

**Highland Yarn Mills, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC.** Cases 11-CA-14814 and 11-CA-14868

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On May 11, 1993, Administrative Law Judge Robert A. Gritta issued the attached decision. The Respondent and the Charging Party Union each filed exceptions and supporting briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions<sup>1</sup> and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions as modified<sup>3</sup> and clari-

<sup>1</sup>In the absence of exceptions, and because it is not material to the judge's finding that the Respondent violated Sec. 8(a)(5) by withdrawing recognition of the Union, we find it unnecessary to consider his discussion of an employer's obligation to validate employee decertification cards offered in support of an asserted good-faith doubt of a bargaining representative's continuing majority status.

Similarly, because of the absence of exceptions, the lack of materiality to the issues before us, and additionally because the record does not sufficiently illuminate the matter, we find it unnecessary to consider the judge's discussion of a purported "ex parte communication" occurring near the close of the hearing. In not passing on this part of the judge's decision, we do not depart in any way from the Board's consistent condemnation of impermissible ex parte communications.

<sup>2</sup>The Respondent and the Union 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), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find it unnecessary to consider the judge's finding, excepted to by the Respondent, that an unlawful promise of benefits occurred in an incident involving employees Robert Jones and Mario Domingo and Supervisor Daniel Adkins. This violation found by the judge would be cumulative of other unfair labor practices we are affirming and would not affect the remedy and Order in this case.

We find more than adequate evidence of union animus on the part of the Respondent, but in reaching that conclusion we do not rely on the judge's findings that Plant Manager Donald Purdee told employee Maxine Ezekiel that the presence of the Union was an obstacle to the sale of the Respondent's High Point facility, or that the Respondent's practice of maintaining supplies of dues-checkoff deauthorization cards in supervisors' offices demonstrated bias in favor of antiunion employees' sympathies. In addition, in finding that the Respondent acquiesced in antiunion employees' violations of plant rules in their solicitation of other employees for union decertification, we find it unnecessary to rely on the judge's findings that employee Robert Jones, in the presence of Supervisor Jacob Beal, solicited employee Abdul Awan while Awan was working, and that Jones solicited employees in employee Ezekiel's work area in the presence of a supervisor named "Kumar."

<sup>3</sup>In its exceptions, the Respondent contends that the 8(a)(5) failure to process air-quality grievances found by the judge was neither alleged in the complaint nor sufficiently litigated. We find it unnecessary to consider this unfair labor practice found by the judge because the bargaining order we are adopting to remedy the Respondent's

ified<sup>4</sup> below, and to adopt the recommended Order as modified.<sup>5</sup>

Overall, the judge found that, in the context of the Respondent's attempted sale of its unionized High Point, North Carolina textile plant and a concurrent campaign by certain employees to decertify the Union as collective-bargaining representative, the Respondent engaged in 8(a)(3) discrimination in several instances, violated Section 8(a)(5) by its withdrawal of recognition of the Union, and violated Section 8(a)(1) in a multitude of incidents, including several disparate applications of its plant rules in favor of antiunion employees and to the detriment of prounion employees.

The judge specifically found, *inter alia*, that the Respondent interfered with employees' Section 7 rights when Supervisor Jacob Beal arbitrarily prohibited employees from discussing union matters in a nonworking area of the plant. Thus, pursuant to the credited testimony of both employee Florence Hill, the Union's recording secretary and a shop steward, and employee Mabel Queen, the judge found that in late October 1991 Hill and Queen spoke to employee Ronnie Easterling in a nonworking area—the "spare floor"—concerning a pending contractual grievance. Easterling had just exited from Supervisor Beal's office. As the three talked, Beal emerged from his office and told Hill that union business could not be conducted on the spare floor, that such business must be discussed "outside," *i.e.*, outside the plant. After some further brief discussion with Beal, the employees dispersed.

In light of the Respondent's exceptions to the finding of this 8(a)(1) violation, we note the following additional facts established by the credited testimony. According to Hill's testimony, under a company rule working employees are not allowed to take a break during the first hour and the last hour of a shift. Hill and Queen were off duty at the time of the incident, while Easterling had about 20 minutes left before the end of his shift. In addition to Beal's statement above, he told Hill that Easterling was working and that she would have to wait until the end of his shift to talk with him.

unlawful withdrawal of recognition is broad enough to rectify any transgressions concerning contractual grievances which should have been processed pursuant to the parties' collective-bargaining relationship.

<sup>4</sup>Both the Respondent and the Union except to the judge's identification of "Don Prady" as the supervisor who issued unlawful disciplinary warnings to employees Knox Quick and Charles McDonald. Although there are uncorrected references in the testimony of McDonald and Quick to "Prady" as their supervisor, the record as a whole clearly supports the Respondent's and the Union's contention that "Prady" is in fact Plant Manager Donald Purdee. Accordingly, we correct this error and find it unnecessary to rely on fn. 7 of the judge's decision.

<sup>5</sup>We will modify par. 1(d) of the judge's Order to make it consistent with his finding that the Respondent engaged in unlawful disparate treatment of prounion employees in enforcing its plant rules.

Taking account of all the relevant, credited evidence concerning this incident, as well as the Respondent's other, contemporaneous unlawful conduct, we affirm the judge's finding that the Respondent, through Beal, violated Section 8(a)(1). To the extent that Beal told Hill and the other two employees that union business could not be conducted in a nonworking area, and in fact made clear that such activity was not allowed anywhere in the plant—without a hint of justification for such a ban—his statement was overly broad and unlawful. See, e.g., *Cooper Tire & Rubber Co.*, 299 NLRB 942, 947 fn. 2 (1990), *affd.* in relevant part 957 F.2d 1245 (5th Cir. 1992). Even assuming that Beal's further statement—that Hill and Queen would have to wait 20 minutes until Easterling finished his shift—was legitimate in the circumstances, we would still find that his more general prohibition of union activity was unlawful, because “an appropriate response need not . . . sweep so broadly as to put in doubt an employee's right to engage in union solicitations protected by the Act without fear of punishment by his or her employer.” *Albertson's Inc.*, 307 NLRB 787, 788 fn. 6 (1992).

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Highland Yarn Mills, Inc., High Point, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the word “only” after the word “Permitting” in paragraph 1(d).
2. Substitute the attached notice for that of the administrative law judge.

#### APPENDIX

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

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

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 solicit employees to withdraw from the Union or to sign decertification cards.

WE WILL NOT threaten employees with more onerous working conditions in reprisal for filing grievances.

WE WILL NOT tell employees that they have received disciplinary warnings in reprisal for filing grievances.

WE WILL NOT permit only antiunion employees to engage in unrestricted movements in the plant or the solicitation of other employees in the plant in violation of our no-solicitation and no-distribution rules.

WE WILL NOT engage in surveillance of the movements of union sympathizers or solicit employees to engage in the surveillance of the movements of union sympathizers.

WE WILL NOT tell employees that the movements of union sympathizers in the plant are the subject of company surveillance.

WE WILL NOT promise employees increases in wages, improvement in company benefits, or improvements in working conditions if they abandon their support for the Union.

WE WILL NOT threaten employees with the transfer of their work to nonunion plants or threaten them with plant closure if they continue to support the Union.

WE WILL NOT threaten employees with discharge because of their union sympathies or union activities.

WE WILL NOT promulgate rules prohibiting prounion employees from engaging in conversations relating to the Union in nonworking areas during nonworking time and WE WILL NOT restrict their movements, conversations, or use of telephones in order to discourage union activity.

WE WILL NOT discourage membership or activities on behalf of Amalgamated Clothing and Textile Workers, AFL-CIO-CLC, or any other labor organization, by discharging employees, failing to offer them overtime opportunities, issuing reprimands because they have filed grievances under contractual grievance machinery, or by otherwise discriminating against them in their hire or tenure.

WE WILL NOT refuse to recognize and bargain collectively with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive collective-bargaining representative of the production and maintenance employees employed at our High Point, North Carolina plant, or refuse to process contractual grievances filed by the Union.

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

WE WILL offer to Manuel E. Trammel full and immediate reinstatement to his former or substantially equivalent employment, without prejudice to his seniority or to other rights previously enjoyed, and WE

WILL make him and Jimmie Hill whole for any loss of pay or benefits suffered by them by reason of the discrimination found in this case, with interest.

WE WILL remove from our files any references to unlawful discharge or unlawful discipline given to any employee and notify the employees, in writing, that this has been done and that the discharge or discipline will not be used against them in the future in any way.

WE WILL recognize and, on request, bargain collectively in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC as the exclusive collective-bargaining representative of all production and maintenance employees employed at our High Point, North Carolina plant, and WE WILL process any and all grievances which have been filed by the Union.

#### HIGHLAND YARN MILLS, INC.

*Paris Favors Jr., Esq.*, for the General Counsel.  
*Thomas H. Keim Jr. and Karen M. Nassif, Esqs.*, of Spartanburg, South Carolina, for the Respondent.  
*Judith F. Buckley, Esq.*, of New York, New York, for the Charging Party.

### DECISION

#### STATEMENT OF THE CASE

##### I. FINDINGS OF FACT

ROBERT A. GRITTA, Administrative Law Judge. This case came on for hearing before me at High Point and Winston-Salem, North Carolina, upon a consolidated unfair labor practice complaint, issued by the Regional Director for the Board's Region 11,<sup>1</sup> which alleges that Respondent Highland Yarn Mills, Inc.<sup>2</sup> violated Section 8(a)(1), (3), and (5) of the Act. More particularly, the consolidated complaint alleges that the Respondent solicited employees to decertify the Union and to withdraw from membership, threatened em-

ployees with more onerous working conditions in retaliation for filing grievances, advised employees that they had received disciplinary warnings for filing grievances, permitted antiunion employees to engage in unrestricted movement throughout the plant for the purpose of soliciting other employees in violation of the Respondent's own no-solicitation, no-distribution rule while restricting similar efforts by union supporters, advised employees that union supporters were subject of company surveillance and that the conversations of union supporters were being restricted, solicited employees to engage in surveillance of fellow employees to discourage their union activities, promised employees benefits in order to discourage their support for the Union, threatened employees with diversion of work to a nonunion plant, with discharge, and with plant closure if they continued to support the Union, orally promulgated a rule prohibiting union supporters from engaging in conversation relating to the Union in nonwork areas during nonworktime, restricted employee access to a pay telephone in the plant to discourage union support, issued warnings to employees Knox L. Quick, and Charles H. "Frog" McDonald in reprisal for filing a grievance, denied overtime to Jimmie Hill because of his union activities, and discriminatorily discharged Manuel Trammel because of his union sympathies and activities. The consolidated complaint further alleges that the Respondent unlawfully withdrew and withheld recognition from the Union as the exclusive collective-bargaining representative of its production and maintenance employees. The Respondent denies the allegations of independent violations of Section 8(a)(1) of the Act, asserts that it enforced a no-distribution, no-solicitation rule in an even-handed manner with respect to union and antiunion partisans alike, states that Quick and McDonald were given disciplinary warnings because of their slowness in performing overhauling work, and that Trammel was discharged during his probationary period for unsatisfactory job performance and insubordination. The Respondent further asserts that it withdrew recognition from the Union because it had a good-faith doubt of the Union's continued majority based on the presentation to it of cards signed by a majority of its employees asserting that they no longer wished to be represented by the Union. On these contentions the issues herein were drawn.<sup>3</sup>

##### II. THE UNFAIR LABOR PRACTICES ALLEGED

Since 1913 the Respondent has operated a textile mill at High Point, North Carolina, where it manufactures yarn from raw cotton for use in a variety of textiles. Located at High Point are two adjacent buildings Mill 1 and Mill 2 where approximately 320 production and maintenance employees work around the clock on three 8-hour shifts, often 6 or 7 days a week.<sup>4</sup> The Respondent is a wholly owned subsidiary of TEXFI Industries, an organization which also owns another textile mill 125 miles away at Bladensboro, North Carolina. The High Point employees have been represented

<sup>1</sup> The principal docket entries in this case are as follows:

Charge filed by Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC (the Union) against the Respondent in Case 11-CA-14814, on January 2, 1992; complaint issued against the Respondent by the Regional Director, Region 11, on February 14, 1992; Respondent's answer filed on February 28, 1992; original charge filed by the Union in Case 11-CA-14868 against the Respondent on February 13, 1992, and amended on March 3, 1992; consolidated complaint issued by the Regional Director, Region 11, against the Respondent on March 24, 1992; Respondent's answer filed on April 7, 1992; hearing held in High Point and Winston-Salem, North Carolina, on 10 dates between June 15 and July 26, 1992; briefs filed with me by the General Counsel, the Charging Party, and the Respondent on or before September 30, 1992.

<sup>2</sup> The Respondent admits, and I find, that it is a North Carolina corporation which operates a manufacturing plant at High Point, North Carolina, where it is engaged in the manufacture and sale of yarn for textile products.

During the past 12 months in the course and conduct of this business, the Respondent has received at its High Point, North Carolina plant goods and materials valued in excess of \$50,000 directly from points and places outside the State of North Carolina. Accordingly, Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

<sup>3</sup> Certain errors in the transcript have been noted and corrected.

The Respondent filed a posthearing motion to correct two inadvertent errors in its brief. The motion is granted.

<sup>4</sup> Sundays are usually devoted to catching up on scheduled production, if any, which was not completed during the preceding week. The regular workweek begins each Sunday evening at 11 p.m. with the reporting of the third shift.

by the Charging Party for 50 years and were covered by a collective-bargaining agreement, executed on February 12, 1990, which expired on February 10, 1992. The employees at Bladensboro are unrepresented.

