sign the petition, Paddie and Shaw had apparent authority to act for the Respondent, as employees could reasonably believe that they reflected company policy and spoke and acted for management. *Community Cash Stores*, 238 NLRB 265, 266 (1978), enf. mem. 603 F.2d 217 (4th Cir. 1979).⁴

2. The judge found, and we agree, that the Respondent violated Section 8(a)(3) of the Act by discharging employees Burks and Roberson. Burks and Roberson both supported the Union, and each wore union buttons to work. On the night of May 24, 1991,⁵ a guard found Burks and Roberson asleep in the breakroom. About 2-3 days later E. C. Green, the Respondent's vice president, called leadman Ben Epling into his office to discuss the matter. Green instructed Epling to write a report on the matter, and told Epling that Burks and Roberson would probably receive a warning slip or a 3-day suspension.

The next evening, Epling asked Burks and Roberson to sign the decertification petition. Burks and Roberson refused. At the end of their shift, Burks and Roberson were sent to E. C. Green's office. Before the meeting began, Roberson announced that he wanted a union representative present during the meeting. Roberson left Green's office to find a union representative, but he was unable to find one and returned shortly thereafter. Green then told Burks and Roberson that a guard reported they had been sleeping on the job. Green added that he was going to investigate the matter and that they were to go home until further notice.

⁴ In light of this finding, we find it unnecessary to pass on the judge's finding that Shaw was, in fact, a supervisor when he engaged in antiunion activity.

⁵ All dates are in 1991 unless otherwise stated.

Roberson asked Green if they could save their jobs by signing the petition. Green replied that he did not know what petition they were talking about. On May 30 or 31, Burks and Roberson were informed they had been terminated.

E. C. Green asked Human Resources Manager Larry Bell to check how the Respondent handled similar situations in the past. Bell reviewed the Respondent's records for the previous 2 years and told E. C. Green that he could find only one similar case, and in that case the employee had been discharged. The record does not indicate when Green asked Bell to review the Respondent's past practice, or when Bell informed Green that the Respondent had discharged an employee for similar conduct.

We find that the General Counsel proved a prima facie case of discriminatory discharge. After learning that Burks and Roberson were found sleeping on the job, E. C. Green told Epling that he would probably suspend them. During his meeting with Burks and Roberson, however, Green learned that they had not previously signed the decertification petition and that Roberson had attempted to invoke his right to union representation during the disciplinary interview. Green then told Burks and Roberson to go home until further notice, and subsequently discharged them. Such evidence, together with the other unlawful acts showing animus against the Union, amounts to a prima facie showing that Burks and Roberson were discharged for engaging in protected activity.

We further find that the Respondent has not rebutted the General Counsel's prima facie case. Although the Respondent had previously discharged an employee for sleeping on the job, the record fails to indicate when E. C. Green asked Bell to check the records for past practice, or when Green learned of the previous discharge. Because the record does not show that Green inquired or learned of the Respondent's past practice prior to discharging Burks and Roberson, and because Green had indicated an intent to merely suspend them for sleeping on the job, we find that the Respondent did not meet its burden of showing that it would have terminated Burks and Roberson absent their protected activity. Accordingly, we shall adopt the judge's finding that Burks and Roberson were unlawfully discharged. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

3. The judge found that the Respondent did not violate Section 8(a)(3) of the Act when it discharged employee Thomas Stamper, an employee serving as strike captain during a strike against the Respondent, for engaging in strike misconduct. We disagree.

On November 1 employee Robert Guyton⁶ left the Respondent's plant around 11:30 a.m. As he drove away from the plant, a blue van crossed the median and stopped under an underpass ahead of Guyton, blocking both lanes of traffic. As Guyton tried to move around the van, several men wearing ski masks jumped out of the van and smashed Guyton's windshield. Guyton then drove his vehicle past the blue van.

Several other cars were parked to the side of the road where this incident took place. Employee Willie Taylor, who was driving behind Guyton, recognized Stamper sitting in the driver's seat in one of the automobiles parked to the side. Taylor reported his recognition of Stamper to the Respondent. The Respondent terminated Stamper that day.

The judge found that the Respondent did not unlawfully discharge Stamper. The judge determined that the Respondent had a good-faith belief that Stamper was a participant in the smashing of Guyton's windshield because Taylor had identified Stamper sitting in a vehicle parked near the scene of the incident. The judge further found that the credited evidence failed to show that Stamper did not, in fact, participate in the incident.⁷ We find, contrary to the judge, that the evidence does not establish that the Respondent had an honest belief of Stamper's participation in the incident, and consequently the Respondent's discharge of Stamper was unlawful.

As noted above, the Respondent did not have direct evidence that Stamper was involved in smashing Guyton's windshield. Rather, the Respondent had merely the testimony of Taylor, who observed Stamper sitting in an automobile near the site where several unidentified individuals jumped out of a van and struck Guyton's windshield. The Respondent terminated Stamper that same day. The record does not show that the Respondent conducted an investigation.

An honest belief of misconduct requires some specificity in the record linking particular employees to particular acts of misconduct. *Columbia Portland Cement Co.*, 294 NLRB 410, 421 (1989), enfd. in relevant part 915 F.2d 253 (6th Cir. 1990). Thus, to establish that it had an honest belief that Stamper engaged in strike misconduct, the Respondent must show that it relied on evidence linking Stamper to a specific act, or specific acts, of misconduct warranting discharge. The record shows, however, that the Respondent did not have any probative evidence that Stamper acted in concert with the individuals who struck Guyton's wind-

⁶The judge inadvertently spelled his name as Guydon.

⁷If an employer disciplines a striking employee, it may defend its action by showing that it had an honest belief that the employee engaged in strike misconduct of a serious nature. If the employer establishes such a defense, the General Counsel has the burden of showing that the employee did not engage in the misconduct. See *General Telephone Co.*, 251 NLRB 737 (1980), affd. mem. 672 F.2d 895 (D.C. Cir. 1981); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964).

shield. Rather, it only had evidence placing Stamper near the scene of the incident. Such evidence, without more, falls short of establishing that the Respondent had an honest, good-faith belief that Stamper was a participant in the incident involving Guyton's windshield.⁸ Because it is the Respondent's burden to establish that it had a good-faith belief that Stamper engaged in strike misconduct, and because the evidence does not show that the Respondent had a basis for such a belief, we find that the Respondent violated Section 8(a)(3) of the Act by discharging Stamper.⁹

4. We agree with the judge that the Respondent violated Section 8(a)(3) by discharging striking employee Harry McDaniel. The Respondent discharged McDaniel after receiving a report that McDaniel's picket stick struck employee Ricky Harper's truck and observing damage to the bed panel of the truck. The Respondent did not, however, have any probative evidence that McDaniel caused that damage.

The record establishes only that Harper drove his truck through a picket line without stopping, and that the front of Harper's truck struck McDaniel's picket, causing minimal damage to the left front panel of the truck.¹⁰ We agree with the judge that the Respondent did not have an honest belief that McDaniel engaged in striker misconduct warranting discharge. *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964).

⁸We note that although our dissenting colleague contends that the 8(a)(3) allegation concerning Stamper's discharge should be dismissed, he does not appear to disagree with our key finding that the Respondent has not established an honest belief that Stamper was a participant in the windshield incident. Rather, our dissenting colleague's contention is predicated on Stamper's status as a picket line captain and on the fact that he took no action to stop the attack. Thus, our colleague would find that a union official, unlike a rank-and-file employee, has a duty to attempt to stop strike misconduct and that any dereliction of that duty subjects the official to discharge. We disagree. Whatever relevance a union official's non-action may have on his union's liability for strike misconduct, disciplining union officials more severely than other employees who do not attempt to stop strike misconduct is inherently destructive of employee rights and is contrary to the plain meaning of Sec. 8(a)(3) of the Act. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 702-703 (1983) (disciplining union officials more severely than other employees who participated in unlawful work stoppage violates Sec. 8(a)(3) of the Act).

⁹Member Oviatt agrees with the judge that the Respondent did have a good-faith belief that Stamper had engaged in misconduct and that the General Counsel did not prove that he was not guilty of misconduct. Accordingly, Member Oviatt would dismiss this 8(a)(3) allegation. He notes that although the incident at issue did not occur on the picket line, Stamper—a picket line captain—was present under the very overpass where the incident occurred, was viewed observing it, took no action to stop the attack, and, indeed, after it was over followed one of the observers of the incident in his vehicle.

¹⁰The judge did not determine whether McDaniel held out his picket stick and struck the truck or whether McDaniel had not held out his picket to strike the truck, but that the truck nevertheless ran into McDaniel's picket stick.

We do not rely, however, as the judge did, on the fact that the damage to the left front panel of Harper's truck was minimal. This fact does not, by itself, indicate an absence of misconduct. Moreover, the record indicates—as noted by the judge—that the Respondent relied solely on damage to the truck's bed panel to justify its discharge of McDaniel, even though it lacked any probative evidence that McDaniel caused that damage. This indicates to us that the Respondent did not have a good-faith belief that McDaniel engaged in any misconduct warranting discharge. Accordingly, we find that the Respondent's discharge of McDaniel violated Section 8(a)(3) of the Act.

5. The judge found that the Respondent's employees engaged in an unfair labor practice strike.¹¹ The General Counsel excepts to the judge's recommended Order, arguing for additional language in the Order requiring the Respondent to offer reinstatement to unfair labor practice strikers, on application, and to make them whole for any loss of pay they may suffer by reason of refusal to offer such reinstatement. In its response to the General Counsel's exceptions, the Respondent argues that such language in the Order is not warranted because the issue of denying reinstatement to unfair labor practice strikers was not raised at the hearing and was not litigated.

In cases in which the Board finds that employees have engaged in an unfair labor practice strike, the Board's usual remedy requires the respondent employer to offer its striking employees reinstatement, on application, and to make them whole for any loss of pay suffered by reason of refusal to offer such reinstatement, even if there is no allegation regarding denial of reinstatement. See *Newport News Shipbuilding*, 236 NLRB 1637 (1978), *enfd.* 602 F.2d 73 (4th Cir. 1979); *Ploof Transfer Co.*, 201 NLRB 828 (1973), *enfd. mem.* 485 F.2d 686 (5th Cir. 1973); *D'Armigene, Inc.*, 148 NLRB 2, 3 (1964), *enfd. in relevant part* 353 F.2d 406 (2d Cir. 1965). Accordingly, we shall order the Respondent to offer the strikers, on their unconditional applications to return to work, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary persons hired on or after September 11, 1991, and to make them whole for any loss of earnings they may have suffered as a result of the Respondent's refusal, if any, to reinstate them in a timely fashion, by paying to each of them a sum of money equal to that which they would have earned as wages during the period commencing 5 days after the date on which each unconditionally offered to re-

¹¹We note that in the section of the judge's decision concerning the discharge of Thomas Stamper, the judge inadvertently stated in the second paragraph that the strike began on November 11, 1991. The strike actually began on September 11, 1991.

turn to work to the date of the Respondent's offer of reinstatement, less any net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Board has found that the 5-day period is a reasonable accommodation between the interests of the employees in returning to work as quickly as possible and the employer's need to effectuate that return in an orderly manner.¹² Accordingly, if the Respondent herein ignores or rejects, or has already rejected, any unconditional offer to return to work, unduly delays its response to such an offer, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the unconditional offer to return to work. *Newport News Shipbuilding*, 236 NLRB at 1638.

AMENDED CONCLUSIONS OF LAW

1. Delete the following phrase from Conclusion of Law 4.

“by threatening its employees that it will not allow a Union;”

2. Substitute the following for Conclusion of Law 5.

“5. The Respondent, by discharging employees Willie Burks, Karl Roberson, Thomas Stamper, and Harry McDaniel because of their union activity, and by transferring employee Leroy Mack from the second to the first shift because of his union activity, violated Section 8(a)(3) and (1) of the Act.”

ORDER

The National Labor Relations Board orders that the Respondent, Beaird Industries, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting its employees from distributing pronoun materials in nonworking areas during nonworking time, soliciting its employees to sign a petition to oust the Union as the exclusive collective-bargaining agent in the bargaining unit described below, promising its employees a pay raise if they would oust the Union as their bargaining agent, promising its employees an increase in work hours if they oust the Union as their bargaining agent, promising its welder employee a test to qualify for a higher grade welding position at higher pay if the employee would sign a petition to oust the Union, threatening to reduce working hours if the employees fail to oust the Union, interrogating its employees about their union activities, promising more work if its employees oust the Union as their bargaining representative, soliciting its employ-

ees to encourage other employees to sign the petition to oust the Union, implying to its employees that they will receive unspecified benefits if they oust the Union as their bargaining representative, promising increased benefits to nonunion employees, threatening retaliation to union employees, threatening more onerous work for pronoun employees if the employees oust the Union as their bargaining representative, and promising its employees that things would get better if a majority of the unit employees signed the petition to oust the Union.

(b) Transferring and discharging its employees because of their Union activities.

(c) Refusing to recognize and bargain with United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive collective-bargaining agent of its employees in the following described bargaining unit, and unilaterally changing terms and conditions of employment, without notifying and bargaining with the Union:

All production and maintenance employees, including, but not limited to, material expeditors, shipping and receiving, chief shipper and receiver, inspectors, toolroom attendants, welders, welder trainees, welder technicians, maintenance mechanics, plant clericals, senior plant clerks, working leadmen, bay leadmen, radiographers and trainees, stress oven operators, electricians, fitters, tool grinders, grinders, machinists, helpers, torch burners, machine center operators, layout, material handlers, overhead and floor crane operators, bending roll operators, handymen, painters, product finishers, and sandblasters; excluding office clerical, office clean up employees, professional employees, draftsmen, nurses, industrial engineers, materials control clerks (purchasing), traffic/building clerk, traffic analyst, traffic manager, watchmen, guards and supervisors as defined in the Act.

(d) Creating vacancies in a substantial percentage of jobs in a particular job classification in the bargaining unit without notifying and bargaining with the Union.

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

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

(a) Offer Willie Burks, Karl Roberson, Thomas Stamper, and Harry McDaniel immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and any other benefits, plus interest, they suffered as a result of the discrimination against them.

¹² *Drug Package Co.*, 228 NLRB 108, 113 (1977), modified on other grounds 507 F.2d 1340 (8th Cir. 1978).

(b) Rescind its discharge of Willie Burks, Karl Roberson, Thomas Stamper, and Harry McDaniel, and remove from its files any reference to its discharge of Burks, Roberson, Stamper, and McDaniel and notify each of them in writing that this has been done and that evidence of its unlawful actions will not be used against them in any way.

(c) Recognize and, on demand from the Union, meet and bargain with the Union at reasonable times regarding the working conditions of its employees in the above-described unit; restore conditions to the status quo as it existed prior to illegally withdrawing recognition of the Union, make its employees whole for any loss of earnings and any other benefits, plus interest, they suffered as a result of the Respondent's unilateral changes, and meet and bargain regarding the creation of job vacancies in the bargaining unit created when it promoted leadmen to foremen.

(d) Accord all striking employees from the strike which started on September 11, 1991, the rights and privileges of unfair labor practice strikers, including, on their unconditional application, offering strikers not heretofore reinstated immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and making whole for any loss of earnings strikers who have made themselves available for employment on an unconditional basis but who were refused reinstatement, in the manner set forth in the Board's decision.

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

(f) Post at its facility in Shreveport, Louisiana, copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

¹³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT prohibit our employees from distributing pronoun materials in nonwork areas during nonworking time.

WE WILL NOT solicit our employees to sign a petition to oust the Union as the exclusive collective-bargaining agent in the collective-bargaining unit described below.

WE WILL NOT promise our employees a pay raise if they oust the Union as their bargaining agent.

WE WILL NOT promise our employees an increase in work hours if they oust the Union as their bargaining agent.

WE WILL NOT promise our welder employee a test to qualify for a higher grade welding position at higher pay if the employee will sign a petition to oust the Union.

WE WILL NOT threaten to reduce working hours if our employees fail to oust the Union as their bargaining representative.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT promise more work if our employees oust the Union as their bargaining representative.

WE WILL NOT solicit our employees to encourage other employees to sign the petition to oust the Union.

WE WILL NOT tell our employees that they will receive unspecified benefits if they oust the Union as their bargaining representative.

WE WILL NOT promise increased benefits to non-union employees.

WE WILL NOT threaten retaliation to union employees.

WE WILL NOT threaten more onerous work for pronoun employees if the employees oust the Union as their bargaining representative.

WE WILL NOT promise our employees that things will get better if a majority of the unit employees sign the petition to oust the Union.

WE WILL NOT create vacancies in a substantial percentage of jobs in a particular job classification in the bargaining unit without notifying and bargaining with the Union.

WE WILL NOT discharge, or transfer to another work shift at reduced pay, our employees because of their activities on behalf of United Automobile, Aerospace and Implement Workers of America (UAW) or any other labor organization.

WE WILL NOT refuse to recognize and, on request, bargain with the United Automobile, Aerospace and Implement Workers of America (UAW).

WE WILL NOT refuse to bargain with the United Automobile, Aerospace and Implement Workers of America (UAW) by unilaterally changing terms and conditions of employment.

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

WE WILL offer Willie Burks, Karl Roberson, Thomas Stamper, and Harry McDaniel immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Leroy Mack, Willie Burks, Karl Roberson, Thomas Stamper, and Harry McDaniel whole for any loss of earnings and any other benefits, plus interest, they suffered as a result of the discrimination against them.

WE WILL notify Burns, Roberson, Stamper, and McDaniel, in writing, that we have rescinded their discharges and we will not use those actions against them in any manner.

WE WILL recognize and, on demand from the Union, meet and bargain with the Union at reasonable times regarding the working conditions of its employees in the following described bargaining unit:

All production and maintenance employees, including, but not limited to, material expeditors, shipping and receiving, chief shipper and receiver, inspectors, toolroom attendants, welders, welder trainees, welder technicians, maintenance mechanics, plant clericals, senior plant clerks, working leadmen, bay leadmen, radiographers and trainees, stress oven operators, electricians, fitters, tool grinders, grinders, machinists, helpers, torch burners, machine center operators, layout, material handlers, overhead and floor crane operators, bending roll operators, handymen, painters, product finishers, and sandblasters; excluding office clerical, office clean up employees, professional employees, draftsmen, nurses, industrial engineers,

materials control clerks (purchasing), traffic/building clerk, traffic analyst, traffic manager, watchmen, guards and supervisors as defined in the Act.

WE WILL restore conditions to the status quo as it existed prior to illegally withdrawing recognition of the Union, and make employees whole for any loss of earnings and any other benefits, plus interest, they suffered as a result of our unilateral changes, and meet and bargain regarding the creation of job vacancies in the bargaining unit created when it promoted leadmen to foremen.

WE WILL accord all striking employees from the strike which started on September 11, 1991, the rights and privileges of unfair labor practice strikers, including, on their unconditional application, offering strikers not heretofore reinstated immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and making whole for any loss of earnings strikers who have made themselves available for employment on an unconditional basis but who were refused reinstatement.

BEAIRD INDUSTRIES, INC.

Jack L. Berger, Esq. and *Charles Rogers, Esq.*, for the General Counsel.

