

Stone Container Corporation and Glass, Pottery, Plastics and Allied Workers International Union, AFL-CIO, CLC. Cases 11-CA-13154, 11-CA-13299, 11-CA-13590, and 11-CA-13810

November 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 20, 1991, Administrative Law Judge H. E. Lott issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions.

1. In adopting the judge's recommendation to dismiss the allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to grant the annual April wage increase in April 1989 while the parties were negotiating for a collective-bargaining agreement, we find this case to be distinguishable from *Bottom Line Enterprises*, 302 NLRB 373 (1991). The Respondent had granted annual wage increases ranging from 3 to 6 percent to its hourly employees in April from 1984 to 1988.² At the February 23, 1989³ negotiating session, the Union wanted to discuss the annual April wage increase, and the Respondent stated that it would have a proposal in March on the wage increase.⁴ On March 22, the Union informed the Respondent that it would not protest the granting of a wage increase in April. On March 23, the parties discussed the April increase, and the Respondent told the Union that it could not grant the April wage increase because of economic reasons.⁵ The Respondent then

¹ The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Wage increases had also been granted on August 31, 1987, and January 4, 1988.

³ All dates are in 1989 unless otherwise indicated.

⁴ Subsequently, the Respondent conducted its annual wage and benefit survey of 15 manufacturing facilities in the Lexington area.

⁵ The Respondent told the Union that it could not grant the April increase because the Lexington plant had substantially higher wage rates than those at other plants in the area and those at the Respondent's comparable plants; labor costs at Lexington were the highest in Regional Manager McNeil's 13-plant region; employees had received four wage increases between April 6, 1987, and April 4, 1988, plus wage adjustments to individual job classifications of up to 13 percent in 1987; and the wage compression rate had gone from a normal 30 percent to only 16 percent between the highest and lowest paying jobs.

stated that it would have a complete economic proposal for the Union in April.⁶ The Union made no specific proposal for an April wage increase and did not raise the issue again during negotiations.

The judge found that a full discussion occurred over the April wage increase at the March 23 meeting, and that the Respondent did not refuse to negotiate. The judge further found that the Union had an opportunity to bargain over this issue and declined to pursue it further. The judge thus concluded that the Respondent did all that was required under Section 8(a)(5), and recommended dismissal of the 8(a)(5) and (1) allegation.

Bottom Line Enterprises, above, stands for the proposition that when parties are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilaterally discontinuing an established practice extends beyond the mere duty to give notice and an opportunity to bargain; rather, except for certain circumstances not present here, it encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole. In *Bottom Line Enterprises*, the employer unilaterally discontinued its contributions to the union's health and welfare and pension trust funds; thus, the employer's unilateral implementation concerned a proposal which was one of the subjects that was part of the negotiations for an overall agreement. Such a proposal differs significantly from a proposal concerning a discrete event, such as an annually scheduled wage review like the one in the instant case, that simply happens to occur while contract negotiations are in progress. We note that it is not disputed that the April wage increases here were annually occurring events, and thus bargaining over the amount of such increases could not await an impasse in overall negotiations. Further, the Respondent was not proposing to permanently abandon the April wage increases⁷ nor declining to bargain over how much of an increase, if any, it should give in April 1989. Rather, the Respondent expressed its willingness to discuss the subject, conducted its "annual wage and benefit survey," and proposed giving no wage increase because, in its view, financial circumstances did not justify one at that time. Further, while the Respondent made its proposal in time for bargaining over the matter if the Union wished to bargain, the Union made no counterproposal concerning the April wage increase, and did not raise the issue again during negotiations. Thus, we find that the Re-

⁶ The Respondent presented its wage proposal to the Union at the April 18 meeting, which called for wage decreases in most job classifications.