In August 1991, TEXFI engaged in a corporate reorganization and announced publicly that it was interested in selling several of its divisions in order to improve its cash position. This offer included both the High Point and Bladensboro mills, which are part of the same division known as the Highland division. President John M. "Max" Cochran testified that he met with potential buyers and that 8 or 10 groups of prospective purchasers had made tours of the High Point plant. In mid-November, the Respondent posted a notice at the High Point plant saying that the plant had not, in fact, been sold, and listed several reasons, including old machinery, which were inhibiting the sale. In a telephone conversation with Union International Representative Phillip Cohen, Cochran told Cohen that TEXFI was interested in selling the High Point and Bladensboro mills together, since there was an interrelation between the two plants and both were part of the same corporate division. He also told Cohen that there was more buyer interest in the Bladensboro mill than in the High Point mill because Bladensboro was not unionized and High Point was. In his testimony in this case, Cochran made essentially the same statement, namely that the presence of a union at the High Point plant was an obstacle to its sale. Plant Manager Donald E. Purdee told Maxine K. Ezekiel, a winder tender on the first shift and the Union's financial secretary, that the presence of a union at the High Point plant was an obstacle to its sale.

Shortly before the principal events in this case began to take shape, the Respondent was involved in a dispute with two longtime employees, Quick and McDonald, an incident which the General Counsel relies on to establish both animus and an independent violation of the Act. McDonald, a union member, was employed by the Respondent for a period of 42 years. He is no longer with the Company. During that period of time, McDonald had served at various times as union president, vice president, steward, and committeeman. For most of those years, he was a fixer or section hand. Three or four years ago he was promoted to the position of overhauler, a classification above that of fixer and one which requires an employee to be capable of performing major repairs on any piece of machinery in the plant. Quick was a class A overhauler<sup>5</sup> who had been employed by the Respondent for a period of 10 years. He was also a member of the Union's executive committee and had participated, from time to time, in discussions with management incidental to the processing of grievances. In August 1991, McDonald filed a grievance against his supervisor, Don Prady, claiming that Prady had violated seniority in making a job assignment to another employee in preference to McDonald.<sup>6</sup> In September, McDonald filed a second grievance, this time against Purdee, who had accused McDonald of malingering when he found him in another department when McDonald was going to fetch some rags. McDonald accused Purdee of harassment and discrimination. On one occasion, Purdee asked employee

Teddy Charles Carter to tell him if he saw either Knox or McDonald in the canteen before 3 p.m. On several other occasions, Purdee queried Carter concerning whether McDonald was staying on the job.

The overhauling of a machine is long-term maintenance that is performed on a periodic basis. It involves putting a machine out of operation for a period of time, possibly as long as a shift, during which time the machine is wholly or partially disassembled, cleaned, and subjected to whatever additional repairs the overhauler deems necessary. This activity is distinguished from "fixing," which means engaging in immediate repairs which are required when a machine ceases to function, either partially or wholly, and which must be attended to immediately. On September 18, Prady assigned both Quick and McDonald to work together as a team overhauling spinning frames and drawing frames in the card room. This job includes taking the frames apart, cleaning them, checking for worn gears, installing new parts if required, and reassembling the frames. I credit the testimony of both Quick and McDonald that, in the past, a two-man team was expected to overhaul one machine per 8-hour shift. Prady told them he wanted them to overhaul two machines per shift and warned them that, if they failed to do so, he would issue a warning to each of them. Quick told Prady they would do the best they could but one frame which had been assigned to them might take a while because it was in bad shape. Prady reiterated that he would give them a warning if they did not meet his time requirement and added that he would continue to give them warnings until they went "out the door."<sup>7</sup>

While Quick and McDonald were performing their assigned overhauling, Prady summoned Willard G. Deby, a chute feed technician, from the card room in Mill 1 to do some cleaning and minor overhauling on draw frames near where Quick and McDonald were working. Contrary to Quick, Deby testified that a single technician should be able to overhaul one machine per day. He further testified that he had cleaned the first machine assigned to him in 5-1/2 hours and, on the following day, cleaned another machine in about 6 or 6-1/2 hours. He further testified that Quick and McDonald were off the job from time to time. What Deby did not know when he was given the overhauling assignment was that he was being timed in the performance of his work. Purdee, the plant manager, came around to inspect his work. On the second day, Purdee instructed Deby to slow down and to make sure that he cleaned everything on the draw frame correctly.<sup>8</sup> He also told Deby that he wanted him to do as good or better a job than Quick and McDonald were doing. Deby testified that, on the second job, he slowed down and tried to find more things wrong. He ventured the opinion that an overhaul should take about 4 hours or so but admitted that a major overhaul, including pulling out pressure rods and tubes, is a 2-day job. He noted that Purdee was satisfied with the second job he performed.

When McDonald and Quick failed to complete the overhauling of two frames a day, Prady gave each of them a written caution, dated September 18, 1991. Each caution was

<sup>5</sup> There are three classes of overhaulers, A, B, and C.

<sup>6</sup> This grievance was processed to the third step during the fall of 1991 but was not referred to arbitration after the Respondent withdrew recognition from the Union.

<sup>7</sup> Prady did not testify in this proceeding and his failure to do so was unexplained on the record.

<sup>8</sup> Quick testified that Deby had done a poor job on the first frame he cleaned and had to spend 4 more hours on it the following day.

signed by Purdee and witnessed by Union Steward Michael A. Pearson. Each was the first written caution that either employee had received during their entire service with the Company. The written cautions were identical in language and read:

*Reason for warning: Job Performance*

You are being issued this written caution for violation of Article XVII Exhibit C Section V of our contract—Job Performance. Each employee is expected to give their best effort and to perform according to prescribed and acceptable levels of efficiency. Your job performance has been unsatisfactory with failure to perform according to acceptable levels of performance. If your job performance does not improve, further disciplinary action shall be taken.<sup>9</sup>

The two employees first talked with their shop steward and then approached Cochran to complain. Cochran said that it was a fixer's job to do what Prady had ordered them to do. Quick replied that Cochran should get Prady off his back or he would get him off it. Cochran agreed to look into the matter and speak with Prady. When Cochran spoke with the two men again, he said that Prady had done this because of McDonald's grievances. McDonald replied that, if this were so, he would drop the grievances he had filed against Prady. Following up on McDonald's offer, Cochran went back to talk with Prady a second time. In a second conversation with Quick and McDonald, Cochran then told them that Prady had issued these cautions because he was upset about a personal matter involving a health problem in his family. Again McDonald stated that he would drop the grievances he had filed. This was the end of the discussion between these parties. Quick and McDonald also filed a grievance concerning these written cautions, but the record is silent as to whether those grievances were ever adjusted. Quick testified that he had been assigned thereafter to overhauling frames and had done only one per day per team without incurring any additional discipline. Manuel E. Trammel was an experienced cotton mill employee when he applied for a job with the Respondent in September 1991. He had worked about 12 years as a fixer at Dacotah, another mill in the region. At his interview, he was told that there was a union at the plant and that he could join it or not. As part of the hiring process, Trammel was given a breathing test. He scored 64 percent on the breathing machine, in contrast to the required 70 or 75 percent, but the secretary in the personnel office threw the score sheet in the wastebasket and went on to administer a drug test. After passing the drug test, Trammel was hired and put to work on the third shift that evening under the supervision of David L. Stirwalt. Trammel was acquainted with another third-shift supervisor, Jacob Beal, whom he met at Dacotah. He asked Beal how he liked the Respondent's plant. Beal replied that he liked it except for the fact that there was a union in the plant. Trammel told Beal that he favored the idea of a union and was going to join after his 45-day probationary period was completed.

During his probationary period, Trammel was given an increasing amount of work by Stirwalt. He was hired as a fixer

<sup>9</sup>McDonald testified that the typewritten caution placed in evidence was not the document he received, which was handwritten.

but was assigned to doffing, spinning, pulling frames, weighing yarn, and other tasks. Trammel denies complaining about being overworked but Stirwalt, whom I discredit, testified that Trammel was terminated for poor job performance.<sup>10</sup> On October 25, a few days before his probationary period was completed, Trammel was told by Stirwalt not to punch in because his job had been "taken care of . . . . We have found some problem with your breathing . . . . We are going to have to let you go." Trammel had been given no cautions, reprimands, or warnings during his probationary period. On one occasion, he told Stirwalt that "I could run this section," and Stirwalt replied, "I know you can." Trammel was also not given a termination slip. However, at the hearing, the Respondent produced a termination slip, entitled "Separation History," signed by Stirwalt on October 26, 1991, which stated, as a reason for Trammel's separation, that he had an "unsatisfactory job performance and poor attitude while on his probationary period." The form also contained a printed question, "Is this employee a trouble maker?" Stirwalt filled in the reply, "Yes."

Late in October 1991, Robert Jones, a third-shift roving tender in the carding room in Mill 2, began to collect signatures on a petition to decertify the Union.<sup>11</sup> Initially, Jones collected signatures on a petition contained in a notebook. About November 17, he changed his procedure and started collecting signatures on 3-by-5 inch cards containing a printed statement which read:

AS AN EMPLOYEE OF HIGHLAND YARN MILLS INC. I NO LONGER WANT TO BE REPRESENTED BY THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION.

SIGN \_\_\_\_\_

DATE \_\_\_\_\_

He was assisted in this effort by Danny Akers, a doffer in the spinning room in Mill 2, James Riddle, a third-shift electrician, and former employee Aggrey Achi, who worked in the card room in Mill 1.<sup>12</sup> It should be noted that a large number of employees at the High Point mill are either Hispanic or Asian, a term used in this case to include Koreans, Vietnamese, Laotians, Cambodians, and East Indians. The Respondent refused to estimate the percentages of its work force that fell into these categories. However, of the decertification cards turned in by Jones and others to the Respondent's management, about 15 bore distinctly Hispanic names and about 50 to 60 bore distinctly Asian names.

<sup>10</sup>According to Stirwalt, Trammel objected to being assigned to doffing work and voiced his objection to the assignment by saying, "Stop the damn spinning off." Stirwalt assertedly replied that he would not stop "spinning off." Trammel assertedly argued that he had been hired as a fixer, not a doffer and, while he would accept the assignment just given to him, the next time Stirwalt asked him to doff, he would take his tool box and go home.

<sup>11</sup>A roving tender is an individual who is assigned to operate a roving machine. Many employees, especially recent immigrants who did not know Jones by name, described him as a tall, blond, white American. Most of the recent immigrants who testified in this proceeding did so with the aid of an interpreter.

<sup>12</sup>Of these four antiunion activists, only Akers testified in this proceeding.

Most, if not all, of the cards solicited by Jones and his associates were signed at the plant. The Respondent has had in place a longstanding no-solicitation, no-distribution rule, as well as other plant rules whose application by the Respondent during the decertification effort was a subject of considerable dispute in this proceeding. These rules read as follows:

### III. Rules of Conduct

. . . .

B. Violation of conduct rules listed below are considered to be serious acts and the acts are not permitted. Violation of conduct rules will be combined with violations of safety rules in Section IV-A for the purpose of discipline. Violation or combinations of violations is ground for a written caution for a first offense, a written warning for a second offense, a final written warning for the third offense, and immediate discharge for cause for a fourth offense within twelve (12) months from the time a written caution is issued for a first offense.

Each rule violation in this section, Section III-B, will be purged from Company records twelve (12) months from the time of a violation thereby the rule violation purged will no longer be considered when determining combinations of violations for the purpose of discipline.

. . . .

#### 2. Solicitation or Distribution

Solicitation by employees on Company property during work time, distribution of literature by employees on Company property in work areas and distribution of literature by employees on Company property in non-working areas during working time.

. . . .

#### 4. Leaving the Department Without Permission

Employees shall not leave their department during working hours without permission of their Supervisor. Employees are not to visit the parking lot without the specific prior approval of the Supervisor.

. . . .

#### 6. Loafing or Lack of Application on the Job

Loafing or lack of application on the job including visiting, stopping off before the end of the shift or intentionally curtailing production before the end of the shift.

. . . .

#### 10. Unauthorized or Excessive Breaks

Taking other than scheduled breaks or taking excessive time on breaks. Each employee is allowed use of the canteen area during each scheduled shift for one (1) ten (10) minute break to be taken during the early portion of the shift, one (1) fifteen (15) minute break for lunch, and one (1) ten (10) minute break to be taken during the latter portion of the shift. Each twelve (12) hour employee will be allowed an extra ten (10) minute

break. No employee will be allowed the use of the canteen the first and last hour of the shift.

The canteens and the smoking areas adjacent to them are recognized nonworking areas. A dispute arose in the record as to whether certain other locations where solicitations may have taken place were nonworking areas. Employees who operate machines, such as spinning machines do not take breaks at fixed times but are allowed to leave their machines for this purpose if their machines are running well. Conversely, if there is a problem, employees are supposed to remain at their machines until the problem is resolved. Maintenance employees, such as carpenters and overhaulers, have no fixed departmental location and work in various parts of the plant, as assigned. Employees, especially those on second and third shifts, often arrive at the plant early and have coffee in the canteen or otherwise occupy themselves in non-working areas. Employees are not supposed to punch in more than 10 minutes in advance of their respective shift<sup>13</sup> nor are they supposed to go to their duty stations in advance of the beginning of the shift, since their machines are still being tended by other employees on the outgoing shift. However, production employees work on an incentive basis and it is not uncommon for them to make preparations for their shift before its scheduled beginning hour, in order that they might get a "running start" to enhance their incentive earnings.

