

Monroe Manufacturing, Inc.; Contract Manufacturing, Inc.; and Embroideries, Inc., Single Employer and Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board. Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11684, 15-CA-11796, 5-CA-11960, 15-CA-11995, 15-CA-12022, 15-CA-12159, and 15-CA-12390

February 25, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On February 15, 1996, Administrative Law Judge George F. McInerney issued the attached decision. Thereafter, the Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified,² and to adopt the recommended Order as modified and set forth in full below.³

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

² The judge found that the Respondent violated Sec. 8(a)(1) and (3) by discontinuing its practice of increasing employees' production (incentive) rates whenever the employees' minimum wage was increased. See sec. III, C, 7 and 19. The Respondent excepts to the finding that this activity violated Sec. 8(a)(3), because it was not alleged as such in the complaint nor litigated as such at the hearing. We find merit in the Respondent's exception and we therefore do not adopt the 8(a)(3) finding. Further, we shall modify the judge's recommended Order to conform to the complaint, which alleges that the Respondent violated the Act by informing employees it was withholding a wage increase because they engaged in activities on behalf of the Union. This allegation is supported by testimony adduced at the hearing. There is no allegation that, and the parties did not litigate whether, the Respondent actually withheld increases or whether any withholding of increases constitutes a violation of the Act.

³ We agree with the judge that the violations he found "cover almost every type of unfair labor practice that an employer may commit." Such egregious and widespread misconduct warrants a broad cease-and-desist order. Accordingly, we shall require the Respondent to cease and desist from infringing in any other manner upon the rights guaranteed employees by Sec. 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

We shall modify the judge's remedy and recommended Order to require the Respondent to offer reinstatement to and make whole any employee adversely affected by its unilateral layoffs and its unilaterally instituted production quotas. *Porta-King Building Systems*, 310 NLRB 539 (1993), enfd. 14 F.3d 1258 (8th Cir. 1994); *Alwin Mfg. Co.*, 314 NLRB 564, 569 (1994), enfd. 78 F.3d 1159 (7th Cir. 1996); and *Alfred M. Lewis, Inc.*, 229 NLRB 757, 759 (1977), enfd.

1. The judge found that the Respondent violated Section 8(a)(5) by failing to notify and bargain with the Union over a series of temporary layoffs which occurred between June 4, 1992, and July 15, 1993. The Respondent excepts to this finding, claiming, inter alia, that "economic exigencies" allowed it to act unilaterally. We agree with the judge.

The record shows that the Respondent's business is characterized by the need to lay off employees on a temporary basis due to such factors as a shortage of materials, excessive inventories, or lack of demand for a particular product.

During negotiations for a first contract, each party made proposals which would provide for the *method* by which employees would be laid off. At the same time, however, the Respondent acted as if its employees had no collective-bargaining representative, by laying off employees without notifying the Union in each instance.

Where, as here, the parties are engaged in negotiations for a collective-bargaining agreement, an employer has the obligation to refrain from making unilateral changes in unit employees' terms and conditions of employment unless and until the parties have reached an overall impasse on bargaining for the agreement as a whole. *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991).

In this case, however, the judge found that, as of July 15, 1993, the Union's "intransigence" on the temporary layoff issue privileged the Respondent to act unilaterally, even though impasse had not been reached in bargaining for a contract. No party has excepted to that finding, and it therefore is not before us.

The judge also found that, during the period of June 4, 1992, to July 15, 1993, the Respondent was required to provide the Union with notice and an opportunity to bargain over each temporary layoff, and that it violated Section 8(a)(5) and (1) by failing to do so. As stated above, the Respondent argues that "economic exigencies" constituted extenuating circumstances permitting it to act unilaterally.

"Economic exigencies" is one of the limited exceptions to the general rule set forth in *Bottom Line*. The Board discussed this exception at some length in its recent decision in *RBE Electronics of S.D.*, 320 NLRB 80 (1995). As explained in *RBE Electronics*, there are actually two categories of "economic exigencies."

The first category consists of economic circumstances so compelling that unilateral action is justified and no bargaining whatsoever is required. The in-

in pertinent part 587 F.2d 403 (9th Cir. 1978). The identity of adversely affected employees shall be left to the compliance stage of this proceeding.

We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

stant case does not fall within this category because it is limited to "extraordinary events which are an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action." *Id.* at 81.⁴ Thus, economic events such as "loss of significant contracts" or "supply shortages" do not constitute the kind of "dire financial emergency" privileging unilateral action. *Id.*

The second category consists of circumstances that are "not sufficiently compelling to excuse bargaining altogether," but that "require prompt action" and "cannot await" final agreement or impasse on the collective-bargaining agreement as a whole. *Id.* When an employer establishes that it "is confronted with an economic exigency compelling prompt action short of the type relieving the employer of its obligation to bargain entirely," the employer's duty is to "provide the union with adequate notice and an opportunity to bargain." *Id.* at 82.

We find it unnecessary to determine whether the facts of this case fall within the second category. Even if the Respondent has established that it was facing such an economic exigency, the Respondent was still required to provide the Union with notice and an opportunity to bargain over each temporary layoff. We agree with the judge that the Respondent failed to satisfy this obligation during the period in question. Accordingly, we find no merit in the Respondent's exception and affirm the judge's finding that the Respondent's unilateral conduct violated Section 8(a)(5) and (1) of the Act.⁵

2. The Respondent excepts to the judge's refusal to accept into evidence a number of tape recordings made by its president, Edward Hakim. We find no merit in the Respondent's exceptions.

Hakim had a practice of tape recording conversations he had with employees in his office. The existence of these tape recordings came to light during employee testimony at the hearing. On July 29, 1993, the Respondent complied with the General Counsel's subpoena and produced the audio tapes on which the employee testimony was based. Additionally, during the hearing, the Respondent introduced a number of tapes as its own evidence. On March 11 and May 19, 1994, the judge permitted the Respondent to withdraw the

original tapes in order to make copies for the General Counsel and the Charging Party.

The judge learned, in early 1995, that the Respondent had returned none of the withdrawn tapes to the reporting service which prepared the transcript of the hearing. Because he was concerned about the tapes' safety and security since the close of the hearing, the judge issued an Order to Show Cause, requesting that the parties address these areas of concern. On August 25, 1995, the judge decided that he would, in fairness to the Respondent, receive the tapes. When the judge received the submitted tapes in late September or early October, he discovered that the Respondent had supplied copies of the original tapes.

In his decision, the judge concluded that he would not receive the copies as substitutes for the originals; that he would strike from the record the transcripts of those tapes; and that he would disregard any testimony derived from the tapes and transcripts of them.

In its exceptions, the Respondent notes that it sent the originals to the judge on December 21, 1995, and the judge refused to accept them. The judge explained in a December 26, 1995 letter that he would not accept the original tapes at that time because the Federal Government was not operating. In addition, the judge noted that he had completed his written decision in this case before the Government shutdown and that it would be released when the shutdown was over. The judge also noted that since he was to retire on December 31, 1995, he would not be able to pursue the matter further in any official position.

The Respondent claims that the reasons the judge gave in his December 26, 1995 letter for refusing to accept the tapes were "unfairly prejudicial" and "significantly [a]ffected Respondent's case on several issues and warrant reversal or rehearing."

We believe that the judge should have received and listened to the tapes. However, we will reverse a judge's rulings or order a rehearing only when the party urging such measures demonstrates that the judge's ruling was not only erroneous, but also prejudicial to its substantive rights. *Spector Freight Systems*, 141 NLRB 1110, 1112-1113 (1963). We find that the Respondent has not shown how any of the judge's findings would be contradicted by any material on the tapes.⁶ Merely alleging it was "prejudiced" by the

⁴ Chairman Gould would also require the employer to show a compelling and substantial justification for individual bargaining in such circumstances. *Id.* at 82 fn. 12.

⁵ We recognize that this case arises in the Fifth Circuit—because that is the circuit in which the unfair labor practices occurred—and that the Fifth Circuit does not agree with the "bargain to impasse" standard set forth in *Bottom Line*, supra. See *Nabors Trailers v. NLRB*, 910 F.2d 268 (5th Cir. 1990). The court does agree, however, with the "notice and opportunity to bargain" standard and that is the standard we have applied in our decision. Thus, our unfair labor practice finding is sustainable under Fifth Circuit precedent.

⁶ The Respondent claims that it was prejudiced by the reasons the judge gave in his December 26 letter for rejecting the tapes. As noted above, we believe that the judge should have admitted the tapes. We disavow the comments he made in the letter. Nonetheless, demonstrating that the judge's reasoning in the letter was unsound is not a substitute for making some minimal showing that the excluded material contradicts the findings on which the unfair labor practices are based. See *Riveredge Hospital*, 274 NLRB 900 (1985), in which the Board denied a respondent's motion for reconsideration because the respondent proffered no evidence to show that particular findings were erroneous.

judge's ruling is not sufficient. The Respondent must state with some particularity how it has been prejudiced.⁷ Therefore, we find no merit in the Respondent's exception.

3. The judge found that the Respondent violated Section 8(a)(1) by discharging Hattie Broadway because she threatened to "go to the Labor Board." The Respondent excepts, claiming, inter alia, that this matter was neither alleged in the complaint nor fully litigated at the hearing. We do not agree.

"It is well settled that the Board may find and remedy a violation even in the absence of a specific allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United Sales*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d Cir. 1990).

The first part of this test is clearly satisfied here. The complaint alleges, inter alia, that the Respondent suspended and discharged Broadway on July 12, 1991, in violation of Section 8(a)(1) and (3), because she concertedly complained about wages, hours, and working conditions, because she violated certain unlawfully promulgated work rules, and because she engaged in union activities. The judge found that Broadway was discharged on July 12, 1991, but for a different reason, i.e., because she told her supervisor on that day that she was "going to the Labor Board." Thus, both the allegations of the complaint and the findings of the judge focus on the same set of facts (the events surrounding Broadway's July 12 discharge) and share a common ultimate issue (the real reason for the discharge). Further, the judge found that Broadway's discharge violated Section 8(a)(1) of the Act, and the complaint includes such an independent 8(a)(1) allegation. Accordingly, we find a close connection between the violation found and the subject matter of the complaint.

We also find that the second part of the *Pergament* test is satisfied. At the hearing, evidence of Broadway's "Labor Board" statement was first elicited by the Respondent's counsel. The Respondent's counsel had full opportunity to examine and cross-examine witnesses.⁸ We agree with the judge that the matter was fully litigated at the hearing and that the Respondent had ample opportunity to make its case.

⁷ See *Teamsters Local 812 (Canada Dry Distributors)*, 302 NLRB 258, 259 (1991), in which a respondent requested that a hearing be reopened to introduce unspecified evidence. The Board denied the request, because the respondent did not state "the nature of the evidence it seeks to introduce and that, if adduced and credited, the evidence would require a different result."

⁸ The judge stated: "It is, after all, the Respondent's privilege to decide what counsel will ask its witnesses. If it is decided not to pursue a particular subject, then it cannot later say that it did not have the opportunity to put in evidence on any point which could have been covered by the missing testimony."

On the merits, we agree with the judge that the Respondent unlawfully discharged Broadway on July 12, 1991. The judge found that on that day Broadway's supervisor, Sam Anderson, saw Broadway eating a peach and "running around." Anderson suspended Broadway for the day because she was away from her work station. Broadway protested the suspension, and Anderson repeated that Broadway should "go home." After Anderson clocked her out, Broadway said that she was tired of this and that she was going to the Labor Board. An argument ensued during which Broadway called Anderson a liar. Anderson then told Broadway that she was getting a week's suspension. As Broadway left the plant, she said that she was "going to the Labor Board" and shouted "fuck you" to Anderson.

Anderson reported the incident to President Hakim. Anderson told Hakim that Broadway was away from her work station eating a peach, that Broadway was disrespectful, that Broadway had threatened to go to the Labor Board, and that Broadway had cursed Anderson. At that point, Hakim said, "Go ahead and let her go."

Applying the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), we find that the General Counsel has made a prima facie showing sufficient to support an inference that protected conduct was a motivating factor in the Respondent's decision to discharge Broadway. Thus, the General Counsel has shown that Broadway was discharged immediately after she revealed to her supervisor that she intended to "go to the Labor Board," conduct that is, of course, protected by the Act. *Bryant & Cooper Steakhouse*, 304 NLRB 750, 752 (1991), *enfd.* in relevant part 995 F.2d 257 (D.C. Cir. 1993). The General Counsel has also demonstrated that the Respondent harbored strong animus toward employee exercise of rights guaranteed by the Act. As the judge stated, the violations of the Act in this case "cover almost every type of unfair labor practice that an employer may commit." Accordingly, we find that the General Counsel has established a strong prima facie case that Broadway's discharge was unlawful.

Therefore, under *Wright Line*, supra, the burden shifts to the Respondent to demonstrate that it would have discharged Broadway even in the absence of her protected activity. In its brief, the Respondent contends that it discharged Broadway for "eating on the job and serious acts of insubordination and profanity."

With respect to the first reason, the record shows that although the Respondent had a rule prohibiting

eating on the job, it was not strictly enforced.⁹ Indeed, Anderson herself allowed employees to eat certain types of food at their work stations. Significantly, Anderson originally suspended Broadway for being away from her work station, not for eating on the job, and the judge specifically found that "eating did not figure in the original decision to discipline." After the Respondent decided to discharge Broadway, the Respondent added "eating on company time" to the list of her offenses, suggesting that it was "piling on" reasons to justify a discharge that was actually based on other grounds.

With respect to the second and third reasons, the Respondent has failed to show that it discharged other employees for engaging in similar misconduct. On the contrary, the judge referred to several instances in which employee Kim Grayson used obscenities toward Supervisor Anderson and an assistant supervisor, for which Grayson received a 90-day suspension. Broadway, however, was terminated, not suspended.

"Under *Wright Line*, an employer cannot carry its burden of persuasion by merely showing that it had a legitimate reason for imposing discipline against an employee." *Hicks Oils & Hicksgas*, 293 NLRB 84, 85 (1989). Rather, the Respondent must show by a preponderance of the evidence that the "same action" (i.e., discharge) would have occurred even in the absence of the protected conduct. *Wright Line*, supra at 1089. This the Respondent failed to do. Accordingly, we affirm the judge's finding that the Respondent violated Section 8(a)(1) by discharging Hattie Broadway.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Monroe Manufacturing, Inc.; Contract Manufacturing, Inc.; and Embroideries, Inc., single employer, Monroe, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Asking its employees to ascertain and disclose to the Respondent the union membership, activities, and sympathies of other employees.

(b) Interrogating its employees regarding their union membership, activities, and sympathies or the union membership, activities, and sympathies of other employees.

(c) Telling its employees who were sympathetic to the Union that they should quit their employment with the Respondent.

⁹ Similarly, the record shows that the rule against being away from one's work station was not strictly enforced. In any event, Broadway was initially suspended, not discharged, for being away from her work station, and the judge did not find the suspension to be a violation of the Act.

(d) Informing its employees that it was withholding a wage increase because they engaged in activities on behalf of the Union.

(e) Threatening its employees with discharge if they continue to engage in activities on behalf of the Union.

(f) Threatening its employees with plant closure if they continue to support or assist the Union.

(g) Threatening its employees with a reduction in hours if they continue to support or assist the Union.

(h) Interrogating employees regarding their union membership, activities, and sympathies by distributing company-sponsored ribbons and T-shirts.

(i) Creating the impression among employees that their union activities were under surveillance by the Respondent.

(j) Informing employees that it would be futile for them to select the Union as their bargaining representative.

(k) Threatening to withhold wage increases from employees if they support or assist the Union.

(l) Threatening employees with unspecified reprisals if they served as union observers at a Board-conducted election.

(m) Promulgating and enforcing a rule prohibiting employees from discussing wages during working time.

(n) Promulgating and enforcing a rule prohibiting the placement of personal notices or bulletins in areas where they had been permitted before the advent of the Union.