Henry T. Arrington, Esq., of New Orleans, Louisiana, and *Jonathan S. Harbuck, Esq.*, of Birmingham, Alabama, for the Respondent.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Shreveport, Louisiana, on March 16–18, and April 6–8, 1992. A consolidated complaint issued on February 13, 1992, and was subsequently amended. The first of the numerous charges filed in this matter was filed on August 27, 1990.

The consolidated complaint, as amended, alleges that Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (Act) and that a strike by bargaining unit employees was caused by Respondent's unfair labor practices.

Respondent admitted the commerce allegations of the complaint. It admitted that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admitted that during a representative 12-month period, it purchased and received at its Shreveport, Louisiana facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Louisiana and that, during the same representative 12-month period, it sold and shipped products, goods, and materials valued in excess of \$50,000 directly to points outside Louisiana. Respondent admitted that at material times, it was a Delaware corporation with a place of business located in

Shreveport, Louisiana, where it engaged in the business of steel fabrication.

Respondent admitted that the Union is, and has been at material times, a labor organization within the meaning of Section 2(5) of the Act.

General Counsel submitted motions to correct the transcript and to include a copy of the employees' petition to oust the Union along with a list of employees, as exhibits in the record. Neither of those motions have been opposed. General Counsel's motions are hereby granted.

Credibility Determinations

As to a great many of the issues involved in this matter it is necessary to make findings as to which of two or more witnesses, if any, were telling the truth.

Respondent contended that the Union and General Counsel's witnesses engaged in a conspiracy of half-truths and falsehoods to sabotage the wishes of the majority of Beaird employees. In that regard Respondent argued that supervisors and other advocates of the petition to oust the Union, were secretly taped by union adherents.

In support of its contention Respondent cited testimony of John Donaho, a first class welder and chairman of the Union's bargaining committee. Donaho admitted that he learned that two employees had taped conversations with supervisors and that those tapes were presented to or played in the presence of the NLRB investigator but Donaho was not present when the tapes were played before the NLRB agent. Donaho testified that he did not encourage those employees to tape conversations with supervisors.

Neither of the two employees mentioned by Donaho were called as witnesses during this hearing.

Respondent argued that the Union encouraged employees to take notes. There was support for that contention in the record and the notes of one witness, Kenneth Bryce, were produced at Respondent's request.

In addition to the above, I noticed that Respondent frequently asked General Counsel witnesses if they had taped conversations with supervisors. There was no evidence of widespread taping of conversations and there was no evidence showing that the Union was involved in the taping of conversations. As noted above, the record did show that the Union encouraged employees to keep notes.

Respondent also argued that several of General Counsel's witnesses were not interviewed for the first time until near or after the hearing in a 10(j) proceeding in Federal district court.

Finally, Respondent argued that all General Counsel witnesses were outspoken union supporters.

There is some evidence supporting Respondent's points and I have considered those matters in making credibility findings. However, I found nothing to show there was a conspiracy to misrepresent evidence involving the Union, General Counsel, or any of the witnesses to these proceedings. Those allegations are serious and if proved may have involved action of a criminal nature. I found nothing to support such a theory.

As to the final point made by Respondent, I find that the fact that many witnesses were union supporters, at least at some point, is not surprising. However, that factor may have resulted from matters other than those argued by Respondent. For example, it is often difficult for the NLRB investigators

to have employees that oppose the charging party, cooperate in their investigation. Perhaps that was the case here. Moreover, in any event, I noticed from the record testimony that many of those witnesses that were questioned about their solicitation of employees to sign the petition to oust the Union admitted that they sought signatures from prounion employees as well as from others.

The 8(a)(1) Allegations

Prohibited Distribution of Union Leaflets

Charles Elkins, who is a machinist first class, testified that he was distributing union literature in the parking lot about 10:30 p.m. during March 1991, when two guards drove up and told him they had been instructed by Bill Adams not to let anyone pass out any type of literature on company premises.

Elkins told the guards that he had passed out literature on several prior occasions and had never been told to leave the premises.

Elkins was directed off the parking lot. Elkins went on to the road outside the gate and continued to pass out literature until he reported for work.

Elkins admitted that after that day he returned and handed out literature in the parking lot probably three times.

Joe Harville who was employed by Respondent from 1989 until June 13, 1991, testified that he occasionally passed out union literature at the plant. On May 16, 1991, while he was passing out union literature inside the gate at the entrance to the parking lot, he was approached by a guard. Harville was asked and told the guard that he was passing out union literature. The guard told him that he would have to ask Harville to leave because the Company doesn't allow anybody to pass out union literature in the parking lot anymore. Harville left the property and went out in the street and started passing out union literature out there. Harville testified that since that occasion he has returned and passed out union literature either at the entrance or the exit to the parking lot. After June 13 when he stopped working for Respondent, Harville was not allowed in the parking lot.

Harville called Manager of Human Resources Larry Bell on May 17 and told Bell about the incident and asked for the name of the guard. Harville did not recall everything that Bell said to him on that occasion.

Elkins testified that as he was leaving work on May 21, 1991, while he was 100 feet short of the timeclock, Sammy Lipsey, another employee, approached him and handed him the following petition which had been signed by other employees:

To ALL FELLOW EMPLOYEES AT BEAIRD INDUSTRIES: May 20, 1991

As each of you know, for the past fifteen months, we have been represented by the UAW union. The union has done nothing to help us or our families. We have already missed one 5% raise and possibly two because of union involvement. Last Thursday, May 16, 1991 the majority of Beaird employees had signed a petition stating that they no longer wished to be represented by the UAW union.

The more signatures we have, the faster the labor board will act on putting out the union. Don't be mis-

lead by union threats. The union will not see the petition you sign. Only the labor board will see the petition. The labor board will then verify the names and notify the UAW union that we have a majority of employees stating they do not want to be represented by the UAW union.

We urge each of you that have not signed to sign up today. This will indicate to Mr. Donahoe and the bargaining committee that we no longer need them. *They need to give up and get out now.*

When we get the union and threat of union strikes behind us, we will then get back to 40 hours and possibly some overtime and make money like we did in 1989 with no union. Compare your 1989 no union earnings to 1990 earnings with a union. So far, 1991 with a union will be worse than the 1990 union year.

You need to sign our petition for yourself and your families now.

Director of Human Resources Larry Bell testified that he received two complaints that the guards were not permitting employees to distribute union leaflets in the parking lot. Bell said it was new guards that did not understand the policy. On the first occasion, Bell went out and explained to the guards that the union handbilling was permitted. On the second occasion, Bell again went out and explained to the guards and also posted a notice to all guards advising that employees could pass out union literature in the parking lot.

Findings

In view of the testimony of Manager of Human Resources Larry Bell, there does not appear to be any dispute as to these incidents. I credit Bell's testimony along with that of Charles Elkins and Joe Harville. Their testimony shows that employees were stopped from distributing union literature in the employees' parking lot on two occasions and that an employee was permitted to distribute antiunion literature in the same area.

There was no rebuttal to Larry Bell's testimony that this was action taken by guards, apparently inexperienced guards, without the blessing of Respondent. On complaints being made Bell took immediate action to correct the problem. However, that action was apparently limited to correcting the security guards. There was no showing that employees were ever advised that mistakes had been made and that employees were free to distribute union literature in nonwork areas.

I find that Respondent violated Section 8(a)(1) by its action in stopping distribution of union literature in nonwork areas while the employees were not working. See *Spring City Knitting Co.*, 285 NLRB 426 (1987); *Tri-County Medical Center*, 222 NLRB 1089 (1976).

Supervisor J. D. Davis

Promised a Pay Raise

Respondent denied that J. D. Davis is a supervisor.

Edward Thomas is a second class welder in Bay 13. Thomas testified that J. D. "Skipper" Davis is the foreman in Bay 14.

On May 24, 1991, Davis asked Thomas to come into his office where he talked about the Union.

At that time Davis had taken over for the original foreman Ronnie McPherson who had had a heart attack. On cross-examination, Thomas admitted that he had referred to McPherson as a leadman in a prehearing affidavit. He also testified in that affidavit that Skipper Davis was an acting leadman.

Davis told Thomas that he knew how Thomas felt about the Union and that Thomas needed to get on the winning team. Davis said the Union is out and Adams has already promised the employees a 7-percent raise if they vote the Union out. Davis said the Union had done nothing for the employees in 15 months and that it was a waste of time to continue to support the Union. Thomas told Davis that he would think about it. Davis told him that if he continued to support the Union his family would suffer and he could risk losing his job.

Willie Burks and Karl Roberson also testified that Davis spoke to them individually and told each of them they would get a raise if they signed the petition to get rid of the Union.

J. D. "Skipper" Davis testified that he is an hourly paid employee classified as product finisher. He has been acting leadman on occasion including during May 1991. Davis, following instructions of the foreman, would direct employees as to the job they were to perform. On cross, he testified that if employees asked for permission to leave that he would let them go if the work was at a point where they could go.

Findings

As to credibility, Edward Thomas admitted that he was confused as to the distinction between foremen and leadmen during the summer of 1991. Due to that confusion which was demonstrated during cross-examination, I am unable to credit Thomas' testimony regarding the issue of supervisory status of Skipper Davis. In other respects Thomas appeared to be truthful. He demonstrated good demeanor and he was responsive to all questions. I credit his testimony with the exception noted above.

There is considerable discussion below regarding the status of two alleged supervisors who were promoted to foreman but, due to settlement of an unfair labor practice charge, their promotions were rescinded. This is not such a case. There was no showing that Skipper Davis was a foreman other than from the testimony of Edward Thomas.

I am unable to determine that Skipper Davis who was acting leadman during the material time, was a supervisor. Therefore I find that General Counsel did not prove that Respondent engaged in illegal activity as to this allegation.

Supervisor Bobby Foster

Promised an Increase in Work Hours

Edward Thomas testified about a conversation with Bobby Foster on June 3, 1991, in Bay 13. Thomas asked Foster when his bay was going back on a 5-day week. Foster told him that if they get the Union out they would go back to a 5-day week. Foster said there is no oil company that is going to put work in a union shop. Foster said you all vote the Union or you can go back to 5 days a week.

Bay Foreman Bobby Foster denied that he ever made the above statements to Edward Thomas. Foster admitted they were working 4-day weeks around May and June 1991.

Findings

As to credibility, I mentioned above that Edward Thomas admitted that he was confused as to the distinction between foremen and leadmen during the summer of 1991. In other respects Thomas appeared to be truthful. He demonstrated good demeanor and he was responsive to all questions. I credit his testimony with the exception noted above.

Bay Foreman Foster denied that he ever mentioned the Union to any employee. I found Foster was somewhat evasive in his cross-examination and I found it doubtful that he never even mentioned the Union to anyone at the plant. I was not impressed with his demeanor and I do not credit his testimony.

Respondent argues that it would be foolish for Foster to make such a comment several weeks after Respondent withdrew recognition from the Union on May 16. However, on May 23 the Union filed charges against Respondent alleging it had engaged in illegal activity by withdrawing recognition. With that in mind it appears that the question of whether or not the employees would continue to support or oppose the Union may have very well been an outstanding question in the opinion of employees and supervisors on June 3.

I credit the testimony of Edward Thomas and discredit the testimony of Bobby Foster. I find that Foster told Thomas that if the employees got rid of the Union they would go back to a 5-day week. That constitutes a violation of Section 8(a)(1) of the Act.

Vice President E. C. Green

Solicited Employees to Sign Antiunion Petition

Kenneth Bryce a machinist testified that he took a doctor's excuse to E. C. Green on May 15, 1991. He told Green that they should require everyone, union or nonunion, to show the same excuses. Green told him that he was needed in the toolroom. As he was going to the toolroom someone told him that Foreman Skip Wallace wanted to see him in the basket room. Bryce went to the toolroom first where he saw Sammy Lipsey and another man. Lipsey told him that Skip needs you in the basket room.

Skip Wallace and Bryce were left alone in the basket room. Wallace told Bryce that he heard Bryce had a bunch of problems with the Union. Wallace told Bryce that the way to resolve those problems is to sign "this contract to get the union out of here." Bryce told Wallace that he would get back to him if he felt he needed to sign any contract.

Findings

Kenneth Bryce testified that he kept notes including the incidents involved in his testimony. Those notes were given to Respondent and subsequently received in evidence. Bryce's notes dealt with his leaving work one night because of illness and the subsequent demand from E. C. Green that he produce a doctor's excuse. Nothing was disclosed which caused me to doubt Bryce's testimony which I credit.

E. C. Green is the vice president of manufacturing. According to Green he instructed his supervisors, especially Skip Wallace, not to talk with employees or get involved in the petition to oust the Union. However, from his cross-examination, it is apparent that E. C. Green was very knowledgeable as to the events surrounding the petition. He knew

which employees were involved with the petition and he knew that employees were told to go to the toolroom on occasion, for the purpose of signing the petition. His testimony to the point that he instructed supervisors to avoid getting involved with the petition to oust the Union does not square with that knowledge. His understanding of the facts agrees with what the record shows. It simply does not appear believable that he was that knowledgeable without having a source of information other than simple rumors in the plant. I was not impressed with Green's demeanor and I do not credit his testimony to the extent it conflicts with credited evidence.

I credit the testimony of Kenneth Bryce and discredit the testimony of E. C. Green. On the basis of the credited evidence, I find that E. C. Green instructed Bryce to report to the toolroom where he was sent to General Foreman Wallace in the basket room for the purpose of having him sign the petition to oust the Union. I find that E. C. Green engaged in solicitation of an employee to sign the antiunion petition in violation of Section 8(a)(1) of the Act. *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985); *Roger's of Santa Clara*, 261 NLRB 409 (1982); *Garrett Railroad Car*, 255 NLRB 620, 628 (1981), aff'd. in relevant part 683 F.2d 731 (3d Cir. 1982).

Supervisor M. O. Green

Promised a Welders Test to Sign Antiunion Petition;
Threatened to Reduce Hours; Promised Pay
Raises; Interrogation

John Godfrey, a second class welder that, at one time, worked under Foreman M. O. Green, testified that Green came and talked with him in early May 1991. At that time Godfrey had been transferred under Foreman Jerry Miles.

Godfrey was working in Bay 13 when M. O. Green came to him and called him over. Green asked Godfrey to sign the petition to remove the Union and told Godfrey that if they get enough names on the petition and get the Union off, they will get a 7-percent raise. Godfrey questioned if that was the case why didn't the Company call a meeting and announce it. Green told Godfrey that Adams is not going to do anything like that. Green asked Godfrey if he had any complaints against the Company and Godfrey replied that he had been there 2-1/2 years and he was under the impression that he would have gotten a raise within 6 months. Godfrey said he would not sign the petition under those conditions.

Green asked if he made arrangements for Godfrey to take the first class test would he sign the petition. Godfrey told Green no under the circumstances. Green told him to hold on a minute and left.

Within 10 or 15 minutes Pearce, a welding technician, came over and asked Godfrey if he was ready to take the first class welding test. Godfrey said no under the circumstances, that he didn't want to take it for their benefit with the petition going around. Pearce asked him how he felt about the Union and Godfrey told him that he had come to favor the Union because of the working conditions.

Godfrey admitted that he usually wore union buttons or a union T-shirt to work and that he attended union meetings in front of E. C. Green's office.

Threatened that Respondent Would not Allow Union
Promised a Wage Increase

H. L. Mayes retired from Respondent as a welder in August 1991. Mayes testified about a conversation he had with Supervisor M. O. Green about May 8, 1991:

Well, (M. O. Green) come through that morning about—oh, I guess maybe 10:00. And he sat down there where I was working and told me he wanted to talk to me a minute. And I told him, All right. And he started talking and asked me had I seen the petition they had going around.

And I said, No, Moe, I haven't seen it but I have heard about it. And he said, Well, I believe if we get this thing signed and get the union on out of here, I think we would all get a 10-percent raise. And I said, Well, Moe, it sounds good.

But I said, How long will we keep it if we get it? And I said, I have seen what the company done for you supervisors. I said, They didn't give you all a 10-percent raise. They give you a 5-percent raise, raised your insurance premium about 7 percent and then cut your vacation, your sick leave and all, such as that.

I said, I think they would do us as good or as well as they done supervisors. And Moe said, Well—he said, Do you remember when you got out of Bay 6? And I said, Yes. You went and talked to Mr. E. C. Green. He helped you get out.

I said, Yes, Moe, I did. And I appreciate it. And he said, Well, I just thought you might sign this thing and return the favor. And I said, Moe, I will think about it. And that was the conversation.

Solicited Employees to Sign Antiunion Petition

Jerome Young testified that after he signed the antiunion petition after being asked to do so by Supervisor Rupert Sepulvado, he was in Bay 6 and Supervisor M. O. Green asked him if he had signed the petition. He told Green that he had. Green then told Young, "why don't you get your Daddy to try to sign it." Young's father also worked for Respondent. Young told Green that he would try and get his father to sign. Green said, "You doing good, Young."

Frank Jones Jr., who is a grinder for Respondent, testified that after he went out on strike on September 11, he returned to work 5 days later. Jones recalled that around May 9–17, 1991, Bay 6 Foreman M. O. Green came to him and told him to sign the petition to get the Union out. Green said he would come back later.

Later that day Jones talked with Supervisor Sepulvado. Sepulvado asked him if he had seen Green. When Jones replied yes, Sepulvado told him, "let's get the Union out now and get a 7-1/2-percent raise." Sepulvado left but returned and asked Jones if he knew any other guys that he could talk to against the Union.

M. O. Green returned later that day and took Jones to the toolroom where he signed the petition.

Jones admitted that he wore union buttons and T-shirts to work and he talked some employees into joining the Union.

When he was shown that he had signed the petition on May 6, Jones admitted that he was off on his dates. Jones

testified on redirect that regardless of the date, the day he signed the petition was the same day that M. O. Green came to him and took him to the toolroom.

Elree Johnson was on strike at the time of his testimony. His job with Respondent was hand weld and automatic. One day in May as he was coming into work he was met by M. O. Green who walked along with him. Green asked Johnson if he would help him. Green said that he needed for Johnson to sign a petition. Johnson told Green that he and a friend of his had already signed. Green and Johnson met Supervisors Claude Veatch and Rupert Sepulvado and Green said to them that Johnson said that he had already signed the petition.

Afterward Lee Ray Paddie came to Johnson and told him that he had lied to Green. Johnson told Paddie that he knew he had lied to Green. Paddie told him well you know you are going to have to sign this petition. Johnson agreed and signed the petition which Paddie had with him. Johnson testified that at that time Paddie was wearing a yellow foreman's hardhat and green uniform.

Promised More Work

Arthur Jones, a second class welder, testified that he had several conversations with M. O. Green beginning on May 13, 1991. On that day M. O. Green stopped him and during the conversation about the antiunion petition told Jones that he had a family to support and that he should think about signing the petition.

The following day Green stopped Jones and asked him if he had thought about it. Jones replied he had but he had not signed the petition yet. Green told him to think about it because "we are working 32 hours a week and if we don't get the Union kicked out, then we may be working 3 days a week."

Around May 17, Green stopped Jones again and asked if he had thought about it. Jones indicated he still had not signed the petition. Green told him they needed to kick out the Union and they could get a 5-percent raise at the first of the year. Green said that he could not guarantee the raise but that was what he had been told by Adams.