On or about November 19, George Chriscoe, a roving technician in the spinning room, saw Jones come into his department and speak with several employees on their job. He had white cards with him as he spoke. One employee Jones spoke with concerning the signing of a card was Billy Messier, Jones' nephew. Chriscoe, a shop steward, checked behind Jones and learned that he was passing out decertification cards. He went to his supervisor, J. T. Hulsey, and complained to Hulsey that Jones was violating the contract by passing out cards on the job. He told Hulsey that he wanted it stopped. Hulsey replied that he did not know if Jones was in fact in violation of the contract and that he would have to call Purdee to find out.<sup>14</sup> Chriscoe then reported this activity to Jimmie Hill, the union president and a section man in the spinning department. Hill suggested that they bring the matter to Purdee's attention and went to Purdee's office to do so. Hill showed Purdee a card which Chriscoe had obtained. Purdee replied that he would take care of the matter and have it stopped. Chriscoe testified credibly of a later instance when Jones, an employee assigned to another department on another shift, spent about 45 minutes in Chriscoe's department talking with employees. Finally Hulsey went up to Jones, spoke to him, and Jones left.

Purdee held a meeting with second-shift supervisors after receiving this complaint and reminded them about the Company's no-solicitation rule. He had no further meetings to see if his reminder was being implemented. The complaint which Purdee received mentioned the names of specific card solicitors, including Jones, Akers, and Riddle. The record reflects

<sup>13</sup> The plant rule was 10 minutes, although some testimony in the record suggested that a 5-minute limitation on early punching in was in place.

<sup>14</sup> After Chriscoe's complaint to Hulsey, Jones continued his efforts, speaking with employees Jim Montlieu and Nathaniel Bowman.

that they continued to solicit cards from employees at workstations as well as at canteens during breaks. None were given any written warnings or cautions, although Purdee testified that they were cautioned. I discredit this testimony. Akers testified that Stirwalt spoke to him about leaving the winding room without permission but he did not say anything in the course of this instruction about card solicitation. There is no other testimony in the record about card solicitors being cautioned about their activities.

On November 19, shortly after the effort to obtain signatures on the decertification cards began, Florence Hill, a specialized cleaner who worked on the second shift in spinning room number 2, heard that Robert Jones, a third-shift employee from the carding room, was passing out decertification cards to technicians in the winding room. Hill was a steward and the Union's recording secretary. About 4:30 p.m., Hill, in the presence of her husband, Jimmie Hill, went to a pay phone located near the canteen, phoned Cohen, and reported to him that antiunion employees were going about the plant soliciting decertification cards on the job and were telling employees that because of the Union the High Point plant was not being sold. Purdee saw her make the phone call, told her to hang up, and instructed her not to make any more phone calls until the end of her shift at 11 p.m.<sup>15</sup> Cohen phoned Cochran, the company president, informed him about the in-plant solicitation effort, and insisted that Cochran was responsible for what was going on because, in Cohen's stated opinion, a widespread coordinated solicitation drive of this kind was not a coincidence. Purdee testified that the Company asked employees to confine telephone use to breaktimes. However, as noted elsewhere, there are no scheduled breaks and employees are free to take breaks whenever their machines are operating without a problem. To use Purdee's expression, "we're very lenient" on the use of the telephone.

Hill credibly testified that at or about this same time she noticed that Jones was speaking to a second-shift winder at her machine and was offering her a decertification card while she was working. The winder in question declined to accept the card. Perronoski "Perry" Young, the winding room supervisor on the second shift, was standing about 10 feet from these employees as they were conversing. On another occasion, at the change of shifts, Hill spoke with Ora Deon Gann, an oncoming third-shift spinner, as the two women passed each other in the alley between the machines. She was in the habit of exchanging pleasantries with Gann as they passed each other during shift change.<sup>16</sup> Second-Shift Supervisor David L. Stirwalt met Hill at the end of the alley between the machines, told her to punch her timecard, and ordered

<sup>15</sup>I credit corroborated testimony to the effect that several months before this event, pay phones were installed near the canteens for the use of employees and that no restriction, written or oral, had ever been placed on their use. It was the custom, especially among women employees, to make and receive phone calls to and from their children and from babysitters.

Purdee testified that the Company asked employees to confine telephone use to breaktimes. However, as noted elsewhere, there are no scheduled breaks and employees are free to take breaks whenever their machines are operating without problem. To use Purdee's expression, "we're lenient" on the use of the telephone.

<sup>16</sup>About 2 months earlier, Hill had filed a grievance on Gann's behalf.

her out of the plant. He also told Gann to get to her job. At the beginning of Hill's next shift, Stirwalt met Hill and her husband at the timeclock as they were punching in and again told Hill that she was not permitted to remain in the mill after the end of her shift at 11 p.m. He reported his earlier admonition that she leave the plant immediately at the end of her shift. This is the first time during her employment that Stirwalt had ever spoken to Hill on this subject.

Hill also testified credibly of another oral warning given to her late in October by Jacob Beal, a third-shift supervisor in the card room. In the company of employee Mabel Queen, an employee in the spinning room, Hill was walking past Beal's office and noticed that employee Ronnie Easterling and two other employees were in Beal's office. Hill had filed a grievance which was scheduled for a meeting the following week and needed Easterling as a witness. She waited with Queen at a water fountain next to a bulletin board in an area known as the spare floor for Easterling to emerge from his meeting in Beal's office. When Easterling left the office, she called him over to the drinking fountain and reminded him that she needed him to be present at the grievance meeting the following Wednesday, whereupon Beal came out of his office and told Hill that she could not conduct union business on the spare floor. He told Hill she would have to discuss union business "outside." Queen accused Beal of picking on Easterling, adding that Easterling always liked to talk with the ladies when he passed them in the Mill. Beal said he was aware of Easterling's habit in this regard. The spare floor where they were standing is a passageway used by employees to walk from one department to another. Hill credibly testified that employees regularly conversed when they met each other in this area,<sup>17</sup> and Queen, a 42-year veteran at the High Point plant, supported this comment.<sup>18</sup>

Hill recounted several other instances in which proponents of decertification solicited support from employees during working time. On or about November 26, Danny Akers, a third-shift employee, was brought into the spinning department on second shift to train doffers.<sup>19</sup> He was seen with decertification cards speaking with Vanida Nanthalat at her machine. According to Nanthalat, Akers asked her to sign the card. He explained to her that the purpose of the card was to get out of the Union. She declined to sign. Nanthalat testified that her supervisor, Randy Feree, did not see her talk with Akers, but Hill testified that Feree was at the next frame over from where Akers and Nanthalat were talking. Within a day or two of this incident, she observed Akers talking to an Indian employee who runs slubbers in the card room. While they were talking, the supervisor of that area, J. T. Hulsey, walked by them, smiled, and continued on. On another occasion, Akers began talking with Hill on the job concerning decertification. She asked him to leave. Later, she complained to Feree that Akers had been coming on the job to solicit decertification cards and asked Feree to keep Akers from doing so. I credit her testimony to the effect that she told Feree, "if you don't have the authority to tell him to stay off the jobs, then call Don and have Don . . . do

<sup>17</sup>Her testimony in this regard was corroborated.

<sup>18</sup>Queen also testified that the Company never had a rule that prohibited employees from talking with each other and that spinners frequently spoke with each other on the job.

<sup>19</sup>Akers was described as a short, stocky man with a close beard.

it." Feree's response was, "I do not have the authority to tell Danny to stay off the job. I have been told Danny is to come in here and do what he wants to do, and I'm not to say anything to him, and if I do, I'll lose my job."

Jimmie Hill (J. Hill) testified that he saw Akers in the spinning room on second shift training doffers. (In November and December, Akers was working double shifts.) On one occasion, he passed by the smoking area, exhibited a decertification card to J. Hill, and said, "Look here. I got one signed." Hill complained both to Purdee and to Randy Feree about Akers and other card solicitors going through the plant collecting signatures. On another occasion, J. Hill witnessed Jones in the winding room talking to a technician on the second shift. Both Jones and the technician left the technician's workplace and went up to Supervisor Young's office. Young was not there so Jones and the other employee stayed in Young's office about 15 minutes carrying on a discussion. After that interval, Hill saw Young standing in the locality watching the two men talking in his office.

From time to time, Jimmie Hill, a fixer or section man in the spinning department, was accustomed to going to his wife's machine while she was working a spinner, whenever he had spare time, in order to help his wife on her job. Other employees whose wives worked at the plant did the same thing. On December 2, Feree instructed him not to leave his section, even to go to his wife's job. On another occasion, Feree told Hill that he was being watched. Sometime in late November, Hill spoke briefly with Gann at the end of his break. For this he was orally criticized by Stirwalt. On or about November 28, Supervisor Leviner told Hill to stay out of his department and leave his help alone.<sup>20</sup>

On December 9, the morning that the decertification cards had been turned in to management, Earl Pearson, a fixer on the first shift in the spinning department, reported sick. When such absences occur, it has been the practice of the Respondent to ask the fixer who follows the absentee in the same section on the next shift to report early and to assume the duties of the absentee. Normally, Hill, who follows Pearson in the same section, would have been called to work to fill in. However, on this occasion, Ronald Hinson, the department manager for the spinning department in Mill 2,<sup>21</sup> phoned J. W. Demby, the first-shift fixer in another section, and asked him to report early to take Pearson's place. Demby did so. When Hill arrived at work at the beginning of the second shift, he complained to Hinson and asked Hinson why he had failed to call him in. Hinson replied that "we are going by seniority now." Hill objected, saying that the Company had never done that before. Hinson's reply was, "With all this mess going on, I thought it would be best to call J. W. [Demby] in instead of you." Hill then asked Hinson, "What mess?" but Hinson made no reply. Hill then told Hinson he knew what Hinson meant.

<sup>20</sup> J. Hill was particularly incensed by these remarks and by the frequency and ease with which decertification card solicitors went about the plant on their errands, because, on several occasions, he had been told by supervisors to get out of their departments while investigating grievances, notwithstanding the fact that the contract accorded him the right to investigate grievances at the plant.

<sup>21</sup> A department manager has the responsibility for operating his department on all three shifts, as distinguished from a shift foreman who reports to the manager but is responsible only for one shift.

Ezekiel, a winder tender on the first shift and financial secretary of the Union, noticed that employee Zeithel Yarborough, mother of Supervisor Keith Yarborough, was trying to give employee Ruth Baskins a decertification card while Baskins was working. She checked up on the conversation and found that Baskins had in fact been solicited to sign a decertification card but had refused to do so. In the company of Steward Dorothy Campbell and several other employees, Ezekiel reported this incident to Plant Manager Patsy Whittington. First they asked Whittington if she was aware of the decertification effort; Whittington said no. Ezekiel then asked Whittington why people were going around the plant trying to get people out of the Union. Whittington replied that she did not know but stated that "if the Union members can go around and try to get people in the Union, then other people have got a right to try to get people out of the Union." Ezekiel and the others insisted that they did not do so. They then asked Whittington if the Company was for sale. She replied that it was for sale and that they had plenty of offers for the Bladensboro plant but none for the plant at High Point. She mentioned that one of the reasons for the fact that they had no offers for the High Point plant was the presence of a union in the plant. Whittington took no action as a result of their complaint. Later the same day, Ezekiel saw Jones passing out cards both in the canteen and elsewhere in the plant. One such observation involved Jones talking to an employee, identified only as Billy, in the winding room. Billy initially refused to sign. Jones then went into the canteen, got a pencil, and brought it back to Billy, who then signed a card. Billy later told Ezekiel that he had signed the card because Jones kept pressuring him. There is no evidence that a supervisor witnessed this incident. Jones, a spinning department employee, also approached Ezekiel at her workstation. When she asked him what he was doing, Jones handed her a card. She asked Jones whether he was trying to get people to leave the Union. At this point, a supervisor, identified in the record only as Kumar, told Jones, "She's the Union. She's the Union," so Jones went on his way.

The Respondent posted notice in the plant to the effect that the plant was for sale and that the Company was attempting to sell the High Point and Bladensboro plants as a package.<sup>22</sup> The notice stated that the Company was having difficulty in selling the High Point plant because of the age of the machinery therein.

Two weeks after the Company withdrew recognition from the Union, it held its annual Christmas party. Ezekiel spoke with Cochran just before the luncheon and asked him just who was in the majority which the Company relied upon in withdrawing recognition. Cochran's reply was that he was sure that he could find a decertification card for her to sign if she wanted to do so. He noted that it was actually too late to sign but, if she really wanted to sign a card, she could. Ezekiel told him that she did not want to sign a card but just wanted to know who composed the majority of the card signers upon which the Company was relying for the action it took.

On or about November 19, Juan Torres, a section fixer and shop steward in the spinning room of Mill 1, went to the of-

<sup>22</sup> Eventually the Bladensboro plant was sold but, at the time of the hearing in this case, the High Point plant remained the property of TEXFI.

office of Daniel W. Adkins, the supervisor in that department, to file a grievance concerning air quality in the plant. It was one of several grievances which were being filed at that time by the Union concerning this subject. Adkins' response to Torres was that there was nothing that the Union could do about the problem. He went on to say that if there was no union in the plant the air quality would be better and the employees would be making more money because the Company would not have to negotiate about this matter.<sup>23</sup> He complained that the Union was trying to run the Company. A few days later, Torres was back in Adkins' office to file another grievance, this time about work assignments. On this occasion, Adkins told Torres that he ought to get out of the Union and that he would receive the same treatment if he did. On the same day, he again spoke with Torres in the breakroom. On this occasion, Adkins said that the Company was going to shut down if it did not sell the plant and stated further that the Company could not sell the plant because of the presence of the Union.

Early in December, before the decertification cards had been turned in, Adkins had occasion to speak with Torres in the presence of Torres' girlfriend, Charlynn Freedle. He called Torres a loser, stated that he would never amount to anything, and asserted that he had no hope of victory because the Union was going out.<sup>24</sup> Adkins also said that the solicitors already had enough cards to get rid of the Union. Adkins told Torres that but for the Union, Torres would have been fired and that someday, after the Union was out, the Company was going to get rid of some people. He specifically mentioned the name of employee George Campbell, a former vice president of the Union.