(o) Promulgating and disparately enforcing a rule prohibiting the placement of materials on its walls.

(p) Warning and suspending employees for speaking out during meetings called by the Respondent to discuss working conditions.

(q) Warning, suspending, and discharging employees for having said they were going to the Labor Board.

(r) Threatening employees with discharge and loss of unemployment benefits because they engage in protected concerted activity.

(s) Laying off employees because they engage in protected concerted activity.

(t) Warning and suspending employees who had complained about severe cold in the Respondent's plant.

(u) Refusing to offer overtime to employees because of their union activities or their protected concerted activities.

(v) Suspending employees because of their union activity.

(w) Warning and suspending employees who were union activists for violating rules not applied to others.

(x) Warning and suspending employees for complaining about disparate enforcement of rules.

(y) Discharging employees due to disparate enforcement of rules requiring notification to supervisors when out sick.

(z) Threatening to lay off employees because of their union activities.

(aa) Warning employees who are union supporters for violations of nonexistent rules.

(bb) Forcing employees to undergo disciplinary hearings without requested union representation.

(cc) Withdrawing company support from outside activities enjoyed by employees because of their union activities.

(dd) Threatening to assign union supporters to more onerous and difficult jobs.

(ee) Threatening employees by requiring them to get permission from the Union before allowing them to transfer jobs.

(ff) Suspending and discharging employees because of their union activity.

(gg) Threatening employees who refuse to lie to support company actions toward other employees.

(hh) Constructively discharging union supporters by harassing, warning, and suspending them.

(ii) Bypassing the Union and dealing directly with individual employees about their recall from layoff.

(jj) Laying off employees temporarily or permanently without notice to or bargaining with the Union.

(kk) Refusing to rehire or recall employees from layoff because of their union activity.

(ll) Establishing a new classification of temporary employee and hiring employees in that classification without notice to or bargaining with the Union.

(mm) Establishing and implementing production quotas for employees without notice to or bargaining with the Union.

(nn) Suspending or discharging employees because they have given testimony before the National Labor Relations Board or its agents.

(oo) Discouraging membership in the Union by discharging, suspending, warning, or otherwise disciplining employees because of their union or other protected activity, or their giving testimony before the Board, or by discriminating against them in any like or related manner with respect to their hire, tenure of employment, or terms and conditions of employment.

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

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

(a) Rescind its unlawfully promulgated and enforced rules prohibiting employees from discussing wages during working time, prohibiting the placement of personal notices or bulletins in areas where they had been permitted before the advent of the Union, and prohibiting the placement of materials on walls.

(b) Within 14 days from the date of this Order, remove from its files any references to the warnings, suspensions, or discharges of those employees found herein to have been unlawfully warned, suspended, or discharged, and within 3 days thereafter, notify each employee in writing that this has been done and that the warnings, suspensions, or discharges will not be used against them in any way.

(c) Within 14 days from the date of this Order, offer all employees found in this decision to have been unlawfully discharged, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make whole all employees named in this decision as having been unlawfully suspended or discharged for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner described in the remedy section of this decision.

(e) Within 14 days from the date of this Order, offer all employees temporarily or permanently laid off between June 4, 1992, and July 15, 1993, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(f) Make whole all employees temporarily or permanently laid off between June 4, 1992, and July 15, 1993, for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct in the manner described in the remedy section of this decision.

(g) Within 14 days from the date of this Order, remove from its files all references to disciplinary warnings, suspensions, or discharges of unit employees imposed for failure to meet the production quotas, and within 3 days thereafter, notify all affected employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

(h) Within 14 days from the date of this Order, offer all employees who were suspended or discharged as a result of their failure to meet the production quotas, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(i) Rescind and withdraw the unilaterally instituted production quotas.

(j) Make whole all employees adversely affected by the establishment and implementation of production quotas for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, in the manner described in the remedy section of this decision.

(k) On request, bargain with Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board, as the collective-bargaining representative of the unit employees as to their terms and conditions of employment, including the layoff and recall of employees, the establishment of a new classification of employees and the hiring of employees in that classification, and the establishment and implementation of production quotas for employees. If any understanding is reached, embody the understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by us at our Monroe, Louisiana facilities; excluding all sales persons, office clerical employees, technical employees, professional employees, guards, supervisors as defined in the Act, and all employees of Packing Techniques, Inc.

(l) Preserve and, within 14 days of a 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.

(m) Within 14 days after service by the Region, post at its Monroe, Louisiana facilities, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 4, 1991.

(n) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

Section 7 of the Act gives employees these rights:

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

WE WILL NOT ask our employees to ascertain and disclose to us the union membership, activities, and sympathies of other employees.

WE WILL NOT interrogate our employees regarding their union membership, activities, or sympathies or the union membership, activities, and sympathies of other employees.

WE WILL NOT tell our employees who were sympathetic to the Union that they should quit their employment with us.

WE WILL NOT inform our employees that we are withholding a wage increase because they engaged in activities on behalf of the Union.

WE WILL NOT threaten our employees with discharge if they continue to engage in activities on behalf of the Union.

WE WILL NOT threaten our employees with plant closure if they continue to support or assist the Union.

WE WILL NOT threaten our employees with a reduction in hours if they continue to support or assist the Union.

WE WILL NOT interrogate our employees regarding their union membership, activities, and sympathies by distributing company-sponsored ribbons and T-shirts.

WE WILL NOT create the impression among our employees that their union activities are under surveillance by us.

WE WILL NOT inform employees that it would be futile for them to select the Union as their bargaining representative.

WE WILL NOT threaten to withhold wage increases from our employees if they support or assist the Union.

WE WILL NOT threaten employees with unspecified reprisals if they serve as union observers at a Board-conducted election.

WE WILL NOT promulgate and enforce a rule prohibiting employees from discussing wages during working time.

WE WILL NOT promulgate and enforce a rule prohibiting the placement of personal notices or bulletins in areas where they had been permitted before the advent of the Union.

WE WILL NOT promulgate and disparately enforce a rule prohibiting the placement of materials on our walls.

WE WILL NOT warn and suspend employees for speaking out during meetings called by us to discuss working conditions.

WE WILL NOT warn, suspend, and discharge employees for having said they were going to the Labor Board.

WE WILL NOT threaten employees with discharge and loss of unemployment benefits because they engage in protected concerted activity.

WE WILL NOT lay off employees because they engage in protected concerted activity.

WE WILL NOT warn and suspend employees who had complained about severe cold in our plant.

WE WILL NOT refuse to offer overtime to employees because of their union activities or their protected concerted activities.

WE WILL NOT suspend employees because of their union activity.

WE WILL NOT warn and suspend employees who were union activists for violating rules not applied to others.

WE WILL NOT warn and suspend employees for complaining about disparate enforcement of rules.

WE WILL NOT discharge employees due to disparate enforcement of rules requiring notification to supervisors when out sick.

WE WILL NOT threaten to lay off employees because of their union activities.

WE WILL NOT warn employees who are union supporters for violations of nonexistent rules.

WE WILL NOT force employees to undergo disciplinary hearings without requested union representation.

WE WILL NOT withdraw our support from outside activities enjoyed by employees because of their union activities.

WE WILL NOT threaten to assign union supporters to more onerous and difficult jobs.

WE WILL NOT threaten employees by requiring them to get permission from the Union before allowing them to transfer jobs.

WE WILL NOT suspend or discharge employees because of their union activity.

WE WILL NOT threaten employees who refuse to lie to support our actions toward other employees.

WE WILL NOT constructively discharge union supporters by harassing, warning, and suspending them.

WE WILL NOT bypass the Union and deal directly with individual employees about their recall from lay-off.

WE WILL NOT lay off employees temporarily or permanently without notice to or bargaining with the Union.

WE WILL NOT refuse to rehire or recall employees from layoff because of their union activity.

WE WILL NOT establish a new classification of temporary employee, and WE WILL NOT hire employees in that classification without notice to or bargaining with the Union.

WE WILL NOT establish and implement production quotas for employees without notice to or bargaining with the Union.

WE WILL NOT suspend or discharge employees because they have given testimony before the National Labor Relations Board or its agents.

WE WILL NOT discourage membership in the Union by discharging, suspending, warning, or otherwise disciplining employees because of their union or other protected activity, or their giving testimony before the Board, or by discriminating against them in any like or related manner with respect to their hire, tenure of employment, or terms and conditions of employment.

WE WILL NOT 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 rescind our unlawfully promulgated and enforced rules prohibiting employees from discussing wages during working time, prohibiting the placement of personal notices or bulletins in areas where they had been permitted before the advent of the Union, and prohibiting the placement of materials on walls.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the warnings, suspensions, or discharges of our employees who we unlawfully warned, suspended, or discharged and WE WILL, within 3 days thereafter, notify each employee in writing that this has been done and that these acts will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer all employees found to have been unlawfully discharged, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges they previously enjoyed.

WE WILL make whole all employees who we unlawfully discharged or suspended for any loss of earnings and other benefits suffered as a result of our discrimi-

nation against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer all employees temporarily or permanently laid off between June 4, 1992, and July 15, 1993, immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make all employees temporarily or permanently laid off between June 4, 1992, and July 15, 1993, whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to disciplinary warnings, suspensions, or discharges of unit employees imposed for failure to meet the production quotas, and WE WILL, within 3 days thereafter, notify all affected employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer all employees who were suspended or discharged as a result of their failure to meet the production quotas, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL rescind and withdraw the unilaterally instituted production quotas.

WE WILL make whole all employees adversely affected by the establishment and implementation of production quotas for any loss of earnings and other benefits suffered as a result of our action against them.

WE WILL, on request, bargain with Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board as the collective-bargaining representative of the unit employees as to their terms and conditions of employment including the layoff and recall of employees, the establishment of a new classification of employees and the hiring of employees in that classification, and the establishment and implementation of production quotas for employees, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by us at our Monroe, Louisiana facilities; excluding all sales persons, office clerical employees, technical employees, professional employees,

guards, supervisors as defined in the Act, and all employees of Packing Techniques, Inc.

MONROE MANUFACTURING, INC., CONTRACT MANUFACTURING, INC., AND EMBROIDERIES, INC.

Donald R. Gattalaro, Esq., for the General Counsel.
David C. Hagaman, Esq. (Ford & Harrison),¹ of Atlanta, Georgia, *Madeleine M. Slaughter, Esq.*² and *James A. Zellinger, Esq.*, of Monroe, Louisiana, for the Respondent.
Robert K. Sweeney, Esq. (Franz & Franz, P.C.), of St. Louis, Missouri, for the Charging Party.

DECISION

GEORGE F. MCINERNEY, Administrative Law Judge. This case began with a charge filed by Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board (the Union) on June 4, 1991, in Case 15-CA-11539-2. The charge alleged that Monroe Manufacturing, Inc., Contract Manufacturing, Inc., and Embroideries, Inc., a joint employer (the Company or the Respondent), had violated and was continuing to violate certain provisions of the National Labor Relations Act (the Act).

Based on this charge, the Acting Regional Director for Region 15 of the National Labor Relations Board (the Regional Director and the Board) respectively, issued a complaint on July 31, 1991, alleging that the Company had violated certain provisions of the Act.

A number of Additional charges were filed by the Union, as follows:

Case 15-CA-11583 filed July 15, 1991.

Case 15-CA-11602-1 filed August 1, 1991.

First amended charge in Case 15-CA-11539-2 filed August 5, 1991.

Case 15-CA-11684 filed November 8, 1991.

First amended charge in Case 11602-1 filed February 24, 1992.

Case 15-CA-11796 filed March 30, 1992.

Second amended charge in Case 11602-1 filed April 10, 1992.

Case 15-CA-11960 filed November 30, 1992.

First amended charge in Case 15-CA-11960 filed January 8, 1993.

Case 15-CA-11995 filed January 8, 1993.

Case 15-CA-12022 filed February 1, 1993.

First amended charge in Case 15-CA-12022 filed April 9, 1993.

Case 15-CA-12159 filed May 27, 1993.

First amended charge in Case 15-CA-12159 filed July 2, 1993.

¹ Hagaman was associated with another firm, Clark, Paul, Hoover & Mallard, during the trial and at least up to the time he submitted a brief in this matter on September 16, 1994.

² Slaughter appeared for the Respondent through March 11, 1994, when she was succeeded by Zellinger.

Seconded amended charge in Case 15-CA-12159 filed October 12, 1993.

Third amended charge in Case 15-CA-12159 filed December 28, 1993.

Case 15-CA-12390 filed November 26, 1993.

First amended charge in case 15-CA-12390 filed December 17, 1993.

Following investigation and administrative determination of the merits of the allegations contained therein, the Regional Director issued a number of complaints and amended complaints, as follows:

Consolidated complaint in Cases 15-CA-11539-2, 15-CA-11583, and 15-11601-1,³ dated September 30, 1991.

Consolidated complaint in Cases 15-CA-11539-2, 15-CA-11583, and 15-CA-11602-1, dated October 1, 1991.

Consolidated and amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11612, and 15-CA-11684, dated December 23, 1991.

Consolidated and amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11612, 15-CA-11684, and 15-CA-11796 dated May 19, 1992.

Consolidated and fourth amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11612, 15-CA-11684, and 15-CA-11796 dated June 9, 1992.

Consolidated and fifth amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11612, 15-CA-11684, 15-CA-11796, and 15-CA-11960 dated January 28, 1993.

Consolidated and sixth amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11612, 15-CA-11684, 15-CA-11796, 15-CA-11960, and 15-CA-11995, dated March 31, 1993.

Consolidated and seventh amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11684, 15-CA-11796, 15-CA-11960, 15-CA-11995, and 15-CA-12022, dated March 31, 1993.

Consolidated and eighth amended complaint in Cases 15-CA-11539-2, 15-CA-11583, 15-CA-11602-1, 15-CA-11684, and 15-CA-11796, 15-CA-11960, 15-CA-11995, and 15-CA-12022, dated May 26, 1993.

Following the opening of the hearing on June 14, 1993, the Regional Director issued a complaint in Case 15-CA-12159 on December 29, 1993.

The Regional Director issued a further complaint in Case 15-CA-12390 on January 31, 1994, and amended this complaint on April 13, 1994. These cases were consolidated at the hearing with the other cases heretofore mentioned, and the matters contained in these latter complaints are a part of this decision.

The Respondent filed timely answers to these complaints denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me on 28 dates between June 14, 1993, and May 19, 1994, at which all parties were represented by counsel, and had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, to make motions and offers of proof, and to argue orally.

³This number was in error, leading to the next complaint, with a correct number, dated October 1, 1991.

After the close of the hearing all of the parties submitted briefs. By order of the chief administrative law judge the time for filing briefs was extended to September 16, 1994. The Respondent, in a motion dated September 30, 1994, requests that I strike the brief filed by the Charging Party on the ground that it was untimely filed. The Board's Rules and Regulations, Section 102.42 states that briefs shall be filed with the administrative law judge at the time fixed for filing, or any extension thereof. According to the Respondent's argument in support of its motion, the Charging Party's brief⁴ was dated on September 15. The envelope used to mail it to the Respondent was postmarked September 16, the very day the briefs were due, and counsel actually received the copy on September 19.

The copy of the brief which I received does indeed bear the date of September 15. However, it was not sent by regular mail, but by Federal Express. The Federal Express "airbill" attached to the brief is also dated September 15. Federal Express ordinarily delivers on the next day following the dispatch of material unless otherwise specified. The Respondent has submitted no evidence that things were otherwise in this case. There is nothing in the Rules and Regulations requiring that copies intended for other parties must be sent through a next-day delivery service. I find that the Charging Party's brief was in fact received in my office on September 16, the day after it was sent, and the date directed by the chief administrative law judge. The Respondent's motion, accordingly, is denied.