⁷ Because the Respondent simply made a decision here regarding the particular wage increase and did not purport to terminate the annual wage review practice, the circumstances here are distinguishable from those in *Daily News of Los Angeles*, 304 NLRB 511 (1991), remanded 979 F.2d 1571 (D.C. Cir. 1992).

spondent satisfied its bargaining obligation regarding the April 1989 wage increase, and we affirm the judge's dismissal of the complaint.

2. We also adopt the judge's finding that the Respondent's postcertification 1988 discontinuance of four activities—a company picnic, the safety program, a \$20 Christmas gift certificate, and a Thanksgiving meal—did not violate Section 8(a)(3) or (5) of the Act. Regarding the 8(a)(3) allegation, the judge credited the Respondent's explanation that it canceled these activities at a time when the profitability of the plant was in decline and it decided that some group activities should be canceled in favor of more individual awards for good performance. The Respondent has a number of employee activities which are routinely changed from time to time. When the Respondent canceled these four activities, it substituted others. We also note that these activities were canceled for unit and nonunit employees alike. At about the same time, the Respondent also eliminated certain other nonemployee activities, including a meeting and golf outing for sales personnel at Pinehurst, North Carolina, and a customer golf outing. Moreover, the discontinuance of the four activities did not result in a decrease in the overall employee activities budget, and in fact that budget increased from 1988 to 1990. But unlike our dissenting colleague, we find no indication of discriminatory intent in that fact. Rather, most of the budget for 1988 had been spent in the first half of that year, so the Respondent essentially held the line on 1988 expenses by its cancellation of certain of these activities. Thereafter, it committed itself to different activities than those canceled, and shifted its emphasis from group events to individual awards. In the circumstances of this case, we cannot find a discriminatory intent in these actions. Indeed, other than the timing of these cancellations as one element of possible discriminatory intent, the credited facts do not establish that the cancellation of these four particular employee activities violated Section 8(a)(3) of the Act, and thus we affirm the judge's dismissal in that regard.⁸

We further agree with the judge's dismissal of the 8(a)(5) allegation regarding the elimination of these activities. As the judge found, the company picnic, the Christmas gift certificate, and the Thanksgiving dinner were not related to any performance or production standards, and thus were gifts rather than terms and conditions of employment. See *Benchmark Industries*, 270 NLRB 22 (1984). Thus, the Respondent did not have to bargain with the Union about their discontinuance. Contrary to our dissenting colleague, the length of time that certain of these gifts were given by the Respondent, without more, is insufficient to establish

⁸We do not agree with our dissenting colleague that a preference for individualized awards, as distinguished from group awards, necessarily indicates animosity toward the exercise of Sec. 7 rights.

that they were terms and conditions of employment. See *Benchmark*, supra; *Harvstone Mfg. Corp.*, 272 NLRB 939 fn. 1 (1984) (where the gifts had been given by two of the companies involved for over 10 years, and by one company for 5 years); and *Freedom WLNE-TV*, 278 NLRB 1293, 1297 (1986).⁹

Regarding the safety bonus program, this involved giving employees donuts, hot dogs, or barbecue lunches if there were no lost-time accidents for specified time periods. We adopt the judge's finding that awarding this small amount of food did not rise to the level of a benefit or compensation that required bargaining.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

CHAIRMAN STEPHENS, dissenting in part.

I disagree with my colleagues in the majority on one point. I would reverse the judge's dismissal of the allegations that the Respondent violated both Section 8(a)(3) and (5) when, after the union victory in June 1988, it unilaterally, and without prior notice and an opportunity to bargain, canceled the employee summer picnic, the catered Thanksgiving dinner, the safety bonus program (consisting of snacks and meals of varying levels of value provided to all the employees if the plant went for certain specified lengths of time without a lost-time accident), and the \$20 Christmas gift certificate. I would predicate the 8(a)(3) violation on all four cancellations, and would find a violation of Section 8(a)(5) on the cancellations of all but the Christmas gift certificate.