A few days later, Torres had a conversation with another supervisor concerning the Union. He was in the office of Leon Barker, the third-shift foreman in the spinning department, along with employees John Bray and Alex F. "Tom" Bowman. Barker told Torres that he should sign a card to get out of the Union because the Union was going out. Barker added that once the Union was out the plant would be a better place to work.<sup>25</sup> Torres replied that he was a member of the Union because he had been mistreated in many different ways, including being given more work to do than others. Barker replied that the Company did not need a union and could take care of its problems on its own. He then went on to say that the Company was going to get rid of some union supporters once the Union was out and that it would be hard for any of them to find a job because of their past union membership. He summed up his advice by saying, "If I saw a storm coming, I would get out of the way." On another occasion in the canteen in Mill 1 next to the spinning department, Barker made another statement about the Union in the presence of Torres and employees Katherine McCarn and Teresa Leach. At that time he said that the plant would shut down because of the Union.

Late in November, Chriscoe was present when Supervisor Larry Feree, the manager of the warehouse, was discussing the Union with the yard crew as they gathered about the receiving dock. Larry Feree told the crew that the Company

was shifting work to the Bladensboro plant because it was nonunion and because the roof leaked at the High Point plant. He also informed them that the Company was putting new machinery in the Bladensboro plant and that it could not sell the High Point plant because of the Union. He stated further that the Company was going to keep the Bladensboro plant and close the High Point plant. Chriscoe challenged this statement, going so far as to say that Feree was lying. He argued that if the Union went out and Purdee got control of the plant the employees would be in worse shape than at present, and he denied Feree's statement that the Union was the reason that the Company was putting more money into the Bladensboro plant, asserting that the Company wanted to sell the Bladensboro plant as well as the one at High Point.

Chriscoe credibly recounted another instance when Akers, a doffer in the spinning room, came into the carding room and asked employee Robert Carter, while Carter was working, to sign a card. Chriscoe observed that Hulsey was in his office when this occurred and that the entire carding room was visible from Halsey's office.<sup>26</sup> Chriscoe credibly testified that, sometime in November, he noticed some unidentified antiunion literature posted in the canteen. Other copies were lying about on tables. The flyer read:

#### WHO IS BEING FOOLED?

Sure we got a 4-1/2 raise.

We also got it about 30 days after BLADENBORO [sic] got theirs and they don't have a union. That's not all. How much more could we have gotten if the union had accepted "THE QUALITY BONUS PLAN" that we heard the company wanted to initiate? Why doesn't the Union let us decide if we want to make more money? They tell us that they are filing grievances to help us.

#### THEY SURE ARE!

1. Like the one they filed against a man getting a pay increase.
2. The one they filed because one of their STOOGES did not get a birthday cake.
3. And many other meaning less grievances filed against fellow employees.

Chriscoe tore up the flyers he saw lying on the table and asked Purdee if he knew about them. Purdee insisted that Chriscoe not bother these papers because they were company papers. Chriscoe replied that Purdee should not leave them about where Chriscoe could get his hands on them or they would be thrown away.<sup>27</sup>

In late November, Teresa Ann Julian, a spinner on the second shift and a shop steward, filed a grievance in conjunction with Ranita Bennett about the air quality in the plant. Part of the remedy requested was that the Company devote more time to cleaning the facility. They met informally with Barker in his office along with other employees on their

<sup>23</sup> The consolidated complaint was amended at the hearing to include Adkins' name.

<sup>24</sup> Torres' testimony was corroborated by Freedle.

<sup>25</sup> Torres' testimony in this regard was corroborated by Bowman.

<sup>26</sup> Chriscoe testified that earlier in the year Hulsey had told him that if he left the work area he would fire him. He also noted that other employees had received reprimands for going into another department without obtaining their supervisor's permission.

<sup>27</sup> It is a company rule that no literature may be posted in the mill without company approval.

shift. Barker rejected the grievance, at Purdee’s direction, stating to the grievants that their complaint was not worth anything because it had not been signed in his personal presence. He told them that the company rule requiring employees to wear dust masks 2 hours a day was the State’s idea but the Company could require employees to wear masks throughout their shift if it wanted to. Barker told Julian to stop talking union on the plant floor or signing up employees on the job or he would fire her. Effie Meban, one of the employees in this group, asked Barker if they could sign a new air quality grievance in front of him, since the other grievance was deemed to be defective because of this procedural problem. Barker replied that they could but, if they did, he would make them wear dust masks 8 hours a day, so they left the office without signing a new grievance.<sup>28</sup>

Sometime in November, employee Teddy Charles Carter went to Purdee’s office to talk about the Union. He expressed concern that feelings were running high in the plant about the Union and suggested to Purdee that someone might get hurt. Purdee’s reply was that he thought that Jones could take care of Jimmie Hill (J. Hill). Purdee then went on to ask Carter if J. Hill was staying on his job. Carter replied that as far as he knew Hill was doing so. Purdee then remarked that he had supervisors watching Hill to make sure that Hill did not leave his department.<sup>29</sup> Thereafter, Purdee asked Carter on several occasions whether he had seen Hill leaving his department.

A few days later, Carter was having a cup of coffee in Whittington’s office. He mentioned to her the conversation that he had with Purdee, whereupon Whittington also asked him if Jimmie Hill was staying on his job. She also asked Carter if he had signed a deauthorization form, which permits the Company to cease deducting union dues from the paycheck of an employee who has executed a checkoff authorization. Carter said that he had not done so. Whittington told him that in order to stop the deduction dues he would have to do so. The Company provides such forms and keeps them in supervisors’ offices. They read:

HIGHLAND COTTON MILLS, INC.  
 DATE \_\_\_\_\_  
 PLEASE DO NOT DEDUCT ANY MORE UNION  
 DUES  
 FROM MY TIME. THANK YOU.  
 \_\_\_\_\_  
 SIGNED

Whittington asked Hinson to hand Carter a card. Hinson did so. Carter signed and dated the card and gave it back to them. Shortly thereafter, the dues deductions ceased.<sup>30</sup>

On one occasion in late November or early December, Carter was standing in an alleyway before his shift talking with Hinson and Whittington. Former Union Vice President Tommy Craddock was present. Jimmie Hill was observed by

<sup>28</sup>The employees on one shift engaged in cleanup activities each week, blowing cotton dust off frames and cleaning other parts of the machines. Formerly they spent 8 hours doing cleanup work; this had been reduced to 3 hours.

this group as he came in before his shift. He went into the Mill and closed the door behind him. Whittington told Hinson to follow Hill and see if he was talking with anyone on the job, instructing Hinson, “If he [Hill] is, get him off the job.” Shortly thereafter, Whittington told Carter that she made those remarks to Hinson in such a way that Craddock would hear them as well.<sup>31</sup>

For some time, the Company permitted doffers to come in before the start of a shift to fill up their boxes before the shift began, unless the doffer on the preceding shift objected. Late in November, Purdee took steps to stop this practice. Carter spoke to Purdee about his action, arguing to him that “it’s not only helping Highland; it’s helping us because if we’ve got our stuff all ready to go to work . . . we can start out ahead instead of being behind.” The prohibition on this activity remained in effect for a while. Hinson suggested to Carter to “let it rest” for a while. Later, doffers resumed the practice of filling up their boxes before the start of their shifts unless the doffer on the preceding shift voiced an objection.

Carter testified credibly that he saw Akers on several occasions soliciting cards from winder-tenders in the winding room. Young, the supervisor, was present but did nothing to interfere with Akers’ activities. Carter also testified credibly that he observed an entry in a notebook kept by Hinson in his office which stated that Jackie Chriscoe’s and Sandra Freedle’s spinning jobs were to be patrolled by second- and third-shift supervisors. Both Chriscoe and Freedle were union supporters.

In October 1991, Clarence R. Slate, a card tender on the first shift and a shop steward, saw Jones come into his area just before the beginning of the first shift. He approached employee Abdul Awan and asked him to place his signature in a school composition book relating to the Union. Foreman Beal was about 15 feet away from this conversation but did not intervene. Slate approached Awan and told him not to sign anything unless Jones explained to him what it was all about. This event took place before decertification cards were circulated throughout the Mill.

Craddock had several conversations with Cochran in late November and December concerning morale at the plant. In one of these conversations he accused Cochran of sponsoring the decertification drive. In one such conversation, Cochran told Craddock that now that “we got the Union out,” the Company would be able to do some things at High Point that it had been wanting to do for some time, such as paying employees more money and improving working conditions. He noted that the plant was deteriorating fast. He said that the Company was going to install an incentive plan. Craddock asked him if it was the same incentive plan that had been discussed at the bargaining table. Cochran said it was, with

<sup>29</sup>Carter testified in general terms that he regularly saw employees from other departments come into his working area to solicit decertification cards from employees at their workstations. He specifically recounted that he saw Akers talking to winders while they were working.

<sup>30</sup>Former employee Gann testified that she once approached her supervisor, Stirwalt, to ask him how to go about joining the Union. Stirwalt’s reply was to refer her to her shop steward, saying that the steward had all the necessary information about union membership.

<sup>31</sup>Carter’s description of this event was corroborated by T. Craddock, both of whom were credible witnesses.

some additions. Cochran remarked that the Union had turned the plan down at the bargaining table. Craddock disagreed, saying that the Company had insisted that the incentive plan be excluded from the grievance procedure. Again Cochran told Craddock that when the Union was out of the plant he would begin to see some differences in the plant.

Christine Craddock, Tommy Craddock's wife, was a travel changer on the first shift in the spinning room in Mill 2. C. Craddock and other employees were in the habit, from time to time, of eating lunch or smoking in what is described in the record as the back room. They also stored their overcoats and purses in this area and used it for breaks when the smoking room or the canteen was crowded. Some tools are stored in this area. During one such break in November 1991, Craddock was speaking to employee Jorge Gomez about joining the Union and was in the process of soliciting a union designation card from him. Akers saw them having this conversation, told them they were not supposed to be talking union in this room, and warned them he was going to summon a supervisor. A few minutes later, Stirwalt appeared and asked them what was going on. Craddock said she was signing up Gomez for the Union. Stirwalt told Craddock that she was not supposed to be signing up employees in that area and could do so only in the canteen or an adjacent smoking area. Craddock insisted to Stirwalt that she was in a nonworking area, whereupon Stirwalt went back to his office.<sup>32</sup> Gomez followed him into the office and began talking to Stirwalt. Craddock went into the office, interrupted the conversation, and asked Gomez whether he still wanted to sign up for the Union. They left the back room and proceeded to the canteen adjacent to the winding room, where Gomez signed a union card. On the following day, Stirwalt told Craddock that he did not appreciate being interrupted in his office when he was talking with another employee but did not issue any sort of reprimand. Craddock credibly testified that, on another occasion, he witnessed Akers talking with an employee Belinda Thompson for half an hour or more at her work area.

Former employee Gann, once a spinner on the third shift in Mill 2, testified credibly that Akers spoke to her on three or four different occasions on the job about withdrawing her union membership. Akers voiced the opinion to her that things would be better at the plant without the Union and also suggested to Gann that it would be best for her to get out of the Union because she would not have a job if she did not do so. She testified credibly that Stirwalt was present during some of her conversations with Akers. On one occasion, in Stirwalt's presence, Akers asked her to sign a card and voiced the opinion that she would be "crazy" if she did not. On another occasion, when Gann was taking a break at the smoking booth with Craddock, Gomez, and employee Ann Willis, Stirwalt approached them and said he was just trying to make sure that they were not talking union on the job.

On one occasion, sometime in November, employee James Willis spoke with Gann at her job for about 10 minutes con-

cerning withdrawing her union membership. The two were observed by Stirwalt, who was standing at the end of her frame. He did not intervene in the conversation. On another occasion, Jones talked with Gann on the job during the late night shift and asked her to sign a decertification card. She refused. The conversation was witnessed by the card room supervisor, who was escorting Jones to the plant gate. Stirwalt was present during another conversation between employee Belinda Thompson, Akers, and Willis, while they were discussing whether Thompson should sign a decertification card. The conversation took place at or near Thompson's machine. When Gann approached the group, she told Thompson that she should make up her own mind<sup>33</sup> and insisted that no one could tell her what to do. Gann then suggested to Thompson that the two of them take a break. However, they did not do so and Gann left the conversation.

Employee James D. Hope, who runs slubbers on the third shift in card room 2, noticed Jones circulating a petition sheet, contained in a notebook or writing tablet, seeking the decertification of the Union. Jones approached Hope at the water fountain near Hope's job and asked him to sign. Hope refused, but Jones continued to circulate the petition among other employees in the area. Later, Jones returned to the card room seeking signatures on individual decertification cards. Jones asked Hope to sign a card some time in November when the two spoke at the smoking booth. Again Hope refused.

Hope was solicited to sign a decertification card by an employee whom he described as "Archie," an African who works on the second shift in Mill 1.<sup>34</sup> "Archie" approached Hope while the latter was working and asked him to sign a card "before they sell the plant, so we can have a job." "Archie" said he thought they would but Hope disagreed. Hope then told "Archie" that if the Union left the plant no one would have a job. He asked "Archie" if he would guarantee Hope a job if he signed a card and "Archie" admitted that he could not. Hope testified that "Archie" worked in another department and was conducting this solicitation on a shift different from the one on which he worked. He also testified credibly that Supervisor Beal was about 35 feet away while "Archie" was talking with him.