All of these briefs have been carefully considered. Based on the entire record in this case, and in particular on my observations of the witnesses, and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

All of the named the Respondents here, Monroe Manufacturing, Inc., Contract Manufacturing, Inc., and Embroideries, Inc., are corporations organized and existing under the laws of the State of Louisiana and they all have offices and places of business in the city of Monroe, Ouachita Parish, Louisiana. The complaint alleges that Monroe Manufacturing is engaged in the manufacture distribution and nonretail sale of childrens' clothing and related products; Contract Manufacturing, Inc. is engaged in the manufacture, distribution, and nonretail sales of baby bottles and related products; and Embroideries, Inc. is engaged in the manufacture and non-retail sale of embroidery services.

The complaint further alleges that at all times material, Monroe, Contract, and Embroideries have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and with administered a common labor policy affecting the employees of each of them; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

⁴Or a "letter brief" as it is described by its author, consisting of only 4 pages in a case with a record of over 3900 pages.

Because of these interrelationships, Monroe, Contract, and Embroideries were alleged to constitute a single, integrated business enterprise, and a single employer within the meaning of the Act.

During a 12-month period ending March 31, 1992, which period is representative of all times material, the Respondent, during the course and conduct of its business operations purchased and received at its facilities in the State of Louisiana goods and materials valued at over \$50,000 directly from points outside the State of Louisiana.

The Respondent amended its answer at the hearing to admit all of the foregoing allegations. I find, therefore, that the Respondent is a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleged, and the answer, as amended at the hearing, admitted, and I find that Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The charges in this matter, beginning with the charge in Case 15-CA-11539-2, filed on June 4, 1991, all arose out of two union organizational campaigns, in 1991 and 1992, the first of which resulted in the rejection of the Union, and the second in its certification as the bargaining representative for certain employees of the Companies here involved.

N. Edward Hakim, who described himself as the president and owner of Monroe Manufacturing, Inc.⁵ and Contract Manufacturing, Inc.⁶ testified that another Company, called Control Services, actually hires and pays managerial employees who manage Monroe, Contract, and a Company called Embroideries, Inc., described by N. Edward Hakim as being held "in the name of my brother Jack Hakim, in New York." There are other companies which are also owned by the Hakim family, including Packaging Technologies, Inc.⁷ From Edward Hakim's testimony, as well as that of employees and supervisors, and from my observations through the entire case, it is apparent, and I find, that the final executive authority in all of these companies and in all situations described here, resided and resides in N. Edward Hakim himself.

B. The Tapes

In the exercise of his executive functions, N. Edward Hakim tries to oversee every detail of plant operations including the smallest employee problems, and almost all disciplinary actions affecting employees. He is proud of his "open-door" policy, and the record shows that when he is physically present, in the plant, he does not hesitate to interrupt other activities to talk to employees about their problems and his concerns about them.

With regard to disciplinary meetings, or meetings with individuals or groups where there might be questions about

what was said or the Company's interests might be later affected by conversations at the meeting, Hakim follows a practice of recording the meetings. He does not have an elaborate system for recording meetings, but uses a small tape recorder, equipped with a directional microphone able to pick up, with greater or less fidelity,⁸ conversations between individuals or groups in his office.⁹

It is Hakim's practice to ask the participants in a meeting if they object to his recording the meeting. If they do not object, he announces that the machine is being started, and at the end of the meeting, that it has been turned off. If anyone did object, he testified that he just says "Well, we are going to do it anyway."

When the first witnesses for the General Counsel testified, those witnesses mentioned the taping of interviews with Hakim, and it was clear, on cross-examination of the witnesses, that counsel for the Company was using the tapes, even framing questions as if he was referring to the tapes as guides to the questioning. This led to demands and subpoenas from the General Counsel and union counsel that the tapes be produced. On July 28, 1993, I ordered the tapes to be turned over to the General Counsel and the Union. On July 29, after over 45 transcript pages of haggling and a 3-hour recess in the hearing, over the security of the tapes, a number were turned over by the Company to the General Counsel and the Union.¹⁰ These were to be audited by the latter two parties over the week end of July 31 and August 1.

Thereafter, during the course of the hearing, the Company introduced a number of tapes.¹¹ Counsel was permitted to withdraw the original tapes, together with papers which were enclosed with some of the tapes, some containing Hakim's handwritten notes, and others bearing data which would permit identification of particular tapes. The hearing, as noted above, closed on May 19, 1994.

Early in 1995, when I began to write this decision, I found that none of the tapes had been received by the Reporting Service, and were, of course, not in the record. Then began a correspondence which I have myself entered into evidence as Judge's Exhibits 1(a) through 1(g) (J. Exhs. 1(a)-(g)) to which reference is made for a closer look at what occurred concerning the missing tapes. In J. Exh. 1(a), an order dated August 25, 1995, I set out the facts of the situation, noting my reservations about the security and the care of the tapes during the months when they remained in the custody of the Respondent, I concluded that in fairness to the Respondent, I would receive the tapes, and some missing transcripts, so that I could listen to them and make determinations on the circumstances under which they were made, and whether they constituted reliable documents to be considered in this decision. I ordered that the Reporting Service receive the tapes submitted by counsel for the Respondent.

⁸ There were some problems on the tapes with the audibility of voices coming from parts of the room further away from the recorder.

⁹ At one point, Hakim said, he had a Realistic tape recorder, then switched to a Sony, which he said had better sound quality. When he needed more tapes, he sent a secretary to a local Wal-Mart for some.

¹⁰ See Tr. at 816-862, July 29, 1993.

¹¹ R. Exhs. 67A, 68A, 70A, 72A, 74A, 82A, 146, 147, 148, and 149.

⁵ Formerly known as Mini-Togs, Inc. See 304 NLRB 644 (1991).

⁶ Formerly known as Luv-N-Care, Inc. See 304 NLRB 644 (1991).

⁷ See 317 NLRB 1252 (1995).

When the Reporting Service forwarded this material to my office, I found that the tapes submitted were not the original tapes, but copies. They were not the tapes which had been offered at the hearing, and which I had received tapes representing the Respondent's Exhibits 148 and 149 were earlier described by counsel as being missing, and then as having been found, but those two tapes have never been received. In addition, the identifying papers which had been with the tapes when they were offered at the hearing, were not submitted at all.

Evidently the Respondent does not want the original tapes and accompanying notes in evidence in this case. It is almost a year and a half since the hearing closed. It is over 7 months since I brought the missing tapes to the attention of the Respondent's counsel. After all this time, and considering the correspondence in J. Exhs. 1(A)-(g), it is discouraging to receive, not the original documents presented at the hearing, but copies made by some unknown person, at an unknown time, and under security measures which appeared questionable (J. Exh. 1(a)).

I cannot determine whether this is a result of negligence on the part of the Respondent, or whether it was calculated to further delay the proceedings and to create false impressions to myself and the Board.

Since I cannot make a decision on these alternatives, either of which is entirely possible, I can and do decide that I will not receive these copies as substitutes for the Respondent's Exhibits 67A, 68A, 70A, 72A, 74A, 82A, 146, and 147 (R. Exh.). Since the original tapes have not been submitted, or received, I strike from the record the transcripts of tapes, marked as R. Exhs. 67B, 68B, C, and D, 72B, 74B, and 82B. I have received no transcripts for R. Exhs. 146 or 147, so these do not need to be stricken. I have received transcripts for R. Exhs. 148 and 149, and these are stricken from the record.

Further, I will disregard any testimony or other evidence which I find is derived from the tapes or transcripts, and I will draw whatever inferences are proper from the fact that the original tapes were not submitted here, and that no tapes, not even copied tapes, were submitted as R. Exhs. 148 and 149.

C. 8(a)(1) and (3) Allegations¹²

1. Paragraph 8 of the consolidated complaint alleges certain violations attributed to Joseph H. Hakim. Joseph is Edward Hakim's brother and was identified by Edward as the person who "runs" the Company's Packaging Technologies operation.

In paragraph 8(a), the complaint alleges that Joseph Hakim asked employees to find out and disclose to him information about union membership and sympathies of other employees.

This allegation refers to a conversation between Joseph and an employee named Edmond P. Landry, a welder, on May 20, 1991. Landry testified that he was in Joseph's of-

fice, and that David Hagaman, the Company's lawyer, was standing nearby, but he was not actually in the office. Joseph asked Landry if he had been to any of the union meetings. Landry said he had. Joseph then asked him if he knew any of the organizers. Landry again answered "yes" that he knew several of them. Joseph then told him to let the union organizers know that he, Landry, had the freedom of the whole plant and keys to any department if they needed anything, any paperwork they might need to use against the Company.

Landry noted that Hagaman was standing close enough so that he may have been able to hear this conversation, but that Joseph stopped talking when Hagaman came up to them. Landry testified that he was convinced that Joseph was trying to trap the Union into doing something wrong. He didn't want to break any laws, he said, but he was worried about his job. He said that he conveyed this concern about this job to his supervisor, Victor Soloman, but Soloman was not called on to testify here.¹³

Joseph Hakim stated that he and Landry did have a conversation in his office in March 1991. Joseph's version was that Landry approached him with a story that some employees were concerned that the Union had got their unlisted telephone numbers and their addresses, and it was rumored that the Company had given out this information. Joseph denied this, but he told Landry that the Company had heard rumors that the Union had been in the plant and obtained information like that. He had heard that union organizers were in the plant taking pictures and going through documents.

Landry then, according to Joseph, suggested that some one could go to the Union and let it be known that they had keys and could get in at any time. In this way, it might be possible to set up the Union in some wrongdoing. Joseph went to talk to Hagaman then came back and told Landry that they couldn't do that, it was too risky. Landry could go to the union meetings but he could not get information for Joseph in that way.

Joseph also testified that at sometime after this conversation Landry was accused by the Company of faking an injury in order to claim worker's compensation.

I did not perceive Joseph Hakim as a particularly credible witness. His story could have been corroborated by at least two witnesses. David Hagaman testified in this proceeding, but did not mention the Joseph Hakim-Landry incident. Hagaman certainly was close enough to see what was going on even if he did not hear the conversation between Landry and Joseph. Joseph's version of the incident includes a conversation between Hagaman and himself concerning what Joseph described as Landry's improper suggestion. Another witness who might have been called was Victor Soloman, described as Landry's supervisor, who could have testified both as to Landry's unburdening himself about his job security, and about the allegedly false worker's compensation claim. There was no suggestion in the record as to Soloman's unavailability.

Since neither of these people testified about the incident, I rely on what I considered a more open and candid demeanor on Landry's part to credit his version of the facts.

¹²In this section I will follow as closely as possible the order of the allegations in the several complaints issued in these cases, beginning with the eighth amended consolidated complaint issued by the Regional Director on May 26, 1993; referred to here as the consolidated complaint, then continuing with the complaint in Case 15-CA-12159, dated December 29, 1993, and the complaint in Case 15-CA-12390, dated April 13, 1994.

¹³Landry also admitted that he was angry and resentful that at some time Edward Hakim had called him a "nothing" but there was no further explanation on that point.

I find that Joseph Hakim's importuning of Landry to lead the Union into a trap, was, in itself, a violation of Section 8(a)(1), even though Hagaman's warning forestalled any implementation of the scheme.

2. James S. (Steve) Booth testified with regard to paragraph 8(b) of the consolidated complaint. Booth worked for the Respondent as a thermoform machine operator.¹⁴ He testified that he and Joseph Hakim were working on the motor of his machine about a month before the 1991 election. Joseph asked Booth if he knew whether Ed Landry was in a union. Booth replied that he didn't know, he knew that Landry was in some union, but he did not know which one.

Joseph Hakim testified that he and Booth were actually rebuilding Booth's machine. In Joseph's version, Booth asked him if the Union would get in. Joseph answered that there was no way of telling. Booth asked what would happen if the Union did get in and Joseph replied that they hadn't made any determination about that yet. Booth asked if Joseph thought they needed a union, and Joseph said that in his personal opinion they did not. Joseph denied that he asked about Landry, adding that he never asked anybody about their union activities.

Here, there is no corroborations for either participant in the conversation. It seemed to be informal, talking together while working on the machine. But, in view of what I have found to be Joseph Hakim's interest in using Landry in a plan to lead the Union into an embarrassing situation, I think it is entirely possible that, in the course of this friendly conversation, he would check on Landry's reliability, and his loyalty to the Company. I found Booth to be a trustworthy and candid witness and, although he had signed a union authorization card, he was not an active supporter of the Union.

In these circumstances, I credit Booth's testimony and I find that by asking him about Landry's union affiliation Joseph Hakim has engaged in a violation of Section 8(a)(1).

The General Counsel, in his brief, has moved to delete paragraph 8(c) from the complaint. There being no objection, the motion is granted and paragraph 8(c) is deleted.

3. Paragraph 9(a) of the consolidated complaint alleges that on or about March 27, 1991, N. Edward Hakim informed employees who were sympathetic to the Union that they should quit their employment with the Respondent.

Candy Balsamo, a blister pack machine operator, who had worked for the Company since August 1990, testified that she had been active in the Union's 1991 campaign. She went to union meetings, wore union T-shirts and buttons, and told her supervisor, Ethel Henderson, that she was a union sympathizer. She distributed union literature to employees and she stated that she was seen doing this by Supervisors Ethel Henderson, Mary Womack, Dee Bryant, Ida Bradshaw, Brady Gray, and Joe Fuller, all of whom had walked by her as she was passing out union literature at the entrance to the plant.

Balsamo testified that on March 27, 1991, the whole plant was summoned to a meeting in the sewing department. There were 600 to 700 people there. Edward Hakim addressed the group, describing how he had built the Company, and that, as of January 1991, he owned Monroe Manufacturing, Contract Manufacturing, and Embroideries. He also told the em-

ployees that if someone wanted a raise, or someone wanted to do better, "the door swings both ways, you can leave."

Edward Hakim testified that he tape recorded the March 27 speech. He was asked if he had informed employees at this meeting that if they were sympathetic they should quit their employment, and he denied saying this. He also denied making a comment about a "door swinging both ways." The tape alleged to be made at that meeting was received in evidence, de bene, as R. Exh. 67A.¹⁵ R. Exh. 67B was identified as a transcript of that tape, typed the night before, Hakim testified here by Hakim's secretary.

Having introduced these documents, the tape and the transcript,¹⁶ the Respondent went on to discuss other matters with the witness.

This is the first of several issues where Hakim's memory was fallible, or where the burden was really placed on the tapes to fill out the Respondent's case. I have serious questions about Hakim's failure to recall many facts about the meetings discussed in this case. I think the record here demonstrates that Hakim is a man of formidable intellect and memory, who almost single handedly built and runs a demanding and highly competitive business with intense personal devotion and the most careful attention to the smallest detail. I do not credit his alleged loss of memory, and I believe that he feigned lack of memory here in order to avoid embarrassing questions. I do not credit his denials in this instance, as well as others as we move through the various complaint allegations here.

I find that Hakim told employees that if they were sympathetic to the Union they should quit their jobs with the Company, and I find this to be a violation of Section 8(a)(1) of the Act.

4. Paragraph 9(b) of the consolidated complaint alleges that, on or about May 9, 1991, Edward Hakim threatened employees with discharge if they selected the Union in the election. Peggy Poe, an employee from December 1989 through July 1991, testified that she attended a meeting in Hakim's office on May 9, 1991, along with 12 to 15 fellow employees. At this meeting, Poe stated that Hakim said that they would risk losing their jobs due to the Union. If they went on strike they would receive no compensation of any kind. On cross-examination, however, Poe modified her testimony to state that Hakim had said they could be permanently replaced if they went out on strike.

Hakim testified that the May 9 meeting was one of a number he held with small groups of employees to talk about the Union. He used large charts he had prepared, he cited Board and Supreme Court cases, and he told employees that if they went out on strike they could be replaced. He denied that he

¹⁵ Although Hakim identified the tape he was shown as dating from May 26, 1991.