After that conversation Jones returned to work and a first class welder came to him and told him that Jimmy Lee wanted him to sign the petition and if he couldn't do them a favor then not to look for one down the road. Jones said to go back and say he would sign. The welder, A. B. Miller, then said Moe Green is waiting for you down the hall. Jones went and met Green who took him to the toolroom where he told Danny that Jones was there to sign the petition. Jones went into the toolroom and signed the petition.

On cross-examination, it was brought out that Jones actually signed the petition on May 10 rather than May 17 as he testified. Jones testified that he recalled the dates of his conversations with M. O. Green as May 13 through 17 but he admitted that his signature and several others around his signature were dated May 10.

Jerry Linnear, who works for Respondent in Bay 5, testified about M. O. Green soliciting him to sign the antiunion petition and promising a 5-day workweek. Linnear, who originally joined the strike against Respondent, returned after striking for 4 days.

According to Linnear's recollection, on May 23 he talked with M. O. Green in Bay 6. Green told Linnear that he had

heard he had been talking with Harry Bradford about the Union. Green asked what Linnear thought about the Union. Linnear replied that he was not worried about the Union if he could go to work. Green told him they had a petition going around to kick the Union out and if they could get the Union out they could go back to a 5-day, 40-hour workweek. Linnear told Green that he would sign if that was what it would take. Later that day Green came around with another fellow with the petition and Linnear signed. Linnear spoke to Green about Gary Jenkins, a friend of his that wanted to sign the petition and get back to a 40-hour week and Green told him that Jenkins had already signed.

On cross-examination, Linnear was shown his signature on the petition and the date "5-3-91." Linnear could not recall whether he dated the petition. General Counsel argued that all the dates on that page of the petition (G.C. Exh. 19) appeared to have been written by the same person.

Linnear testified that on another occasion M. O. Green talked to him and Harry Bradford about the union meetings. Green asked them to attend the meetings and come back and tell him what was going on. Green said that he and E. C. Green would like to know. Linnear said that he and Bradford agreed to do that.

M. O. Green denied that he has ever talked with Jerome Young about the petition to oust the Union or about anything else.

Green testified that he heard there was a petition to oust the Union and that he learned of that petition from leaflets that the Union had distributed.

M. O. Green denied that he has had a conversation with John Godfrey in the last 2 years. Green denied that he asked Godfrey to sign a petition. He denied that he told Godfrey there would never be a union at Beaird and he denied telling Godfrey that the employees would get a 7-percent raise if they got rid of the Union. Green denied sending a welding technician to Godfrey to see if Godfrey wanted to take the first class test.

Green denied talking with Henry Mays about the petition to oust the Union.

Green denied that he talked with Arthur Jones about anything other than his having given Jones a dog. He denied that he talked to Jones about the antiunion petition.

M. O. Green denied ever talking with Frank Jones other than a routine greeting and he denied ever talking with Frank Jones about the petition to oust the Union.

Green denied that he ever talked with Jerry Linnear about the petition and he denied that he asked Linnear to sign the petition.

Green did admit talking to Elree Johnson about the petition. According to Green, Johnson asked him what he thought about Johnson signing the petition and Green responded that he thought it would be a good thing. Green denied that he told Claude Veatch and Rupert Sepulvado in Johnson's presence, that Johnson had already signed the petition to oust the Union and he denied that he ever told Lee Ray Paddie about Elree Johnson signing the petition.

Findings

There was some confusion in Godfrey's testimony. He testified about a conversation with M. O. Green that at the beginning of the conversation Green called him over and introduced himself. Later on cross, Godfrey could not recall that

he had said that Green introduced himself. However, with that exception, Godfrey appeared consistent in his direct and cross-examination. He demonstrated good demeanor and with the one exception noted above, gave no indication that he was untruthful. As to that inconsistency it could have just as easily been due to nervousness at the beginning of his testimony.

Elree Johnson impressed me with his demeanor. Although there were times during cross-examination when he was confused as to what was being asked, it appeared that he tried to respond truthfully. Nothing was brought out which reflected adversely on Johnson's testimony. He readily admitted that he had lied when originally asked by M. O. Green to sign the antiunion petition. When he was subsequently confronted with that lie he admitted to Lee Ray Paddie that he had lied and agreed to sign the petition. I credit the testimony of Elree Johnson.

Arthur Jones appeared to testify in a straightforward matter. However it was brought out on cross-examination that the dates he recalled meeting with M. O. Green were incorrect. Jones recalled a series of conversations with Green during the 4 days before he signed the antiunion petition as occurring from May 13 through 17. However, the actual petition illustrated that he actually signed the petition on May 10. I am convinced that Jones was incorrect as to dates. However, I was impressed with his demeanor throughout his testimony even after it was brought out that he was in error on the date he signed the petition. At that point he insisted that his testimony was not wrong. Jones was asked other difficult questions and he appeared to handle those well. For example he was asked why he went to the Union and told them that he had signed the antiunion petition and he replied that he went because he felt he had done something wrong in signing the petition. Jones also recalled signing a union petition to recertify his support for the Union on a Monday as he was going to work. However, it was shown by Respondent that he dated that petition May 19 which is a Sunday. Nevertheless Jones insisted that he actually signed that petition in the parking lot on a Monday.

Although I find that Arthur Jones was wrong on his dates, I am convinced that he testified to the best of his ability to tell the truth. I shall credit his testimony. However, I am convinced that his conversations with M. O. Green occurred during the few days before May 10 rather than before May 17.

It was apparent that Frank Jones was incorrect as to the date he signed the antiunion petition. He placed the date as between May 9 and 17. Actually he signed the petition on May 6. However, despite that error, I am convinced that Frank Jones was testifying to the best of his recollection. He appeared to be a sincere witness. Moreover, as shown above Jones has returned to work by crossing the picket lines. I have considered that as a factor in deciding that his testimony should be credited.

There was some confusion as to the date of conversations Linnear testified to having with M. O. Green. He recalled the date as May 23 but the petition, which he said he signed that same day, had the date of May 3. General Counsel argued that it appeared that the dates on that page of the petition were all signed by the same person.

Linnear crossed the picket line and returned to work after being out on strike for 4 days. On the day before he testified

he told Respondent's manager of human resources that he did not want to testify. Against that background and in view of his demeanor, which was good, I am convinced that he testified truthfully as to the content of his conversations with M. O. Green.

In view of the confusion, I am not convinced that Linnear correctly recalled the dates of his conversations with Green. However, all the evidence illustrates that those conversations occurred during May 1991.

H. L. Mayes, a retired welder, presented a good demeanor. He appeared to respond to both direct and cross-examination in a straightforward manner. I am convinced that he testified truthfully and I credit his testimony. There was nothing shown during his examination which would cause me to question his sincerity.

Respondent attacked the credibility of Jerome Young. At one point in cross-examination Young was asked why he came forward with his testimony and he explained that the Union needed the testimony because the matter was coming to trial. I have carefully considered the rather extensive cross-examination of Jerome Young, and I disagree with Respondent as to the significance of his answers. Respondent examined Young at length on how the Union knew to refer him to the NLRB attorney. His answers illustrated that Young did not know the answer to that question but he appeared to try over and over again to deal with that question. However, it was not until General Counsel asked him on redirect if he had not signed something for the Union asking that his name be removed from the antiunion petition, that he recalled that as how the Union may have known he had signed the antiunion petition. When asked on recross why he didn't tell Respondent's attorney that earlier, Young replied that "sometimes a person talks to you and you can remember what he said after somebody reminds you of it." I am convinced that Jerome Young was testifying to the best of his ability and I credit his testimony.

I do not credit the testimony of M. O. Green. Green's testimony was in direct conflict with several other witnesses. Despite substantial evidence that Green was heavily involved in the petition to oust the Union, Green denied, on cross, that he ever talked to any employee about the Union. Evidently at that point Green had forgotten that he had admitted during direct examination, that he and employee Elree Johnson had talked about Johnson signing that petition to oust the Union.

I was not impressed with Green's demeanor and I found his testimony to be unbelievable.

I find that the credited evidence proved that Supervisor M. O. Green asked employees to sign the petition to oust the Union (see *Roger's of Santa Clara*, 261 NLRB 409 (1982); *Garrett Railroad Car*, 255 NLRB 620, 628 (1981), *affd.* in relevant part 683 F.2d 731 (3d Cir. 1982).) He promised employees a raise in pay if they got rid of the Union; he offered to arrange a welding test so that an employee may advance to first class welder if the employee would sign the petition; Green interrogated H. L. Mays about his knowledge of the antiunion petition and promised a raise in pay if the employees got rid of the Union; Green told Mays that E. C. Green had given Mays a favor and he thought Mays should return the favor by signing the petition to oust the Union; Green asked Jerome Young if he had signed the petition and asked Young to have his father, another employee, also sign the petition; Green told Frank Jones Jr. to sign the petition to oust

the Union and accompanied Jones to the toolroom where Jones signed the petition to oust the Union on May 6; Green asked Elree Johnson to help him by signing the petition and Johnson told Green that he had already signed. Later Lee Ray Paddie came to Johnson and told him that he had lied to M. O. Green and that he was going to have to sign the petition. Johnson agreed and signed the petition; Green told Arthur Jones that he had a family to support and ought to think about signing the petition. Green told Jones that he would be working less if they didn't get the Union out and Green told Jones that he had been told by Adams that the employees would get a raise if they got the Union out. Green accompanied Jones to the toolroom where Jones signed the petition on May 10; Green asked Jerry Linnear to sign the petition and promised a 5-day workweek and Green brought an employee to Linnear with the petition which Linnear signed on May 3; and Green asked Jerry Linnear and Harry Bradford to attend union meetings and come back and tell him what was going on. (See *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985); *Seneca Foods Corp.*, 244 NLRB 558 (1979).)

By engaging in the above activities Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

Supervisor Jimmy Lee

Solicited Employees to Sign Antiunion Petition;
Promised an Increase in Work Hours

Sandy Moore, a grinder for Respondent, testified that General Foreman Jimmy Lee came to him while he was working on May 14, 1991. Lee told him there was a petition circulating to get the Union out so that they could go back to at least 5 working days. Moore asked Lee if anyone would know if he signed the petition and Lee told him no. Lee told Moore that he could go to the toolroom and sign the petition.

Moore testified that coworker A. B. Miller was near enough to overhear his conversation with Lee.

Later that day, Moore went to the toolroom but when "Danny" came up with the petition, Moore hesitated to sign. Danny then called out the names of a few people that had signed and Moore signed the petition.

On cross-examination, it was brought out that Moore actually signed the petition on May 9 rather than May 14 as he recalled in his testimony.

General Foreman Jimmy Lee denied that he ever talked with Sandy Moore about the petition to get rid of the Union. Lee admitted that they were working 4 days a week at the time the petition was circulating.

Findings

Sandy Moore's testimony appeared straightforward. However, he experienced difficulty in responding to questions from Respondent's attorney regarding how he came to know to give his affidavit to the Government. I had the impression that Moore was concerned with whether it was proper for him to identify the person or persons that referred him to the Government rather than with telling the simple truth. In fact at one point he asked if we did not want him to tell that he had talked to the two government attorneys about his testimony.

Possibly Moore was being truthful in his testimony but I must consider the above factor and, in that regard, it appears

that he was concerned with matters other than simply responding truthfully to questions.

General Foreman Lee denied that he talked with employee Sandy Moore about the petition to get rid of the Union. I was not impressed with Lee's demeanor. I do not credit his testimony to the extent it conflicts with credited evidence.

As shown above, due to his reluctance to respond to some questions on cross, I was unable to fully credit the testimony of Sandy Moore. I also found the Jimmy Lee was not a credible witness.

In view of the fact that it is General Counsel's burden to prove that a violation occurred, I must dismiss this allegation even though I do not believe that Jimmy Lee was truthful. There was no credible evidence to support the allegations.

Supervisor Raymond L. Paddie

Raymond L. Paddie testified that he is also known as Lee Ray Paddie.

Respondent denied that Paddie is a supervisor. Respondent does not deny that foremen are supervisors. However, as to Paddie, Respondent contends that he was no longer a supervisor at material times. General Counsel contends that Paddie continued to act as foreman and for that reason he was a supervisor at material times.

Paddie was one of several foremen that were allegedly promoted out of the unit without notice or bargaining with the Union. The Union filed charges alleging that the vacated unit jobs had not been filled and that Respondent's action was unlawful. That matter was settled and the settlement included rescinding the promotions. Under the terms of the settlement agreement, Paddie was returned to his former position of leadman.

The employees were advised through posting on the bulletin board, that in settlement of an unfair labor practice charge several foremen were being busted back to leadmen. On cross-examination, Paddie was shown a notice to employees on a standard NLRB form and admitted that was the notice advising employees that some foremen were being busted back to leadmen. Paddie admitted that the notice did not identify the foreman that were being busted back to leadman.

Despite the settlement which rescinded Paddie's promotion, Paddie continued to wear a foreman's yellow hardhat. Gary Miles and Freddie Terrell, other foremen whose promotions were rescinded by the settlement, testified that on learning that their promotions had been rescinded they went back to wearing green or orange hardhats which are worn by leadmen or hourly employees.

Gary Miles has since been promoted to foreman. He testified that he continues to take direction from the general foreman as to what jobs to perform on a shift similar to what he did as leadman. He also continues to confer with the general foreman before issuing a disciplinary writeup to an employee. Again, that is similar to the procedure he followed when he was leadman.

Lee Ray Paddie testified that he also has been promoted to foreman since the time when he solicited employees to sign the petition to oust the Union. At the time the petition to oust the Union was being circulated Paddie admittedly solicited employees to sign the petition and, at that time, he was admittedly wearing a foreman's yellow hardhat even though he had been told that his promotion to foreman had been rescinded.

Solicited Employee to Sign Antiunion Petition

Paddie was one of several employees including at least two former foremen, Paddie and Shaw, that solicited employees to sign the petition to oust the Union. In fact Paddie, Shaw, and employee Sammy Lipsey were the three that took the petition to Respondent's president and told him that a majority of the employees had petitioned for the ouster of the Union.

Paddie admitted that he told some employees that Respondent had granted a 5-percent raise when it took over a plant in Houston, and a month later they came up with another 7-percent raise but that the way "we was tied up, he couldn't give a raise. I figured if we'd get rid of [the Union], we'd get a raise."

As shown below under the heading of Supervisor M. O. Green, Elree Johnson was met by M. O. Green as he came into work during May 1991. Green asked Johnson if he would help him. Green said that he needed for Johnson to sign a petition. Johnson told Green that he and a friend of his had already signed. Green and Johnson met Supervisors Claude Veatch and Rupert Sepulvado and Green said to them that Johnson said that he had already signed the petition.

Afterward Lee Ray Paddie came to Johnson and told him that he had lied to Green. Johnson told Paddie that he knew he had lied to Green. Paddie told him well you know you are going to have to sign this petition. Johnson agreed and signed the petition which Paddie had with him. Johnson testified that at that time Paddie was wearing a yellow foreman's hardhat and green uniform.

Lee Ray Paddie did not deny the testimony of Elree Johnson.

Findings

Elree Johnson impressed me with his demeanor. Although there were times during cross-examination when he was confused as to what was being asked, it appeared that he tried to respond truthfully. Nothing was brought out which reflected adversely on Johnson's testimony. He readily admitted that he had lied when originally asked by M. O. Green to sign the antiunion petition. When he was subsequently confronted with that lie, he admitted to Lee Ray Paddie that he had lied and agreed to sign the petition. I shall credit the testimony of Elree Johnson.

Paddie testified about his role in soliciting employees to sign the petition to oust the Union and he testified about the question of whether Jeffrey Rambin quit his job. I found Paddie to be a truthful witness. However, the credited evidence proved that he took an active role in advocating the petition.

The evidence indicated that Paddie continued to act as a foreman after the settlement and resultant rescission of Paddie's promotion. According to the testimony of some of the former foremen, as shown above, the duties of the foremen and leadmen were similar. As to Paddie in particular, the employees were never informed of the rescission of Paddie's promotion and Paddie continued to act like a foreman. He wore the hardhat and uniform that was customarily worn by foremen. As before and after his promotion, foremen, like leadmen, directed the employees in their work. As to the extent that work was ultimately directed by the general foreman through the foreman or leadman, the employees

were not told. Their direction came from their foreman or leadman as the case may be.

In view of the close similarity between the work of the leadmen and the foremen; the fact that Paddie continued to hold himself out as a foreman; as well as the fact that Respondent's higher supervisors were aware that Paddie and Shaw continued to wear the hat and uniform of a foreman and said nothing to correct that situation, I find that the employees reasonably believed that Paddie was acting as a supervisor during the material times. *Community Cash Stores*, 238 NLRB 265 (1978); *American Lumber Sales*, 229 NLRB 414 (1975); *Einhorn Enterprises*, 279 NLRB 576 (1986).

The record shows that Paddie solicited employees to sign the petition to oust the Union and he admittedly told some employees that the presence of the Union prevented consideration to giving the employees a pay raise similar to what had been granted in Respondent's plant in Houston. I find that those actions constitute violations of Section 8(a)(1). See *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985); *Roger's of Santa Clara*, 261 NLRB 409 (1982); *Garrett Railroad Car*, 255 NLRB 620, 628 (1981), *affd.* in relevant part 683 F.2d 731 (3d Cir. 1982).

Supervisor Bobby Remedies

Solicited an Employee to Sign an Antiunion Petition; Promised a Pay Raise if the Union was Voted out

Welder Charles Johnson testified that on May 22, 1991, his foreman Bobby Remedies asked him if he heard about the Company's petition going around to get the Union out. Remedies said that they needed to get the Union out so we could get some work back in the plant. Remedies said that the employees would get a 7-percent raise if they got rid of the Union. Johnson said he didn't believe it and that if Adams would put it on the board in writing, he would believe it. Remedies said that he couldn't do that because it was against the law.

On May 28, Remedies showed Johnson a raise proposal and what the raise would be for the first class welders and said they needed to get the union out because it was a bad idea. Remedies asked Johnson if he remembered when he bought his house, at that time he thought it was a good idea, later on he found out it was a bad idea. Remedies said that is the same way it was with the Union. He said it has been 16 months with the Union and it hasn't helped and that before that time Johnson was paying for his house. Remedies said in the long run it would help Johnson. Johnson asked what he meant and Remedies said if they get the Union out we will get a 7-percent raise. Johnson asked if he would be fired by Adams if he didn't sign the petition and Remedies said no, he hoped we just let bygones be bygones.

Bay Foreman Remedies admitted that he had several conversations with Johnson about the petition but he contended that Johnson was the one to ask about the petition. He denied that he asked Johnson to sign the petition or that he told Johnson he would get a 7-percent raise. However, Remedies identified a paper as being a paper he showed Johnson during one of their conversations. That paper, General Counsel's Exhibit 26, shows the rate of a first class welder and the weekly and yearly pay based on 40 hours per week; it also shows what those figures would be if there was a 7-percent raise; then it shows the hourly rate, weekly and yearly pay

for a first class welder with overtime and it shows the hourly, weekly, and yearly pay for a first class welder with overtime and a 7-percent raise.