The judge dismissed the 8(a)(3) allegation in part because he accepted the Respondent's argument that the four benefits were canceled out of "economic necessity." But the economic necessity argument was contradicted by two other arguments of the Respondent, namely that it had actually increased its employee activity budget in 1988 and 1989, and that cancellation of these four benefits simply reflected its regional manager's preference for "individual awards for good performance" as opposed to employer-subsidized "group activities."

That declared preference in fact points up the message the Respondent was sending the employees after their concerted activity resulted in the election of a union to represent their collective interests. Voting for the Union cost them benefits that inured to the

⁹*Litton Systems*, 300 NLRB 324 (1990), cited by our dissenting colleague, involved an "extra paid half hour for lunch on the day before the Christmas holiday." See above at 331 fn. 34. In essence, employees were to receive a wage increase for that day. Clearly, wages are a mandatory subject of bargaining. The employer's conduct in that case effectively changed a longstanding wage practice. The instant case does not involve a change of wages.

group—such as the summer picnic that had been announced before the election but that was canceled soon afterwards. The “individual awards” that the Respondent tells us its management instituted in place of the canceled group benefits would of course be largesse dispensed to individuals of management’s choosing.

The Respondent, relying on *Benchmark Industries*, 270 NLRB 22 (1984), also successfully argued to the judge that the benefits were not sufficiently regular and substantial to constitute “terms and conditions of employment” for the purpose of sustaining a violation of either Section 8(a)(3) or (5). I would agree that the Christmas gift certificate—given at most only twice in the past—might not meet the *Benchmark* test. But the safety bonus program (a regular practice since 1984), the catered Thanksgiving dinner (a fixture of 19 years standing), and the picnic (which the employees had enjoyed during at least the previous 3 years and were promised for a fourth year, before the election intervened) were sufficiently a part of the employees’ reasonable expectations to constitute conditions of employment. *Litton Systems*, 300 NLRB 324, 331 fn. 34 (1990) (paid holiday lunch given before either Christmas or Thanksgiving for 4 years deemed a condition of employment).

Furthermore, where the 8(a)(3) violation is concerned, the pattern of the cancellation of benefits is significant: it began soon after the election with the picnic, and came to the employees’ attention again at Thanksgiving and Christmas, and whenever their overall safety record was such that they would have received an award if the safety bonus program were still in effect. Given the timing and the Respondent’s claimed reasons, as discussed above, I would infer that the Respondent was motivated by the union election in canceling these benefits, and I believe that the employees were likely to draw the same inference.

Finally, I believe that message was sufficiently potent to undermine employee support for the Union. On this ground, I would find that the Respondent could not rely on the employee union-repudiation petitions as a basis for withdrawing its recognition of the Union as the employees’ collective-bargaining representative.

Paris Favors Jr., Esq., for the General Counsel.
Stewart M. Vaughn Jr. and C. Matthew Keen, Esqs.
(Ogletree, Deakins, Nash, Smoak & Stewart), of Raleigh,
 North Carolina, for the Respondent.
Richard Schall, Esq. (Tomar, Simonoff, Adourian & O’Brien), of Haddonfield, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

H. E. LOTT, Administrative Law Judge. This case was heard at Winston-Salem, North Carolina, on June 4, 5, and 6, 1990, on unfair labor practice charges and amended

charges filed from January 26, 1989, to April 16, 1990, against Stone Container Corporation (Respondent) by Glass, Pottery, Plastics and Allied Workers International Union, AFL-CIO, CLC (Union) alleging violations of Section 8(a)(1), (3), and (5) of the Act.

Respondent’s answer to the complaint, duly filed, denies the commission of any unfair labor practices.

The parties were afforded and opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of hearing briefs have been received from the parties.

The issues in this case are whether or not Respondent threatened an employee in violation of Section 8(a)(1) and discriminatorily withheld an assignment from another employee in violation of Section 8(a)(3) of the Act. Also at issue is whether or not Respondent eliminated certain gifts/benefits and discontinued the annual wage increase in violation of Section 8(a)(1), (3), and (5) of the Act. Bad-faith bargaining is at issue over whether or not Respondent violated Section 8(a)(5) of the Act by failing to provide an economic counterproposal until April 18, 1989, by refusing to meet at reasonable times and by presenting a concessionary wage proposal on April 18, 1989. The final issue relates to whether Respondent had a good-faith doubt when it withdrew union recognition in April 1990.