¹⁶ The General Counsel raised a question as to the security of this particular tape since it was described earlier, when the parties were discussing the tapes in July 1993, as "missing." When asked, Hakim gave a rambling story about this tape being unmarked and lost among "a couple hundred" other tapes and having been fortuitously "discovered" the previous day (March 8, 1994) when the secretary was transcribing "a lot of tapes." This, of course, is a striking example of the carelessness with which this evidence was handled, and an additional reason why my ruling in sec. III, B, above, is warranted.

¹⁴ Joseph Hakim described the thermoform machine as a device which makes plastic trays out of polystyrene.

told employees that they would be discharged or lose their jobs if they struck.

I do not believe that the General Counsel has shown in this instance that Hakim actually threatened employees with discharge, and I find no violation of the Act in this incident.

5. In paragraph 9(c) the General Counsel alleges that on or about May 17, 1991, Edward Hakim threatened employees with unspecified reprisals because they supported or assisted the Union.

Rebecca Sue Kelly, an employee, received two checks on a Friday in May (May 17, 1991, was a Friday). She asked her supervisor, Ethel Henderson, why she got two checks. Henderson told her she had to see Hakim. Kelly said she would like to have other employees with her. She named Candy Balsamo, Carmen Crumby, Cathy Sauce, Rachel Glass, and Sarah Myers. Henderson went to see Hakim and when she got back she told Kelly that he would meet with her, Myers, Glass, and Sauce, but he didn't want to talk to Balsamo or Crumby.

When the four women acceptable to Hakim got to his office he explained that he issued them two checks to show them how much they would have paid in union dues if the Union had been in the plant since February.

During the meeting Cathy Sauce asked if Hakim was going to close the plant. He said he couldn't answer that question, but he took two bottles out of his desk and said that one was a union bottle and the other was not. He then told them that the union bottle cost more, and asked which one they thought people were going to buy, the higher or lower priced bottle.

Hakim then brought out a paper which he told the women was the Union's constitution, and union leaflets. He asked Kelly to read sections of the constitution and when she finished each section asked her, "Didn't they lie to you?"

Toward the end of the meeting Hakim sat down at his desk and said to Kelly that people were not going to like her when "all this is over with." He said that she had "influenced a lot of people and caused people a lot of trouble that they wouldn't have had to go through otherwise."¹⁷

Again, in this incident, I do not believe that the General Counsel has presented a prima facie case for a violation of Section 8(a)(1) of the Act. Hakim's remarks here were, in my opinion, within the permissive limits of Section 8(c) of the Act. There were no threats of reprisals, and the only "specified reprisals" were apparently Hakim's prediction that some of Kelly's fellow employees would resent Kelly's influence on them in the union campaign. This was not a threat that he would do anything.

6. Paragraph 9(d) of the consolidated complaint alleges that Edward Hakim promised an employee a raise and a promotion if the employee would discharge and discipline union supporters.

The employee in question, Candy Balsamo, was, as has already been noted, a known union supporter and activist. On June 22, 1991, a Saturday, she was called up to Hakim's office. There, she met with Hakim, Supervisor Bill Edge, Ethel Henderson, and, later in the meeting, Mary Malta, an assistant supervisor in Henderson's department.

Balsamo said that Hakim told her and the others that Henderson had been having problems with people not showing respect to her. Hakim said that employees no longer looked up to her, and she was not getting production out of them.¹⁸ She had trouble particularly with Albertina (Tina) Moy and Julie Gonzalez, two union supporters who were also friends of Candy Balsamo.

Because of the perceived problem with Ethel Henderson's department, Balsamo quoted Hakim as stating that he was going to reorganize the department into two parts. One part would be packing, and Mary Malta, currently an assistant in the whole department, would be the assistant supervisor over that. A new position would be created as assistant supervisor in a new blister pack unit. Hakim said that he wanted Balsamo to take this position which would include an unspecified raise in pay, and semisupervisory status. Her duties would include writing people up and firing them if they gave her a hard time. In particular, Hakim wanted Balsamo to assume her new position on the following Monday morning, and fire Julie Gonzalez and lay off Albertina Moy. After that, if anyone gave her any problems, to come in and see him.

Hakim said that he had noticed Henderson was slipping, and he wanted to give her some help and to groom someone to take her place when she retired. He asked Henderson what she thought of Balsamo and Henderson said he could talk to her.

Hakim's recollection of what he told Balsamo about the extent of her duties is somewhat different from Balsamo's memory of that part of the meeting. He said he told her she would be giving out work, ordering employees to perform certain duties, and disciplining employees when necessary. He asked her if she could be fair to union and nonunion employees alike. He mentioned disciplining of Moy and Gonzalez, as he put it, to test her reaction to disciplining her friends, and she said no, she wouldn't have a problem.¹⁹

At the conclusion of this meeting, Balsamo left it that she would talk to her husband and let Hakim know her decision on Monday. When she came in on Monday she told Hakim that she had decided to decline the job. She felt that she did not want to fire her best friends in the plant.

There is no question in my mind that Moy and Gonzalez were both union supporters, just as Balsamo was, if not quite so visible. Thus, if Balsamo took Hakim's offer, with its condition that she lay off Moy and fire Gonzalez, Hakim would have eliminated three union supporters at one whack. But there are some problems with this simple solution to the question of motive. First, is the fact that the record here

¹⁸ Henderson is an elderly woman, described by Hakim as being in her late seventies or early eighties. She testified here that she had worked for the Company for 28 years and retired at the end of 1992. She had difficulty focusing on the questions asked her and with the answers she gave. I did not feel that her memory was good, and I did not consider her a reliable witness. But these qualities, which I observed while she was testifying here, certainly could lead, as Hakim had observed, to a diminution of respect among employees under her supervision.

¹⁹ In regard to discipline, Hakim testified that Balsamo's new job would not entail actually firing or disciplining employees. She would bring her recommendations for discipline to Henderson. The record bears out this statement. All discipline is administered by supervisors, but Hakim generally gets involved with suspensions, and always is consulted about discharges.

¹⁷ Hakim also said in this meeting that he was not giving raises because of the union campaign. See sec. III,C,7, below.

shows that Albertina Moy was suspended for 1 week on June 17 for making fun of Henderson and also for leaving work early on June 12 without permission.²⁰ Gonzalez, who incurred no penalty, apparently, for making fun of Henderson,²¹ was to be fired, and Moy, who would have served her time for the fun-making and leaving work early, would have returned from her suspension either on Monday, June 24, or Tuesday, June 25, and would only be laid off for no fixed period, and for no reason, according to the record here.

It would be more logical to find, as Hakim testified, that he asked Balsamo whether she would have a problem discharging Moy and Gonzalez. Although I have a lot of problems with Hakim's credibility, there seems a closer relation to the truth in his statement on this incident. The movement of militant prounion employees into supervisory and management positions is not uncommon. I can recall reading of a General Motors executive, many years ago, regretting the company's lack of foresight in not promoting a union agitator and troublemaker, Walter Reuther, into the ranks of management.

In this situation, Hakim had a longtime, faithful employee who was getting along in years and whose septuagenarian fussiness, antebellum appearance and manners invited the mockery of younger, presumably up-to-date employees. He needed either to get rid of the longtime employee, or try to get her some help to ease things along, and keep up production. It is not illogical that his glance lit on an aggressive union activist. If she could do that much for a Union, she could do it for him. I think this is much closer to the truth than the General Counsel's theory, and more closely fits the facts. I find no violation in this incident.

7. Paragraph 9(e) of the consolidated complaint alleges that on or about June 17, 1991, the Respondent, through Edward Hakim, informed employees that it was withholding a wage increase because they were engaged in activities on behalf of the Union.

In June 1991, the Company had a plant, since closed, on Texas Avenue in Monroe, a short distance away from the main plant on DeSiard. Some of the employees at Texas Avenue worked in the paint department, painting baby bottles and other products.

According to Karen Brandon, a paint department worker, conditions at Texas Avenue were pretty bad. The plant was hot in June, there were no vending machines for snacks and sodas, and there was a bad problem with fleas. To complicate things further, the paint department employees were working on some sort of piece work basis. The testimony on this is confusing, but the best I can make out of it all is that employees were paid for producing so many items, which allowed them, if they produced more, to make more than the minimum wage paid to most employees in the plant. However, when the minimum wage was increased in April 1991 to \$4.25 an hour, their production rates were not correspondingly changed, so that they made less in comparison to the minimum than they had when the minimum was \$3.75.

Things came to a head on June 17, when a group of employees gathered early in the morning in front of the Texas Avenue plant. These included Karen Brandon, Mattie Adams,

Kim Grayson, Michelle Dushene, Hattie Broadway, and some others.

About 6:15 a.m., Paint Department Supervisor Sam Anderson came along and asked the assembled women if they were on strike. Kim Grayson replied, with an obscenity, that they were being mistreated.²² Karen Brandon said that they were painting, working hard, but not earning what they should.

Sam Anderson called Mike Henegan, the plant manager, and he came over to Texas Avenue to talk to them. Henegan did not spend much time talking to them, however, as he told them he would talk to Edward Hakim. He did get a list of complaints from the women and he said he would get back to them after he saw Hakim.

Later that day the group met with Hakim in his office. The employees first raised the question of production rates. Hakim showed them a paper saying what he could or could not do in a situation where a petition for a union election had been filed (R. Exh. 66). He said that since the petition was filed on April 1 he could not change the production rates—there was a freeze on it because of the "Union thing."

The notice from the Board (R. Exh. 66) to which Hakim referred is a preelection notice listing some do's and don't's for employers, and which should be posted somewhere where employees can read it. The specific provision on which Hakim relied for his position on pay raises forbids:

Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises.

This notice, however, does not prohibit, nor would it be an unfair labor practice, or objectionable conduct, for an employer to continue a practice of making wage adjustments for reasons which arose outside of or unconnected with the election process. Referring to a meeting which Hakim had with embroidery department employees on June 8 (consolidated complaint, par. 13(b), sec. III (c)(19) below). Hakim testified that in the past, when the minimum wage was raised, the Company took the same base and followed it up with the minimum wage increase. In this case, Hakim felt that this procedure was in violation of the proscription in the notice. I do not agree. It seems to me that if there was a practice of changing the production rates to keep those incentive rates at a certain level above the minimum wage, when the minimum wage is raised, an event which has nothing to do with the election process, a refusal to continue past practice, and blaming that failure on the Union, punishes the employees and is a violation of Section 8(a)(1) and(3) of the Act.

8. Paragraph 10(a) of the consolidated complaint alleges that Ethel Henderson threatened employees with discharge if they continued to engage in union activities.

Bobbie Lee Alderman, who worked at the plant from 1987 until she left in January 1993, testified that she was working at the pacifier table in 1991. She was not active in the union campaign during 1991, but while the campaign was going on, she testified, Ethel Henderson told her that if the Company found out she was for the Union she "wouldn't last very long."

²² Karen Brandon said that Kim Grayson's use of obscenities was not unusual, that she spoke like that frequently.

²⁰ See consolidated complaint, par. 39, sec. III, C, 35, below.

²¹ There are no allegations in the complaints here concerning layoffs, suspensions, or termination of Gonzalez.

Ethel Henderson's memory was not good. She testified that she was friendly with Bobbie Lee Alderman, and that she had helped her out over the years, but she denied that she had ever tried to influence her about the Union. In view of Henderson's problem with memory, I do not credit her denial, I find that she did threaten Alderman with discharge if the Company found out she was for the Union, in violation of Section 8(a)(1) of the Act.

On this same subject, Candy Balsamo testified that on March 26, 1991, Henderson spoke to about a dozen employees including Carmen Crumby, Rebecca Sue Kelly, Kathryn Sauce, Sara Kay Myers, Sandra McBride, Bobbie Lee Alderman, and Balsamo. Henderson said that if anybody signed a (union) card Edward Hakim would terminate them. Balsamo announced that she had signed and Henderson told her that Hakim would fire her for that. She added that Hakim wouldn't let a union come in because the plant belonged to him.

Henderson denied making these threats. In this incident I credit Candy Balsamo and I find that Henderson did make the threats attributed to her, and I find this to be an additional violation of Section 8(a)(1) of the Act.

9. Section 10(b)(1) alleges that Henderson threatened employees with plant closure if they continued to support or assist the Union.

Bobbie Lee Alderman also testified about this allegation, stating that Henderson told her that if the Union came in Hakim would close the plant and move it out of State. Albertina Moy testified that Henderson told her that the Company would close the plant if the Union came in. Henderson also denied these allegations, but I credit Moy's and Alderman's testimony and I find an additional violation of Section 8(a)(1).

10. Section 10(b)(ii) alleges that Henderson threatened employees with a reduction in hours if they continued to support or assist the Union. Bobbie Lee Alderman also testified that in the conversation with Henderson, mentioned above, he told her that if she didn't "stand for the Company" and the Union came in her hours would be cut to 3 days a week. Henderson said the same thing to Albertina Moy. I do not credit Henderson's denial that she said these things, and I find them to be violations of Section 8(a)(1).

11. Paragraph 10(c) alleges that on a number of days Henderson interrogated company employees regarding their union membership, activities, and sympathies.

The General Counsel urges me to find a violation of Section 8(a)(1) on a theory that Henderson interrogated employees by distributing red ribbons or T-shirts which were also red in color and bore the names of Monroe Manufacturing and Contract Manufacturing. These ribbons and T-shirts symbolized to the employees that the wearer supported the Company during the election campaign, even though there was no "vote no" message on them.

Given Henderson's partisanship as demonstrated in the previous few sections of this decision, I think she certainly would have known that those who took, and wore, the red T-shirts were probably company supporters. Henderson showed her view of the significance of the red shirts by her refusal to give one to Candy Balsamo and, even though she did give a shirt to Margie Bracey, another well-known union activist, she berated Bracey, who said she told Henderson she

was antiunion, for telling a "barefaced lie" just to get a "two-bit T-shirt."

Counting T-shirts, both the red ones given out by the Company and blue T-shirts distributed to and worn by union adherents, could give an idea of who was for what, although Edward Hakim, somewhat ruefully, expressed his surprise at the closeness of the 1991 election based on estimates he had made by counting red T-shirts he saw around the plant. Thus, the wearing of T-shirts or ribbons which were made up and distributed by the Company and the Union, in red and blue respectively, could be a kind of interrogation, but more serious were Henderson's threats that Edward Hakim would observe people not wearing the Company's color.

Henderson actively fostered the wearing of red ribbons and T-shirts. Rebecca Sue Kelly testified that Henderson ordered a floor boy to remove a blue ribbon. He refused and she then said she was going to take down the names of all the people who were wearing blue ribbons. Kelly stopped wearing her own blue ribbon about a month before the election.

Candy Balsamo also noted that Henderson was taking down the names of people who did not want red T-shirts. Balsamo also described Henderson actually throwing T-shirts at employees, whether they wanted them or not.

Albertina Moy also testified as to the passing out of T-shirts and ribbons.

All of this indicates to me that the passing out of ribbons and T-shirts was a kind of loyalty test which Henderson was administering, and did in fact constitute a kind of interrogation. I find it to be a violation of Section 8(a)(1). *Barton-Nelson, Inc.*, 318 NLRB 245 (1995).

12. Paragraph 10(d) of the consolidated complaint alleges that the same conduct outlined in the preceding section of this decision also gave to employees the impression that their union activities were under surveillance.

Based on the reasoning in the preceding section, and particularly Henderson's invocation to employees of Hakim's notice of what kind of T-shirts they were wearing, and Hakim's own wry comment cannot on the deceptive numbers he, in fact, observed, show that there not only was an impression of surveillance, these was actual surveillance of what employees were wearing.

I find this also to be a violation of Section 8(a)(1).

13. Paragraph 11(a) of the consolidated complaint alleges that Mary Womack, a supervisor for the Respondent, threatened company employees that the plant would close if they supported or assisted the Union.