Findings

I was impressed with the demeanor of Charles Johnson. He appeared to respond truthfully to both direct and cross-examination. Although much of his testimony was obviously harmful to Respondent's position, he also testified that in response to his question Foreman Remedies assured him that Adams would not fire him for not signing the antiunion petition. I shall credit the testimony of Charles Johnson.

As shown above, Bay Foreman Remedies admitted that he had several conversations with Charles Johnson about the petition but he contended that Johnson was the one to ask about the petition. He denied that he asked Johnson to sign the petition or that he told Johnson he would get a 7-percent raise. However, Remedies identified a paper as being a paper he showed Johnson during one of their conversations. That paper, General Counsel's Exhibit 26, shows the rate of a first class welder and the weekly and yearly pay based on 40 hours per week; it also shows what those figures would be if there was a 7-percent raise; then it shows the hourly rate, weekly and yearly pay for a first class welder with overtime, and it shows the hourly, weekly, and yearly pay for a first class welder with overtime and a 7-percent raise.

During cross-examination, Remedies admitted many of the matters included in Johnson's testimony including Johnson making a mistake in buying a house and Johnson saying they had been lied to before about a raise, were included in his conversations with Johnson.

I am convinced that Remedies made the comments which Johnson testified about especially in view of the paper which Remedies admittedly showed Johnson. For that reason and in view of Remedies' demeanor during cross-examination, which was not good, I do not credit the testimony of Robert Remedies.

In view of my credibility findings, I find that Bay Foreman Remedies did solicit Charles Johnson to sign the petition to oust the Union and Remedies told Johnson that he would get a 7-percent raise if the employees got rid of the Union.

Respondent argued as to all the alleged promises or pay raises that it had publicly disclaimed rumors of a pay raise before the matter of the petition even came up. What Respondent is referring to was a response by Respondent to a statement from the Union during negotiations to the effect that the Union authorized Respondent to grant an annual pay increase. Respondent issued a statement from President Adams disclaiming any intention of granting a pay increase.

However, the supervisors that promised pay raises presented an entirely different situation. What Adams wrote to the employees involved the situation while the Union was the employees' agent. What the supervisors were saying was that without the Union a raise can occur. I am unable to find that Adams' disclaimer was ever intended to apply in the instant situation. Adams did not disclaim a pay raise at a time after the petition to oust the Union was circulated nor did he ever tell the employees that they would not receive a pay raise regardless of whether they were successful in ousting the Union.

Remedies' comments constitute activity in violation of Section 8(a)(1) of the Act. See *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985); *Roger's of Santa Clara*, 261 NLRB 409 (1982); *Garrett Railroad Car*, 255 NLRB 620, 628 (1981), *affd.* in relevant part 683 F.2d 731 (3d Cir. 1982).

Supervisor Rupert Sepulvado

Promised Pay Raise; Promised Increased Work; Solicited Employees to Talk Against the Union

Jerome Young, a fitter on the first shift, testified about a conversation with Supervisor Rupert Sepulvado around May 1991. The conversation occurred in Bay 7 and only Sepulvado and Young were involved. Sepulvado talked to Young about signing the petition to get the Union out "so we can make more money." Young agreed. Sepulvado told him he should try to get the other guys to sign the petition and Young agreed to that. Sepulvado said he would have a guy named Ben come around after lunch with the petition.

Young said that Ben came around after lunch and he signed the petition. He told Rupert Sepulvado afterward that he had signed the petition. Sepulvado told him that was good and encouraged Young to get some of the other guys to sign the petition.

As shown above, Frank Jones Jr. testified that Foreman M. O. Green came to him and told him to sign the petition to get the Union out. Green said he would come back later.

Later that day Jones talked with Supervisor Sepulvado and Sepulvado asked him if he had seen Green. When Jones replied yes, Sepulvado told him, let's get the Union out now and get a 7-1/2-percent raise. Sepulvado left but returned and asked Jones if he knew any other guys that he could talk to against the Union.

General Foreman Rupert Sepulvado denied that he has ever had a conversation with Jerome Young. He denied that he ever talked to Young about the Union or about signing a petition.

Rupert Sepulvado denied that he ever had a conversation with Frank Jones Jr. and he denied talking to Jones about the Union or the petition. Sepulvado denied telling Frank Jones that the employees would get a 7-1/2-percent raise if they got rid of the Union.

Sepulvado denied that he was ever told that Elree Johnson had signed the petition.

Sepulvado admitted that on one occasion he asked Ben Epling about the petition and told Epling to keep up the good work but Sepulvado testified that he told Lee Ray Paddie that he had heard that Paddie was involved with the petition and that he had better not catch Paddie doing that on company time.

Findings

It was apparent that Frank Jones was incorrect as to the date he signed the antiunion petition. He placed the date as between May 9 and 17. Actually he signed the petition on May 6. However, despite that error, I am convinced that Jones was testifying to the best of his recollection. He appeared to be a sincere witness. Moreover, as shown above, Jones has returned to work by crossing the picket lines. I have considered that as a factor in deciding that his testimony should be credited.

Respondent attacked the credibility of Jerome Young. At one point on cross-examination, Young was asked why he came forward with his testimony and he explained that the Union needed the testimony because the matter was coming to trial. I have carefully considered the rather extensive cross-examination of Jerome Young, and I disagree with Respondent as to the significance of his answers. Respondent examined Young at length on how the Union knew to refer him to the NLRB attorney. His answers illustrated that Young did not know the answer to that question but he appeared to try over and over again to deal with that question. However, it was not until General Counsel asked him on redirect if he had not signed something for the Union asking that his name be removed from the antiunion petition, that he recalled that as how the Union may have known he had signed the antiunion petition. When asked on recross why he didn't tell Respondent's attorney that earlier, Young replied that "sometimes a person talks to you and you can remember what he said after somebody reminds you of it." I am convinced that Jerome Young was testifying to the best of his ability and I credit his testimony.

General Foreman Sepulvado denied facts included in the testimony of three other witnesses, Frank Jones Jr., Jerome Young, and Elree Johnson. Moreover, Sepulvado demonstrated inconsistency in his admissions in that he cheered Ben Epling on in his work with the petition to oust the Union while he warned Lee Ray Paddie not to let him catch Paddie soliciting the petition at work. I was not impressed with Sepulvado's demeanor and I do not credit his testimony.

In view of the credited evidence I find that General Foreman Sepulvado solicited Jerome Young to sign the petition to oust the Union; he promised Young that the employees would make more money if they got rid of the Union; he solicited Young to ask other employees to sign the petition; Sepulvado promised Frank Jones the employees would get a raise in pay if they got the Union out and he asked Jones if he knew other guys he could talk to against the Union.

I find those activities constitute violations of Section 8(a)(1) of the Act. see *Choctawhatchee Electric Cooperative*, supra; *Roger's of Santa Clara*, supra; *Garrett Railroad Car*, supra.

Supervisor C. B. Shaw¹

Solicited Employees to Sign Antiunion Petition; Promises Pay Raises; Threatened Employees with Discharge

Respondent denied that C. B. Shaw was a supervisor. As shown above regarding Lee Ray Paddie, Shaw was one of several foremen that were allegedly promoted out of the unit without notice or bargaining with the Union. The Union filed charges alleging that the vacated unit jobs had not been filed and that Respondent's action was unlawful. That matter was settled and the settlement included rescinding the promotions. Under the terms of the settlement agreement Shaw was returned to his former position of leadman. Shaw testified that it became common knowledge in the plant that several foremen, including Shaw, was busted back to leadmen. Addition-

¹ Shaw was frequently referred to as C. V. Shaw. He testified that his name is Charles Bernard Shaw. I have referred to him as C. B. Shaw in view of his testimony.

ally, Shaw testified that he told everybody that he talked to about the petition to oust the Union, that he was doing that because he was busted back.

Gary Miles and Freddie Terrell, as well as C. B. Shaw, have since been promoted to foremen. Miles testified that he continues to take direction from the general foreman as to what jobs to perform on a shift similar to what he did as leadman. He also continues to confer with the general foreman before issuing a disciplinary writeup to an employee. Again, that is similar to the procedure he followed when he was leadman.

Both Miles and Terrell testified that on being busted back to leadman from foreman they stopped wearing the yellow hardhat normally worn by foremen.

John Godfrey was questioned about Gary Miles. Godfrey testified that Miles wore a yellow hardhat when he was foreman but when he was reverted back to leadman he changed his hardhat back to a green hardhat.

As mentioned above, Respondent does not deny that foremen are supervisors. As to Shaw, however, Respondent contends that he was no longer a supervisor at material times. General Counsel contends that Shaw continued to act as foreman and for that reason he was a supervisor at material times.

However, unlike the situation with Paddie, Shaw testified that he told everyone that he talked to about the petition that he had been busted back to leadman and it was for that reason that he was fighting the Union.

Sheldon Birdsong, a sandblaster helper that was on strike at the time of his testimony, testified that C. B. Shaw was his supervisor. Birdsong testified that Shaw wore the yellow hat and green uniform that supervisors customarily wear. Shaw worked under C. E. Shoalmire. Each morning Shaw directed Birdsong and others in his crew, as to their duties for that day. Shaw would also assign people to work in other bays on occasion and, according to Birdsong, Shaw had the authority to send an employee home. Birdsong testified that he is aware of occasions when Shaw exercised all those areas of authority. Birdsong testified that on one occasion he went to Shaw and asked for authority to leave for the day and Shaw told him it was fine. Birdsong testified that Shaw did not check with anyone else before telling Birdsong that he could leave.

When Birdsong started working for Respondent, Shaw was a foreman. In April 1991, Shaw, along with other foremen, was included in an unfair labor practice proceeding settlement requiring their return to the status of leadman. Birdsong admitted that he heard about Shaw being returned to leadman status. Nevertheless, according to Birdsong, Shaw continued to wear a yellow hardhat and green uniform which foremen usually wear.

When it was time for a raise Birdsong was told by C. E. Shoalmire that he was going to talk with Shaw about whether to give Birdsong the raise. Birdsong did receive the raise in pay.

In addition to assigning work to Birdsong, Shaw would talk to Birdsong regarding the quality of his work such as telling Birdsong that a job had not been done right.

Despite Shaw's testimony that he told everyone that he talked to about the petition, that he had been busted back to leadman, the record shows otherwise. As shown below Shaw

said nothing about being busted back to leadman when he talked to Birdsong about the petition.

This presents a more difficult case than was the situation with Lee Ray Paddie. Shaw testified that he told employees that he had been busted back and, even though the record shows that he did not say that when he talked to Birdsong about the petition, Birdsong admitted that he had heard that Shaw had been busted to leadman.

Around the middle of May 1991, Shaw came to Birdsong in the sand house where Birdsong was working and asked Birdsong if he had heard about the petition that was going around. Birdsong said that he had heard. Shaw said that the Union had been here for 15 months and hadn't done anything for you guys. Birdsong replied that it wasn't costing him anything. Shaw said that if Birdsong signed the petition to get the Union out, then "we would be able to get a big, fat raise and we will get a lot more jobs." Birdsong said that he had heard it was supposed to have been a 7- to 10-percent raise but that he didn't want that, he just wanted what was his. Birdsong told Shaw that he had talked to Leadman Ronnie McPherson on nights, about Birdsong being due a raise and McPherson said that he would write it in the book but that he had looked in the book and his name was not there. Birdsong then told Skip Davis who was replacing McPherson, and Davis wrote in the book that Birdsong was due a raise.

Birdsong told Shaw that he was a company man as long as the Company treats him fairly. Shaw asked if they could count on Birdsong's support and Birdsong replied that the only thing he was supporting was his family. Shaw said okay and walked away.

Shaw admitted that he talked to Birdsong about signing the petition but Shaw denied that he ever promised anybody a pay raise.

The documentation of Birdsong's pay raise was introduced. That document included the signatures of C. E. Shoalmire and higher officials but did not include Shaw's signature.

Nathaniel White Jr. testified that before the strike he worked under Bay Foreman C. B. Shaw and Supervisor Sonny Shoalmire. White testified that Shaw wore the yellow hardhat and green uniform that foremen wore and that Shaw had the authority to direct work and let employees off work. White testified that he asked Shaw on occasions to get off and Shaw granted his request. Shaw was never overruled on those occasions.

White testified that some time after his vacation in April 1991, Shaw called him into an office where Ben Epling was also present. Shaw told White that he had a petition trying to get a reelection on the Union and he wanted White to sign the petition. White signed the petition. White said that he signed the petition because he was afraid he would end up like two guys, Karl Roberson and Willie Burks, who didn't sign the petition and were fired.

Shaw testified at one point that everyone in his bay signed the petition but Birdsong. Shaw then testified that he did not recall Nathaniel White signing the petition but when asked if he talked to White about signing the petition, Shaw admitted that he probably did. When asked about Burks and Roberson, Shaw admitted that neither of them had signed the petition.

Findings

Sheldon Birdsong appeared to testify truthfully. There was nothing remarkable about his cross-examination. Respondent's counsel argued that Birdsong was not responsive. However, it appears to me that Birdsong was trying to respond to the question. When asked when he heard rumors of pay raises he responded it was around the time he heard of the antiunion petition. I am unable to discredit testimony which otherwise appeared credible on the basis of that type response.

I was not impressed with Nathaniel White's demeanor. He went to great length to explain why he originally testified in an affidavit that he had signed the antiunion petition in June. Moreover, White testified that the reason he signed the petition was because he did not want to be fired like Karl Roberson and Willie Burks. White signed the antiunion petition and as shown below, Karl Roberson and Willie Burks were not told of their discharges until May 30 or 31, allegedly for an incident that occurred on May 24. Obviously White was not being truthful when he testified that he signed the antiunion petition on May 3 because he was afraid of being fired like Roberson and Burks.

I am unable to credit the testimony of Nathaniel White Jr. to the extent it conflicts with credited evidence.

I was not impressed with C. B. Shaw's demeanor. His testimony conflicted with other witnesses including Sheldon Birdsong. He testified that he did not promise employees pay raises while he discussed the petition to oust the Union. However, when asked he did admit that Birdsong brought up the fact that he had not received his pay raise while Shaw was talking to him about the petition. I found Shaw to be an unbelievable witness. I found especially unbelievable Shaw's testimony that he told everyone that he talked to about the petition, that he had been busted back to leadman. The credited record evidence shows that was not the case. Shaw, like Lee Ray Paddie, continued to hold himself out as a foreman after he was told that he had been busted back to leadman because of the settlement of an unfair labor practice case; Shaw continued to wear the yellow hard hat of a foreman; Respondent, although aware that Shaw continued to dress like a supervisor, did nothing to show the employees that Shaw was not a supervisor; and the duties Shaw exercised including directing the employees and permitting employees to leave when they asked, were not distinguishable to the employees from the duties of a foreman. I find that Shaw was a supervisor during material times. See *Community Cash Store*, 238 NLRB 265 (1978); *American Lumber Sales*, 229 NLRB 414 (1975); *Einhorn Enterprises*, 279 NLRB 576 (1986).

I find that Shaw solicited Sheldon Birdsong to sign the petition to oust the Union and promised Birdsong a raise if he signed the petition. That constitutes a violation of Section 8(a)(1) of the Act. *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985); *Roger's of Santa Clara*, 261 NLRB 409 (1982); *Garrett Railroad Car*, 255 NLRB 620, 628 (1981), *affd.* in relevant part 683 F.2d 731 (3d Cir. 1982).

Supervisor Simon Shively

Solicited Employees to Sign Antiunion Petition;
Solicited Employees to Solicit Others to Sign;
Implicitly Promised Unspecified Benefits; Promised
Increased Benefits to Nonunion Employees; Threatened
Retaliation to Union Employees; Threatened More
Onerous Work to Union Employees

Les K. Brown is a shipping and receiving clerk for Respondent. He joined the strike but crossed the picket line and returned to work 4 days later.

Brown testified that his supervisor, Simon Shively thought he was nonunion but Shively asked him if he had signed the petition during May 1991. Brown replied yes but that he was getting his name taken off. Shively told Brown that he couldn't believe it and that Brown had doublecrossed him. Shively said, well, I got your raise and I am going to turn it in to Lester but I will have to see.

Brown, who indicated that he had not wanted to come and testify, said there must have been some misunderstanding because 2 days after he talked with Shively, he received his raise in pay. He received the raise on schedule.

Les K. Brown testified about another conversation with Simon Shively in May regarding the Union. Shively said when you have 51 percent for the Union and 49 percent against, the Company was more than likely going to stick by the nonunion people and that Robert Gilliard (a receiving clerk that favored the Union) and the union guys would probably get the dirty jobs.

Simon Shively admitted that Les Brown told him that he had signed the "petition to get his name off that," but, according to Shively he told Brown that he didn't care about that. Shively testified that he did say that he was going to get the raises but what he was doing was picking up the letters of recommendation so they would not sit around in an office overnight. He testified that he said nothing to couple his picking up the letter recommending raises with Brown signing to have his name taken off the antiunion petition. As to the statement regarding the close percentages between union supporters and opponents, Shively testified that an employee asked him about that and he replied that he didn't think anything would happen on a 50-to-50 vote. Shively denied saying that Robert Gilliard would get the dirty jobs if the Union was voted out. On cross, he admitted that Gilliard was pronoun.

Shively denied that he ever had a conversation about the petition to oust the Union. Later in his testimony he admitted that if an employee asked him about the petition to oust the Union he may have said yes it was going around. He said there was a possibility someone asked him that but he didn't recall the persons name and Shively denied that he had anything to do with the petition.

Findings

Les Brown stated that he did not want to testify in these proceedings and, during cross, counsel asked if he recanted his affidavit testimony. Brown said that he did recant his affidavit testimony. However, on redirect, Brown was asked if

he was saying that his affidavit was incorrect and Brown said no that is not what he is saying. Brown explained that he had misunderstood about his raise and at the time he gave his affidavit, he was under the impression that he was not getting his raise. However, he later found out that he did receive his raise on schedule.

It is evident from his testimony that Brown felt he had misunderstood what was happening regarding his raise in pay. However, Brown did not recant his testimony at the hearing. In fact he stated that the testimony in his affidavit was not incorrect. I am convinced that Brown was trying to testify truthfully even though it was evident that he was uncomfortable. There were no conflicts between what Brown said on direct and what he said on cross as to his recollection of events. I shall credit his testimony.

Simon Shively denied a great deal of the testimony by Les K. Brown. It was obvious from his testimony that Brown did not want to testify against Shively. As shown above, I believe that Brown testified truthfully. On the other hand, I was not impressed with Shively's demeanor. I do not believe his denials as to what was said by him to Brown. Shively was evasive on cross and his denial that he talked to any of his employees about the petition to oust the Union was unbelievable. I do not credit Shively's testimony.

I find that the credited evidence shows that Shively solicited Brown to sign the petition to oust the Union and told Brown that he had doublecrossed him and would have to see about his recommendation to give Brown a raise in pay, after Brown told him that he had signed to have his name removed from the petition to oust the Union. I also find that Shively told Brown that the pronoun employees would get the dirty jobs if the Union was voted out. Shively implied that nonunion employees would receive unspecified benefits due to the nearly even split in the election vote, and that employee Gilliard and other union supporters would receive more onerous working conditions. (*Krollicki Wholesale Meats*, 270 NLRB 941 (1984), affd. 763 F.2d 215 (6th Cir. 1985); *Gilboy Ford Mercury*, 246 NLRB 891 (1979).