On the entire record and based on my observation of the demeanor of the witnesses, and in consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company is an Illinois corporation with a plant located in Lexington, North Carolina, where it is engaged in the manufacture of corrugated boxes and containers. During the past 12 months, Respondent received at its Lexington, North Carolina factory goods and raw materials valued in excess of \$50,000 directly to points outside the State of North Carolina. During the same period Respondent shipped from its Lexington, North Carolina factory products valued in excess of \$50,000 directly to points outside the State of North Carolina.

Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find that the Glass, Pottery, Plastics and Allied Workers International Union, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On April 22, 1987, the Union filed a petition for an election among the production and maintenance employees at the Stone Container plant in Lexington, North Carolina. On May 22, 1987, the Region directed an election in a unit of:

All production and maintenance employees, including shipping and warehouse employees, employed by the Employer at its Lexington, North Carolina, plant and the checker loader at its Forest City, North Carolina warehouse, excluding all salaried employees, office

clerical employees, guards and supervisors as defined in the Act.

On June 18, 1987, an election was held and the Union filed objections. A second election was agreed on and held on June 23, 1988. The Union was certified on July 1, 1988. There are 160 employees at the Lexington plant of which 119 are unit employees. Respondent has 180 plants in the United States, of which, 120 are unionized. The chief negotiator for the Company is William Barr and for the Union is Joseph Pitts.

B. Alleged Threats to Eric Rowland

Employee Eric Rowland testified that on October 20, 1989,¹ Regional Manager Eric McNeill was walking through the printing department when he noticed Rowland's union button. McNeill lifted the button and asked him what it was and whether the Union was going to give him another election. Rowland asked McNeill whether he would settle the charges the Union had against him. McNeill said he couldn't comment on that without getting in trouble. Rowland said the Union could help him and the employees. McNeill disagreed. Rowland said the Union could help with job security. McNeill responded by saying that he could fire Rowland or any other employee and there was nothing the Union or Labor Board could do. No employee that was a good worker had ever been fired. Rowland stated that if the employees stayed together, they could force him to give him what was theirs. McNeill said they could never force him to do "any damn thing." Rowland said what he meant is they could influence the decision-making process at negotiating time. McNeill stated that the only way to gain his respect would be to go on strike and any man who does that will be permanently replaced and never work there again. On October 23 McNeill told Rowland there was an ugly rumor going around about them. Rowland accused McNeill of tugging at his union button. McNeill denied it. Rowland said that wasn't his main concern. What concerned him was McNeill's remark that any man who went on strike would be permanently replaced. McNeill said he meant that.

Employee Steve Weaver testified that although he didn't hear any part of the above conversation, he saw McNeill tugging on Rowland's union button.

Respondent's Harold McNeill testified that he saw Rowland with a "vote yes" union button on his shirt. He pointed to the button and asked Rowland whether that meant they were going to have another election. Rowland said he didn't think so. Rowland said he wanted to tell McNeill why he was for the Union. McNeill said fine, but, "I am not asking you." Rowland explained that he was for the little man and job security. McNeill asked him if he knew anyone that was ever discharged for doing a good job. Rowland could think of no one and stated that if they didn't get job security, they would have to strike. McNeill said that they could go on strike if they wanted to, but Stone policy requires that the plant stay open even if it meant bringing employees from other plants. On October 23, McNeill told Rowland that Rowland was telling employees that McNeill pulled his union button. Rowland said he thought he did. McNeill said, "You know doggone well I didn't pull your union button."

McNeill denied saying that he could fire employees and there was nothing the Union or Labor Board could do. He denied using the word "permanently," but said he used the word "replaced." He denied stating that replacement employees would never work at the plant again.