On the Sunday evening when the decertification cards were turned into the Respondent's management, Jones approached Hope again while the latter was working and asked him if he wanted to sign a card. He told Hope that this was his last chance. Hope again refused. On this occasion they were standing at the water fountain. Jones had punched out before this conversation took place. Beal was about 10 feet away in the supervisor's office.<sup>35</sup>

Hope was in the habit of answering the telephone in the supervisor's office if the latter was away from his desk. On one occasion, he answered the phone and spoke with Leon,

<sup>33</sup> Thompson had previously told Gann that she felt that she was being pressured into signing a card.

<sup>34</sup> I take this description to be a reference to former employee Aggrey Achi, one of the four principal activists in the decertification effort. However, for purposes of this case, it is immaterial whether Hope's description applied to Achi or to some other employee.

<sup>35</sup> Hope's regular workstation is about 10 feet from the supervisor's office.

<sup>32</sup> I credit C. Craddock's testimony that the area in question was never referred to in the plant, to her knowledge, as the fixer's room or the tool room. There is no suggestion in the record that any work was being performed at that location when Stirwalt was speaking to her about soliciting a card.

a supervisor in Mill 1.<sup>36</sup> Leon told Hope that the Union was on the way out. Hope, who had been a union member for about 6 years, asked Leon how he knew. Leon's only reply was, "You wait and see!"

Juanita Guy, a specialized cleaner in Mill 1, had occasion to talk with Jones, a Mill 2 employee, as he was soliciting decertification cards in the canteen in Mill 1. Jones showed a card to Mario Domingo and asked him to sign. Jones told Domingo that the Union was preventing the Company from giving employees a raise. Supervisor Adkins was present and watched Jones give Domingo a card. Domingo signed the card and returned it. Jones then attempted to solicit a signature from Guy. She asked Jones where he got the card and received no answer. Jones asked Guy how she felt about Jimmie Hill, to which question Guy replied, "What difference does it make?" She then asked Jones what he was doing in Mill 1, and Jones told her that he could go anywhere he wanted. After this conversation concluded, Jones continued talking with employees in the smoking booth next to the Mill 1 canteen.

Phouthone Luangkoth, a Laotian employee who worked in the yard, testified that he signed a decertification card in the office of second-shift Winding Room Supervisor Perranoski "Perry" Young. At the hearing, Luangkoth testified twice, once in English and on the second occasion with the assistance of a Laotian interpreter. Because of Luangkoth's difficulty in understanding the questions put to him, I am inclined to rely more on the testimony of Young concerning this event, although Young's testimony is not entirely consistent with other facts in the record. Young asked Luangkoth where his Trans Am was; Luangkoth replied that he could not afford to drive it. Luangkoth then asked Young how he could get out of the Union. Leroy Gray, a section hand on the second shift, was present during his conversation. Gray told Luangkoth about the deauthorization slips which were posted on the window pane of the office. Young removed one of the slips and gave it to Luangkoth, who signed it in the office assertedly with a pen which Young furnished to him.<sup>37</sup> Young then placed the card in the Company's internal mail distribution and it was forwarded to the personnel office. Young was asked at the hearing, "Did you ask [Luangkoth] if he liked the Union?" to which Young replied, "Not really."

Alex F. "Tom" Bowman, a doffer who was formerly on the third shift, had occasion to speak with a third-shift supervisor identified in the record as Jesse in the breakroom concerning decertification cards. Jesse told Bowman that the plant would be a better place to work if the Union were not present. Bowman signed a decertification card given to him by Riddle at Bowman's workstation. He signed it on December 3 in Barker's office, although Barker was not present. Riddle explained to Bowman what the card was all about but Bowman, who is illiterate, was unable to read it.

Pheng Phommavong, a Laotian employed in the spinning room, was solicited to sign a decertification at her workstation by Robert, a skinny, tall white man who worked

in a different section of the plant. She declined to do so. Danny, whom I take to be Danny Akers, asked her on two different occasions, while she was working, not to be a member of the Union. She complained to her supervisor about Akers' action in talking to her about the Union at her workplace and asked the supervisor to stop it from happening. Her supervisor said that he would do so.

Mak Saveth, a Cambodian employee in the spinning room, acknowledged signing a decertification card given to her by Achi at a machine in the back of her workplace. She also wrote on the card the month when it was signed. Achi told her to sign the card because the people in the office told them to sign it. Achi did not read the card to her before she signed it and Saveth does not read English. She testified at the hearing that she did not know what she was signing. Saveth testified without contradiction that Achi, who works in a different part of the plant, approached a Thai employee at her workstation and talked to her for a while about signing a card. Achi told the employee in question that she should sign because the "big boss" said that employees should sign.

Yusai Nie, a Vietnamese employee in the spinning room, signed and dated a card which was presented to him at his workplace by Achi who worked in a different part of the plant. Nie asked Achi why he had to sign the card. Achi replied that an unnamed "big boss" said that everybody had to sign. Nie testified that he could not read English well and did not read the decertification card before signing it because he could not translate into Vietnamese the meaning of the English words on the card.

A number of the Respondent's employees who are recent immigrants testified with the aid of an interpreter concerning the circumstances surrounding their signing of cards. Many of them are either illiterate in English or read English poorly. Somchay Sosepsaengneva, a Laotian employee, identified her signature on a decertification card which was solicited by an individual whom she described as a tall, white man with brown hair who worked in another part of the plant. He said nothing to her about the contents of the card except to ask her to sign it. She testified that she signed the card without knowing what it was about.

Gumaro Castellon, an Hispanic employee, identified his signature on a decertification card. He testified that it was solicited by Achi, described by Castellon as "a black man." Castellon did not read the card because he cannot read English and testified that Achi did not explain the contents of the card to him. Castellon discussed the card with Moises Rico, a fellow employee. Rico suggested to Castellon that he sign the card because if the Union were not in the plant the supervisors would give him more work. Rico then took Castellon into Adkins' office where they held a 15-minute conversation with Adkins. Adkins told Castellon, using Rico as an interpreter, to sign the card so the Company could give him more work. Adkins went on to say that the Company would remove the lazy people from the plant and give the work to others, adding that, if the Union remained, the Company would close the plant. Thereafter, Castellon signed. After signing, Castellon then asked Torres what it was that he had signed. Torres explained that the purpose of the card was to get rid of the Union. Castellon told Torres that, in fact he wanted to be represented by the Union, so Torres presented him with a union card, which he also signed. This

<sup>36</sup> Presumably the reference was to Leon Barker, a third-shift foreman in the spinning room in Mill 1.

<sup>37</sup> The decertification card which Luangkoth signed was executed in ink but the dues revocation card mentioned by Young was signed in pencil. Luangkoth testified that he signed both cards in the office in Young's presence, one in ink and the other in pencil.

was 1 of about 30 or so authorization cards which the Union collected during this period of time in order to combat the decertification drive. Sometime after the Respondent withdrew recognition from the Union, Castellon signed a dues revocation card in Adkins' office, whereupon Adkins gave him additional revocation cards to pass out to other employees. Castellon has relatives working at the plant.

Souk S. Keokongsky, a Laotian employee, signed a decertification card given to him by Akers in the restroom at the plant. Keokongsky did not read the card before signing it, testifying that Akers told him that the purpose of the card was "to keep the union or to let it go." He also said that Akers told him he wanted to remove the Union from the plant because it was becoming unpopular. Keokongsky's ability to read English is limited. He did not in fact read the card before signing it but testified in general terms that he understood what it was for.

Chanthana Vongprachanh, another Laotian employee, signed a decertification card given to her while she was working by "a tall, skinny white man named Robert." Three or four other persons were present at that time. Robert, whom I take to mean Robert Jones, said nothing to her at the time he gave her the card. Vongprachanh is unable to read English but signed the card because Robert and the others were just standing around waiting for her to do so. No one read the card to her. It contains both a printed signature and a written one; however, the printed signature was not placed on the card by her.

Vanida Nanthalat, a Laotian employee, signed a decertification card given to her by "Robert" in the breakroom. She testified that "Robert" worked in a different part of the plant. She did not sign it immediately and in fact did not do so until after Akers, who also worked in the spinning room at the time, asked her to do so. Nanthalat reads a little English and testified that she knew that the card was designed to permit employees to withdraw from the Union.

I credit the corroborated testimony<sup>38</sup> of Du Thi Le, a Vietnamese employee who works in the winding room on the second shift, that she was asked, while she was working, by an individual named Leroy to come to a meeting in the packing room, an adjacent area where employees frequently gathered for production meetings and other discussions about the quality of their products. Several other Asian employees were present. Supervisor Young was not in the immediate area, although he was in his office at the time. She was told at this meeting by a white man that the Company wanted to buy new machinery for the plant and improve plant safety

<sup>38</sup> Lau T. Nguyen signed a card at or about this time. She corroborated testimony concerning the holding of the meeting and added that a Cambodian employee handed her a card which she signed. She was reluctant to sign because her sister was a union member. However, the Cambodian told her she had to sign so she did. Dung My Nguyen, a former employee in the winding room, was given a card on this occasion. She reads very little English and had difficulty in reading a card which was presented to her at the hearing. She corroborated the fact that the group of Asian employees was told at this meeting that they had to sign cards if they wanted to keep their jobs so most of them did. Anh N. Che, a Vietnamese employee in the winding room, signed a card presented to her by an American employee at a meeting held with other Asian employees. He told them that they simply had to sign. She did not understand what she was signing so she asked a Korean employee what the cards were all about, but the Korean employee did not know either.

but the Company could not afford to do so and was opposed to having employees in the Union. Another employee who attended this meeting, Dung My Nguyen, said that the card solicitor said that if they wanted to keep their jobs the employees should sign the cards that were being given to them. The text of the writing on the cards was not translated. However, all the employees present signed, even though some did not understand English. On a later occasion, Le signed a second card which was presented to her at her workstation. The individual who gave her the second card, which was dated December 7, did not read the card to her or explain what it was all about.

Ypat Nie, a Vietnamese employee who works in the card room, signed a card which was given to him by Robert Jones while he was taking a break. Nie does not read English. Jones simply presented the card to him and told him that everyone had to sign it. He did not read the card to Nie before Nie signed it.

Hoa T. Son, a Vietnamese employee who worked in the spinning room, signed a card which was given to her by a fellow employee, Ju Nom, a Cambodian in the bathroom at the plant. Nom asked her to sign it. Nom told Son that she thought that the owner wanted to sell the plant but, if the Union were in the plant, he could not do so. Son read the card but did not understand some of the language on the card, including the statement "no longer want," although she did recognize the name of the Clothing and Textile Workers. Earlier in the shift, Son saw Akers and another person handing out cards to employees as they came to work. She overheard Akers say to other employees that they might not have a job if the Company could not sell the plant and the Company could not sell the plant if the Union were still present.

Late on Sunday evening, December 8, Jones, Riddle, Achi, and Akers, the four principal solicitors of the decertification cards, brought them to the company office and turned them over to Purdee, who was present by prearrangement. Normally, the business office is closed during evening hours even though the plant may be in operation. Akers handed Purdee the cards in a brown paper bag and said, "Merry Christmas."

Purdee was accompanied to the plant that evening by Mel Harmon, the Respondent's training director. They accepted the cards and immediately began to pull company records to verify the signatures on the cards against those records. Purdee testified that they counted 201 cards in the batch which Akers had presented. From this number, they excluded 20 which were duplicates. Of the remaining 181, they ascertained that the signers of the cards were in fact listed on company records as employees. They did not make any signature comparisons with respect to most of the cards. With regard to about 60 cards, they pulled insurance records which contained actual signatures of employees, compared the signatures on the cards with the signatures on the insurance records, and satisfied themselves that, in those instances, the card signers were the same people who had signed insurance forms. However, Purdee admitted that he had no qualifications as a handwriting expert. The parties appear to agree that, at that time, there were 320 production and maintenance employees in the Respondent's bargaining unit.

In anticipation of this event, Purdee had prepared two identical letters withdrawing recognition from the Union. The only difference between the letters was that they bore different dates. At or about 1:30 a.m., on Monday, December 9, Purdee and Harmon went to the main post office in High Point and mailed a revocation letter, signed by Purdee, to Cohen at Cohen's Greensboro, North Carolina office. Dated December 9, the letter read:

Dear Mr. Cohen:

I am writing to advise you that Highland Yarn Mills, Inc. has received objective evidence that a majority of its employees do not wish to be represented by Amalgamated Clothing and Textile Workers Union AFL-CIO-CLC Local 319. Accordingly, by this letter, Highland Yarn Mills, Inc., withdraws recognition of the Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, Local 319, as the representative of its employees at its High Point, North Carolina facility.

Please be assured that Highland Yarn Mills, Inc. will continue to comply with the existing bargaining agreement for the remainder of its term.

Purdee posted copies of the letter on company bulletin boards, although the record is confused as to whether he did so during the early morning hours of the third shift or waited until later in the morning. The following morning Purdee notified Cochran of what had transpired and personally delivered a copy of his letter to Cohen to Hill, the Local 319 president, at Hill's home.

In December, the Respondent unilaterally canceled a scheduled grievance meeting on several air quality complaints which had been filed throughout the plant and which were being processed under the contractual grievance proceeding. Cohen had arrived at the plant office, where a number of employees had assembled to assist in the grievance meeting, and was abruptly told by a receptionist that the grievance meeting had been canceled. He learned that Cochran was attending a meeting in another part of the building so he led the group of employees, who had been waiting in the office, to where Cochran was located. Cochran emerged from his meeting and, when asked why the meeting had been canceled, replied only that he had left messages to that effect with Cohen. Cohen claimed that he had never received any cancellation messages at his office. However, no other explanation was given and the pending grievances were never discussed thereafter or processed further. On the same day, Cohen presented the Respondent with about 30 newly signed union authorization cards. He demanded to see the cards on which the Respondent had premised its withdrawal of recognition and was told that he should make a written request. Cohen made such a request and was, in fact, furnished with copies of the decertification cards. At that time he learned that some who had signed decertification cards had also executed fresh authorization cards. The contract expired on February 9, 1992, and the Respondent has refused to recognize the Union thereafter.