Those comments constitute violations of Section 8(a)(1) of the Act.

Supervisor Claude Veatch

Solicited Employees to Sign Antiunion Petition

Kevin Greer, a welder in Bay 12, testified that he crossed the picket line and returned to work after going out on strike for 1 week. Greer testified to a May 10, 1991 conversation he had with his general foreman, Claude Veatch. Veatch asked Greer if he had signed the petition and Greer replied that he did not want to. Veatch told him that it would be the best thing for him to do to go over to the toolroom and sign the petition.

Greer did go over to the toolroom to get some supplies. Claude Veatch came up and said, just go in there and sign. Greer went into the toolroom and signed the antiunion petition.

On cross-examination, Greer admitted that his conversation with Veatch started out with Veatch saying that he wasn't satisfied with Greer's work. Greer admitted that he wore union buttons and T-shirts to work.

Greer testified that since he has returned to work after starting out with the strike, he received an 8-percent wage increase around November 1, 1991.

Willie Ashley, a handyman for Respondent, testified that his foreman sent him over to General Foreman Claude Veatch in May 1991. Ashley's foreman, J. M. Mixon, denied that he ever said anything to Ashley about the petition to oust the Union and he denied that Claude Veatch ever asked him to say anything to Ashley about the petition. Mixon did not deny Ashley's contention that his foreman sent him over to General Foreman Veatch.

Ashley testified that Veatch told him there was a petition they wanted him to sign because they had helped him and now they needed him to help them. Ashley told Veatch he would not sign. Veatch said he sure needed to "get the damn Union out of there so we could go back to work." Veatch told Ashley to go to the toolroom and sign the petition. That no one would ever know because he goes over to the toolroom anyway. When Ashley went to the toolroom he was asked to sign the petition but he said he would not risk 27 years with the UAW.

Ashley admitted that Veatch told him that he was not threatening him and was not going to fire him or anything like that.

Jimmy Mays Sr. testified that he has worked for Respondent for 28 years. Mays asked Claude Veatch to help him become an inspector around the time the Respondent withdrew from negotiations with the Union. Veatch asked Mays if he had signed the company petition. Mays replied that he thought they had enough signatures and Veatch told him they had but they wanted more. Veatch told Mays that he needed to see Ted Wallsworth if he was interested in inspection.

General Foreman Claude Veatch admitted that on one occasion when he was criticizing Kevin Greer about Greer's work habits, Green said that he understood there was a petition to decertify the Union. Veatch responded they were not talking about the petition but they were talking about Greer's work habits. Veatch denied that he asked Greer to sign the petition.

Veatch testified that Ashley asked him what he thought about the petition to decertify the Union and Veatch told Ashley that he thought he should sign the petition.

Veatch admitted that Jimmy Mays asked him to help him get in inspection and he told Mays who he should see. Mays then asked if it would help if he signed the petition and Veatch admittedly replied "It more than apt wouldn't hurt nothing."

Findings

There was one area of confusion regarding the testimony of Kevin Greer. Greer testified that he had never told anyone before the hearing about receiving an 8-percent wage increase around November 1, 1991. Counsel for General Counsel elected not to redirect in that area. Although probabilities are against any witness testifying under direct about something that he has not previously brought up with the attorney, it was not clear in this instance what was occurring. Greer testified that he did not remember that matter ever coming up. The record did not show that he was testifying as to what he recalled as occurring during his pretrial preparation or otherwise.

Regardless, I am not convinced that that confused area demonstrates that Greer was trying to mislead anyone. In other respects, I found him to be a straightforward, candid witness and I credit his testimony in all areas other than the one confused question of whether he had told anyone about his pay raise before the hearing.

Ashley testified that he has worked for Respondent since 1964. He appeared to be very forthright in his testimony and in his everyday conversations. When asked about signing the petition, he refused and explained at the hearing that he would not risk his 27 years with the UAW. I was impressed with Ashley's demeanor and I credit his testimony.

Mays admitted that he supported the Union and that he occasionally wore union T-shirts to work. Mays demonstrated good demeanor. He was responsive to cross-examination questions as well as those on direct. I found him to be a credible witness.

Unlike several other supervisors, Claude Veatch did not deny several conversations alleged during General Counsel's case. Veatch did offer somewhat different accounts of those conversations. However, in light of the evidence of several witnesses who also presented what appeared to be excellent demeanor, I am convinced that their testimony more accurately presents the truth.

Respondent cited *Telex Communications*, 294 NLRB 1136 (1989), and *Sheraton Plaza La Reina Hotel*, 269 NLRB 716 (1984), in arguing that any comments by Veatch were friendly or joking. I do not credit that Veatch was simply being friendly or joking. As shown below I credit the testimony of Greer, Ashley, and Jimmy Mays Sr. which shows differently.

The testimony of Kevin Greer shows that Veatch was deeply involved in encouraging Greer to sign the petition to oust the Union. That testimony of Greer, which I credit, supports General Counsel's allegation that Veatch solicited Greer to sign the antiunion petition. Veatch told Greer that it would be the best thing for him to go over and sign the petition.

Additionally, I credit the testimony of Ashley that Veatch told him they had helped him in the past and now they wanted him to sign the antiunion petition.

Jimmy Mays Sr. was solicited to sign the petition by Veatch when he was seeking Veatch's help in getting another job with Respondent. I credit that testimony.

Those actions by Veatch constitute a violation of Section 8(a)(1). *Roger's of Santa Clara*, supra; *Garrett Railroad Car*, supra.

Supervisor Skip Wallace

Solicited Employees to Sign Antiunion Petition

As shown above under the topic on E. C. Green, Kenneth Bryce, a machinist, testified that he took a doctor's excuse to E. C. Green on May 15, 1991. He told Green that they should require everyone, union or nonunion to show the same excuses. Green told him that he was needed in the toolroom. As he was going to the toolroom someone told him that Foreman Skip Wallace wanted to see him in the basket room. Bryce went to the toolroom first where he saw Sammy Lipsey and another man. Lipsey told him that Skip needs you in the basket room.

Skip Wallace and Bryce were left alone in the basket room. Wallace told Bryce that he heard Bryce had a bunch

of problems with the Union. Wallace told Bryce that the way to resolve those problems is to sign "this contract to get the union out of here." Bryce told Wallace that he would get back to him if he felt he needed to sign any contract.

Skip Wallace testified that he knows who Bryce is because Bryce rode to work with two men that work under Wallace but Wallace denied that he has ever had a conversation with Bryce and he denied that he talked to Bryce about the petition to oust the Union.

Harry McDaniel testified that Skip Wallace talked with him about the antiunion petition some time before the strike in September 1991. McDaniel believed that the conversation occurred before Respondent withdrew recognition of the Union. McDaniel remembered that Wallace said that we have to get the Union out of here and that overtime would pick up when we got the union situation settled. Wallace also referred to being able to lay off who he wanted to lay off.

Skip Wallace denied telling McDaniel that overtime would pick up if they got the union situation settled. However, Wallace did admit that he asked McDaniel if he knew there was a petition going around and he asked McDaniel if he had signed the petition. McDaniel told him no.

Promised Pay Raise

Jimmy Mays Sr. testified that he has worked for Respondent for 28 years. In mid-May 1991 according to Mays, he was sent to the toolroom by his leadman and told to see Skip Wallace. Bay 19 Foreman Skip Wallace asked him to sign the petition to get rid of the Union. Wallace told Mays that they only needed 11 names to get the Union out. Wallace said the Company is going to do better and that the Company was including a 7-percent raise in the overhead. Wallace said that he couldn't tell Mays that there was going to be a 7-percent raise but if they were figuring it into the overhead, Mays could go ahead and figure it out for himself. Mays said that he had heard they were going to take away the longevity pay. Wallace replied no, they are not going to take that away. Mays told Wallace that he would think about signing the petition.

The next day, Wallace again asked Mays about signing the petition. Wallace said they only needed five more signatures. Mays said he was still thinking about it. Eventually, after Wallace asked, Mays told him that he was not going to sign the petition.

Skip Wallace denied that he talked to Mays about signing the petition except on one occasion. After Mays asked Wallace to help him get in the inspection department, Wallace told Mays that he didn't have anything to do with that but he suggested two people for Mays to see. According to Wallace, Mays then asked if it would help for him to sign the petition. Wallace laughed and told Mays "yeah, go ahead and sign it." Wallace denied talking to Mays in the toolroom about the petition and he denied telling him there would be a raise if the employees got rid of the Union.

Promised Easier Working Conditions for Signing Antiunion Petition

Tom Ellis, a welder who was on strike at the time of the hearing, testified about a conversation he had with his foreman Skip Wallace during May 1991. Wallace asked Ellis to sign the petition. Ellis replied that he did not want to. Wal-

lace told Ellis that things would be better if the majority of the people signed it. Ellis told Wallace that he would think about it.

Over the next week or so, Wallace asked Ellis several times if he had thought about signing the petition. When Wallace and employee Sammy Lipsey asked him if he was ready, Ellis said he was. The three of them went to the basket room where Ellis signed the antiunion petition.

Ellis admitted that he was a union supporter and that he wore a union button to work.

Skip Wallace testified that he had only one conversation with Tom Ellis about the petition. On that occasion Ellis came to him and expressed concern that the union people would take repercussions if he signed the petition. Wallace testified that he told Ellis that he ought to sign the petition because he did not believe anybody was going to see the names on the petition. Wallace denied that he ever talked to Ellis about signing the petition in the basket room.

Findings

Kenneth Bryce testified that he kept notes including the incidents involved in his testimony. Those notes were given to Respondent and subsequently received in evidence. Bryce's notes dealt with his leaving work one night because of illness and the subsequent demand from E. C. Green that he produce a doctor's excuse. Nothing was disclosed which caused me to doubt Bryce's testimony which I credit.

As to Harry McDaniel, there was nothing in McDaniel's answers to direct and cross-examination which demonstrated inconsistency in testimony.

Mays admitted that he supported the Union and that he occasionally wore union T-shirts to work. Mays demonstrated good demeanor. He was responsive to cross-examination questions as well as those on direct. I found him to be a credible witness.

When Ellis gave a sworn statement to the Union on January 24, 1992, he testified that he could not recall the exact date on which he signed the antiunion petition but it was around August 1. Subsequently, after asking a friend on the picket line he was told that the petition was going around in May and that was when Respondent broke off negotiations. In another affidavit Ellis changed the date of his signing the petition to May 1991. Ellis testified that after finding out that Respondent claimed to have signed a majority during May, that he must have signed around May because Skip Wallace had told him before he signed, that they needed just a few more signatures.

The above reflects on Ellis' ability to recall dates. However, I find nothing in his testimony which illustrated that he intended to mislead in his testimony. Ellis' demeanor was good. He appeared responsive to both direct and cross. I am convinced that he tried to testify to the best of his ability. However, his ability to recall dates was not good.

Truman Wallace testified in direct conflict with the testimony of five other witnesses and his testimony was in slight conflict with that of Vice President E. C. Green. Although Wallace admitted that he talked to two of the five, about the antiunion petition, he denied substantial portions of the testimony of those two as well as all the testimony regarding conversations with him by the other three witnesses. As to one of the five, McDaniel, Wallace admitted that he asked McDaniel *if he had* signed the petition. Wallace denied that

he asked McDaniel to sign the petition. However, Wallace testified that he later told Vice President E. C. Green about his conversation with McDaniel and Green's recollection is that Wallace told him that he directed McDaniel to the tool-room to sign the petition. In view of the above and my observation of Wallace's demeanor, I do not credit his testimony.

Moreover, Wallace admitted that he is a close friend with Sammy Lipsey who was the most active advocate of the antiunion petition. However, when he saw Lipsey talking in a place where he had no business, Wallace, according to his testimony, was unaware of why Lipsey was there. He gave Lipsey a warning for wasting time but he was not aware that Lipsey was wasting time by pushing the petition.

The credited testimony of Bryce shows that Wallace told him that he could resolve his problems with the Union by signing the contract to get the Union out. I find that comments constitutes a violation of Section 8(a)(1).

I credit the testimony of McDaniel as to his conversation with Wallace. Wallace admitted that he talked with McDaniel and that he talked with McDaniel before he was told by E. C. Green not to talk to employees about the Union. E. C. Green told that to Wallace while the employees were involved in the petition to oust the Union. Therefore, Wallace placed his conversation with McDaniel some time before May 16. I credit his testimony only to the extent of placing the date. McDaniel's credited testimony shows that Wallace told McDaniel that they have to get the Union out and that overtime will pick up if they get the Union out. That constitutes a violation of Section 8(a)(1).

The credited testimony of Jimmy Mays Sr. which proves that General Foreman Skip Wallace asked him to sign the petition to oust the Union and told him that the Company was figuring a 7-percent raise in the overhead. I find those comments violate Section 8(a)(1) of the Act.

I credit the testimony of Tom Ellis. As shown above, the only difficulty Ellis had in his testimony was with the date of his conversations with Wallace. Wallace admitted that he had one conversation with Ellis during the time the petition to oust the Union was circulating. I find that Wallace asked Ellis to sign the petition several times and that Wallace told Ellis that things would be better if a majority of the people signed the petition to oust the Union. I find those comments violate Section 8(a)(1). *Roger's of Santa Clara*, 261 NLRB 409 (1982); *Garrett Railroad Car*, 255 NLRB 620, 628 (1981), affd. in relevant part 683 F.2d 731 (3d Cir. 1982); *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985); *Seneca Foods Corp.*, 244 NLRB 558 (1979).

The 8(a)(3) Allegations

Discharged Jeffrey Rambin

Jeffrey Rambin worked for Respondent as an L-tech operator from 1987 until December 1990.

Rambin participated in activities on behalf of the Union. He passed out union leaflets and pamphlets after work at the front gate on some 20 or 25 occasions. He attended union meetings and wore a union button.

On December 19, 1990, Rambin was suspended from work because he had burned a metal plate a few days earlier. According to Rambin, he was told of the 1-day suspension by his bay foreman, McGee. Rambin was suspended for 1

day but the next day when he called in he was told by General Foreman Williams to return to work on January 2, 1991. However, 2 weeks later when he picked up a paycheck, he learned that he had been terminated.

Rambin denied that he quit his job. He testified that when he left on his last day of work he went to the layout room, laid his hardhat down on the table, and left without speaking to anyone. On cross, Rambin admitted that normally he would wear his hardhat and goggles home or leave them in his locker but, on December 19 when he knew he had been suspended, he left both his hardhat and goggles in the layout room.

Lee Ray Paddie testified that he and Gary Williams and Gerald McGee were sitting in the layout department between shifts when Jeffrey Rambin opened the door, shook his head, and threw his hat and glasses on the floor. Rambin did not say anything. He closed the door.

When Paddie left a few minutes before 4 p.m., Rambin was in the parking lot talking with Freddie Moore, another employee, and Rambin had tools in his hand. Paddie asked Rambin what happened and Rambin replied "well, they won't tell me anything and everything. I've got to go to work, I've got to find me a job." Rambin then left with the tools which included, according to Paddie, some of Paddie's tools.

Paddie admitted that Rambin did not say he quit.

Gary Williams, general foreman, testified that he had prepared a warning to issue to Rambin on December 19, 1990, because Rambin had misaligned the cuts in a large iron plate but that he never gave Rambin the warning because Rambin walked in, threw down his hat and glasses, and walked out. Williams did not have a chance to talk with Rambin. Williams testified that he had intended to give Rambin 3 days off because of his misalignment of the iron plate and his failure to call attention to that mistake. According to Williams he did not intend to discharge Rambin.

Gerald McGee, bay foreman, testified that before December 19 he had left Jeffrey Rambin a note concerning the misaligned plate and that they needed to look into the matter and possibly give him a warning. McGee agreed with Williams and Paddie, that Rambin walked in on December 17, tossed down his hat and glasses, and walked out. McGee, unlike the others, recalled that Rambin said, as he tossed down his hat and glasses, "I'm going to go get me another job." According to McGee, he had some problems with Rambin and he had decided to give Rambin one more chance because of the misaligned plate.

After Rambin tossed down his hat and glasses, McGee followed with the intent of talking with Rambin but decided to wait for Rambin to cool down. According to Rambin it was not his intention to discharge Rambin. McGee never did talk with Rambin and McGee left on vacation the next week. He walked over to Rambin's toolbox on December 19 after he got the shift started and noticed that the toolbox was unlocked and the tools were gone.

Findings

Rambin denied that he quit his employment and he denied that he said anything to anyone as he left after being told he was suspended on December 19. He admitted that he left his hardhat and goggles in the layout room even though it

was the practice to place those items in his locker or keep them with him.

I was not impressed with Rambin's demeanor or with the simplistic nature of his story. His explanation that he left his hardhat and goggles out because he knew he would not need them during his suspension leaves a lot to be desired especially in view of his admission that he normally takes care to protect those items. I find that I am unable to credit Rambin's testimony to the extent it conflicts with credited evidence.

Paddie testified about his role in soliciting employees to sign the petition to oust the Union and he testified about the question of whether Jeffrey Rambin quit his job. Paddie appeared to testify truthfully and he presented a good demeanor. I saw nothing which would cause me to doubt his credibility.

Gary Williams, a general foreman, testified about the termination of Jeffrey Rambin. I noticed nothing in Williams' demeanor which caused me to question his credibility.

McGee testified regarding the alleged illegal discharge of Jeffrey Rambin. However, McGee differed with Paddie and Williams as to the incident of Rambin tossing down his hat and goggles. Only McGee testified that Rambin said anything at that time.

The credited testimony shows that Rambin tossed down his hat and glasses and walked off the job. Due to conflicts in the testimony and the fact that only McGee recalls that Rambin said anything when he threw down his hat and goggles, I do not credit McGee's recollection that Rambin said he was to get another job. Nevertheless, the credited evidence shows that Rambin told Paddie later that day that he was going to have to find another job. Under the circumstances, I am convinced that McGee said something to Rambin regarding his work in the misalignment of an iron plate and, as Rambin testified, McGee told him that he was suspended for 1 day. Otherwise Rambin's actions make no sense whatsoever.

I credit the testimony that Rambin tossed down his hat and glasses and walked out as well as Paddie's testimony that Rambin said he had to go look for another job.

The tenor of Rambin's testimony shows that he felt he was being harassed by Foreman McGee from the beginning.

Regardless of how the credited evidence is viewed, it does not support a finding that Rambin was discharged. In view of the above, I find that in a conversation with Lee Ray Paddie, Rambin indicated that he was leaving to look for another job. Rambin took his tools and left his hat and goggles. Both those actions were unusual for someone that planned to return to work. Therefore, I find that Respondent was justified in determining that Rambin had quit and I find that General Counsel has not proved that Rambin was discharged because of his protected activities. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Delta Gas*, 283 NLRB 391 (1987), enfd. 840 F.2d 309 (5th Cir. 1988); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Yaohan of California*, 280 NLRB 268 (1986). See also *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992), for a discussion of the *three* tests required by *Wright Line*.

Discharged Willie Burks and Karl Roberson

Karl Robertson worked for Respondent as a sandblaster on the 11 p.m. to 7 a.m. shift from June 1990 until May 1991.

Roberson participated in union activities. He wore a union button and a union shirt to work. He attended union meetings and passed out UAW buttons in the plant.