Analysis and conclusions

I credit McNeill's testimony because he was a much more credible witness than Rowland whose language testimony was uncorroborated. Accordingly, I do not find a violation of Section 8(a)(1) and will recommend dismissal of this allegation.

C. Alleged Discrimination Against Ulysses Ashe

Ashe is a forklift operator in the finishing department. He was also a leadman whose duties included substituting for Supervisor Houston Bennett whenever Bennett was absent from work. Ashe is vice president of the Union and a member of the Union's negotiating committee who participated in all negotiating sessions. On April 28 all the supervisors went on a fishing trip; however, Billy Cotton, who is also in the Union substituted for Bennett that day instead of Ashe, who testified that he lost 57 cents per hour or \$4.56 for the day.

Employee Jerry Summerlin testified that he was a new employee working on second shift where Ulysses Ashe is leadman. During April Ashe approached him and said that he should join the Union, that things would go easier on him if he did. At various other times Summerlin testified that Ashe assigned him to a hard job as corrugator and later said that if he joined the Union, that might not happen again. According to Summerlin, Ashe said that management had better "get his ass" out of there or he would take care of it. Finally, he told Summerlin that he was like a scab and would eventually get rubbed off.

After about a week of this, Summerlin went to Plant Superintendent Boyd Delk who referred him to General Manager Tom Cadden who asked Summerlin for a signed statement of events. Summerlin gave a statement on April 18. The management committee confronted Ashe with Summerlin's allegations at the April 17 bargaining session. Ashe denied the allegations. The Company informed the Union that an investigation would ensue. According to Cadden, the investigation had not been completed on the day Ashe didn't substitute. Cadden testified that Ashe was never disciplined because of the head-to-head credibility conflict. After this incident, Ashe continued to substitute for Bennett. He substituted 72 hours in April and 41 hours in May.

Analysis and conclusions

I find that the Company met its *Wright Line* burden for not allowing Ashe to substitute 1 day. Since Summerlin's statement and testimony was untainted, I conclude that management had a reasonable basis for its action. Moreover, no discipline was ever given to Ashe. Accordingly, I conclude that the Company did not violate Section 8(a)(3) of the Act, and I recommend dismissal of this allegation.

D. Unilateral Discontinuance of Parties, Picnics, and Other Company Benefits/Gifts

Former General Manager Dallas Newsome, who was forced to resign, established certain employee activities:

¹ All dates hereinafter refer to 1989 unless otherwise indicated.

Company picnic for all employees was held from 1985 until 1988 when it was canceled by acting General Manager Harold McNeill.

Safety awards—since 1984 safety awards were given to all employees. If the plant went without a lost-time accident for 1 month, employees were given donuts and coffee; for 3 months, hot dog lunch; for 6 months, catered barbecue meal. These awards were discontinued in 1988 by McNeill.

Christmas party—prior to 1986, the Company held two Christmas parties, one for all employees and one for salaried employees. In 1986 Newsome canceled the salaried party and substituted a \$20 gift certificate for groceries. The Christmas party for all employees is still held every year with personalized gifts for employees' children. In 1988 McNeill discontinued the \$20 gift certificate which apparently was given only once.

Thanksgiving meal—a catered Thanksgiving meal had been given to all employees for 19 years. In November 1988, Respondent discontinued this practice.

Harold McNeill testified that when he took over as general manager, the profitability at the Lexington plant was declining and the former manager was over budget on employee activities. Thomas Cadden felt that some group activities should be canceled in favor of more individual awards for good performance. Therefore, Respondent canceled the above activities without bargaining with the Union and other activities were substituted for these canceled activities without union objection. At the same time, a sales meeting scheduled for Pinehurst in July and a customer outing scheduled for August at Bermuda Run were also canceled at a savings of \$15,000.

There are approximately 30 employee activities in existence with a current budget of \$41,500. The budget for 1988 was \$30,000 with actual expenses of \$39,136.