Mary Womack is Ethel Henderson's sister and has worked for the Company and its predecessors for 40 years. She was a bit more acerbic than her sister, but still possessed of a gracious manner. Womack, however, also suffers from a poor memory of the fact situations in which it is alleged she participated, and I must also find that she was not sure enough of the facts in those situations to render her testimony reliable.

Rebecca Sue Kelly, who I have found to be a credible witness, testified that on April 23, 1991, Womack spoke to a number of employees including Candy Balsamo, Sarah Myers, Rachel Glass, Carmen Crumby, and Kelly herself on the back dock of the plant. Womack came by and she had a union flier in her hand. She began to talk about the flier and Kelly paid little attention until she heard Womack say

"I know what he will do [referring to Hakim]; he will close the plant. If we go Union we will have to go up in our prices—Our stuff will just sit on the shelves." She then turned around and said, "He didn't say that; I did."

Womack denied having said this, but I do not credit that denial and I find this threat to close the plant to be a violation of Section 8(a)(1) of the Act.

14. In paragraph 11(b)(i) Womack is alleged to have again threatened employees that the plant would close if the Union got in; in paragraph 11(b)(ii) she is alleged to have said it would be futile for employees to select the Union; and in paragraph 11(b)(iii) she allegedly threatened to withhold wage increases.

Candy Balsamo testified that about May 14 she was having a cigarette on the back dock. Womack came up and told her that Ed (Hakim) "won't have to let a Union in here if he don't want it. The plant belongs to him and if he didn't want to give people raises he didn't have to. The Union can't make him. He doesn't have to hold dues out of peoples' checks if he don't want to, and it is up to him if the Union [sic] in, not up to the people. He is the owner of the plant."

She also said that Hakim had said he would close down before he let the Union in, and everybody would wind up without a job. She said she had just talked to Edward Hakim, they (the supervisors) had meetings every weekend, and he said he would close the doors.

Womack denied this conversation, or even talking about the elections to employees, but I do not credit those denials. I do credit Candy Balsamo's testimony and I find that the Respondent has violated Section 8(a)(1) through its supervisor's, Mary Womack, threats to close the plant; that Edward Hakim would withhold pay raises; and that it would be futile for employees to select the Union to represent them because he would not have to bargain with that Union.

15. Paragraph 12(a) of the consolidated complaint alleges that Sam Anderson, paint department supervisor, interrogated employees in April 1991 about their union membership activities.

This incident arose out of another ribbon distribution. This time it was Sam Anderson giving out red ribbons indicating that the wearer favored the Company in the election (see sec. III, C, 11, above).

Kimberly Ann Grayson had worked for the Company from 1987 to 1989, then came back in 1990 and was a painter of baby bottles in the spring of 1991. She was active from the start of the 1991 union campaign. She got friends to sign union authorization cards, and she passed out fliers. Sam Anderson had seen her doing that.

During the campaign, Anderson offered red ribbons to Grayson four or five times. She finally took one and pinned it to the seat of her pants. I find this offering of ribbons to constitute interrogation of employees and an additional violation of Section 8(a)(1) of the Act. *Barton Nelson, Inc.*, supra.

16. Paragraph 12(b) of the complaint alleges that around May 8, 1991, Sam Anderson threatened employees with discharge if they selected the Union as their bargaining representative.

Kim Grayson testified that on that date she met with Sam Anderson, Bill Edge, another supervisor,²³ and Lois Jackson. In this meeting, Anderson said that if the Union came in they

would all lose their jobs and they would be permanently replaced in case of a strike.

I find that Anderson said this and that this statement, unqualified as it was, constituted another violation of Section 8(a)(1) of the Act.

17. Paragraph 12(c) of the complaint alleges that Sam Anderson threatened employees with a wage freeze because of their union activities.

Karen Brandon had worked at the Company for 5 years at the time of this hearing. She had been a part-time bottle painter, an assistant supervisor, and finally a full-time bottle painter.

Brandon became interested in the Union early on and was instrumental in getting the organizing started. She gave names and telephone numbers of people she knew to the Union, attended meetings, wore union T-shirts, and passed out leaflets. Sam Anderson had seen her distributing literature and she wore union T-shirts while at work.

On May 9, 1991, Brandon had a conversation with Sam Anderson. Anderson asked her if she had any gripes or complaints. Brandon said no, but asked when the production rates were going to be raised to make up for the increase in the minimum wage which had gone up on April 1. Anderson replied that since the Union had filed a petition on April 1, there was a freeze on production rates and they couldn't be changed.

This incident is similar to the incident in Edward Hakim's office in June where he told employees, including Brandon, that he could not change production rates under the law, since a petition had been filed (sec. III(c)(7)).

I find that this excuse, using the Union's petition to vary customary practice and impose a freeze was a violation of Section 8(a)(1) and (3) of the Act.

18. Paragraph 13 (a) of the consolidated complaint alleges that around May 22, 1991, Wills (Buddy) Bradshaw, identified in the complaint as plant manager, threatened employees with unspecified reprisals if they supported or assisted the Union.

Margaret Kyle, an embroidery machine operator who worked at the plant from January 1990 to May 1993, testified that a union organizer named Darla Watson asked her to be an observer at the 1991 election. Kyle talked to Buddy Bradshaw about this. She wanted to know whether she should punch out or stay on the clock while acting as observer.

According to Kyle, Bradshaw told her that sometimes people held grudges, and sometime, down the line, her acting as a union observer might cause problems for her. On the basis of this, Kyle decided to decline the offer to act as union observer.

Bradshaw testified that Kyle talked to him in the break room about being asked to be an observer. She asked what the duties of an observer were and Bradshaw answered that the Company and the Union picked two or three observers to sit at a table and check the voters and the general atmosphere; see that the election was going as it should; see that no one came in to vote who wasn't on the list; and if they saw people who shouldn't be in the area, to have them put out.

But Bradshaw denied that Kyle asked him about punching out, and he stated that he did not say that being an observer could cause problems down the line for her.

²³Edge was stipulated on the record to be a supervisor (Tr. 968).

I think Bradshaw's short description of the duties of observers at a Board-conducted election was concise, but accurate. He must have had a bit of experience in that area. However, I do not credit his denial that he warned her about possible adverse consequences if she did act as a union observer. He may have been motivated by the kindest of considerations but given the antiunion feelings of Edward Hakim, as shown by Hakim's own testimony, and based on Bradshaw's own apparent experience with union elections, I think it follows that Bradshaw took the time to warn Kyle of what could happen to her as a result of her participation in the election on the side of the Union. Although Bradshaw's motive may have been well-intentioned, I find that his words in fact constituted a threat of unspecified, but very real, reprisals, and I find this warning to be a violation of Section 8(a)(1).

19. Paragraph 13(b) of the complaint alleges that about June 8, 1991, Buddy Bradshaw informed employees that the Respondent was withholding a wage increase because they engaged in activities on behalf of the Union.

Margaret Kyle testified that she attended a meeting of embroidery department employees on June 8, 1991, in Edward Hakim's office. Buddy Bradshaw and Ethel Henderson were also there.

Hakim spoke to the employees and told them that due to the fact that the Union had filed the petition for an election they couldn't change any production rates until everything was settled.

Bradshaw also said at the meeting that he had planned to raise the production rates before the petition was filed, but once it was filed, they couldn't do anything about the rates.

I note that Bradshaw was quoted in Kyle's testimony as saying that the Company was preparing to raise production rates. I also note Hakim's testimony that raising production rates when the minimum wage was increased was the Company's policy, before the Union came into the picture. Bradshaw did not deny that he said that he was preparing to raise the rates. This undenied admission serves to corroborate my findings in section III(c)(7) and (17). I find a further violation, here, a violation of Section 8(a)(1) and (3).

20. Paragraph 14(a) of the complaint alleges that in September 1992 Brady Gray, vice president for distribution for Contract Manufacturing, Inc. (formerly Luv-N-Care), advised employees that they should not include references to former union membership on employment applications (for work at the Respondent).

Paragraph 14(b) stems from the same situation. In 14(b) Brady Gray is alleged to have threatened employees by advising them that the Company would not hire union supporters.

Kae Thomas testified that she met Brady Gray through a cousin-in-law of hers, Carolyn Campbell, who was Gray's girlfriend.²⁴ Thomas had recently come to Monroe from California. She had a child and needed a job. Campbell testified that she asked Gray to help Thomas get a job.²⁵ Gray told Campbell and Thomas that the latter should get an application and turn it in to the Company. This comports with

Gray's testimony, but Thomas said that Gray got her an application. When she filled it out, Gray looked it over and noticed that she had put down that she had been a union member at a job in California. Gray then told her to fill out another application, because if the Company found out that she had been in a union they "most likely" wouldn't hire her. He told her to put in "self-employed." Gray added a warning that if she was approached by the Union (at the Respondent) just disregard them and keep on doing her work. Thomas said that this was what she did. There is no evidence that she engaged in any union activity. She was hired on September 14, 1992.

As I have indicated, Gray testified that he did not obtain an application for Thomas. He told Thomas to get a form herself, and when informed by Campbell that she had not, after several months, he urged Campbell to tell her to do it.

Gray testified that he never saw Thomas' application and never knew she had actually applied until he saw her in the lobby of the plant and she told him she had been hired. Later, after seeing Thomas, Gray went to the personnel office and told Gwen Anderson, the personnel director, that Thomas was a friend of a friend of his, that she was responsible, she had a child, and she was the kind of employee they were looking for.

I have serious questions about Thomas' credibility. She led Carolyn Campbell to believe that she was married to Campbell's cousin, when she was not.²⁶ This alleged relationship induced Campbell to approach Gray. But Thomas, as well as Campbell, concealed from Gray, and from the Company on Thomas' employment application, that she had been in jail. It is this, I believe, that led Thomas to claim she had been self-employed, in an "arts and crafts" business in California. I can understand Thomas' default on the automobile payments arranged for her by Campbell's obtaining a loan, but the other things, the inaccurate claim of relationship and the concealment of the jail term lead me to discredit her testimony on material issues.

I do not find that Brady Gray told Thomas that she should not place references to union membership on her job application, and I do not find that he warned Thomas that the Company would not hire union supporters, and I find no violation in this incident.

21. Paragraph 15 of the consolidated complaint alleges that the Respondent, by oral proclamation to employees, promulgated a rule requiring employees to work overtime. Paragraph 16 alleges that Edward Hakim and Ethel Henderson, from April 15 and May 3, 1991, respectively, selectively and disparately enforced the rule by applying it only against employees who supported the Union.

Mary B. Armfield, a packer from January 1991 at least to the time of this hearing, testified that she told Ethel Henderson that she was a union supporter. She passed out union literature; attended the representation case hearing; and held up a pronoun banner outside the court house where the hearing was held, an action which was filmed by and reported on a local television station.

²⁴ Campbell was not employed by the Respondent.

²⁵ Carolyn Campbell testified that Thomas had been fired from her previous job because she had been in jail, but she did not tell Gray about this because she wanted Thomas to get the job.

²⁶ Thomas also testified, under oath, at this hearing that she was a "cousin-in-law" of Campbell. Apparently, Thomas had been married to Campbell's cousin, but that marriage had been dissolved before Thomas came to Monroe.

In April 1991, Armfield was called to Edward Hakim's office. Henderson was there. Hakim charged her with refusing to work overtime, when told to do so. Armfield told Henderson that she was lying; that anytime she had been asked to work she had worked overtime. Henderson said nothing. Hakim then said that it was company policy from now on that if the employees were told to work it was mandatory, they had to stay and work. When Armfield raised the question of the care of children, or accommodating to a spouse's schedules, Hakim said that if it didn't have anything to do with the Company, it didn't matter. He didn't care about that. That was their own problem, if it wasn't for him their children wouldn't eat, and that their livelihood was dependent on him.

After this, Armfield stated, the nonunion employees, who wore red ribbons, were assigned to work overtime, and Armfield was not asked to work overtime.

Rebecca Sue Kelly testified that overtime was never mandatory before the union campaign of 1991, but a month or so before the election overtime became mandatory.

Kelly stated that on a Friday Henderson asked her about 4:15 p.m. to work overtime. Kelly reminded Henderson that her son had seizures and she had to let the babysitter know ahead of time when she had to work overtime. Henderson replied "I know, honey, you can go ahead and go." There were 20 or more people still there when, Kelly said, she left at 5 o'clock.

The next morning Edward Hakim called Kelly and Henderson into his office. He explained that he was taping the meeting. He asked why Kelly left early on Friday. She mentioned the babysitter and Hakim said that was no excuse. At that point, according to Kelly, he turned off the tape recorder. He then went on to say that her job was more important than anything, even kids, and that she had better get another babysitter, or get another job, because if it happened again, she would be terminated and she would not be allowed to draw unemployment.

Albertina Moy testified that on June 12, 1991, she was supposed to work until 5 p.m. She developed a pain in her side and told her assistant supervisor, Mary Malta, that she was leaving. On the next day Ethel Henderson told her she was laid off for a day. Moy asked about two other employees who left early and Henderson said that one of them was going to be written up, but the other had an excuse. Later that day a group of employees met with Henderson and Mike Henegan, the plant manager. Henegan told the employees that from now on the hours were 7 a.m. to 5 p.m. and that employees had to work overtime when orders had to get out. Henegan said if the orders didn't get out, he would get in trouble. At the end of this Moy was not suspended.

On the next day, employees, including Moy, met with Personnel Director Gwen Anderson. Anderson told them pretty much the same thing, if they didn't work when asked to work overtime they would be disciplined, written up, with a 3-day suspension or discharge.

Hakim did not testify concerning these specific incidents.

Applying the facts which were testified to here, and I credit the testimony of Armfield, Kelly, and Moy, there does not seem to be much connection to the allegations in paragraph 16. I certainly can, and I do, find that Hakim, or through him Henegan and Anderson, promulgated a new rule, that overtime was mandatory. But there was no union

certification at that time, and no reason to find that this declaration violated any law unless it can be shown that the new rule was adopted for discriminatory reasons. There is no evidence in the testimony concerning this issue that the rule was adopted for discriminatory reasons.

Similarly, there is no evidence that the rule was enforced in a discriminatory or disparate manner against union adherents. The only evidence about who got overtime was Armfield's testimony that the non or antiunion employees got overtime, while the complaint allegation charges that the union employees were forced into mandatory overtime.

Under my understanding of these complaint allegations, paragraphs 15 and 16, I can find no violations of law.²⁷

22. Paragraph 17 of the consolidated complaint alleges that on or about April 16, 1991, the Respondent promulgated and maintained a rule prohibiting employees from discussing their wages during working time.

Candy Balsamo testified that around the end of April 1991 she had a conversation with Carmen Crumby about their paychecks. Balsamo told Crumby she was low on hours, and she was not allowed to make them up. Henderson came up to them and said that any talking about paychecks would result in their termination.

A similar incident occurred in July 1991. Balsamo testified that Cathy Sauce was complaining about her paycheck to Balsamo and Rebecca Sue Kelly. Henderson came up and told Sauce that if she discussed her paycheck "whatsoever" that Hakim would fire her.

Edward Hakim testified that the rule against discussing wages was not new, was not promulgated in 1991, but had been in effect for as long as the Company had been there. He said it was enforced by supervisors, was explained to new hires by the personnel office, and that it was common knowledge around the plant. Neither Hakim nor Henderson denied the testimony of Balsamo as to the two instances in April and July 1991, where Henderson threatened employees with discharge for discussing paychecks.

Hakim may believe, with Cervantes, that comparisons are always odious, and that allowing discussions of relative wages or paychecks in the plant (not just, as alleged in par. 17, during working time) could lead to dissension, jealousy, or even physical confrontation, is not sufficient to overcome the right of employees to discuss wages as well as hours and other conditions of employment on their own time or in non-working areas. I find this rule to be a violation of Section 8(a)(1) of the Act. *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992).