Willie Burks worked with Roberson. Burks had worked for Respondent since 1989. He supported the Union. During the last 2 weeks of February 1991, he wore a union button to work.

In April and May 1991, Roberson and Burks reported to J. D. Skipper Davis who was a leadman. At that time Davis was replacing the night leadman Ronnie McPherson. During that period, according to Roberson and Burks, they had conversations with Skipper Davis regarding the antiunion petition that was being circulated.

Skipper Davis told Roberson and Burks that if they signed the petition the employees would get a 7-percent raise. Davis told Roberson if he didn't sign the employees would be cut back to 4 days a week.

On another occasion during the time Davis was acting night leadman, he told Roberson that if he wanted the raises on time he would need to go and sign the petition.

J. D. "Skipper" Davis admitted that he asked Roberson and Burks to sign the petition to oust the Union but he denied that he ever talked to them about a pay raise. On cross-examination, Davis admitted that he had heard they might get an 8-percent raise if the Union was voted out and that he heard that from Ben Epling for one.

Davis testified that at the time he was acting leadman his shift overlapped that of Roberson and Burks and he gave them work instructions each night before he left. When Davis left there was no leadman or foreman with direct supervision over Roberson and Burks left at the plant. Instead Ben Epling had the responsibility of checking on Roberson and Burks. However, on the night of May 24 Epling had three ovens going and would not be able to check on Roberson and Burks until 4 a.m. Davis testified that he asked one of the security guards to check and make sure that Roberson and Burks were alright when he made his rounds. The next afternoon when Davis came in Ben Epling told him that the guard had found Roberson and Burks asleep. However, Davis did not take any action. He did not report the incident to anyone.

Davis did admit that he talked with Roberson and Burks and they both denied they had been asleep. Davis cautioned them not to be caught up there where they were not supposed to be.

Steve Canady a guard for Mid-South Security testified that during May 1991 he was working as security officer at Beard working from 6 p.m. to 6 a.m. Canady testified that when he drove by the sand house on his rounds around 2:18 a.m., he did not see or hear anyone working in the sand house. On his next round an hour later he again noticed that he could not see or hear anyone working in the sand house. As he continued his rounds on that occasion as he was on his way out of Bay 14, he looked into the breakroom and saw Burks and Roberson asleep. Canady went on with his rounds and when he came to the ovens he told Ben Epling that Burks and Roberson were asleep. Canady wrote up a report on the incident. He made one copy for Manager of

Human Resources Larry Bell and one for Mid-South Security.

Canady admitted that he did not get out of his vehicle at the sand house and that it was possible that Burks and Roberson were working on a stopped up hose when he passed at 2:18 a.m. Canady testified that it was not part of his duties to check on employees but that he was doing it out of curiosity.

C. B. Shaw testified that everyone in his bay signed the petition to oust the Union but Sheldon Birdsong. When asked about Burks and Roberson, Shaw admitted that neither of them had signed the petition.

On May 24, 1991, Roberson worked with Willie Burks and another employee named Gibson who was working overtime. They were working on a large project, "a digester or a condenser, something of that nature." As they worked sandblasting they had breakdowns caused by the sandblasting hoses stopping up with rocks. That required shutting down the system to rout the hoses with wire. Gibson helped rout out Roberson's hose and he left around 2:30 a.m. when his overtime ended. Roberson continued to sandblast until his unit was cut off by Burks. Burks unit was blocked and he and Roberson went under the tank to bleed the system down and rout the tank in order to get Burks' hose back up. After bleeding the tank, Burks, who had been working longer than Roberson, decided they should go to lunch which they did.

Burks recalled passing a guard as he and Roberson walked to the breakroom.

Roberson and Burks went on to the breakroom. After eating Roberson had his legs up on the table when another employee, Ben Epling, kicked in the door. Epling told Burks and Roberson that they should sign the petition or go see E. C. Green. Epling said they had been sleeping in the breakroom. After their break, Roberson and Burks went back to work.

Burks testified that Ben Epling ran the oven in Bay 14 and after the second-shift foreman leaves each night, Epling is over the sandhouse.

Ben Epling testified that he asked Burks and Roberson to sign the petition but both said they wanted to stay neutral. He testified that after being told by a guard that Burks and Roberson were asleep in the breakroom he went down and found them asleep. Epling testified that he walked in and said, "now, I'll bet you're ready to sign this petition." He then told them they needed to get back to the sandhouse. Epling testified that he did not report the incident to supervision.

Burks testified that he had a conversation with Skipper Davis and Davis told him that E. C. Green was going to fire him. Burks told Davis that he had not been asleep. Davis told him that it might help if he would sign the book which Burks explained was the petition book to get the Union out.

Ben Epling testified that even though he did not report the incident of Roberson and Burks sleeping, about 2 or 3 days later he was called in to E. C. Green's office. Green told him that he had a report from a guard that he had caught Burks and Roberson sleeping and reported it to Epling. Green asked Epling if that was true. Epling told Green the guard's report was accurate. Green told Epling to write a report on the matter. Epling testified that he asked E. C. Green if he was going to give them 3 days off or a warning slip

and Green told him "I'll probably give them a warning slip or maybe three days and put them back to work."

The next night when Roberson reported for work Skipper Davis told him that E. C. Green wanted to fire him because he had heard that Roberson was sleeping on the job. Roberson explained to Davis that he and Burks were not sleeping but that Epling had kicked in the door and made that accusation. Roberson told Davis that it was a constant string of harassment. Davis told him that he was going to tell him how to save his job but since Roberson had that attitude he just wouldn't worry about it.

When Roberson came to work the following night, which was Sunday, Ben Epling asked him again if he was ready to sign. Roberson told Epling that he thought he was going to stick with the UAW.

Epling also spoke with Burks. According to Burks, Epling said to him, "Willie, I am begging you; will you and Karl please sign the book and I guarantee won't anything happen." Burks told Epling that he was not ready.

Roberson saw one of the guards that night and he told the guard that someone had said the guard had seen us sleeping. The guard told him that was not what he reported but he did report that he did not see sand going over a period of time. Burks who overheard some of the conversation between the guard and Roberson, testified that he heard the guard say that he did see them asleep.

At the end of the shift Roberson and Burks were sent to E. C. Green's office.

Burks, Roberson, Shoalmire, and E. C. Green were in Green's office. Green told them that he had a report from a guard they had been sleeping on the job. Green told them to go home until further notice and he would investigate the matter. Burks and Roberson explained that they had some breakdowns on the equipment that night but there had been no sleeping on the job. Roberson asked E. C. Green if they still had the option of signing the petition and save their jobs. E. C. Green replied that he did not know what petition they were talking about.

On May 30 or 31, Roberson and Burks picked up their paychecks and saw terminated written on each check.

Roberson and Burks denied that they had been asleep at work.

General Foreman Sonny Shoalmire testified that E. C. Green asked him to bring Karl Roberson and Willie Burks to his office. As they were going to the office Roberson said that he wanted to have someone represent him. Roberson left the office but returned later and said that everyone had left. E. C. Green told Roberson and Burks that he had a letter from a guard saying he had caught them sleeping and that he was sending them home until further notice. Shoalmire testified that he did not receive a report on that incident from either Ben Epling or Skipper Davis who was acting leadman.

E. C. Green agreed with the above testimony. He agreed that when called into his office Karl Roberson asked for union representation but, after going to find his representative, Roberson returned and said he could not find who he wanted. The meeting continued and Green told Roberson and Burks they were being sent home until further notice while he investigated the guard's allegations that they were asleep on the job. Roberson and Burks denied they were asleep.

E. C. Green admitted that he called in Ben Epling. According to Green Epling confirmed the guard's report and re-

ported that when Epling went to the breakroom he also found Roberson and Burks asleep.

Manager of Human Resources Larry Bell testified that E. C. Green asked him to check into how they had handled situations like this in the past. Bell testified that he went back 2 years and could find only one similar case and in that case the employee had been discharged.

Findings

I found Karl Roberson and Willie Burks to be credible witnesses in most respects. However, I am convinced under all the evidence that they were asleep in the breakroom when discovered by first the security guard and secondly by Ben Epling. I do not credit their testimony to the contrary. However, I do credit their testimony where the testimony was not disputed by credited evidence and in instances where I have determined that other factors show the testimony to be credible.

Ben Epling testified about circulating the antiunion petition and the discharge of Karl Roberson and Willie Burks. Epling appeared to testify candidly. He was responsive to cross-examination as well as to direct. I saw nothing which caused me to doubt his credibility.

I was not impressed with the demeanor of Davis especially when he was denying that he ever talked to employees about a rumored pay raise if they voted out the Union. Davis admitted that he heard a rumor from Ben Epling and others that the employees may get an 8-percent raise if they voted out the Union and he admitted talking to employees about signing the petition to oust the Union but he denied coupling the two together.

Steve Canady, a security guard, impressed me with his demeanor. He appeared to respond to questions directly whether on direct or cross. I saw no reason to not believe his testimony.

I credited the evidence showing that Respondent received a guard's report that Roberson and Burks were sleeping in the breakroom during their shift. However, the evidence also shows that when they were approached in the breakroom by Ben Epling, Epling told them that he bet they were ready to sign the petition now.

I also credit the testimony of Roberson and Burks showing that after that night they were warned by both Skipper Davis and Ben Epling that unless they signed the petition, E. C. Green wanted to fire them.

The credited evidence shows that both Roberson and Burks supported the Union. Testimony of C. B. Shaw, which I credit, shows that only Sheldon Birdsong, Roberson, and Burks refused to sign the antiunion petition in Shaw's bay.

I also credit the testimony of Roberson and Burks that they were asked to sign the petition to oust the Union by both Skipper Davis and Ben Epling after they were caught sleeping and both Davis and Epling implied that was the only way they could save their jobs.

Finally, I credit the testimony of Ben Epling that when he reported to E. C. Green that Roberson and Burks were sleeping in the breakroom, E. C. Green told him that he would probably give Roberson and Burks a warning slip or 3 days' suspension and put them back to work.

However, it is undisputed that after E. C. Green made that comment to Ben Epling, Karl Roberson engaged in an additional act of protected activity. When Green called Roberson

and Burks into his office, Roberson asked to be represented by the Union. Roberson left but was unable to find his preferred representative and the meeting continued. Roberson and Burks were told of their suspension and later informed they had been terminated.

Under the circumstances, I am convinced that General Counsel proved a prima facie case of discriminatory discharge. Respondent was aware of Roberson and Burks' union activities including their continued refusal to sign the petition to oust the Union.

Despite the fact that the record failed to show direct knowledge by any supervisor, the record does show that the two people that reported to Vice President E. C. Green about Roberson and Burks were acting leadman Davis and Ben Epling. Both those men tried to persuade Roberson and Burks to sign the petition and both warned Roberson and Burks that they needed to sign the petition in order to save their jobs. Roberson and Burks refused to sign the petition.

Finally, everyone including Vice President E. C. Green was aware that Roberson wanted union representation in his suspension interview with Green. I find that General Counsel proved a prima facie case of discriminatory discharge. Respondent failed to show that Roberson and Burks would have been discharged in the absence of their protected activity.

I find that Respondent used the opportunity to discipline Roberson and Burks as a pretext to discharge them. E. C. Green announced beforehand that he intended a lighter discipline before Roberson asked for union representation during the disciplinary interview. Green told Ben Epling that he would warn or suspend Roberson and Burks for 3 days. After Green told Epling of his intention, Roberson told Green that he wanted a union representative in the room when he was interviewed by Green. See *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Delta Gas*, 283 NLRB 391 (1987), enfd. 840 F.2d 309 (5th Cir. 1988); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Yaohan of California*, 280 NLRB 268 (1986).

Transferred Leroy Mack from Second to First Shift

Leroy Mack testified that he has worked for Respondent for almost 26 years. Mack is a first class welder.

At the time of the hearing Mack had, since the strike started, participated in the strike against Respondent. Mack participated in union activity including passing out union literature at the gate whenever there was literature to be passed out, attending meetings including those in the plant in front of E. C. Green's office, and wearing union buttons, shirts, and ball caps.

Until the end of May 1991, Mack worked the evening shift where he earned an extra 25 cents per hour over what he would have made on the first shift. However, he was transferred to the day shift. He discussed that matter with his general foreman Claude Veatch. Veatch told Mack that it had been told to him that Mack was harassing the men on nights about the Union and that was the reason he was brought to days. Mack asked for an explanation and Veatch said that he could not tell him.

Mack testified that later on Veatch asked him if he wanted to go back to the evening shift and he told Veatch that he

did not. Mack testified that he said that because you usually get the opposite of what you want.

Another employee, Willie Lyle Jr., was transferred at the same time as Mack. According to Mack, Lyle was not as active for the Union as he was.

General Foreman Claude Veatch admitted that Mack and Willie Lyle were transferred to day shift at his direction. Veatch admitted that he told Mack and Lyle they had been transferred because some people on the second shift complained that they were being harassed by Lyle and Mack about the Union. Mack and Lyle were given the opportunity to transfer back to second shift roughly 5 weeks later. Veatch said that he told Mack and Lyle that sometime people are wrongly accused and that they may have been wrongly accused.

Findings

The evidence is not in dispute that Veatch told Mack that he was being transferred because some employees contended that he was harassing them about the Union.

In view of the undisputed evidence, it is apparent that Respondent believed that Leroy Mack was engaged in prounion activities. Respondent decided to transfer Mack because of its information that he was harassing other employees.

When an employer takes disciplinary action against an employee because of suspected misconduct while the employee is engaged in union activity, the standard test is to first determine if the employer has a good-faith belief that the employee engaged in the misconduct. If the employer meets that burden then General Counsel has the burden of showing that the employee did not engage in misconduct. (*Rubin Bros. Footwear*, 99 NLRB 610 (1952); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); see also *Clear Pine Moldings*, 268 NLRB 1044 (1984).)

Here, there was no showing that Respondent had anything more than a complaint from some employees of harassment. There was no showing that Respondent investigated the matter. Respondent did not establish that it had a good-faith belief that Leroy Mack engaged in misconduct. Even if Respondent relied on the complaint of harassment there was no showing that Respondent inquired into the substance of the allegation or that they questioned whether "harassment" constituted misconduct. Therefore I find that Respondent failed to show that it had a good-faith belief that Mack engaged in misconduct. In fact the record shows that Mack may have been falsely accused.

I find that General Counsel proved that Leroy Mack was transferred from the second to first shift because of its suspicion that Mack was engaged in union activity. In view of the fact there was a pay differential between the second and first shift, Leroy Mack is entitled to backpay to the extent he was deprived of the pay differential by Respondent's action. In that regard the record shows that Mack was subsequently offered the opportunity to return to the second shift and he declined on the theory that he would not get what he wanted. Nevertheless, I find that the record failed to show Respondent was insincere in its offer to Mack and for that reason, Mack's entitlement to backpay must end at the time he was offered the opportunity to return to the second shift.

Discharged Thomas Stamper

Thomas Stamper worked for Respondent from March 1968 until he was discharged on November 1, 1991. His termination notice, which he received in the mail, read:

This is to inform you that your employment with Beard Industries has been terminated due to your severe misconduct on the picket line.

Stamper was a first class welder before his termination. He participated in the strike beginning at its start on November 11, 1991. He was one of the team captains on the picket line. His duties included lining up the picket lines, answering the phones providing coffee and cookies for the men on the picket lines. Each shift had two team captains. In Stamper's case he usually stayed in the strike office because the other captain preferred to be on the picket line. That captain was usually at the gate. There were three picket stations at various gates.

Respondent alleged that Stamper was discharged because he engaged in misconduct around 11:30 a.m. on November 1, 1991.

Stamper denied that he engaged in any misconduct. On November 1, 1991, he was in the strike office during most of his 6 a.m. to noon shift except from about 9 to 9:30 he went to the front gate to take coffee to the men on the picket line. After delivering coffee he made the rounds of the picket stations and returned to the strike hall.

Stamper testified that he left the strike hall about 12:30 p.m. He was driving his burgundy Plymouth Voyager. He denied that he drove near the Bert Coons Road overpass around 11:30 a.m.

Charles Elkins, a machinist first class who has worked for Respondent for 16 years, testified that he was on strike against Respondent. On November 1, 1991, Elkins was helping in the strike hall delivering donuts. Elkins testified that he was at the hall from 6 a.m. until 7:30 a.m. and again from 8:15 or 8:30 a.m. until 2:30 p.m. and that Thomas Stamper was in the hall during part of that time. Elkins testified that Stamper was there from 7:30 a.m. until he left for 15 or 20 minutes around 9 a.m. to take coffee to the front picket line. According to Elkins, Stamper then returned to the hall and remained until he left around 12:15 or 12:30 p.m. Elkins recalled that Stamper brought his discharge papers out to the hall the next day.

Robert Parker testified that he was another team captain and on the day Stamper allegedly engaged in misconduct, Parker was scheduled to replace Stamper at noon. Parker testified that he came into the office early on that day between 10 and 10:30 a.m. Charles Elkins and Thomas Stamper were in the strike office when Parker arrived. Parker remained in the strike office from his arrival until 6 p.m. Parker testified that Thomas Stamper was in the strike office from the time Parker arrived until around 12:15 p.m. when Stamper left.

Stamper was one of two picket line captains on the morning of November 1 until noon, according to Elkins. Stamper stayed at the hall past his shift time until about 12:15 or 12:30 p.m. Robert Parker, who was picket line captain for the next shift, came to the hall around 11 a.m. according to Elkins, even though Parker's shift did not start until 12. Elkins testified that the second picket line captain that morning

was David Ross and that Ross stayed with the front picket line.

In defense of this allegation Respondent offered evidence regarding an incident that occurred outside the plant on a highway on November 1, 1991.

Robert Guydon testified that he was working for Respondent on November 1 and that he left the plant around 11:30 a.m. to drive to a nearby store for lunch. Emmett Bradford rode with Guydon. As Guydon and Bradford drove away from the plant down Old Forising Road, a light blue van crossed the median and stopped under the Bert Coons overpass in front of Guydon, blocking both lanes of traffic. Guydon stopped then tried to drive around the van. Several men in ski masks jumped out of the van, moved toward Guydon and Bradford, and hit Guydon's windshield with a club or bat, busting the windshield. Guydon estimated the incident occurred at about 11:35 a.m. He noticed two or three other cars parked under the overpass at the time of the incident.

Guydon drove on to the store. When he arrived at the store Willie Taylor came in after Guydon and told Guydon that he had been right behind him when the incident occurred.

Some 5 or 10 minutes after the incident under the overpass, Guydon, after buying his lunch at the store, returned to the plant. At that time there were no vehicles under the overpass. Guydon reported the incident to a police officer outside the plant, then to Manager of Human Resources Larry Bell in the plant.

Guydon was able to identify the driver of the light blue van from photos in the plant of all employees. Guydon testified that the driver was not wearing a ski mask and Guydon identified him as Paul Sparish.

Under cross-examination, Guydon testified that he recalled there were some vehicles parked under the underpass at the time of the incident included a maroon mini van, a small brown truck, and a white car. He admitted that although he recalled seeing one or two individuals off the side of the road at the time of the incident, he could not identify any of them.