Analysis and conclusions

The evidence is clear that the picnic, gift certificate, and Thanksgiving dinner are not related to any performance or production standards, *Benchmark Industries*, 270 NLRB 22 (1984), and are merely gifts. On the other hand, the safety meals were based on performance, i.e., no lost-time accidents. However, I view hotdogs, donuts, and barbecue lunches as not rising to the level of a benefit or compensation which would mandate bargaining. I find that the small amount of food given is not significant enough to require bargaining because it would not effectuate the purposes and policies of the Act.

Accordingly, I will recommend dismissal of these 8(a)(5) allegations.

General Counsel argues that discontinuance of these gifts is also a violation of Section 8(a)(3) of the Act because it occurred after the Union was certified and during negotiations. I find that the Company satisfied its *Wright Line* burden by presenting undisputed evidence of economic necessity. It also gave reasonable explanations for favoring individual awards over group gifts. Of noteworthy consideration is the fact the elimination of these activities applied to salaried as well as all hourly employees. Accordingly, I recommend dismissal of the 8(a)(3) allegations.

E. Elimination of the Annual Wage Increase

It was stipulated that hourly employees at the Lexington plant received the following wage increases:

4-28-4	6%
4-1-85	5%
4-7-86	4%
4-6-87	3%
8-31-87*	3%
1-4-88	2%
4-4-88	3%

* Wage adjustments to individuals jobs as high as 13% were also made between 4-6-87 and 8-31-87.

It was further stipulated that Respondent did not grant an April 1989 increase at a time when the Union was the collective-bargaining representative of its employees.

On March 22, the Union sent a telegram to the Company stating that it would not protest the granting of a wage increase in April. However, prior to this, in February the Union wanted to discuss the annual wage increase. William Barr said that he would have something for them in March. In the interim, the Company conducted its annual wage and benefit survey of 15 manufacturing facilities in the Lexington area.

On March 23 the parties met and discussed the April wage increase. Barr told Joseph Pitts that the Company could not grant an annual wage increase because:

1. Stone Container in Lexington had substantially higher wage rates in the area based upon their wage survey.
2. Labor costs at the Lexington plant were the highest in McNeill's 13 plant region.
3. Employees had received four wage increases between April 6, 1987 and April 4, 1988, plus wage adjustments in 1987 to individual job classifications of up to 13%. That Dallas Newsome had used poor judgment in recommending these increases and was terminated in March 1988 because of the plant's poor performance.
4. The 13% adjustments in the lower paying jobs had caused the wage compression rate to go from a normal 30% to 16% between the highest and lowest paying jobs.
5. The wage rates at Lexington were higher than comparable Stone plants. Management compared the Lexington plant with their other plants in Richmond, Virginia and Birmingham, Alabama because they had similar products, jobs and customers. Additionally, all three were former Champion and Horner-Waldorf facilities.

After this discussion the Company informed the Union that it could not give a wage increase in April, but would have a complete economic proposal for the Union that month. The Union made no specific proposal for a wage increase nor did it bring up the issue again during negotiations.

Analysis and conclusions

The undisputed evidence indicates that the April wage increase first came up in February. Then on March 23 a full discussion between the parties took place over that issue. It

appears that since the Union had an opportunity to bargain over this issue and declined to pursue it further, the Company did all that was required under Section 8(a)(5) of the Act.

In summary, the evidence supports a finding that the Company did not refuse to negotiate over the April increase. Accordingly, I recommend dismissal of the 8(a)(5) allegation.

Addressing the 8(a)(3) allegation, there is ample evidence that the Company met its *Wright Line* burden of establishing that it would not have given a wage increase, notwithstanding the presence of the Union. It is undenied that the Company gave the Union many economic reasons why a wage increase was inappropriate. These reasons also dissipated any discriminatory motive. Accordingly, I recommend dismissing this 8(a)(3) allegation.