23. Paragraph 18 of the complaint alleges that on or about April 23, 1991, by oral proclamation to its employees, the Respondent has promulgated and maintained a rule prohibiting the placement of personal notices or bulletins in public view.

What this means, apparently, is that the Respondent discontinued a practice of allowing the posting personal notices on the walls of the lunchroom or the breakroom, places frequented by off-duty employees.

Candy Balsamo testified that employees had been permitted to post notices, including fruit cake sales around Christmas, notices which might be there for 2 or 3 months.

²⁷ The cruelty and insensitivity of Hakim's remarks to Armfield and Kelly do not constitute statutory violations.

Balsamo herself put up notices for the sale of lunches. The lunches were prepared by members of Balsamo's church on Wednesdays, could be ordered by employees and supervisors, and were delivered by the church people to the plant. Balsamo also went around signing up customers for the lunches.

After the hearing on the representation petition in April 1991, Ethel Henderson came to Balsamo, a known union activist, and told her that she could no longer go around and take orders for the lunches, Henderson or some one else would do that. Balsamo was not to be allowed to put up notices in the breakroom or lunchroom.

Henderson did not testify on this point, but Edward Hakim stated that there was a policy which had been in effect for 20 years which prohibited placement of personal notices on bulletin boards. The only exceptions were a death in the family, a collection for an individual, or something to do with a church. Hakim did not explain why Balsamo's church related lunch program was now being banned after being operative up to April 1991.

In this instance, as in the talk about wages, or in the rules against the placement of materials or notices on the wall of the plant, or talking during worktime, Hakim merely stated, flatly, that these rules had always been in effect and had always been enforced, and certainly were not newly promulgated, or dusted off for use in the union campaign. He presented no evidence beyond his word, about which I have serious reservations. The fact that there is so much undenied and credited testimony that these rules were new, or newly enforced; that some, like the posting of materials on the walls and pillars of the plant, were disparately enforced only against union activists leads me to the conclusion that all of these rules, however venerable their origins, were resurrected for defensive and offensive use in the campaign against the Union.

Finally, I note in the Company's "Rules and Regulations" required to be signed by all employees (R. Exhs. 3 and 4) there is no mention of these rules we are considering here.

I therefore find, with respect to paragraph 18, that the rule was either nonexistent, or had been disused for some time, and was enforced to keep Candy Balsamo from having access to a broad range of employees in her rounds to sign up people for the church lunches. This was a violation of Section 8(a)(1) of the Act.

24. Paragraph 19 of the consolidated complaint alleges that on or about May 22, 1991, the Respondent promulgated, and has since maintained, a rule prohibiting the placement of materials on its walls.

Paragraph 20 alleges that on or about May 21, Irma Antley, a supervisor, maintained and enforced the rule in a selective and disparate manner.

Virginia Herrington worked as a baby clothes inspector at the Company from March until July 1991. She became active in the union campaign. She attended union meetings, wore union T-shirts, distributed leaflets in front of the breakroom entrance, and she helped to carry a banner bearing a "Union-Yes" message at the court house the day of the representation case hearing. Irma Antley, Herrington's supervisor, described her as a "Union girl" and knew her to be an activist.

On May 22, 1991, Harrington put up some pronoun fliers and stickers on the wall near Antley's office. Antley came to her later and asked if she had put them up. Harrington ad-

mitted it, and Antley told her not to put them up any more. When Herrington asked why, Antley went to Edward Hakim's office. When she returned, she told Herrington that Hakim did not know there were any antiunion posters and "stuff all over the place." Hakim had told Antley that they would take down all the posters and signs.

Herrington stated, however, that the antiunion posters were not taken down. They were in Irma Antley's office window, in the breakroom, in the bathroom, and an antiunion employee was putting up posters saying "Vote no and save your dough" all over the plant. These antiunion posters stayed up until the election was over.

Candy Balsamo testified that antiunion notices were put up by antiunion employees a couple of days before the election. They were above the timeclock and all over the breakroom. Balsamo then put up union notices over the timeclock, on her machine, and in the breakroom. Ethel Henderson told Balsamo that if she was caught putting up notices she could be laid off or terminated.

Henderson testified that there was a rule about putting things up on walls, and said that she told Balsamo that she could put up notices only in the breakroom. She denied that she ever told Balsamo to take down any notices.

Irma Antley, the stitching floor supervisor, testified that in 1991 they were told not to put any materials on the walls. She did not recall how long that rule was in effect.

Hakim testified, as with the other rules cited in the complaint, that the rule against posting on the walls and pillars had been in effect for 20 years. He said that tape or staples used to affix materials to the walls would damage the paint and necessitate repainting.

I think from this testimony that it is clear that even if there had been a longstanding rule against posting, that rule was not enforced except against pronoun employees and posting in the period beginning in May 1991, just before the union election. I therefore find a violation of Section 8(a)(1) in this incident.

25. Paragraph 21 of the complaint alleges that the Company promulgated a rule against talking during worktime in May 1991, and enforced this rule, as alleged in paragraph 22 of the complaint, disparately only against employees who supported the Union. Paragraph 42 alleges that Virginia Herrington was given a warning on or about July 22, 1991, for talking.

Virginia Herrington testified that there were no rules against talking to other employees when she started to work in March 1991. Workers normally talked to each other. Right after the election Irma Antley told Herrington to quit talking. She repeated this order "ten times a day" in a "nasty tone of voice," "through gritted teeth." Herrington heard her warn another person "real nice."

Irma Antley testified that there was no rule against talking, provided the employee remained at the work station. Antley stated that Edward Hakim came to her and said that he had found Herrington away from her work station, and he told Antley to give Herrington a warning slip for being away from her worksite.

Hakim testified that employees could talk, but were not supposed to leave their machine or go to another department to talk. They could not quit working in order to talk to other people.

In this case, I do not believe that the General Counsel has shown a prima facie case in respect to these allegations. Herrington testified that Antley warned her about talking, but the only disparate treatment she mentioned was that Antley had used a nasty tone of voice in warning her, and a nice tone of voice in warning others. The treatment seemed to be the same, and the only disparate part, was the way the treatment was administered. Hakim's instructions to Antley to issue a warning to Herrington was not for talking, but for being away from her work area, a restriction which appears in several places in the Company's rules and regulations (R. Exh. 4).

26. Paragraph 23 of the complaint alleges that the Company promulgated the rules described in paragraphs 15, 18, 19, and 21 in order to discourage its employees from supporting the Union. I so find with respect to paragraphs 18 and 19 but not as to paragraphs 15 and 21. Reference is made to the discussions in sections III,C,21 through 25, above.

27. Paragraph 24 of the consolidated complaint alleges that in or about September 1992, the Company promulgated a rule orally that employees no longer could bring in drinking cups bearing union insignia to their work areas.

Paragraph 56 of the complaint alleges that the Company, without bargaining with the Union, in or about September 1992, refused to allow its employees to bring drinking cups bearing union insignia to their work stations.

These allegations differ only in the applicable subsection of Section 8(a) of the Act. In paragraph 24, the subsection is Section 8(a)(1) and in paragraph 56, the subsection is Section 8(a)(5).

There is no question that there was a company rule forbidding eating and drinking in work areas, but those rules had not been generally enforced. According to Felicia Kennedy, supposedly all cups were forbidden in work areas, but people kept bringing them in. Some had labels such as "CITGO," "China Stores" or "Cracker Barrel." Kennedy brought one marked "Union Yes." She had brought this cup to work both before and after the union election on June 4, 1992. Then, in September, Saul Hakim, who was in charge of security at the plant, told Kennedy that she couldn't bring "that thing" in here.

Marilyn Smith, another employee and union supporter, testified that she had a "Union Yes" cup which she had been accustomed to bring in to her work station. Ida Bradshaw, Smith's supervisor, told Smith that she couldn't bring the cup into the plant. Bradshaw explained that it was one of Saul's rules. Smith said that she did not use the drinking fountain, and Ida Bradshaw told her to take the cup and put it aside so that no one would see it.

Saul Hakim, who is another brother of Edward Hakim, testified that there always had been a rule about food and drink in working areas. The rule was supposed to be posted in various places in the plant, but the notice which was introduced in evidence here (R. Exh. 50) was posted on December 8, apparently in 1992. Saul stated that Buddy Bradshaw had told him about a spill of some kind of soda on merchandise which was being prepared to ship out. This incident was reported to Edward Hakim, who told Saul and Bradshaw to repost the notices forbidding food and drink in work areas. Saul saw that the rule was reposted, and spoke to his security guards about reminding employees to observe the rule.

Buddy Bradshaw, plant manager of Monroe Manufacturing, testified that a serious spill of some kind of liquid on merchandise had occurred right before December 8, 1992. Bradshaw reported it to Saul, who took it from there. Bradshaw had nothing more to do with it.

Looking first at the enforcement of the rule, it was very lax, but it was nonetheless a rule which had been adopted at some time before the advent of the Union. Whether the spill described by Bradshaw happened in September or December 1992 is not important. Another spill could have set the wheels in motion. Someone observed that the notice concerning this rule was missing, and steps were taken to enforce the rule. According to Marilyn Smith, however, the enforcement was not airtight. Ida Bradshaw, while reminding Smith of the rule, also told her, after a little discussion, that she could bring the cup in but told her to keep it where no one would see it. Smith testified about cups bearing different logos being brought in by others, and even being used in the plant.

I cannot find here that the rule was new or that it was enforced disparately by management against union supporters. I, thus, find no violation of Section 8(a)(1) as alleged in paragraph 24, and no violation of any duty to bargain as alleged in paragraph 56.

28. Paragraph 25 of the consolidated complaint alleges that about June 17, 1991, a group of the Respondent's employees including Kim Grayson, Karen Brandon, Mattie Adams, Victoria Johnson, Michele Duchesne, Hattie Broadway, Liz Davis, and Sharon Bell concertedly complained to the Respondents regarding the wages, hours, and working conditions of the Respondent's employees.

This allegation is not in issue. This meeting has already been described under paragraph 9(e) of the consolidated complaint (sec. III,C,7).

29. Paragraph 26 of the complaint alleges that on or about July 8, 1991, at the Texas Avenue plant, the Respondent promulgated, and has since maintained, rules prohibiting employees from eating on the job except for hard candy or gum, and from leaving their work stations during worktime.

I think that even though the Texas Avenue plant was a separate location from the main plant on DeSiard, the same rules would apply throughout the Company. Since this is so, and I have found that the prohibitions against eating and drinking in work areas were in effect before the first union campaign in 1991 in the main plant, they should likewise be in effect at Texas Avenue. The prohibition against leaving work stations is contained in the rules and regulations (R. Exh. 4) already cited. I cannot find that the rules were just begun in the summer of 1991.

However, there is a question of enforcement of the rules. Elizabeth Davis, assistant supervisor at Texas Avenue, testified credibly that eating and drinking went on unchecked at that plant. But there apparently was another spill on merchandise sometime in July, and Davis testified that Sam Anderson said that the rules against eating and drinking would now be enforced.

Karen Brandon, who I have found to be a credible witness, testified that Anderson announced the new enforcement of the rule prohibiting the leaving of work areas in the first week of June. According to Brandon, Sam Anderson came into the paint department and said to Brandon, Kim Grayson, Hattie Broadway Davis, and some others that Davis was hav-

ing trouble with people leaving work stations. She said that from then on, "if you left your work station, you could be suspended for 1 week. If you did it again, 2 weeks' suspension, and the third time would result in either a 3-week suspension or discharge."

Hattie Broadway corroborated the sense of this warning, but she placed Anderson's announcement as being on July 8.

I would credit Brandon over Broadway, not because the latter was not telling the truth, but I feel that Brandon had the better memory. Therefore, I find that the work station rule was announced in the first week of June 1991. I cannot say that the union campaign had nothing to do with this restatement of the rule, but the date, 2 weeks or so before the meeting in Edward Hakim's office where employees concertedly presented their grievances over wages and the squalid conditions at the Texas Avenue plant shows that the work station rule could not have been connected to that meeting.

The ban on eating and drinking, according to Elizabeth Davis, the only witness who testified about it, was restated on the day before Hattie Broadway's discharge, which was July 12. This was, as I have found, not a new rule either, and I cannot find that the restatement either of the work station rule, or the eating and drinking rule derive from the June 17 meeting in Hakim's office. There are no other facts or circumstances in this record which could lead to a finding that these changes in enforcement policies were adopted as a result of union activity.

30. Paragraph 27 of the complaint alleges that the Respondent suspended employee Kim Grayson for 2 weeks. Paragraph 28 alleges that the Respondent engaged in the conduct described in paragraphs 26 and 27 because its employees engaged in the conduct described in paragraph 25 (concerted protected activity), and to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The suspension of Kim Grayson occurred at the meeting between the paint department employees and Edward Hakim in his office on July 17, 1991.

The events which led up to the meeting are described above in section III,C,7 of this decision. The employees in the paint department at the Texas Avenue plant were unhappy with their production rates which had not been increased since the raise in the minimum wage. They were also fed up with conditions at the plant, cold in the winter, hot in the summer, no public telephones, no snack or soda machines, and problems with fleas and rodents.

At the meeting there was a lot of good-natured talk at the beginning. Hakim then said he would get some fans for the summer weather, pay telephones, and snack machines, but he would not, or could not, make any pay adjustments for them. Grayson testified that she said that this was like stealing from the employees. Hakim replied that he couldn't do anything for them until he paid off his lawyers. Whether he was joking or not is not revealed by the record, but Grayson obviously thought he was serious because she testified that she said that what he was telling them was that they "are supposed to bend over and grab our ankles until you pay off your lawyers." Hakim then told Grayson she had a 1-week suspension. Hakim testified about this incident, recalling that he was talking about some charts he had which "proved"

that he could not give any pay raises. Grayson then said, "I guess we just bend over and grab our ankles and take it in the ass." He told her not to talk like that, and that she had just "bought yourself a week off."

Now we have in this record a couple of examples of Grayson's use of obscenities. Karen Brandon testified that in a conversation with Sam Anderson, which Brandon witnessed, Grayson, in response to question from Anderson, replied that they were being "fucked over." Brandon commented that this language from Grayson was not unusual, she spoke like that quite frequently. There is also a warning in Grayson's file giving her a 90-day suspension as of July 15, 1991, for telling an assistant supervisor to "kiss her ass." (R. Exh. 132c.)

So there is no reason to doubt that she could have said what Hakim said she did. I would be naive if I wasn't aware that what she reported that she said lacks a punch line. The statement really means nothing without some kind of conclusory statement. But none of the other people who were at this meeting and who testified here, including two supervisors, agreed with Hakim's recollection of what Grayson said.

Karen Brandon said that Grayson said, "Well, at this point we might as well bend over and grab our ankles." Elizabeth Davis, the assistant supervisor, testified that Grayson said something like "reaching over and grabbing your knees." Sam Anderson, noting that Grayson was upset, recalled that everyone was laughing and talking all at once, when Kim Grayson said, "What do you do, bend over and grab ankles," or something like that.

In view of this testimony, I think that Hakim may, in the confusion, have thought he heard a punch line that was not, in fact, delivered. In any event, he reacted swiftly and thoughtlessly, pronouncing Grayson guilty without any trial, lacking the calm judicial manner he is so proud of in his handling of employee discipline. I find that Hakim was mistaken in his impression of what Grayson said, but that he objected to her vehemence in disagreeing with him, and proceeded to teach her a lesson.

Grayson, after receiving the 1-week suspension, remained in the room, and the meeting went on. Hakim testified that she kept talking, but he did not say what she was saying. Brandon testified that after the meeting had gone on a little while, Hakim turned to Grayson, saw that she was there, and asked if she had a problem. She asked if she was still employed, and he replied that she was just suspended for a week. She then said that this (meeting) had to do with her job and she wanted to hear it. Hakim then said she was suspended for 2 weeks and asked if she would like to try for three? Grayson then left the room.