Emmett Bradford testified that he was riding with Guydon during lunch on November 1. Bradford recalled, as did Guydon before him, that as they approached the Bert Coons underpass they noticed a light blue van move into the wrong lane and cause a red car to swerve off the highway down the road in front of them. The red car did not stop. Bradford agreed with Guydon that they stopped when the blue van stopped across the lanes under the overpass and then tried to drive pass the blue van off the road. Four or five people with ski mask on stepped out of the van and struck and busted Guydon's windshield. Bradford also saw the face of the driver of the blue van and later identified him from photos in the plant as Paul Sparish. He recalled some vehicles were parked on the side of the road under the underpass. One of those he identified as a maroon colored mini van.

Bradford was injured in the incident. He got glass in his eye which cut the right side of his eye.

Willie Taylor testified that he was driving to lunch behind Guydon and Bradford on November 1. He saw the blue van stop and block the road under the underpass and he saw the men in ski mask attack Guydon's truck as it tried to drive around. Taylor testified that he could not recognize any of

the men in ski masks that attacked Guydon's truck. He identified three vehicles that were parked under the underpass, a maroon mini van, a white Camaro, and a brown looking truck. He recognized the man driving the blue van as someone he had seen at the plant and he identified him from photos in the plant as Paul Sparish.

Taylor held up a revolver to show he was armed and drove around the blue van. As he drove around he recognized Thomas Stamper sitting in the maroon mini van parked on the side. Stamper was in the driver's seat with his window rolled partly down. Taylor knew Stamper because they had worked together for about 7 or 8 months on the third shift.

After driving away from the underpass, Taylor noticed that the maroon mini van was behind him as he stopped at a four-way stop. Taylor testified that he pointed his finger at Thomas Stamper and said they were going to get enough of what had happened.

Findings

In determining questions regarding disciplinary action taken against an employee because of protected activities the rule of law requires that I must first consider whether Respondent had a good-faith belief that the employee engaged in misconduct. Then if I find the Respondent had such a belief, I must consider whether it was proved that the employee did not actually engage in the misconduct.

In this matter three witnesses testified that Thomas Stamper was at a place other than the Bert Coons underpass at 11:30 a.m. on November 1, 1991. Despite that testimony I find that when the matter was reported to it on November 1, Respondent was confronted with the testimony of Willie Taylor which illustrated that Stamper was at the scene of violence against two employees. I saw nothing in Taylor's testimony which would justify a determination that Respondent could not rely on Taylor's testimony. Additionally, the two employees involved in the violence, Robert Guydon and Emmett Bradford, recognized a maroon mini van parked at the scene of the incident. On the basis of that evidence which was available to Respondent, I find that Respondent had a good-faith belief on November 1 that Thomas Stamper was involved in strike misconduct.

In view of that finding I must consider whether the record illustrated that Thomas Stamper did not engage in misconduct. In that regard General Counsel does not question whether Stamper was involved in the misconduct even though he was at the scene of the violence. Instead General Counsel argued that the evidence proved that Stamper was not there. Instead he was at the Union's strike office.

I have considered the evidence that Stamper was at the strike office at the time of the incident against Guydon and Bradford. I was not convinced from their demeanor that either Charles Elkins or Robert Parker were untruthful. However, I noticed from Parker's testimony that he was uncertain as to the date of the incident and he attempted to place that date on the basis of his recollection of his knowledge at the time he learned of the incident which resulted in Stamper's discharge.

I am convinced that Charles Elkins and Robert Parker were in error in their testimony that Thomas Stamper was at the strike hall around 11:35 a.m. on November 1 in view of

the strong testimony of Willie Taylor which I credit. In that regard I do not credit the testimony of Thomas Stamper.

Despite the fact that his testimony was contrary to that of three other witnesses who placed Stamper at another place, I am convinced that Willie Taylor saw Thomas Stamper at the Bert Coons underpass at 11:35 a.m. on November 1, 1991. Taylor had worked with Stamper for 7 or 8 months. He positively identified Stamper at the underpass and he again identified Stamper when Stamper followed Taylor to the four-way stop sign. Moreover, I credit the testimony of Robert Guydon and Emmett Bradford that a maroon mini van was parked at the Bert Coons underpass while Guydon's truck was under attack on November 1. In view of that credited evidence, I am unable to find that General Counsel proved that Stamper was not involved in the incident on November 1, and for that reason I find that General Counsel failed to prove the allegation as to Thomas Stamper. (*Rubin Bros. Footwear*, 99 NLRB 610 (1952); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); see also *Clear Pine Mouldings*, 268 NLRB 1044 (1984).)

Discharged Harry McDaniel

Harry McDaniel worked for Respondent for about 3 years. He was a first class pipe fitter. McDaniel participated in the strike against Respondent. He received a letter on November 1, 1991, notifying him that he had been discharged.

McDaniel walked the picket line during the strike. He testified to an incident while he was walking the picket line at the employee parking lot gate in October. Also picketing were Scott Lynch, Ed Norman, and Joe Garcia Sr. Around 2:45 p.m., a truck turned into the gate as McDaniel was walking across and brushed McDaniel's back and hit the stick portion of the picket sign he was carrying. The stick portion of the picket sign was struck by the left front quarter panel of the truck as McDaniel walked holding the picket sign in front with the stick trailing behind him. There were security guards near by and a policeman parked across the street when the incident occurred. After passing, the truck stopped and McDaniel told the driver he had better slow down or he was going to hurt someone. McDaniel testified that he later learned that the driver was Rick Harper. Harper said something to McDaniel but McDaniel did not recall what he said. McDaniel denied that he intentionally hit the truck and, according to an examination McDaniel made of the truck on January 7, 1992, there was no damage.

McDaniel received the following letter from Larry A. Bell of Respondent, dated November 1, 1991:

This is to inform you that your employment with Beard Industries has been terminated due to your severe misconduct on the picket line.

Scott Lynch testified that he was on picket line duty with Harry McDaniel when McDaniel was almost struck by a truck. Lynch recalled the incident occurred on October 21. Lynch testified that McDaniel was walking with his back to a truck turning in and didn't see the truck coming toward him. The truck appeared to brush McDaniel's back side when it passed. Lynch, who was standing on the passenger side of the truck, said that McDaniel was carrying a picket sign, with the sign tucked under his arm, and as the truck passed the sign went down the truck's hood up the wind-

shield on the driver's side. The truck pulled up a bit and the driver and McDaniel passed words.

Lynch was never interviewed by anyone from Respondent, the police, or security about the incident.

Ed Norman was on the picket line crossing in front of the gate in alternating manner with Harry McDaniel. The normal routine was for Norman and McDaniel to walk from opposite sides of the road toward each other, timing their walk so they cross just as a vehicle approaches in an effort to force the vehicle to stop.

In the case of the incident with McDaniel and the truck, Norman and McDaniel had already crossed when the truck turned in and the truck did not have to stop. Norman testified that the truck more or less hit Harry rather than Harry hitting the truck and that the truck almost hit the picket sign that Norman was carrying as well. Norman agreed that McDaniel's picket sign stick hit along the hood and fender of the truck.

Norman testified that no one from Respondent has interviewed him about the incident.

Joe Garcie Sr. testified that he was never employed by Respondent but that he walked the picket line in place of his son, an employee, who could not be present due to going to school. Garcie witnessed the incident with McDaniel and the truck. He was standing on the passenger side of the truck.

Garcie testified that as the truck approached the gate it speeded up rather than slow and it appeared to catch McDaniel on the lower part of his leg and almost knock him down. On cross, Garcie repeated that he saw the truck strike McDaniel on the lower leg but he agreed that McDaniel was able to walk after the incident. He said McDaniel was trying to get out of the way of the truck. Garcie was asked if McDaniel did anything to the truck with his picket sign and he answered no that McDaniel did not have time to do anything with his picket sign.

Ricky Harper testified that he is a tool grinder for Respondent and he did not engage in the strike. He was driving the truck involved in the incident with Harry McDaniel. Harper testified as following regarding that incident:

I came to the gate and I tried to get as close to the truck in front of me as I could, and as I began to go up on the grate, there was an individual who was over to my side four or five feet away from my truck and he was walking toward the front of my vehicle. And I was committed to going on in, so I didn't stop. And when he realized that I—

. . . .

As I was coming through the gate, he had his picket sign out in front of him and he just lowered it into the side of my truck and allowed the sign to scrape down the side of my truck till it hit the mirror. And at the time that it hit the mirror, I stopped and I rolled my window down and I asked him why did he do this with his sign, and he began to shout. And about the time that this was happening, Mr. Rascoe came over to my truck—

Harper denied that anyone was walking in front of his truck at the time he started pulling into the gate. After driving into the plant parking area, Ricky Harper examined his truck and found "three small dents in the panel on the bed

of my truck." Also, Harper testified that where the sign hit there was a scratch all the way down the side of the truck.

Ricky Harper reported to a guard and, after the guard made a report, he and Harper went to Manager of Human Resources Bell's office and reported the incident. Bell came out and examined Harper's truck. Later the guards made video pictures of the men on the picket line and Harper identified Harry McDaniel.

On cross, Harper admitted that McDaniel's picket sign just went from the front of his truck to the mirror. Ricky Harper admitted that the scratch caused by the picket sign was the type that he believed probably could have been waxed out. The three small dents Harper admitted were back on the bed and not where he saw McDaniel's sign hit. However, Harper testified those small dents were where McDaniel was standing after he stopped his truck and that the dents were not on the truck when he left home that night.

Respondent introduced an estimate of the damage to Harper's truck of \$494.50 for damage to "left bed side panel" and "stripe."

Chal Michael Rascoe testified that he was security guard during the above incident. Rascoe testified that it appeared that McDaniel tried to get in front of Harper's truck and when he saw he could not he stuck his picket sign out and made contact with the front left hand side and the sign went down the truck to a point right past the driver's door. Rascoe made out the report after Harper came back and said that his truck had been damaged. On cross-examination Rascoe admitted that he did not see or hear McDaniel strike Harper's truck other than with the picket sign as shown above. Rascoe also admitted that he did not see any damage to Harper's truck at that time.

Manager of Human Resources Larry Bell testified that Ricky Harper reported the incident and he went out and looked at Harper's truck. Bell said there were some dents in the side of the bed of the truck. When asked if there was any other damage Bell replied there were some scratches. On cross, Bell testified there was a pretty serious scratch in one of the three dents in the side of the bed and also a scratch down the side of the truck.

Findings

There was nothing in McDaniel's answers to direct and cross-examination which demonstrated inconsistency in testimony. However, the testimony dealing with the incident which led to his discharge, involved impressions of whether the picket sign McDaniel was carrying hit a truck or was hit by the truck. As to that testimony especially, I must weigh the testimony of all witnesses, in determining what to believe.

From all the evidence it appears that this situation involved an effort by Ricky Harper to get into the gate before the picketing strikers were able to move into his path and block his truck. It also appears that the crossing pickets were intent on requiring traffic to stop before being permitted to go on into the plant.

From all the evidence it is apparent that Harper's truck struck McDaniel's picket sign stick. There is confusion as to whether McDaniel was simply holding the picket or whether he pushed it in front of Harper's truck.

However, it was not on that issue that Respondent elected to discipline McDaniel. The damage to Harper's truck which

was relied on by Respondent involved three dents and a scratch in one of the dents, in the outside of the bed of Harper's truck. There was no evidence that McDaniel was in any way involved in that damage. Although Harper recalls that McDaniel was standing near where he ultimately found the dents, Harper did not hear or see anything which connected McDaniel to the dents.

Here again Respondent discharged an employee for alleged misconduct while the employee was engaged in strike activity. The test is the same one applied in the case of Thomas Stamper. I shall first examine whether Respondent had an honest belief that Harry McDaniel engaged in misconduct.

As to that question there was no evidence which gave Respondent a basis to honestly believe that McDaniel caused the dents and scratch to the bed panel of the truck. Respondent introduced an estimate for repairs for those damages which was substantial. However, the evidence available to Respondent which was made part of the record included the testimony of Ricky Harper and security guard Rascoe. None of their testimony shows that Harry McDaniel caused the damage to the bed panel of Harper's truck. It is clear from Harper's testimony, that he did not see or hear McDaniel do anything which caused the dents.

McDaniel's picket sign stick did scrape the left front panel of Harper's truck as Harper drove through the picket line without stopping and the evidence presented to Respondent by Harper and Rascoe, showed that McDaniel had stuck out his picket sign, stick forward, and permitted it to rub along Harper's front panel. Evidence which appeared equally as credible from McDaniel, Scott Lynch, Ed Norman, and Joe Garcie showed that McDaniel's sign was hit as the truck almost struck McDaniel. In either event the testimony of Ricky Harper shows that the scratch by McDaniel's picket stick could have been waxed out. At the most, the damage was minimal.

Apparently there was noticeable damage to Ricky Harper's truck and perhaps that damage occurred when he drove through the picket line. However, the record failed to show that Respondent had any probative evidence showing that Harry McDaniel caused the noticeably damage, i.e., the dents and scratches to the bed panel of Harper's truck. It was clear from the testimony of Manager of Human Resources Bell, that it was because of that damage, not the slight scratch to the front left panel of Harper's truck, that caused Respondent to take action against McDaniel. I find that Respondent did not have an honest belief that McDaniel engaged in misconduct which caused that damage.

As to the incident involving McDaniel's picket sign stick rubbing against Harper's front panel, I am convinced that was a minor incident. The evidence appears to show that Harper speeded up to get into the gate before the picketing employees had time to cross in front of his truck. Harper's truck struck the sign held by McDaniel and that sign did brush Harper's front left panel but there was little or no damage to Harper's truck. I do not find that to constitute evidence which is sufficient for Respondent to show an honest belief that McDaniel engaged in misconduct. (*Rubin Bros. Footwear*, supra; *NLRB v. Burnup & Sims*, supra; see also *Clear Pine Mouldings*, supra.)

Discharged Donald DuBose

Donald DuBose worked for Respondent for approximately 23 years. He was discharged on November 21 allegedly for misconduct involved in his strike activity. He participated in the strike against Respondent.

DuBose received a letter from Respondent dated November 21, 1991:

This is to inform you that employment with Beaird Industries has been terminated due to your severe misconduct on the Picket line.

On November 21, 1991, DuBose was walking the picket line with his team from 6 a.m. until noon. Allen Massey, Ritter, Sandy Moore, Clifford Lopez, and Henderson were others on that same picket line that morning.

DuBose testified that he and some of the other people on the picket line saw a guard driving down through the parking area and making throwing motions. Clifford Lopez and a couple of the others on the picket line, went down to the area where the guard had appeared to throw something and found tacks. Later DuBose saw the guards video filming first cars going through the picket line then they started filming him. DuBose testified that he was shelling and eating pecans as he walked the picket line that day. As he walked he dropped the pecan shells. He denied that he dropped nails or tacks and he denied seeing any of the others drop tacks or nails.

DuBose admitted on cross that he was not filmed in the same area where it appeared that tacks had been thrown from a guards' vehicle. He admitted that he did not report to any authority that he had seen what appeared to be tacks being thrown from a guards' vehicle.

Allen Massey who was a team captain on DuBose's team, testified that he was late arriving at the picket line where DuBose was picketing on November 21. He arrived around 6:15 a.m. and when he arrived he noticed some tacks in the area where a sidewalk meets the road. He did not observe anyone throwing the tacks after he arrived. He did not observe any tacks in the area where employees were picketing and he did not see any picket including DuBose with tacks. He testified that DuBose frequently eats peanuts, pecans, or candy. On that morning there were two policemen there and one policeman was standing near him. Both Massey and the policeman noticed the tacks on the ground. The tacks were roofing tacks and were on the ground about 3 feet from where the pickets were walking.

Chal Michael Rascoe testified that he was security guard and that he found a tack in the area where DuBose and others were picketing. Rascoe testified that he suspected DuBose of dropping tacks on previous occasions. A few minutes after he found the first tack Rascoe went back and found another tack that had not been there before. Rascoe called Security Officer McCrary and instructed him to video DuBose's feet. Rascoe left as McCrary started video tapping. Before leaving Rascoe checked the area and found some more tacks. He picked those up and left the area clean of tacks.

About 30 minutes later Rascoe returned and he and McCrary viewed the tape. Rascoe also checked for more tacks on the ground and he found 10 more tacks. The tacks were roofing tacks with large flat heads.

Rascoe testified that he did not see DuBose drop any tacks and that DuBose was eating pecans on the picket line that night.

Rascoe made a report and turned in the report and the video tape to Personnel Manager Bell.

Roy Mack McCrary Jr., another security guard, testified that he filmed Donald DuBose on the picket line at the direction of Rascoe for approximately 30 to 45 minutes on the morning of November 21, 1991. McCrary testified that he saw DuBose drop tacks while he was filming. DuBose was wearing overalls with the pants legs unzipped. McCrary was standing 15 to 20 feet from DuBose and he saw approximately 10 tacks drop from DuBose's pants. His written report and video tapes of the incident were received in evidence.

Ron Thoma, commercial director of KTBS TV, testified that he was employed to edit the video filmed by Officer McCrary with special equipment that may slow down and highlight particular items on the tape. The highlighting includes zoom and a process of darkening the area around a particular object in order to show the object against the contrast in shade. Thoma testified that he did not add or remove anything from the tape. His edited tape was received in evidence.

Director of Human Resources Bell testified that Security Officer McCrary told him that he could see tacks falling out from DuBose's pants legs as he was taking the video.

Findings

Roy McCrary was a security guard with Mid-South Security. He testified regarding the incident which led to the discharge of Donald DuBose. McCrary demonstrated good demeanor and I saw nothing which caused me to question his credibility.

Cal Rascoe was a security guard with Mid-South Security that was assigned to Respondent's plant. He testified regarding the incidents leading to the discharges of Harry McDaniel and Donald DuBose. Rascoe had good demeanor. I saw nothing in his testimony which caused me to doubt his credibility.

As shown above, in determining questions regarding disciplinary action taken against an employee because of protected activities the rule of law requires that I must first consider whether Respondent had a good-faith belief that the employee engaged in misconduct. Then if I find the Respondent had such a belief, I must consider whether it was proved that the employee did not actually engage in the misconduct.

The evidence is not in dispute as to the existence of roofing tacks at or near the picket line on the morning of November 21, 1991. Even the picket line captain Allen Massey saw tacks on the ground 3 feet from where the pickets were walking. I credit that testimony of Massey. I also credit the evidence which was available to Respondent including that of Rascoe and McCrary, the two security guards, along with the video tapes.

In my opinion the video tapes alone are insufficient to prove that DuBose was dropping tacks. It does appear, especially from the edited tape, that something was falling from DuBose's trouser legs but it is impossible to tell from the film that the objects are tacks. However, Respondent was also aware that Officer McCrary saw approximately 10 tacks

fall from DuBose's pants. It was also aware that shortly after McCrary's observation, Officer Rascoe went over and found 10 roofing tacks in the area where the pickets were walking. On the basis of that evidence, I am convinced that Respondent had a good-faith belief that Donald DuBose engaged in misconduct by dropping roofing tacks in the area where automobiles entered the plant on the morning of November 21, 1991.