F. Alleged Bad-Faith Bargaining

At the beginning of negotiations, the parties agreed on certain ground rules. One rule was that there would be no overall agreement on a contract until agreement was reached on all items. The other relevant rule was that contract language would be negotiated first before moving to economics.

The parties met a total of 17 times for close to 100 hours. The Company and Union agreed to meet once in August, once in October, and once in November because Barr was involved in contract negotiations at other plants. McNeill was also busy with the transition of various plants in and out of his area and the Company needed time to prepare its counterproposal. These conflicts were explained to the Union and Pitts did not object. In November 1988 and January, Pitts wanted more meetings; however, the Company explained that it would be difficult because of the holidays. In January and thereafter more sessions were held. The parties met once in November, three times in January, and twice each month from February to June.

The Union gave its initial proposal on August 16, 1988. It was not a complete proposal but did have a wage package of 8.5 percent for the first year, 7.9 percent for the second year, and 7.3 percent for the third year. Pitts wanted increased pensions, more holidays, and vacation. He also wanted to eliminate employee contributions on all insurance. He testified that he didn't expect the Company to accept this economic proposal.

From August 1988 to January, the parties made proposals, counterproposals, made language changes, and reached agreement on many provisions of the contract.

On February 23, the Union asked the Company for an economic proposal. The Company stated it would have a proposal on the annual April increase in March. On March 23, most of the language items had been agreed on. Lines of progression was the only major language item remaining. At that time Barr told Pitts the Company would present a comprehensive economic proposal at their next meeting.

On April 18, the Company presented its wage proposal which called for wage decreases in most job classifications. The wage rates were derived by averaging the wage rates of each job classification at the Lexington, Richmond, and Birmingham plants. The proposal, according to Barr, was designed to restructure wage rates at the Lexington plant so they were more in line with other similar Stone plants and area wages. Reasons, which were essentially the same as those given for denying the April increase, were discussed at

length and the Union rejected the Company's proposal. On May 2 and 16, the Company made wage proposals which contained higher rates and benefits than their previous proposal. The Union rejected these proposals and made counterproposals. On June 1 the Company increased its wage proposal over all other proposals and the Union rejected this offer and proposed 42 cents for the first year and a 4.3-percent increase for the second year. This was rejected by the Company. At this meeting the only language item open was lines of progression which requires employees to move up to the next higher position. The Company agreed to "redline" all current employees for 1 year. According to McNeill, Pitts stated that since they agreed on almost everything but wages, it was time for the Company to submit a final offer. The Company agreed.

On June 2 the Company made a final economic proposal which amounted to a 1-percent decrease in present wage levels. This wage proposal was derived from averaging the higher job classification rate of the Richmond or Birmingham plants with the Lexington rate and the rate at the Nekoosa plant which is geographically close to Lexington and a competitor of Stone for labor. The proposal also raised the Company's pension contribution from \$11 to \$12 as agreed and sickness and accident insurance contributions from \$130 to \$135. The Union rejected this offer because of the wage rates.

The parties did not schedule another meeting until Pitts contacted Barr in September for a meeting. The parties agreed to meet on September 18. At this meeting the parties had each prepared a memorandum of open and agreed to items. The Union proposed a wage increase of 42 cents an hour for the first year and a 4-percent increase for the second year, vacations—5 weeks after 20 years, A&S, \$145, pension first year \$1 increase, second year \$1 increase, 2-year contract and a drug testing proposal. The Company rejected this offer and countered with a 1-year freeze on wages and agreed to red-circle employees on lines of progression. The Union rejected this offer and no further meetings were scheduled.

Analysis and conclusions

There is very little dispute over most of the facts; however, where there is a conflict, I credit the Company's chief negotiator, William Barr, because he kept copious notes of every negotiation session and was corroborated by Harold McNeill and Thomas Cadden who were reliable witnesses.

It should be noted at the outset that the complaint does not allege surface bargaining and it is very specific on the alleged violations. For example, the complaint only alleges that the Company's initial proposal on April 19 violated Section 8(a)(5) and it does not mention contract duration.