### III. ANALYSIS AND CONCLUSIONS

#### A. Respondent's Hostility to the Union

For more than 50 years, the Charging Party had represented the Respondent's production and maintenance employees at its High Point plant and had concluded with the Respondent a series of collective-bargaining agreements going back as far as any employee at the plant could remember. However, in the summer of 1991, the economic status of the Respondent's parent corporation was such that it wanted to sell the High Point plant and several other holdings to improve its cash flow position. It is well established in this record that the presence of a union at the High Point plant seriously impeded the sale of that plant and that the Respondent had been told as much by several prospective purchasers. One of the Respondent's corporate strategies was to sell the High Point plant together with its nonunion plant at Bladensboro but it was unable to do so. To many employees, the inability of the Respondent to sell the plant was often being portrayed as the equivalent of closing the plant. However, the Bladensboro plant was sold and, at the time of the hearing, the High Point plant was still in production under the same ownership.

During this period of time which coincided with the solicitation of decertification cards, the Respondent behaved toward the Union and its members with marked hostility which frequently crossed the line into illegal conduct. In the fall of 1991, the Respondent posted a notice informing employees of its desire to sell the plant. The notice also indicated that it was having difficulty in doing so but, instead of attributing the problem to unionization, it blamed the Company's difficulties on the fact that the plant had a large amount of obsolete machinery which prospective purchasers found unattractive. During the time when the events recited in this record were taking place, several groups of would-be purchasers had been given tours of the plant, so bargaining unit employees at High Point were well aware of the Respondent's intentions.

While the Respondent's publicly stated position was that old machinery prevented the sale of the plant, its private statements often placed the onus on the Union. In a telephone conversation with Cohen, Cochran said that buyers were more interested in Bladensboro than in High Point because the former did not have a union and High Point did. In his testimony in this proceeding, Cochran made essentially the same statement under oath. Purdee told Ezekiel that the presence of a union at High Point was an obstacle to any sale. When Ezekiel and several other employees complained to Whittington about decertification card solicitors violating the Company's rules, Whittington told them that the Company had plenty of offers for the Bladensboro plant but none for High Point and the reason for this difference was the presence of a union at High Point. In a statement to employee Torres, Supervisor Adkins made a causal connection between plant sale and plant closing. He told Torres that the Company was going to shut the plant down if it could not sell it and that it could not sell the plant because of the presence of the Union. Such a statement constitutes a threat to close the plant in the event employees did not withdraw from

the Union and is a violation of Section 8(a)(1) of the Act. Later, Adkins called Torres a loser in front of Torres' girlfriend, insisting that he had no hope of victory because the Union was going out and that the solicitors already had enough cards to eliminate the Union. Such a statement constitutes illegal interference with union activities in violation of Section 8(a)(1) of the Act. Adkins also told Torres that after the Union was gone the Company was going to fire some people, including former Union Vice President Campbell. Such a statement constitutes an illegal threat in violation of Section 8(a)(1) of the Act. When Torres was discussing an air pollution grievance with Adkins, the latter told Torres that if there were no union in the plant, the air quality in the plant would improve and employees would be making more money because the Company would not have to negotiate raises. Such a statement constitutes a promise of benefit for withdrawing from the Union and is a violation of Section 8(a)(1) of the Act.

Other supervisors also made remarks to employees which exhibited company animus and, on some occasions, violated the Act. Barker told employees Torres, Bray, and Bowman that once the Union was out the plant would be a better place in which to work. Such a statement is an illegal promise of benefits, which violates Section 8(a)(1) of the Act. Barker went on to say that the Company was going to get rid of some union supporters once the Union was out and that they would have a hard time getting jobs because of their past union membership. This statement is an illegal threat to discharge employees because of union membership in violation of Section 8(a)(1) of the Act and is also a threat to blackball employees because of their union membership and activities in violation of Section 8(a)(1) of the Act. Barker's statement on this occasion, "If I saw a storm coming, I would get out of the way," is a threat of unspecified retaliation against employees who continue to support the Union and is a further violation of Section 8(a)(1) of the Act. Later, when Barker told employees McCarn and Leach that the Company would close the plant because of the Union, the Respondent made a threat which violated Section 8(a)(1) of the Act.

In November, several employees met informally with Barker in his office to voice a grievance about air quality in the plant. On this occasion, Barker told their spokeswoman, Julian, to stop talking union on the floor and stop signing up employees there or he would fire her. This statement was a threat to discharge in violation of Section 8(a)(1) of the Act. When he told the assembled employees that he would make them wear dust masks if they pursued their air quality grievance, the Respondent violated Section 8(a)(1) of the Act by threatening retribution against employees for engaging in union and protected, concerted activities.

Purdee told employee Carter that he had supervisors watching Union President Hill to see that Hill did not leave his department. By singling out a union official for special treatment, the Respondent was engaging in surveillance of the union activities of employees and demonstrating the disparate treatment being accorded by the Company to union activists in comparison with its enforcement of company rules against antiunion solicitors. For both reasons, this statement violated Section 8(a)(1) of the Act. When, on several other occasions, Purdee asked Carter if he had seen Hill

leaving his department, the Respondent was engaging in surveillance in violation of Section 8(a)(1) of the Act.

Late in November or early December, Whittington instructed Supervisor Hinson to follow Hill to see if Hill was talking with anyone on the job. She instructed Hinson to get him off the job if he was found talking to any other employee. Her reported remarks did not limit the scope of her instruction to Hinson to watch out for union solicitation but broadly applied to any talking, a prohibition that the Respondent has never imposed in practice on any employee. By virtue of these remarks, the Respondent was engaging in unlawful surveillance of the union activities of its employees in violation of Section 8(a)(1) of the Act and was giving further evidence of its lack of even-handedness in enforcing plant rules.

The above-recited events all took place before the submission of decertification cards to Respondent's management late on December 8. Following the withdrawal of recognition of the Union by the Respondent, Cochran told Craddock that, now that "we got the union out," the Company would be able to pay employees more money and improve their working conditions. He also told Craddock that the Company was going to install an incentive plan. Such statements, made while the Union was still the bargaining agent of the Respondent's employees during the interim between withdrawal of recognition and the termination of the contract and while new union authorization cards were being solicited, constitutes an implied promise of benefit for continued lack of support for the Union and is a violation of Section 8(a)(1) of the Act.

On the day of the plant Christmas party, which took place shortly after recognition was withdrawn, Ezekiel asked Cochran which employees constituted the majority on which the Respondent was relying to justify its withdrawal of recognition. Some hours later, Cochran responded to this inquiry by going to Ezekiel's workstation and offering to supply her with a decertification card if she wanted one. By soliciting an employee to sign a decertification card, the Respondent herein violated Section 8(a)(1) of the Act.

In soliciting cards from fellow employees, decertification solicitors repeated the company theme about dire consequences which would follow if the Union remained in the plant. They employed these threats most vigorously with Asian and Hispanic employees, although they used them on others as well. Achi asked James D. Hope, who ran slubbers in card room 2, to sign a card "before they sell the plant, so we can have a job." Jones told employee Mario Domingo in the canteen in Mill 1 that the Union was preventing the Company from giving employees a raise. Since Adkins, a supervisor, was present at this conversation, which included the actual solicitation and signing of a decertification card, and did nothing to disavow Jones' remarks, they are plainly attributable to Respondent and constitute an implied promise that if the Union were to be removed from the plant employees would be given a raise. Such a statement is an illegal promise of benefit which violates Section 8(a)(1) of the Act.

At a meeting of a few Asian employees held in the packing room, a man who fits the description of Jones told employees that the Company did not want a union because, with a union, it could not afford the expense of buying machinery and improving plant safety. He told them that if they wanted to keep their jobs they should sign decertification

cards. On another occasion, employee Hoa T. Son overheard Akers tell a group of employees that they might not have a job if the Company could not sell the plant and it could not sell the plant if the Union remained. Rico, a fellow employee of Castellon, suggested to Castellon that he sign a decertification card tendered to him by Achi. They went to Adkins' office, where, during an extended conversation, Adkins told Rico and Castellon, in the context of a discussion concerning the cards, that the Company would get rid of lazy people and transfer their work to others but, if the Union won, the Company would close the plant. Adkins' remarks to an employee who is compensated, in part, on an incentive basis involving work assignments was a promise of increased compensation in the event of deunionization and an illegal threat to close the plant in the event of continued union support by employees. Both statements are independent violations of Section 8(a)(1) of the Act.

I conclude and find that the above threats, interference, promises of benefits, surveillance of union activities, solicitation of decertification cards, and disparate enforcement of plant rules are violations of Section 8(a)(1) of the Act.

#### B. *Disparate Application of Respondent's No-Solicitation*

The Respondent has long maintained at its High Point plant a no-solicitation, no-distribution rule forbidding such activity during worktime or in work areas. No challenge was levelled at the legality of these rules, which were incorporated into the body of the recently expired contract as Exhibit C. However, the General Counsel alleges that these rules, as well as other plant rules relating to an employee's leaving his department without permission and employee loafing and lack of application on the job, were disparately enforced by company supervisors against union adherents while being generally ignored by the Respondent in order to permit solicitors of decertification cards to roam freely throughout the plant as they wished, to pursue the object of their effort. The disparate application of a no-solicitation, no-distribution rule vis-a-vis union and antiunion employees is a clear violation of the Act. *Deepdale General Hospital*, 253 NLRB 644 (1980); *Reeves Rubber*, 252 NLRB 134 (1980); and *Standard Products Co.*, 281 NLRB 141 (1986). One difficulty in determining in this case the existence vel non of this type of violation is the fact, noted above, that most operating personnel do not have standard, fixed breaktimes but are permitted to leave their machines and go to departmental canteens and smoking areas or use pay phones located throughout the plant whenever their machines are operating smoothly. Conversely, employees are expected to remain at their machines when problems arise until either they or the fixers assigned to their shift are able to restore their machines to proper working order. Moreover, it is clear that employees have always been permitted to engage in casual conversations with other employees in working areas and during working time, notwithstanding strictures contained in the written rule against loafing and lack of application on the job. It is also clear that the Respondent enforced its rule forbidding employees from leaving their departments without supervisory permission with a fair degree of regularity, except in the case of decertification card solicitors.

The record in this case is replete with credible testimony, both of a generalized nature and involving particularized in-

cidents, to support a finding that Jones, Achi, Riddle, and Akers, the solicitors of decertification cards, regularly and routinely solicited cards, both in their own and in other departments, from employees on the worktime and in the working areas of the employees who were being solicited. They also spoke to such employees in the breakrooms and smoking rooms as well, often in departments other than their own.

Employees often followed the practice of arriving at work half an hour or even an hour early to have a cup of coffee in breakrooms before beginning a shift. However, they were not supposed to punch in until immediately before the beginning of their assigned shift. They were expected to leave the plant at the conclusion of their shifts. Card solicitors often approached prospective signers who were working on different shifts from the ones to which the solicitors had been assigned. Complaints by union adherents to company supervisors about violations of company rules by decertification card solicitors were usually met with either token responses or no response at all.

On November 19, Jones, a third-shift employee in the card room, solicited several cards on the second shift in the spinning room. A complaint about his activity brought to the attention of the supervisor, Hulsey, resulted in a bureaucratic response that Hulsey would have to check with the front office to see if something was wrong. Jones continued soliciting while union adherents J. Hill and Chriscoe carried their complaint to the general manager. On another occasion, Jones also came into Hulsey's department and spent about 45 minutes soliciting cards until Hulsey finally spoke with him and he left. Departments in the High Point mill are relatively small. Each supervisor has charge of about 20 employees, sometimes less, so it is difficult to believe that Hulsey did not know that Jones was in his department and did not know what Jones was doing there. It appears that he deliberately permitted Jones the latitude to violate the plant rules for an extended period of time, making him stop only after Jones was given an opportunity to complete his errand.

Jones solicited cards on the second shift in the winding room in the close proximity to Supervisor Young. Akers solicited a card from employee Nanthalat at her machine in the spinning room, although it is disputed whether the supervisor was in the locality when it took place. Two days later, Akers was again talking with an employee on the job while Supervisor Hulsey walked past without stopping him. On another occasion, when Akers began to solicit a card from Union Officer Florence Hill at her machine, she complained to Supervisor Randy Feree about the rule violation and was told by Feree that he had no authority to prevent Akers from continuing. Feree added that he had been told that Akers could come on his job and do anything Akers wanted to do and that Feree was powerless to prevent it. On another occasion, Jones went into the spinning room on the second shift and took an employee to Supervisor Young's office, speaking with him about 15 minutes at that location. While Young was not present in the office during the conversation, he was seen later outside the office, watching Jones speak at length to another employee in an apparent violation of the company rule prohibiting employees from leaving their department and being in the plant during another shift.<sup>39</sup>

<sup>39</sup> If Jones was in the spinning room talking to an employee in that department, he was either in violation of the company rule as to not

When Ezekiel noticed Yarborough soliciting a card from employee Baskins while the latter was working, she accompanied to the Plant Manager Whittington and was met with the response that, if the Union could do so, antiunion employees could do likewise. There is no evidence in this record that union adherents were in fact violating the no-solicitation rule, and Whittington was so informed. On another occasion, Jones was seen by Union Official Ezekiel handing out cards at her workstation. When she questioned him, a supervisor in the locality cautioned Jones that Ezekiel was part of the Union so Jones left. Akers was seen outside his department in the carding room, soliciting a card from employee Carter while Supervisor Hulsey was in his office within plain view of the conversation. On an earlier occasion, Jones came in to the carding room on first shift and asked employee Awan to sign a petition which had been written out in the composition book which Jones initially used. Supervisor Beal was within 15 feet of the conversation but said nothing.