I also find that General Counsel failed to show by credible evidence that Donald DuBose did not engage in misconduct. The video tapes show that something appeared to fall from the unzipped coverall legs of Donald DuBose on the morning of November 21. I do not credit DuBose's testimony to the extent it implies that he was dropping pecan shells in that manner. There is no reason why DuBose would try to conceal pecan shells by dropping them down inside his trousers. Also, as shown above, I credit the testimony of Officer McCrary that he saw DuBose drop approximately 10 roofing tacks. Therefore, I find that General Counsel failed to show that Respondent violated provisions of the Act by discharging Donald DuBose. (*Rubin Bros. Footwear*, 99 NLRB 610 (1952); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); see also *Clear Pine Mouldings*, 268 NLRB 1044 (1984).)

The 8(a)(5) Allegations

On March 30, 1990, the Union was certified as the exclusive collective-bargaining agent of Respondent's employees in the following described appropriate collective-bargaining unit:

All production and maintenance employees, including, but not limited to, material expeditors, shipping and receiving; chief shipper and receiver, inspectors, toolroom attendants, welders, welder trainees, welder technicians, maintenance mechanics, plant clericals, senior plant clerks, working leadman, bay leadman, radiographers and trainees, stress oven operators, electricians, fitters, tool grinders, grinders, machinists, helpers, torch burners, machine center operators, layout, material handlers, overhead and floor crane operators, bending roll operators, handymen, painters, product finishers, and sandblasters; excluding office clerical, office clean up employees, professional employees, draftsmen, nurses, industrial engineers, materials control clerks (purchasing), traffic/building clerk, traffic analyst, traffic manager, watchmen, guards and supervisors as defined in the Act, as amended.

After the Union was certified as bargaining representative of the above-described bargaining unit in March 1990, Respondent was purchased by Trinity Industries in April 1990.

In April 1991, the parties agreed to a settlement in Case 15-CA-11334-1. In addition to posting a notice the settlement required Respondent to return from supervisor to leadman F. B. Terrell, R. L. Paddie, S. Davis Jr., J. Miles, and C. B. Shaw.

The parties engaged in collective-bargaining negotiations from May 30, 1990, until May 16, 1991, when Respondent withdrew recognition.

Respondent contends that it was obligated to withdraw recognition because it was presented with a petition signed by a majority of the bargaining unit employees requesting

that they no longer be represented by the Union, on May 11, 1991, a day substantially after the certification year expired on March 30, 1991.

General Counsel does not quarrel with Respondent's contention that a majority of the unit employees signed the petition. General Counsel would agree that 268 out of 528 unit employees signed the petition. However, General Counsel argues that the petition was tainted by supervisory participation in the signing of the employees and, for that reason, does not entitle Respondent to withdraw recognition.

From September 11, 1991, until April 1992, bargaining unit employees struck against Respondent in Shreveport.

Respondent Withdrew Recognition and Refused to
Recognize the Union Since May 16, 1991

On May 16 at a scheduled negotiating session, Respondent handed the Union the following letter:

Based upon a petition signed by a majority of the bargaining unit employees at Beaird Industries, Inc. stating that they no longer wished to be represented by your union, we have a good faith doubt as to your continuing majority status. Therefore, we are withdrawing recognition and must decline any further meetings with you for the purpose of negotiating a collective bargaining agreement.

/s/W.E. Adams

The Union wrote Respondent that same day protesting Respondent's withdrawal of recognition.

On May 22, 1991, the Union wrote Respondent and asked for all documents supporting Respondent's claim of a basis for its good-faith doubt of the Union's continuing majority status. The Union also asked for another negotiating meeting.

Findings

The above evidence is not in dispute. It is not disputed that Respondent was presented with an employees' petition signed by a majority of its employees expressing a desire not to be represented by the Union. Respondent contends that it was justified in withdrawing recognition of the Union on May 16, 1991, because of its employees' petition. General Counsel argues that the evidence illustrated that supervisory employees participated in solicitation of employees to sign the petition and that the petition does not reflect an uncoerced expression of the employees' desire to have or not have union representation.

The evidence illustrated that several employees including Ben Epling and Sammy Lipsy were involved in circulating a petition to oust the Union among Respondent's bargaining unit employees.

Ben Epling testified that he phoned the National Labor Relations Board on May 2, 1991, and was told the procedure for petitioning to oust the Union.

Ben Epling and Sammy Lipsy admitted they solicited employees to sign the petition during worktime as well as during break times. Both denied they ever solicited signatures in the presence of supervisors. On one occasion on May 7, 1991, Lipsy's general foreman Skip Wallace gave him a written warning for wasting time. Lipsy testified that he understood that was a warning because he was spending his time soliciting employees to sign the petition. However, Gen-

eral Foreman Wallace testified that he did not know what Lipsy was doing other than being in an area where he had no business and that was the reason he gave Lipsy a warning.

Epling testified that E. C. Green stopped him in the plant on the second day he was soliciting employees to sign the petition and told him not to be passing the petition around and holding men up on working time. On cross, Epling testified that supervisors including M. O. Green, Rupert Sepulvado, J. M. Mixon, Sonny Shoalmire, E. C. Green, and J. C. Wise, asked him about the petition. He admitted that M. O. Green talked to him and said he had heard that Epling had a petition going around. Epling said that he had and Green asked him if he was getting many names on it. Epling replied a few.

Lipsy denied that any supervisors ever referred employees to him to sign the petition, or told him to go see an employee to have them sign the petition, or that any supervisor was ever present when an employee signed the petition in his presence. He admitted that although he was soliciting signatures he told some employees that it was his understanding that if they voted the Union out they'd get a 5- to 7-percent raise.

In addition Lipsy and Epling solicited other employees to help solicit signatures for the petition. Several employees testified to soliciting other signatures on the petition. Danny Pizzolato testified that he worked in the toolroom and that he solicited employees to sign the petition which had been given to him by Sammy Lipsy. Pizzolato denied that he ever solicited an employee or had an employee sign the petition, in the presence of a supervisor.

Sammy Lipsy testified that on the morning of May 16 he met with two of the others that were soliciting signatures for the petition, C. B. Shaw and Lee Ray Paddie, and counted the signatures. Ben Epling, who was working nights at that time, testified that C. B. Shaw phoned him and asked how many employees had he signed the night before. When he told Shaw 20 or 21, Shaw told him that put them over a majority and he asked Epling to bring those signatures in. Epling came in and gave the signed petitions to Shaw.

General Counsel alleged but Respondent denied, that both Shaw and Paddie were supervisors at material times.

Paddie admitted that he participated in solicitation of signatures for the decertification petition. However, during that time he received a warning for wasting time which was due to his efforts to solicit signatures on the petition. Additionally, General Foreman Rupert Sepulvado asked him if he had a petition going around. When Paddie admitted he did Sepulvado told him that was fine but "don't let me catch you doing it on company time."

C. B. Shaw who was also busted back from foreman to leadman as a result of the charges filed by the Union, admitted that he solicited employees to sign the petition to oust the Union. Shaw admitted that he continued to wear a yellow hardhat like foremen wore during the time he was soliciting employees to sign the petition.

Their count revealed more than half the bargaining unit employees. Lipsy called and eventually received an appointment with Respondent's president. Lipsy, Shaw, and Paddie presented the signed petition to President Adams and told him they had enough names and did not want to be represented by the Union. Lipsy testified that Adams called in

some ladies and said to them, "Let's get this counted for sure how many we've got."

However, as found above, the credited evidence also proved that several supervisors were deeply involved in the efforts to persuade employees to sign the petition to oust the Union. Supervisors Bobby Foster, E. C. Green, M. O. Green, Bobby Remedies, Rupert Sepulvado, Simon Shively, Claude Veatch, and Skip Wallace were involved in the petition efforts which included solicitations, promises, and threats to employees.

Moreover, I found that the record evidence proved that both Paddie and Shaw were supervisors at material times. Both engaged in solicitation to have employees sign the petition to oust the Union as well as other violative conduct.

The fact that both Paddie and Shaw were involved with the petition to oust the Union was clearly demonstrated by the two of them being two of the three that took the final petition to President Adams and told him that a majority of the employees had signed to oust the Union.

The above evidence shows that the petition was tainted by the work of the various supervisors. The unfair labor practices found which occurred during the time the petition was circulating, were clearly of the type that would tend to dissipate support for the Union. *Choctawhatchee Electric*, 274 NLRB 595 (1985). Therefore the petition, which showed a slight majority, cannot be used as a basis for withdrawing recognition of the Union. Moreover, as shown above, the petition was completed in an atmosphere of unfair labor practices.

Respondent, by withdrawing recognition on May 16, 1991, engaged in conduct violative of Section 8(a)(1) and (5) of the Act. *Cypress Lawn Cemetery Assn.*, 300 NLRB 609 (1990); *Choctawhatchee Electric*, supra; *Rogers of Santa Clara*, 261 NLRB 409 (1982).

Moreover, the evidence shows that the employees struck on September 11, 1991, because of Respondent's continual refusal to recognize and bargain with the Union. Since that action constituted a violation of provisions of the Act, the strike must be considered an unfair labor practice strike.

Unilateral Changes

Reduced the Work of Unit Employees from April 18, 1991

John Donaho testified that Bays 4, 5, 6, and 7 went from a 5- or 6-day to a 4-day workweek on April 18, 1991, and that the Union was given no prior notice of that change.

Donaho testified that not everyone was included in the first reduction to 4 days but that others were included later. Bays 10 and 13 were shortened to 4 days on May 6 and Bays 11 and 12 were reduced to 4 days on May 13.

In early June 1991, everyone was returned to 5-day weeks.

However, according to the testimony of Charles Johnson, a welder, the employees on the second shift in Bay 12 where Johnson worked, were told in a safety meeting on June 4 that their work was being reduced to 4-day weeks. Johnson believed the 4-day workweek lasted about 3 weeks.

Beginning on April 22, 1991, Respondent ran an ad in the local newspaper, the Shreveport Times, soliciting applications for the positions of code welders, fitters, and associate welding engineers. John Donaho recalled that the ad ran for about a week.

Findings

The record shows that Respondent failed to notify the Union and bargain about the above reductions in workweeks. An employer's obligation to bargain with the Union includes an obligation to notify the Union of changes in working conditions. By making the above changes in workweeks from 5 to 4 days per week without notifying and bargaining with the Union, Respondent engaged in an additional violation of Section 8(a)(1) and (5) of the Act. *Smyth Mfg. Co.*, 247 NLRB 1139 (1980); *Alamo Cement Co.*, 277 NLRB 320 (1985); *San Antonio Portland Cement Co.*, 277 NLRB 338 (1985).

Transferred Work from Employees in the Unit

In April and June 1990, Respondent promoted eight leadmen to supervisory positions. The leadman position was included in the bargaining unit. At least seven of the bargaining unit positions created when the former unit employees were promoted to supervisor, were left vacant. The Union was not notified and permitted to bargain regarding Respondent's action.

The Union filed charges over Respondent's action and that matter was settled. The settlement included rescission of five of those promotions.

General Counsel agrees that the appointment of supervisors is a management function. However, General Counsel argues that Respondent had an obligation to bargain because of the vacancies created by promotion of a large proportion of the leadmen positions in the bargaining unit. *Kendall College*, 228 NLRB 1083, 1088 (1977), affd. 570 F.2d 216 (7th Cir. 1978); *Tesoro Petroleum Corp.*, 192 NLRB 354, 359 (1971).

General Counsel argues that the settlement of the above charges, Case 15-CA-11334-1, should be set aside because Respondent violated the terms of that settlement by the unfair labor practices alleged in this proceeding.

Findings

In view of my findings, I recommend that the settlement agreement in Case 15-CA-11334-1, be set aside and that Respondent be ordered to remedy the violation of Section 8(a)(1) and (5) occasioned by its failure to bargain with the Union regarding the vacancies created in the bargaining unit when it promoted leadmen out of the unit during April and June 1990.

Refused to Bargain over Discharges (Burks and Roberson) and Refused to Supply Information Since June 5, 1991; Personnel Files of Burks and Roberson; Copies of Disciplinary Actions Including Sleeping on job, Overstaying Breaks, Loafing; Copies of all Statements from Others Regarding Discharges of Burks and Roberson; All Records Concerning Bay 14 for May 23-25, 1991

On June 5, 1991, the Union wrote Respondent and requested to bargain concerning the discharge of Willie Burks and Karl Roberson. The letter also requested copies of the personnel files of Burks and Roberson; copies of all discipline issued to any employee for sleeping on the job, overstaying breaks or lunch, loafing, or loitering; copies of any statement of any witness concerning the discharges of

Burks and Roberson; and records concerning the work of Bay 14, Sand Blasting Shop, from May 23–25, 1991.

Respondent has, since May 16, 1991, refused to bargain with the Union and it has failed and refused to bargain regarding the discharges of Burks and Roberson or to furnish any of the requested information.

Findings

In view of my findings above that Respondent illegally withdrew recognition from the Union, it had an obligation to bargain with the Union over mandatory subjects on June 5 and thereafter. The discharges of Burks and Roberson, who were employees in the bargaining unit represented by the Union, was a mandatory subject of bargaining. In fact the parties had negotiated over disciplinary actions against unit employees during the period before Respondent withdrew recognition.

Additionally, Respondent has an obligation to furnish requested information to the Union if the requested information is needed by the Union for the proper performance of its duties. I find that the information requested by the Union is needed for the proper performance of the Union's duties. Therefore, Respondent violated Section 8(a)(5) by refusing to bargain with the Union over the discharges of Burks and Roberson and by refusing to furnish the Union the information it requested. *Associated General Contractors of California*, 242 NLRB 891 (1979), enf. 633 F.2d 766 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981).

Employees Engaged in Unfair Labor Practice Strike from September 11, 1991

A union membership strike resolution was adopted by the membership on August 25, 1991. That resolution specifies that a strike is being authorized because of Respondent's withdrawal of recognition and refusal to meet with the Union. Frank Inman of the Union testified that the Union's attorney explained to the membership before they voted on the strike resolution, that the National Labor Relations Board had found merit to the charges that Respondent acted unlawfully in withdrawing recognition and, if they struck over that action by Respondent the strike would be an unfair labor practice strike.

Findings

In view of my findings above and the record evidence which shows that the strike which started on September 11, 1991, was motivated by Respondent's unfair labor practices, I find that the strike was an unfair labor practice strike and that striking unit employees are entitled to all the privileges of unfair labor practice strikers. *Airport Parking Management*, 264 NLRB 5, 11 (1982), affd. 720 F.2d 610 (9th Cir. 1983); *Larand Leisurelies, Inc.*, 213 NLRB 197 fn. 4 (1974), enf. 523 F.2d 814 (6th Cir. 1975); *Juniata Packing Co.*, 182 NLRB 934, 935 (1970).

CONCLUSIONS OF LAW

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

2. United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has been at times material, the exclusive representative for the purposes of collective bargaining of the following employees:

All production and maintenance employees, including, but not limited to, material expeditors, shipping and receiving; chief shipper and receiver, inspectors, toolroom attendants, welders, welder trainees, welder technicians, maintenance mechanics, plant clericals, senior plant clerks, working leadman, bay leadman, radiographers and trainees, stress oven operators, electricians, fitters, tool grinders, grinders, machinists, helpers, torch burners, machine center operators, layout, material handlers, overhead and floor crane operators, bending roll operators, handymen, painters, product finishers, and sand-blasters; excluding office clerical, office clean up employees, professional employees, draftsmen, nurses, industrial engineers, materials control clerks (purchasing), traffic/building clerk, traffic analyst, traffic manager, watchmen, guards and supervisors as defined in the Act, as amended.

4. Respondent, by prohibiting its employees from distributing pronoun materials in nonwork areas during nonworking time; by soliciting its employees to sign a petition to oust the Union as the exclusive collective-bargaining agent in the above-described collective-bargaining unit; by promising its employees a pay raise in they would oust the Union as their bargaining agent; by promising its employees an increase in work hours if they oust the Union as their bargaining agent; by promising its welder employee a test to qualify for a higher grade welding position at higher pay if the employee would sign a petition to oust the Union as bargaining agent; by threatening to reduce working hours if the employees fail to oust the Union; by interrogating its employees about their union activities; by threatening its employees that it will not allow a union; by promising more work if its employees oust the Union as their bargaining representative; by soliciting its employees to encourage other employees to sign the petition to oust the Union; by implying to its employees that they will receive unspecified benefits if they oust the Union as their bargaining representative; by promising increased benefits to nonunion employees; by threatening retaliation to union employees; by threatening more onerous work for pronoun employees if the employees oust the Union as their bargaining representative; and by promising its employees that things would get better if a majority of the unit employees signed the petition to oust the Union, has violated Section 8(a)(1) of the Act.

5. Respondent by discharging its employees Willie Burks, Karl Roberson, and Harry McDaniel and transferring its employee Leroy Mack from the second to the first shift, because of their union activity, has violated Section 8(a)(1) and (3) of the Act.

6. Respondent, by withdrawing recognition from and refusing to bargain with the Union as exclusive collective-bargaining representative of the employees in the above-described bargaining unit since May 16, 1991; by unilaterally removing leadmen from the bargaining unit without notifying and bargaining with the Union regarding vacancies in the unit; by unilaterally reducing the work hours for unit employees from April 18, 1991, without notice to or bargaining

with the Union; by refusing to bargain with the Union about the discharges of employees Willie Burks and Karl Roberson; and by refusing to supply the Union with information requested by the Union regarding the discharges of Burks and Roberson, has violated Section 8(a)(5) and (1) and 8(d) of the Act.

7. By striking against Respondent from September 11, 1991, until April 6, 1992, because of Respondent's unfair labor practices, the employees were engaged in an unfair labor practice strike.

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

THE REMEDY

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

As I have found that Respondent has illegally transferred and discharged its employees in violation of sections of the Act, I shall order Respondent to offer Leroy Mack, Willie Burks, Karl Roberson, and Harry McDaniel, immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. I further order Respondent to make Mack, Burks, Roberson, and McDaniel whole for any loss of earnings they suffered as a result of the discrimination against them and that Respondent remove from its records any reference to the unlawful actions against its employees Mack, Burks,

Roberson, and McDaniel, and notify Mack, Burks, Roberson, and McDaniel in writing that Respondent's unlawful conduct will not be used as a basis for further personnel action. Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

As I have found that Respondent engaged in illegal activity by unlawfully withdrawing recognition and refusing to bargain with bargaining with United Automobile, Aerospace and Implement Workers of America (UAW) from May 16, 1991; by unilaterally implementing changes in working conditions without notifying and bargaining with the Union; by refusing to supply United Automobile, Aerospace and Implement Workers of America (UAW) with relevant information necessary to United Automobile, Aerospace and Implement Workers of America (UAW)'s bargaining responsibilities, I shall recommend that Respondent be ordered to restore terms and conditions of work for bargaining unit employees to the status quo of April 1, 1991; that on request, it supply United Automobile, Aerospace and Implement Workers of America (UAW) with information relevant to United Automobile, Aerospace and Implement Workers of America (UAW)'s bargaining responsibility; and on request, bargain in good faith with United Automobile, Aerospace and Implement Workers of America (UAW). It appears that the remedy may include make-whole requirements resulting from Respondent's illegal implementation of its final order. *Storer Communications*, 294 NLRB 1056 (1989). If necessary, the extent of Respondent's make-whole obligation should be set through compliance proceedings.

[Recommended Order omitted from publication.]