With this in mind and the fact that these were initial contract negotiations, I find that the Company bargained in good faith on everything that was not alleged to be a violation in the complaint, i.e., everything but the initial concessionary wage proposal. Moreover, the evidence supports this finding.

The Company's initial wage proposal was made on April 19. I find that based on the evidence presented, this was not an unreasonable delay. The parties agreed that language agreements should come first and they made substantive progress in this area every time they met. In February, the Union wanted to discuss economics, but Pitts also wanted to

discuss the annual wage increase which took up most of the March 23 meeting. In March most of the language issues had been resolved and the Company agreed to present its economic proposal in April. The first April meeting was taken up with the Ulysses Ashe incident and delayed the Company's proposal by 1 day. After its initial economic proposal, the Company made many proposals and the evidence indicates that the Union had no difficulty with those proposals, with the exception of wages, which I find was the only real issue preventing the parties from reaching agreement.

It should also be noted that in negotiations, initial wage proposals do not mean much. In fact the Union's initial proposal, which Pitts conceded would not be accepted, could be labeled as not justified under the circumstances. However, there was one difference between the two proposals. The Company gave lengthy valid economic factors for its initial proposal and the Union didn't, except to say that the employees hadn't had a wage increase since April 4, 1988. Therefore, I find that the initial company proposal was made at a reasonable time and was accompanied by valid economic reasons for wage concessions.

General Counsel argues that the parties did not meet often enough and this delayed the negotiating process. I find that the Union did not object to the 1988 meeting dates. When the Union finally protested, the frequency of meetings increased but not for that reason alone. I further find that the frequency of meetings did not impede progress because progress was made at every meeting held. It has been held by the Board that it is not the frequency of the meetings alone that is determinative but what transpired and what was accomplished at these meetings that is important. I find this principle applicable here. Moreover, it is clear that the Company has had considerable experience negotiating contracts with unions and is not opposed to the principle of collective bargaining since it has 120 plants under union contract. Barr alone negotiated five collective-bargaining agreements in 1988 and six more in 1989. His pattern of bargaining over the years has been to meet two times a month and only increase the frequency during the week of contract expiration. I can find nothing wrong with that approach since good-faith bargaining and progress took place at each session.

Accordingly, I will recommend dismissal of these 8(a)(5) allegations.

G. Refusal to Recognize the Union

On March 28 and April 1, 1990, General Manager Thomas Cadden received a petition signed and dated from March 7, 1990, to April 1, 1990, by 84 employees who stated that they no longer wanted to be represented by the Union. There were 119 hourly employees on roll as of April 1, 1990. Cadden testified that he and his personnel administrator verified the signatures by comparing the petition signatures with signa-

tures on employment applications. After verifying the signatures, Cadden notified Pitts by letter dated April 2, 1990, that the Company had a good-faith doubt, based on objective considerations that the Union represents a majority of the employees in the bargaining unit and withdrew recognition.

Analysis and conclusions

General Counsel does not dispute the validity of the signatures or the petitions or that a majority of employees signed them. His argument is based on well established Board law that an employer cannot withdraw recognition of a union based on disaffection which was caused by the employer. He argues that Respondent's unfair labor practices caused employees to sign the petitions which are the basis for Respondent's withdrawal of recognition. Thus, the withdrawal of recognition is a violation of Section 8(a)(5) of the Act.

Since I have found no unfair labor practices committed by Respondent, I also find Respondent's withdrawal of recognition is not a violation of Section 8(a)(5) of the Act and will recommend dismissal of this allegation.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in any violations of Section 8(a)(1), (3), and (5) of the Act.
4. The following unit constitutes a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including shipping and warehouse employees, employed by the Employer at its Lexington, North Carolina, plant and the checker loader at its Forest City, North Carolina warehouse, excluding all salaried employees, office clerical employees, guards and supervisors as defined in the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The complaint is dismissed.

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.