When union officials complained about decertification cards being signed and collected in violation of company rules, Purdee held a meeting of certain supervisors who were on the second and third shifts and reminded them of the rule, saying that it should be enforced. Except as noted above, there is no evidence that either Purdee or any supervisor disciplined or even spoke to card solicitors to enforce this rule. Indeed, this meeting, held in response to the Union's complaint, was mere tokenism on Purdee's part. It had no effect on activity which continued to be carried on by card solicitors throughout the plant over a period of several weeks, with the knowledge and tacit consent of supervisors who simply turned a blind eye while it occurred. As no decertification cards were turned in following the submission of cards to Purdee late on Sunday evening, December 8, I conclude that all of these reported instances of card solicitation on the job took place on or before that date.<sup>40</sup>

The contrast between the Respondent's attitude toward the solicitation of decertification cards and the activity of union supporters in the plant is dramatic. Before the withdrawal of recognition by the Company, Stirwalt, at Akers' instigation, directed Craddock to refrain from soliciting a union authorization card from Gomez in the back room near the spinning room while both of these individuals were on break. His statement to her that she could solicit cards only in the canteen or the smoking room was not only a misstatement of the Company's rule, which proscribed only working areas, but went beyond the limits of any restriction on solicitations which an employer may lawfully impose. Many other parts of a plant, such as bathrooms, parking lots, and various non-working areas constitute appropriate locations for union activities by employees during nonworking time. The location where Craddock was speaking to Gomez was a storage area which employees frequently used for breaks and lunch. There is no evidence whatsoever that it was in fact being used or occupied on that occasion by employees who were working

leaving his own department without supervisory permission, or he was carrying on this activity with the Company's express permission. In either situation, the Respondent was responsible for Jones' actions.

<sup>40</sup> In most instances, the specific recollections of the witnesses testifying to these events placed them either in November or early December.

or that such activity was in any way impinging upon the performance of any company operation. Accordingly, by forbidding solicitation of union cards in a nonworking area, Stirwalt was demonstrating company bias and disparate treatment in the enforcement of its no-solicitation rule and was extending the impact of that rule beyond its lawful limits. I conclude and find that Stirwalt's action constitutes a violation of Section 8(a)(1) of the Act.

Stirwalt again exhibited overzealousness in the enforcement of the company no-solicitation rule by approaching Craddock, Gomez, and employee Ann Willis as they were taking a break in the smoking booth. He told them that he was just trying to make sure they were not talking union on the job. There is no record evidence that they were discussing union matters at all, but it is immaterial if they were. In fact, he was harassing union adherents on this occasion by threatening to engage in the surveillance of lawful union activities. I conclude and find that Stirwalt's conduct at the smoking booth is a violation of Section 8(a)(1) of the Act.

The practice of the Respondent in maintaining supplies of deauthorization cards in foremen's offices to provide antiunion employees with easy access to the means for cancelling their dues-checkoff authorizations, while condoning and, in some instances, actively promoting employee efforts to eliminate the Union from the High Point plant, further illustrates its lack of evenhandedness in enforcing its own no-solicitation rule. The record contains many other examples of the Respondent's bias in this regard.

When Hill, in the presence of her husband, phoned Cohen on November 19 from a pay phone in the plant to report the circulation of decertification cards, she was stopped from doing so by Purdee, who told her that she could not make any calls until the end of her shift. In fact, employees routinely used pay phones in the plant during working hours, both to make and receive calls, and there has never been any restrictions on telephoning, either has a formal rule or in practice. In fact, these phones were installed throughout the plant to permit employees to make calls. By singling out a union official for such a restriction while she was engaged in union activity, the Respondent was guilty of unlawful interference with union and protected concerted activities in violation of Section 8(a)(1) of the Act and I so conclude and find.

Employees routinely exchange pleasantries at the end of a shift or while passing each other in working areas of the mill. However, when Hill and Gann did so at the end of their shift, Stirwalt ordered them out of the plant and repeated a warning against talking at the beginning of the shift on the following day. While the Company has in place a no-loafing rule, it has never applied it in such a rigorous and exacting manner as in this instance. It is clear that Stirwalt was picking on Hill because he suspected that as a union activist she might be discussing a union matter with Gann rather than to enforce a company rule. Accordingly, he was engaging in harassment even if the two women were not in fact discussing union business at the time in question. On another occasion at or about this time, Stirwalt criticized Hill for speaking briefly with Gann at the end of his break. For the reasons outlined above relating to Hill, I find that this oral reprimand was uttered by Stirwalt because of Hill's status as union president and not for the purpose of enforcing a company rule. Accordingly, I conclude and find that Stirwalt's order

to Hill and Gann and the later reprimand was a violation of Section 8(a)(1) of the Act.

Outside the office in the card room, Hill, in the presence of Queen, spoke with Easterling as he emerged from Foreman Beal's office. At the time they were standing at a drinking fountain located next to a company bulletin board, a plainly nonworking area.<sup>41</sup> Hill's purpose in speaking with Easterling was to remind him to attend a grievance meeting the following week. The conversation was casual and short but Beal emerged from the office and told her that she would have to discuss union business "outside." Under Board law and under plant rules, employees have the right to discuss union business inside the plant so long as the discussion takes place, as this one did, in a nonworking area, and an employer has no right to prevent such activity from taking place by arbitrarily designating parts of a factory as working areas when no work is being performed in the area. By giving the employees in question this instruction, Beal was interfering with union and protected, concerted activities and was violating Section 8(a)(1) of the Act and I so conclude and find.

As found above, Whittington gave Supervisor Hinson instructions to watch Hill and to stop him from talking to employees on the job. Supervisor Feree informed Hill that, in fact, he was being watched. It is clear from this record that the reason he was being watched was that he was the union president. I conclude and find that the Company was engaging in surveillance of Hill's actual or potential union activities, and thereby violated Section 8(a)(1) of the Act.

The credited testimony does not support the allegations that Supervisor Young asked Luangkoth how he felt about the Union when Luangkoth was in Young's office signing a deauthorization slip. Accordingly, so much of the consolidated complaint which alleges that the Respondent coercively interrogated employees on this occasion must be dismissed.

These many instances of exceeding the bounds of the law and plant rules to impede union supporters from communicating with employees at the plant while tolerating and condoning rampant and repeated violations of company rules on the part of employees who were soliciting decertification cards, as evidenced in this record show conclusively that Respondent enforced its no-solicitation rule in a disparate manner and I so conclude and find.

*C. The Reprimands Given to Knox L. Quick and Charles H. McDonald*

Both Quick and McDonald were experienced and skilled employees. Each had worked many years at the High Point plant. McDonald had been there, off and on, for 42 years, and Quick had worked for the Respondent for 10 years. Both had progressed, over the years, to the relatively high paid position of overhauler and both were union members. Until the fall of 1991, neither had ever received a reprimand concerning the nature or quality of their work.

In August 1991, McDonald filed a grievance against his supervisor, Prady, concerning a job assignment. In September, he filed a second grievance, this time against Purdee for accusing him of malingering. These grievances were pending

<sup>41</sup> The drinking fountain and the bulletin board are in a passageway between two departments known as the "spare floor."

in September 1991, when the events litigated herein took place. It is unknown if these grievances were ever resolved.

Prady assigned McDonald and Quick to overhaul spinning frames and drawing frames and to work as a team. Although both employees had performed this recurring maintenance task many times, Prady told them in advance what he expected of them in terms of the number of frames to be completed in a shift. He also placed in their vicinity another employee, Debty, who was assigned to do the same work in order to set the pace that McDonald and Quick were supposed to meet. However, at the outset neither Debty, McDonald, nor Quick were told what Debty's function was designed to be. When, on the first day of this repair work, Debty worked too rapidly and failed to do a satisfactory job, he was told to slow down the following day and to do as nearly a perfect job as possible so it could be favorably compared with the work which Quick and McDonald were doing.

Quick and McDonald failed to keep pace with Debty. When this happened, they were given identical written warnings, which contained the further warning that "if your job performance does not improve, further disciplinary action shall be taken." When Quick and McDonald complained to Cochran about the warning, Cochran said he would speak with Prady and try to straighten out the matter. When Cochran returned to speak with the two employees, he told them that Prady had given them warnings because McDonald had filed a grievance, whereupon McDonald offered to drop the grievance if Prady would drop the disciplinary warnings. Cochran reported the offer to Prady, who then changed his story to an explanation that he had given disciplinary warnings to Quick and McDonald because he had been upset about a personal family matter. Cochran reported this reply to the employees in question.

Taking reprisal against an employee by issuing a written warning for filing a grievance under contractual grievance machinery is a violation of Section 8(a)(1) and (3) of the Act. It is immaterial whether the basis of the disciplinary warning is or is not well founded. In this case, Prady was setting up both McDonald and his partner, Quick, for possible discipline. To perfect this scheme, he went so far as to assign another employee to work alongside them, performing the same task, so that he would have a basis for proving the validity of the warnings if they should be challenged on the merits in a further grievance proceeding. In effect, Prady had decided to impose discipline on these individuals before they had committed the infractions for which the warnings were issued.

Prady's assorted reasons, reported to McDonald and Quick by Cochran, established beyond peradventure the actual reason for this elaborate undertaking. The timing of the warnings, the fact that a grievance was then pending against Prady, and the spotless record of both employees over long periods of employment would give rise to an inference of unlawful motivation. Prady's second explanation for the warnings, namely that they were given because Prady was personally upset over a family health matter, is an absurdity, in that the health of Prady's family has no bearing on the job performances of Quick and McDonald. Prady's second explanation serves only to confirm the fact that both warnings were in fact issued for retaliatory rather than for bona fide reasons relating to job performance. By issuing disciplinary warnings against McDonald and Quick because

McDonald had filed a grievance against the Respondent under contractual grievance machinery is clearly discriminatory and I conclude and find that Respondent has thereby violated Section 8(a)(1) and (3) of the Act.

#### D. *The Denial of Overtime to Jimmie Hill*

It is necessary for fixers to be present on all shifts in case of breakdowns which require minor repairs. When a fixer calls in sick, it has been the custom of the Respondent to ask the fixer in the same section of the same department on the following shift to report early, thereby permitting him to earn some overtime. On the first shift in the spinning department during the morning of December 9, first-shift fixer Pearson called in sick. According to the normal practice, the Respondent would have asked Hill to come in early, finish out that shift, and then continue his regular tour on the second shift. December 9 was the day when the employees who circulated decertification cards turned those cards in to Respondent's management and when, with extraordinary speed, Respondent's management examined the cards during a midnight verification session, ascertained their validity in a period of 2 hours, and then dispatched an already prepared letter to the Union withdrawing recognition. The following morning, Purdee went to Hill's home for the purpose of making personal delivery of a copy of the withdrawal letter.

Instead of calling Hill into the plant that morning to fill in for Pearson, Foreman Hinson phoned Demby, another second-shift fixer in a different section, and offered him the overtime opportunity. Demby reported early for work and filled in for the missing fixer. When Hill came to work in the afternoon, he learned what had happened and complained to Hinson that he should have been called to work instead of Demby. Hinson's only explanation was "With all this mess going on, I thought it would be best to call J. W. [Demby] instead of you." Hill asked, "What mess?" but received no reply. It is clear from this abbreviated explanation by Hinson and by the failure of the Respondent to advance any other credible explanation for its departure from past practice that Hill was denied an opportunity for earning overtime in Pearson's absence because of his status as union president. Denying Hill overtime because of his membership in and activities on behalf of the Union is discriminatory. I conclude and find that Respondent's action violates Section 8(a)(1) and (3) of the Act.

#### E. *The Discharge of Manuel E. Trammel*

Trammel was an experienced fixer and cotton mill employee when he went to work for the Respondent in September 1991. Early on, he let the Respondent's management know of his union sympathies and his intention to become a union member as soon as he had completed his probationary period. A few days before completing that period he was discharged.

Upon entering the service of the Respondent, Trammel was given a mandatory breathing test which he failed. He was hired, notwithstanding this problem. He continued to work in the spinning department under Stirwalt at a time when new and more aggressive leadership was being provided to the union local at the plant by the assignment of a new International representative, and during the period of time when the Respondent was making a determined effort

to sell various plants only to experience difficulty at High Point because of the presence of a union. When, in late October, Trammel was notified of his discharge—a discharge which took place when, as a probationary employee, he had no redress under the contractual grievance machinery Trammel was told that the reason for the discharge was his failure to pass a test which had proved to be no obstacle to employment a few weeks earlier. Nothing was said to him by his foreman about any work deficiency. However, on his separation notice, a document which he never received, the Respondent gave a totally different reason for its action, asserting that Trammel's job performance was unsatisfactory. The document also described Trammel as having a "poor attitude" and as being a "trouble maker."

Trammel's separation from employment presents a case in which an employer, who evinced strong antiunion animus, discharges a known union sympathizer for an assortment of shifting reasons, saying at first that the employee had difficulty in breathing and later that his job performance was poor. Moreover, Trammel's job performance was characterized by the Respondent, in writing, by two terms which have often been found by the Board to be code words for union activism, namely "bad attitude" and "trouble maker." In light of these factors, and the failure of the Respondent to provide any credited explanation for the discharge, I conclude and find that the Respondent discharged Trammel because of his union sympathies and that, in so doing, it violated Section 8(a)(1) and (3) of the Act.