Based on all these facts, I find that Grayson's two suspensions were based, not on obscenities and disruption of the meeting, but on Hakim's anger at being questioned by her, and by her impudence in insisting that she stay to listen to a meeting on matters that concerned the job. I find these suspensions to be violations of Section 8(a)(1).

I do not believe, in view of my findings on paragraphs 26 and 27, that the actions of the Respondent in paragraph 26 were taken to discourage employees from engaging in concerted activities. But I think Hakim's actions in suspending Kim Grayson, as alleged in paragraph 27, would tend to dis-

courage employees in the exercise of their rights to engage in protected concerted activities.

31. Paragraph 29 of the complaint alleges that on or about July 12, 1991, the Respondent terminated its employee, Hattie Broadway. Paragraph 30 alleges that the Respondent did this because Hattie Broadway violated the rules described in paragraph 26 (eating in a work area) and also to discourage employees from engaging in concerted activities.

Hattie Broadway was employed as a painter of baby bottles from May 1989 until she was discharged on July 12, 1991. She was employed during the union campaign in the spring of 1991, but, by her own testimony she never became involved in union activity.

She did, however, attend the June 17 meeting of employees in the paint department and Edward Hakim in Hakim's office (see sec. III,C,7 and III,C,30 for discussions of this meeting). Broadway testified that she spoke up during this meeting to complain about the fleas, about vending machines and the lack of telephones, but she added that "pretty much everyone" raised the same problems.

As I have found in connection with paragraph 26 of the consolidated complaint (sec. III,C,29 above), there had been a rule against eating and drinking in work areas, but it had generally been ignored with the unspoken approval of the supervisors at Texas Avenue. Apparently there was a spill of some sort of liquid on merchandise either at Texas Avenue or DeSiard Street early in July. Elizabeth Davis testified that she had been told by Supervisor Sam Anderson that the rule was reinstated and would be enforced from then on. In addition, both Broadway and Karen Brandon testified about the restating of rules against leaving work stations without permission. The evidence shows, however, that enforcement, particularly about the leaving work station rule was not generally followed up. Karen Brandon testified that employees ordinarily left their work stations, on legitimate company business, to fill up their paint bottles, to get a new supply of baby bottles, to go to the rest rooms, and to help others, less experienced workers in setting up paint guns. They had always done this in the past and there were no problems.

On the morning of July 12, Sam Anderson was getting ready to go over to the DeSiard plant together with Liz Davis and Kim Grayson for a meeting in Hakim's office.²⁸ They had gotten out to the car when Anderson realized she had forgotten some papers. She went back into the plant where she saw Hattie Broadway eating a peach, and "running around." Anderson said she described it in a "kidding way" "Hattie, why don't you just clock out for the rest of the day and eat that peach." Broadway admitted that she was eating a peach and that she had left her work station in order to ask another employee, Victoria Johnson, where they were going to eat that day. Sam Anderson told Broadway to go home for the day because she was away from her work station. Broadway retorted that Anderson should send the other people who had left their work stations home, too. Anderson said for her not to worry about the others, "just you go home." Broadway said she didn't have any way to get home, and she walked back to her work station. At this point, An-

²⁸ This concerned an incident where Grayson had told Davis to "kiss my ass." As it turned out, Grayson got a 90-day suspension (R. Exh. 123(c)) for this, but there is no allegation in the complaint covering this incident.

derson clocked her out, and matters escalated. Broadway went up to the timeclock and said that she was tired of this, and that she was going to the Labor Board. Anderson said she could do whatever she wanted, and they began to argue, words were exchanged, among which was an accusation, admitted by Broadway, that Anderson was a "liar." After a few minutes Broadway started out the door. Anderson sent another employee to get Broadway's handbag, and Victoria Johnson clocked out to drive her home. Anderson then told Broadway that she was getting a week's suspension for that. Broadway answered that "I don't have myself nothing—I am not coming back—I quit—I am going to the Labor Board." Anderson said, again, that she should just do what she wanted to do. Broadway then went out the door, shouting "fuck you" to Anderson.

After this, Broadway left, and Anderson went to the meeting in Hakim's office. While she was there she described the incident to Hakim. She made no recommendation to him, but told him, that Broadway was running around eating a peach, and she got "ugly" with Anderson, disrespectful and cursing her. Anderson also told Hakim that Broadway had threatened to go to the Labor Board and that she had cursed her as she went out the door. At that point, Hakim said "go ahead and let her go."²⁹

This statement of the facts is drawn from the testimony of Broadway and Anderson which does not differ substantially on the material issues.

The Respondent maintains in its brief that there is no link between Broadway's concerted activity, which consisted only of her attendance and comments at the June 17 meeting. But, even if there was a connection between that June 17 meeting, and Broadway's discharge almost a month later, the Respondent has "proved" it would have suspended and discharged her anyway for eating on the job, for insubordination and the use of profanity.³⁰

The Respondent is probably correct in its argument that Broadway's activities at the June 17 meeting, concerted and protected as they were, were not part of the reasons for the discharge. The real reason, I believe, came out in Anderson's testimony about her meeting with Hakim shortly after the row with Hattie Broadway when Anderson told him about the incident, ending with Broadway's threat to go to the Labor Board. Since Hakim did not testify on this issue, we do not have his version of his motives for the discharge, but having observed him as he testified here, and having listened to, and reread all of the testimony in this case, I think I am justified in inferring that Broadway's threat to go to the Board was the determining factor in his decision. Although this reason was not listed in the complaint, I believe that the matter was fully litigated. It is, after all, the Respondent's privilege to decide what counsel will ask its witnesses. If it is decided not to pursue a particular subject, then it cannot later say that it did not have the opportunity to put in evi-

²⁹ Anderson attempted to hedge this testimony, but finally did admit that when she told Hakim about the Labor Board that was when he told her to fire Broadway.

³⁰ The testimony of Davis, Anderson, and Broadway is in agreement, and is clear that eating did not figure in the original decision to discipline. This decision was only for being away from the work station. The only time eating is mentioned is in the discharge notice dated June 12, 1991. That notice does not mention profanity at all. I think these shifting reasons should be taken into consideration.

dence on any point which could have been covered by the missing testimony.

I, therefore, find that Broadway was discharged because she threatened to go to the Labor Board, in violation of Section 8(a)(1).

32. Paragraph 31 of the consolidated complaint alleges that employees Carolyn Smith, Margaret Grace, Ruby McKinney, and Vanessa Brewster concertedly complained to the Respondent on July 16, 1992, regarding the wages, hours, and working conditions of the Respondent's employees. Paragraph 32 of the complaint alleges that on the same date, July 16, 1992, the Respondent failed and refused to recall from layoff or rehire the employees listed in the prior paragraph. Paragraph 33 of the complaint alleges that the Respondent took the action listed in paragraph 32 because the employees had engaged in the conduct stated in paragraph 31, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Paragraph 53(b) of the consolidated complaint alleges that the Respondent, by Edward Hakim, bypassed the Union and offered employees recall from layoff to locations different from the locations where the employees had been employed prior to layoff and implementing those recalls about July 27, 1993.

Taking the facts in this matter from the beginning, the record shows that in July 1992 the Company lost its contract with a major customer for sleepers. Hakim did not notify the Union.³¹

As a result of losing the contract, Hakim called the employees from the sleeper line and offered them (or some of them) positions in other parts of the Company. We are concerned here only with the four employees named in the complaint, Carolyn Smith, Margaret Grace, Ruby McKinney, and Vanessa Brewster.

Carolyn Smith testified that she had worked for the Company since 1987, in the sewing department. During the 1992 union campaign, Smith had passed out leaflets, wore union T-shirts, and got people to sign cards. She wore the T-shirts while passing out literature and she said she was seen by Supervisors Dee Bryant, Vernon Saxon, Scott McKinney, and Edward and Saul Hakim.

At the July 16 meeting with Smith, Margaret Grace, Vanessa Brewster, Ruby McKinney, and some other employees, together with Hakim and Supervisor Ida Bradshaw, Hakim told the employees that they were being transferred. Margaret Grace testified that she asked Hakim why they were being transferred and he replied that it was none of her business. He then asked her why she had a brown purse. She told him that was none of his business. Smith testified that after this exchange Hakim said to Grace, "That's why people like you are out of a job, for being so smart." Smith smiled or laughed at this and Hakim turned on her, saying that was why she was out of a job, she "smiled too much."

Hakim then passed out papers to each individual saying that they accepted the transfers "of their free will and without promise or coercion." (R. Exh. 128(a)-(b).)

Smith had talked to a union representative named Karen before she went to the meeting. Karen had told her to put down the word "coerced" on the paper if they felt as if they were being coerced. Smith relayed this advice to McKinney, Grace, and Brewster. Then, feeling coerced by this procedure, Smith and the others wrote the word "coerced" or "coercion" on their forms. If Hakim's temper was a bit short when Grace asked him why they were being transferred, his mood did not improve when he looked at the signed forms. He threw them down, and said, according to McKinney, that he couldn't help them, he couldn't take these forms. He picked up their employee badges and the four women left.

Cooler heads must then have prevailed, because about 2 weeks later, the four employees received letters asking them to come in to the plant. They met individually with Hakim on July 27, and even though the new forms he gave them still had statements about free will and no coercion they needed jobs and they signed.³²

I don't believe there is any question, first, that the transfers were not voluntary. Whether they were mandated by real economic necessity, or imposed by the whim of management, is not important. What is important is that for whatever reason, the forms were really some kind of release, although I cannot presume to guess what kind of liability the Company was seeking to avoid.³³

The advice given the employees by Karen might not have been too good an idea either. They could have signed the forms without waiving any rights they might have. The coercion was there whether they signed a paper that it wasn't there or whether it was. But they did talk about it and they agreed to put on the record their disagreement with this condition of employment, that their transfer was voluntary and not caused by coercion. I find that the actions of the four employees were constituted protected concerted activity. *Meyers Industries*, 281 NLRB 882 (1986).

Given that finding, there is no question that the actions of Edward Hakim in refusing to accept their transfer forms, and forcing them to spend 2 more weeks or so out of work is a violation of Section 8(a)(1) and (3) of the Act.

Together with this violation, I find also that by failing to notify the Union of these layoffs the Respondent has further violated Section 8(a)(1) and (5) of the Act.

33. Paragraph 34 of the consolidated complaint alleges that on or about January 11, 1993, Karen Brandon and Victoria Johnson concertedly complained to the Respondent about working conditions in the Texas Avenue plant. Paragraph 35 alleges that Karen Brandon and Victoria Johnson were suspended for 2 days on January 12, 1993. Paragraph 36 alleges that the Respondent engaged in the conduct described in paragraph 35 because the employees had engaged in the conduct described in paragraph 34, and in order to discourage

³¹ In July 1992, the Respondent had filed objections to the election and had not yet recognized the Union. However, where the Union had obtained a majority in the election, and was later certified as the bargaining representative for these employees, the Respondent acted at its peril in unilaterally dealing individually with employees. *Mike O'Connor Chevrolet-Buick-GMC Co.*, 209 NLRB 701 (1975); *Allis-Chalmers Corp.*, 286 NLRB 219 (1987).

³² McKinney had some problems with reporting back at once, but that does not concern us here. There are no allegations on that part of the incident.

³³ Hakim's testimony was of no help in answering this, or any questions, about this incident. He did not recall, said he hadn't heard the tapes yet, and had not reviewed the affidavits he gave the Board. He did say that this kind of thing had been his practice for 20 years.

employees from engaging in such actions or other concerted activities.

Karen Brandon testified that she was still working at the Texas Avenue plant in January 1993. In contrast to the situation in June 1991, when fans were required to combat the heat in the plant, in January 1993, the heat was off completely. Virginia Johnson, another painter, testified that the temperature on January 11, 1993, was 30 degrees outside and she thought about 20 degrees inside the plant. Besides which, according to Brandon, it was damp, with holes in the roof allowing rain to come in.

January 11 was a Monday and the heat had gone off on Friday about 1:30 p.m. Brandon spoke to a number of other employees, and to Elizabeth Davis, the assistant supervisor. Davis, said that someone would be coming over to fix the heater. No one showed up and people continued to complain. Davis said that she had called Mike Henagan at the DeSiard plant and he said he would send someone over. He did, according to Davis, but that person couldn't fix the heater.

At about 12:30 p.m., Brandon and Johnson said they were going home because it was too cold to work. They left about 12:30.

On the next day they returned to work and were told by Davis that they were suspended for 2 days, because they had left before the end of their shift without permission.³⁴

Elizabeth Davis testified about the cold, and the problem getting the heater fixed. She agreed that the employees were complaining and she said that both Brandon and Johnson told her they were going home if the heater wasn't fixed. But she said they did not come to her and ask if they could go at the time they left.

According to Davis, right after Brandon and Johnson had left, a man came and fixed the heater. Davis reported to Mike Henagan that the two women had left and he told her to give them 2 days off.

There is no question that the activities of Brandon and Johnson were concerted and protected. Their protests were protected, and I believe their walkout was protected. The Company certainly has rules, but when employees walk out over a serious problem with working conditions, after giving notice of what they were doing, when they were going to do it and why they were going to do it, a disciplinary penalty is unwarranted and the actions of the Company violate Section 8(a)(1) of the Act.

34. Paragraph 37 of the complaint alleges that from on or about April 16 until on or about May 23, 1991, the Respondent refused to offer overtime work to employee Candy Balsamo. Paragraph 38 alleges that since on or about April 16, 1991, and continuing until on or about June 4, 1992, the Respondent has refused to allow employee Candy Balsamo to make up lost hours of work.

Candy Balsamo was, as has been noted, a union activist in the 1991 campaign. Balsamo testified that before she appeared at the April 16, 1991 representation case hearing, she could work overtime almost any time she wished. If she had a doctor's appointment or a lawyer's appointment she could take the time off, then make up the hours by working late on Saturday, or even on Sunday, if there was work.

³⁴ Johnson testified that they were actually suspended for 4 days, not returning until Friday, January 15.

After the hearing on April 16, she was not allowed to do it any more. Ethel Henderson gave her the excuse that the department payroll was too high. Balsamo gave the names of antiunion employees who were called on to work overtime, Kenisha Burns, Cheryl Tripp, Susan Green, and Rachel Glass.

After the election on May 23, 1991, which the Union lost, Balsamo testified, she started working overtime again.

Henderson admitted that she did refuse to offer overtime to Balsamo, and she said it was in 1991, but she could not remember just when in 1991.³⁵ I can take Henderson's answer here as an admission, but I do not view it as a denial that she stopped Balsamo's overtime.

On the question of company policy to allow time to be made up by the assignment of overtime, both Vice President Brady Gray and Plant Manager Michael A. Henagen denied that there was any company policy that permitted the use of overtime for that purpose. But both of them admitted that the practice might be allowed by supervisors within the constraints of budget and available work.

There being no contradiction of Balsamo's testimony either in the general policy of the Company, or in the day-to-day administration of the blister pack department, I find that Balsamo was deprived of the opportunity to earn overtime during the period between the representation hearing and the union election.

I find this to be a violation of Section 8(a)(1) and (3).

Paragraph 38 of the complaint both overlaps and extends beyond the allegation in paragraph 37. It seems to me there is some sort of administrative error here. Balsamo's testimony does not differentiate between the two separate allegations, and she did testify that overtime again became available to her after the May 23 election. I cannot find any evidence which would extend the period she was deprived of overtime from May 23, 1991, to June 4, 1992, and any finding I would make that extended the overtime denial period would be contrary to the testimony of Balsamo.

I, therefore, find that the General Counsel has not shown a violation as alleged in paragraph 38.