#### F. *The Withdrawal of Recognition of the Union by the Respondent*

Under existing Board law, the ease with which an employer may terminate an existing collective-bargaining relationship with a union is vastly greater than the ease with which a union may inaugurate one. In a host of cases litigated since the landmark Supreme Court decision in *Gissel Packing Co.*,<sup>42</sup> a union must normally demonstrate to the Board that, in fact, it represents a majority of the employees in a bargaining unit. If a designation card upon which it relies is procured by fraud, coercion, or misrepresentation, the card is invalid and will not be counted in determining majority status. *NLRB v. Cumberland Shoe Corp.*, 351 F.2d 917 (6th Cir. 1965). Cards on which such majority status is pinned are subject to scrutiny at a hearing and, unless authentication is waived, must be individually authenticated by the signer, a witness to the signing, or by an actual comparison with an admitted signature made by an individual qualified to make such comparisons. In practice, litigation involving the authentication of such cards has been detailed, exhaustive, and demanding and, in such litigation, the burden of proof to show that a card is valid rests squarely upon the one who has proffered a card as a basis for asserting majority status.

By contrast, an employer who, at prescribed intervals, is presented with a set of decertification cards, ostensibly signed by employees, may withdraw recognition if it has a reasonable basis for believing that the cards are signed by a majority of its employees. While the standard for withdrawal of recognition is normally quoted as being an objective one, the purported signature of an employee on a document voic-

<sup>42</sup> *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

ing a desire to terminate recognition is sufficient. Those proffering such cards to an employer need not prove that they are in fact valid nor is the employer, in the face of a refusal-to-bargain charge, required to shoulder any burden to establish that they were actually signed by the individual whose name appears on the card or that they were signed in circumstances which assure their reliability. Reasonable basis may be established, under *Wilshire Foam Products*, 282 NLRB 1137 (1987), by comparing signatures on a card with printed employee rosters, and if the signatures match the names of bargaining unit employees, such a comparison is sufficient to produce a reasonable doubt of majority, regardless of whether the signatures are or are not actually bona fide. By focusing on appearance rather than fact, the Board has facilitated withdrawal of recognition and has obviated the necessity of any inquiry by an employer in such circumstances as to whether the cards presented to it are the product of misrepresentation, coercion, or promise of benefit, whether by solicitors for whose conduct the employer is legally accountable or by rank-and-file employees for whose statements in procuring cards an employer is normally not accountable. The burden of disqualifying cards is upon someone challenging their validity, and it is questionable whether such a challenge, even if sustained by evidence later adduced, can, under existing Board doctrine, destroy the assertion of a reasonable basis, if such basis existed when recognition was withdrawn.

In this instance, the Respondent received cards from four employee card solicitors, hastily counted them, and found that it possessed an ostensible majority of 181 cards in a unit of 320 employees. It made signature comparisons only of 60 of these cards and made no inquiry as to how the cards were collected or what was said by card solicitors to fellow employees in order to obtain their signatures. Under *Wilshire Foam*, this type of determination appears to be sufficient, even though it is clear from the evidence in this case that many foreign-born card signers were illiterate in English and had little or no knowledge of what they were signing, and even though it is equally clear that employee solicitors of these cards frequently intimidated both foreign-born and other signers with the possibility of plant closing or loss of work in the event that the Union remained in the plant as their collective-bargaining representative.

There are two relevant exceptions to the rule that an employer may withdraw recognition from an incumbent union on the basis of objective evidence that the union has lost its majority status. A good-faith doubt of continued majority status may not be asserted in a context of employer unfair labor practices, especially if those practices are of the kind and character which may have contributed to the union's loss of majority. *Colson Equipment*, 257 NLRB 78 (1981); *Chicago Magnesium Castings Co.*, 256 NLRB 668 (1981); and *Abbey Medical/Abbey Rents, Inc.*, 264 NLRB 969 (1982). An employer is also precluded from asserting such a good-faith doubt if the decertification effort was tainted by supervisory involvement. *Choctawhatchee Electric*, 274 NLRB 595 (1985); *Amason, Inc.*, 269 NLRB 750 (1984); *Manhattan Hospital*, 280 NLRB 113 (1986). In this case, signatures on decertification cards were collected against a background which was replete with both animus and employer unfair labor practices and the effort was helped along by repeated supervisory involvement of a flagrant nature.

As found above, this Respondent was guilty of imposing company discipline on two veteran employees because one of them had filed a contractual grievance and was guilty of discharging a newly hired employee because he had voiced support for the Union. It threatened employees with the onerous prospect of wearing face masks throughout their shifts if they persisted in pressing grievances relating to air quality. The most flagrant of its violations, as they impinged upon the card solicitation effort, was its persistent practice of ignoring violations of plant rules respecting solicitation on working time and in working areas while repeatedly harassing union supporters for either real or suspected violations of the same rules. This practice was both pervasive and intense and sent a clear message to all employees that the Company stood squarely behind the decertification effort. It also served to impede and discourage any countervailing effort on the part of union supporters to preserve the standing of their union. Supervisory threats to close the plant and to equate the inability of the Company to find a buyer with plant closing were highly intimidating factors in the decertification effort. Such remarks were repeated by card solicitors with such regularity as to make them a further expression of company policy. One supervisor threatened the transfer of work from the plant to a nonunion facility if the Union remained in the High Point plant. As found above, supervisors suggested to employees that the Company was holding off making improvements in wages and working conditions until the Union was removed from the plant. Respondent placed union officials under close surveillance, told employees that it was doing so, and asked employees if they would help spy on other employees who were union activists. It restricted the conversations and movements of union supporters, including the use of the pay phone in the plant, in order to impede union activity and harass union sympathizers. In short, there was nothing about the Respondent's doubt of the Union's majority status that could in any way be characterized as having been made in good faith. In view of the record evidence supporting my prior findings and the record as a whole I conclude and find that when the Respondent wrote its letter of December 9 to Cohen withdrawing recognition, when it failed and refused to discuss and process pending air quality grievances during the interim period between withdrawal of recognition and the expiration of the contract, as it was obligated to do, and when, after the expiration of the contract, it refused to accord further recognition to the Union as the exclusive collective-bargaining representative of its production and maintenance employees, it violated Section 8(a)(1) and (5) of the Act.

With regard to an issue that arose between the closing and reopening of the record, and respecting the Board's published Rules and Regulations, I feel constrained to offer a determination. As reflected in the record, on July 15, 1992, there was an ex-parte communication between Region 11 and the Division of Judges concerning a prospective motion for a deposition that I had authorized during the trial. The communication involved the regional attorney of Region 11 and the associate chief of the Atlanta Branch of the Division of Judges. Sometime after the communication, I received an oral report from the associate chief. I made a written notation of the conversation. Shortly thereafter, the associate chief submitted a written report of the communication to me. Due to the differing substance between the oral report and the

written reports I set up a conference call with all parties. The conference call disclosed that the Respondent and the Charging Party had not authorized the regional attorney to discuss the prospective deposition with the Division of Judges. Both Respondent and Charging Party submitted in writing that no authorization was given to the regional attorney.

For as long as I can remember a perception has persisted among the labor bar and some courts that the General Counsel's office enjoys a favored litigant status in unfair labor practices cases. Past Boards have issued policy directives and amended the Board's Rules and Regulations attempting to dispel the perception and establish standards of conduct above reproach. It would appear that those efforts have not been totally successful.

In my view, the Board's Rules and Regulations prohibiting ex-parte communications mandates that upon assignment of a case to a particular judge for trial any communications of a party litigant or any outsider with respect to details of the case must be with the judge and none other.

To allow otherwise is tantamount to nurturing the continuation of the unwanted perception and ex-parte communications ostensibly disallowed by published Rules and Regulations.

Any conduct of the General Counsel's staff, the Board's staff, or the Division of Judges' staff that appears to an observer as favored treatment for the General Counsel's litigator is intolerable and must be eliminated in both policy and practice. Whether the vice, leading to suspicion of ex-parte communications, is one of attitude or misconception it must be eradicated.

#### CONCLUSIONS OF LAW

1. Highland Yarn Mills, Inc. is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Respondent at its High Point, North Carolina plant, except executives, office personnel, shipping clerks, quality control and fiber lab personnel, standards department personnel, over-the-road tractor-trailer drivers, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been the exclusive collective-bargaining representative of the employees employed in the unit found appropriate in Conclusion of Law 3 for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By withdrawing recognition from Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC as the exclusive collective-bargaining representative of the employees employed in the unit found appropriate in Conclusion of Law 3; by failing and refusing to process contractual grievances filed before recognition was withdrawn; and by failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the employees, the Respondent has violated Section 8(a)(5) of the Act.

6. By discharging Manuel E. Trammel and by denying overtime to Jimmie Hill because of their membership in and activities on behalf of the Union; and by issuing reprimands

to Charles H. McDonald and Knox L. Quick because they filed grievances under contractual grievance machinery, the Respondent has violated Section 8(a)(3) of the Act.

7. By the acts and conduct set forth above in Conclusions of Law 5 and 6; by soliciting employees to withdraw from the Union and to sign decertification cards; by coercively interrogating employees concerning their union sympathies; by threatening employees with more onerous working conditions in reprisal for filing grievances; by telling employees that they had received disciplinary warnings in reprisal for filing grievances; by permitting antiunion employees to violate its no-solicitation and no-distribution rules; by engaging in surveillance of the movements of union sympathizers; by soliciting employees to engage in the surveillance of the movements of union sympathizers, and by telling employees that the movements of union sympathizers were the subject of company surveillance; by promising employees increases in wages, improvements in company benefits, and improvements in working conditions if they abandoned their support for the Union; by threatening employees with transfer of their work to nonunion plants and with plant closure if they continued to support the Union; by threatening employees with discharge because of their union sympathies and union activities; by promulgating rules prohibiting prounion employees from engaging in conversations relating to the Union in nonworking areas during nonworking time and by restricting the movements, conversations, and use of telephones in order to discourage union activity, the Respondent has violated Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section on 2(2), (6), and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Since the independent violations of Section 8(a)(1) of the Act found here are repeated and pervasive and evidence on the part of this Respondent a policy of total disregard for its statutory obligations, I shall recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hicknott Foods*, 242 NLRB 1357 (1979). The recommended Order will also recommend that the Respondent be required to offer Manuel E. Trammel full and immediate reinstatement to his former or substantially equivalent employment and to make him and Jimmie Hill whole for any loss of earnings which they may have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth* formula,<sup>43</sup> with interest at the rate prescribed by the Tax Reform Act of 1989 for the overpayment and underpayment of income tax. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The recommended Order will require the Respondent to expunge from its personnel files any disciplinary actions against Trammel, Quick, and McDonald which were litigated in this proceeding and will further require it to notify those employees that such action has been taken and that the in-

<sup>43</sup> *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

fractions indicated on each of these forms will not be used as a basis for future discipline. The recommended Order will require that the Respondent be required to complete the processing of any contractual grievances which were pending at the time it withdrew recognition from the Union and will further require that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of its High Point employees. I will also recommend that the Respondent be required to post the usual notice advising its employees of their rights and of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>44</sup>

#### ORDER

The Respondent, Highland Yarn Mills, Inc., High Point, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employees to withdraw from the Union or to sign decertification cards.

(b) Threatening employees with more onerous working conditions in reprisal for filing grievances.

(c) Telling employees that they have received disciplinary warnings in reprisal for filing grievances.

(d) Permitting antiunion employees to engage in unrestricted movements in the plant or the solicitation of other employees in the plant in violation of its no-solicitation and no-distribution rules.

(e) Engaging in surveillance of the movements of union sympathizers or soliciting employees to engage in the surveillance of the movements of union sympathizers.

(f) Telling employees that the movements of union sympathizers in the plant were the subject of company surveillance.

(g) Promising employees increases in wages, improvements in company benefits, or improvements in working conditions if they abandon their support for the Union.

(h) Threatening employees with the transfer of their work to nonunion plants or with plant closure if they continue to support the Union.

(i) Threatening employees with discharge because of their union sympathies or union activities.

(j) Promulgating rules prohibiting pronoun employees from engaging in conversations relating to the Union in non-working areas during nonworking time or by restricting their movements, conversations, or use of telephones in order to discourage union activity.

(k) Discouraging membership in or activities on behalf of Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, or any other labor organization, by discharging employees, failing to offer them overtime opportunities, issuing reprimands because they have filed grievances under contractual grievance machinery, or by otherwise discriminating against them in their hire or tenure.

<sup>44</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(l) Refusing to recognize and bargain collectively with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC as the exclusive collective-bargaining representative of all the production and maintenance employees employed at its High Point, North Carolina plant, or refusing to process contractual grievances filed by the Union.

(m) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

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

(a) Offer to Manuel E. Trammel full and immediate reinstatement to his former or substantially equivalent employment, without prejudice to his seniority or to other rights previously enjoyed, and make him and Jimmie Hill whole for any loss of pay or benefits suffered by them by reason of the discriminations found here, in the manner described above in the remedy section.

(b) Remove from its files any references to unlawful discharge or unlawful discipline given to any employee and notify the employee in writing that this has been done and that the discharges or discipline will not be used against him in any way.

(c) Recognize and, on request, bargain collectively in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC as the exclusive collective-bargaining representative of all the production and maintenance employees employed by the Respondent at its High Point, North Carolina plant, and process any and all grievances which have been filed by the Union.

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

(e) Post at the Respondent's High Point, North Carolina plant copies of the attached notice marked "Appendix."<sup>45</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, 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.

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

IT IS FURTHER RECOMMENDED that insofar as the consolidated complaint here alleges matters that have not been found to be violations of the Act, the consolidated complaint is dismissed.

<sup>45</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."