35. Paragraph 39 of the consolidated complaint alleges that Albertina Moy was suspended by the Respondent for 5 days on June 17, 1991. Paragraph 40 alleges that the Respondent did this because Moy violated a rule (par. 15 of the complaint, alleging a new rule requiring employees to work overtime) and to discourage employees from engaging in activities on behalf of the Union and other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

Albertina (Tina) Moy was a known union adherent as demonstrated by her open activity on the company premises in 1991. Hakim was aware of this as reported by Candy Balsamo in her testimony about the meeting on June 22, 1991. An interview of Moy by a local television station was broadcast on May 23, the day of the election.

On June 12, a Wednesday, Moy was working a scheduled 7 a.m. to 5 p.m. shift. In the afternoon, about 3:30 p.m., she developed a pain in her side. She had a kidney infection and felt that she could not keep working. She told Assistant Su-

³⁵ She may have been confused because there was another incident involving overtime with Balsamo and some others. See sec. III,C,36, below.

pervisor Mary Malta that she was leaving, but gave her no reason. Malta said, "Ok," and Moy left. The next day Malta told Moy that she was to be laid off for 1 day. Moy complained that two other employees had also left early. Malta told her that one of those was being written up, but the other had permission to leave. Moy still complained, so a meeting was set up with Plant Manager Mike Henagan and a group of employees. Henagan told them that from now on their hours were 7 a.m. to 5 p.m.; when it was time for them to work overtime they had to work it. If the orders did not get out he was held responsible. So, he said, "Don't let it [leaving early] happen again." He dismissed everyone and they went back to work.³⁶

A second meeting on the same subject was held on the next day with Gwen Anderson, the personnel director. Anderson told a smaller group of employees, including Moy, the same thing as Henagan had the day before, adding that they had to show respect for Henderson by starting to work overtime.

On that same day,³⁷ Moy testified that she was called up to Hakim's office. Henderson was there, with Mary Malta, Julie Gonzalez, and someone named Susan. Hakim went through his usual routine with the tape recorder and then asked Moy why she was making fun of Henderson when she passed by the machine where Moy and Gonzalez were working. Moy told him that she didn't work with Gonzalez that day and that she did not make fun of Henderson.

Hakim then asked her why she left work early on "last Wednesday." She told him she left because her side was hurting, and she had a kidney infection that month. He said that had nothing to do with it and when they had to work overtime they had to work from 7 a.m. to 5 p.m. Then he told Moy to go back to work.

About 10 minutes later Mary Malta came and told Moy to come back to Hakim's office. When they were there Hakim asked Moy again why she left on Wednesday. Again she told him that her side was hurting. He then asked Malta if Moy had told her that her side was hurting and Malta said she had not. Hakim then said, "a week layoff, write her up." Before that occasion Moy had left early and had never been disciplined. No one was ever suspended for leaving early, so far as she knew, and there is no evidence that the other employee who was originally going to be disciplined by Mary Malta was in fact accorded the same treatment as Moy.

Hakim did not testify on this meeting, and since I have excluded all tapes and transcripts from evidence here (R. Exh. 70) I find that there has been no denial of Moy's testimony. I therefore find that Hakim knew of Moy's union activity, and that his discipline of her was inconsistent with his treatment of other employees. In the absence of any logical explanation of this, I infer and find that his motive in disciplining Moy was her union activity and that his actions violated Section 8(a)(1) and (3).

36. Paragraph 41 of the consolidated complaint alleges that on or about July 8, 1991, and continuing until on or about August 6, 1991, the Respondent refused to offer overtime

³⁶ Apparently the 1-day suspension was canceled.

³⁷ Moy may have this a little mixed up. If she left early on June 12, then the meeting with Henagan was on Thursday, June 13, and the meeting with Gwen Anderson on June 14. So the meeting with Hakim was on June 17, and not on the same day as the Anderson meeting.

hours to employees Candy Balsamo, Carmen Crumby, and Rebecca Sue Kelly.

Candy Balsamo testified that on July 8, 1991, Henderson said that certain people must leave at 4 p.m., Candy Balsamo, Carmen Crumby, Rebecca Sue Kelly, and Julie Gonzalez. Henderson told Balsamo that she was just a supervisor and if there were any complaints, go upstairs and see Edward Hakim.

Rebecca Sue Kelly testified that she was working at packing one day (July 8) about 4 p.m. and Henderson came up to her and said that it was time for her to go. Kelly looked at her and she said, "Yes, you have to leave the building now." When Kelly asked why, Henderson told her that it was not her, that the order came from "upstairs."

Edward Hakim testified about this incident. He said that Henderson had come to him at some point and said that she had a problem with two or three women not wanting to work overtime as required, basically refusing, and saying that it was illegal to make them work overtime. Hakim said if these girls don't want to work overtime, don't give them overtime.

After this, according to Hakim, he received a charge (from the Labor Board) that these employees were refused overtime (see Case 15-CA-11602-1 filed August 2, 1991). Hakim went to Henderson and said that he didn't need this headache, "give them whatever overtime they want."³⁸ He then ordered Henderson not to force them to work the overtime.³⁹ Hakim continued by saying he then got more charges, but I could not find any which are on point.

Balsamo had a different scenario for the change in the overtime policy. She testified that after July 8, when the overtime was stopped for the four women, other employees began to resent the fact that these people were going home early when they were forced to stay. So Balsamo and the others made up stories that they all had other jobs to which they had to go at 4 p.m. every day. They told this to a person they knew would tell Henderson the story. Sure enough, the person they told the story to went to Henderson, Henderson then went upstairs, and came down around 4 o'clock, came to Balsamo and told her that she had to stay until five. After that they all got overtime.

While these stories, Balsamo's and Hakim's, are logical, and even amusing, the question is whether Hakim violated the law by cutting off the overtime back in July. There is no question that the overtime may have been necessary, but the right of employees to get together and protest is protected by law. Thus, Hakim's action in cutting these four women off from any overtime, whether they wanted it or not, interfered with, restrained, and coerced them in their Section 7 rights, and constituted a violation of Section 8(a)(1) of the Act.

37. Paragraph 43 of the consolidated complaint alleges that on or about October 22, 1991. The Respondent issued a disciplinary warning to Candy Balsamo, and paragraph 44 al-

³⁸ Hakim also stated that he received charges after this that these women were forced to work overtime. The only charge even close to the summer of 1991, which charges that Candy Balsamo was forced to work overtime, was an amended charge in Case 15-CA-11602-1 filed on February 24, 1992. It is likely that Hakim was exaggerating on this point.

³⁹ He would have been better off if he had done that in the first place.

leges that on that same date, the Respondent suspended Candy Balsamo for 1 week.

Candy Balsamo was working on a blister pack machine with two other employees—Ella Cater and Linda Brownell. On October 22, Balsamo testified that she was working when she tripped over her shoelaces. She sat down to tie the laces, double knotting them. She looked up and saw Mike Henagan up in an office located on a mezzanine 10 to 12 feet above the shop floor. Hennigan was standing inside Debra Averette's office looking at her through a glass window. When he saw she was looking at him he made a thumbs up gesture to tell her to get up.⁴⁰ Henagan then asked another employee to call the three employees who were working this machine, together with Henderson, to come up to the office where he was standing.

Balsamo testified that she, Cater, Brownell, and Henderson all went up to the office. Henagan said to her, "I guess you know why you are being wrote up." Balsamo said, "No," and Henagan replied that he had timed her sitting down for 5 to 7 minutes. He wrote her up but neither Balsamo nor the other two women would sign the writeup. The employees went back to work until Henderson came by and told Balsamo she had a 1-week suspension.

Ella Cater testified that Balsamo was tying her shoe. Cater stated that she went up to the office and that she refused to sign the writeup because it said Balsamo had been sitting for 15 minutes and Cater said that was not true.⁴¹ On the next morning Henderson said that Mike Henagan told her that Cater and Brownell must be for the Union because they did not sign the writeup.

Linda Brownell testified that on October 22 Balsamo said that she was tired, and she sat down on a box behind where she had been standing. Brownell looked up and saw Henagan looking at them, then motioning at Balsamo. Another employee came by and said they were wanted upstairs. Brownell stated that Balsamo turned to Cater and told her they had to come up with a good idea (to explain) her sitting on the box. She then said "tying her shoes." Then they went upstairs. While they were there Brownell did not tell Henagan about the conversation between Balsamo and Cater, but she did not remember whether she told him that Balsamo was not tying her shoe.

Mike Henagan said he was in Debra Averette's office to answer or to make a telephone call. He looked out over the shop floor and saw Balsamo sitting down and watching a supervisor down at the other end of the building. She was there at least 5 minutes because he timed it with his watch while he was on the telephone. He did not see her tying her shoe.

I have credited Balsamo in much of what she said in this case. In this instance, however, I think that even if she did have to tie her shoe, she could have completed that before Henagan spotted her. But I think she continued to sit after the shoe was tied, in violation of the rule that she must remain standing.

Henagan was a fairly reliable witness, although I do not credit his denial that he knew that Balsamo was a union ac-

tivist. I do not think, however, that that factor influenced him in his decision to write her up and suspend her for a week.

I find no violations in this warning or the 1-week suspension. Indeed, receiving only a week suspension for this offense was unusually mild, considering some of the punishments meted out by management at this plant.

38. Paragraph 45 of the consolidated complaint alleges that on or about December 7, 1991, the Respondent issued a disciplinary warning to Candy Balsamo. Balsamo testified that early in December 1991, Ethel Henderson announced a new rule about people leaving work early. Employees would, from then on, be required to give 3 days' notice in order to leave early. Balsamo had scheduled a "makeover" for Saturday, December 7, and had made a deposit which, apparently was nonrefundable. She, along with some other employees, spoke to Henderson and told her that if they had to work on that Saturday, they would have to leave by one o'clock. Henderson said it was all right. On December 7, however, Henderson told them that they would have to work until they were told to stop. Balsamo told her that she already had permission to leave, but Henderson replied that she didn't care, everybody had to stay, no matter what.

Later that morning Balsamo said that she talked to Brady Gray and told him about the 3 days' notice and the importance of the makeover to her. Gray told her not to worry, that Henderson wouldn't write her up, and Balsamo would be able to make it to the makeover.

However, when she was about to leave (she was not sure whether it was at 1 or at 2 o'clock). Henderson told her she would be written up for leaving.

And so she was (R. Exh. 92). But Balsamo testified that other employees, including Linda Brownell⁴² and Rebecca Sue Kelly, another union adherent.⁴³ Brownell did not testify about this incident, but Balsamo did testify that in a conversation between herself, Brownell, and Henderson, Henderson said tht Brownell was written up for leaving early on December 7. She took Brownell over to her desk and showed her the writeups for both her and Balsamo.

Brady Gray testified that Balsamo had come up to him on a Saturday, in the plant, and told him that Henderson had told her she could not leave. Gray advised Balsamo to go to Henderson and see if she would let her leave and then come back, give Henderson "something to work with."

Later, when Balsamo came to him and told him she had been written up, Gray asked her if she had done what he had advised her to do. She said she had not.

As inconsistent as this situation was, I can find no connection between Balsamo's activities on behalf of the Union, and this writeup, which so far as I can tell (R. Exh. 92) carried no penalty. I particularly note that there apparently was no writeup for Kelly, who left with Balsamo that afternoon. Kelly was active, perhaps not so much as Balsamo, but active nonetheless, and she was not written up for leaving early on December 7.

I find no violation of law in this incident.

⁴²No friend to Balsamo, see reference to her testimony against Balsamo in sec. III,C,38, above.

⁴³There is no indication that Kelly was disciplined or written up for leaving early on December 7.

⁴⁰According to Henderson, these machines had to be loaded and unloaded constantly, so that two of the three people working on it could not sit down while it was operating. The employees would rotate so that each could sit for a certain period of time.

⁴¹The writeup (R. Exh. 90) states Balsamo was sitting for 5 minutes.

39. Paragraph 46 of the complaint alleges that on or about January 6, 1992, the Respondent suspended its employee, Ella Cater (spelled "Cader" in the complaint) for 2 weeks.

In January 1992, just after a Christmas vacation, Candy Balsamo testified that Henderson told employees that no one was allowed to use the front door, which led to the employee parking lot. This door was to be locked for security reasons, and would be used only as a fire door.

Rebecca Sue Kelly stated that most employees had used this door, and, when it was no longer to be used, they had to walk all the way through the building to get out.

Both Balsamo and Kelly testified that even after Henderson had announced that it would not longer be used, new locks had not been installed, but the door did have a sign over it reading "fire exit only." However, many supervisors, including Henderson herself, Mary Womack, Debra Averette, Joe Hakim, Mark Henagan, Mike Henagan, Craig Morse, and Jeff Hill, and employees, including Betty Allen, Angela Trucelli, Marilyn Johnson, a woman named Sandy, and Lillian Elias, continued to use the door as an egress to the parking lot.

Mary Womack, the supervisor on the gift set line, testified that she had been told that she should report anyone she saw using the door.

On January 3, at lunchtime, Womack saw Ella Cater going out the door. Womack told Cater that she shouldn't go out of the door. Cater responded with a sassy but not obscene comment, "I will show you I am going out of it" and added a word which Womack did not recall.⁴⁴ Womack reported the incident to Cater's supervisor, Womack's sister, Ethel Henderson.

Ella Cater had been involved as the seamstress who made all those red ribbons for Ethel Henderson to distribute to employees. There is no indication that she was prounion, but as noted in section III,C,37, above, she was a friend and co-worker of Candy Balsamo and supported Balsamo's shoelace tying abibi to the charge of sitting down made by Mike Henagan in the October 27, 1991 incident.

Cater testified that on January 3, she was going to use the door to leave work. She said it was around 5 o'clock, rather than noontime. Lillian Elias went ahead of her and they both went out the door. Cater was aware of the rule, but she did not mention any conversation with Womack, but she did say that Womack was standing with employee Andrea Pricelli when she went out the door. Cater denied that she had used the word "damn" to Womack.

On the next day, Saturday, a security guard named Rusty and Saul Hakim came by and Saul shouted at Cater, asking her if she had trouble following the Company's rules and regulations. Saul said Womack had said she told her she "didn't give a damn" and was going out the door. Then, on Monday, January 6, Cater's timecard was not in the rack. Henderson met her and told her she was suspended for 2 weeks for going out the door.

⁴⁴She described it as a "big" and, a "slang" word, and a "dirty" word, but said it was not a "curse" word. She could not say for sure that the word was "damn" as in "I don't give a damn," but she did say that the word was on a tape of a meeting held in Edward Hakim's office (R. Exh. 74). A noted previously those tapes and transcripts have been stricken from this record. I make no finding except that Cater said she was going out the door, then went out.

Later that day there was a meeting in Edward Hakim's office. Henderson and Womack were there with Hakim. However, before Cater herself went into the office, she heard Henderson saying that "Ella" was a changed person since she had been talking to Candy Balsamo. When she got into the office Hakim told Cater she had 2 weeks off, and that everybody who went out the door was getting 2 weeks off. Cater asked about Lillian Elias, but Hakim would not give her an answer.

After Cater had served her suspension she saw people still using the door, which was not locked until some time later.

In this case I credit the witnesses, Balsamo, Cater, and Rebecca Sue Kelly, all of whom testified to the use of the door by supervisors and rank-and-file alike, continuing at least until after January 20. I further believe Cater in her recollection of Henderson's talking about change in Cater because of talking to Balsamo. This leads to suspicion that what Henderson was really saying was that Cater, the maker of the procompany, antiunion red ribbons, may have switched her allegiance.

I note, however, in regard to this theory, first, that it was Womack, not Henderson, who initiated the incident, and, second, that Cater and Balsamo were closer than other co-workers, having been teamed, together with Linda Brownell, on the same blister pack machine. I don't think there was any question that they would have talked all during the period they were working there. I cannot, under these circumstances, find an antiunion, or anticoncerted activity motive here. Unfair, the discipline imposed may have been, but there is no evidence that others were not suspended for using the door.

I just do not believe here that the General Counsel has established a prima facie case of a violation of Section 8(a)(1) or (3) here.

40. Paragraph 47 of the complaint alleges that on or about February 27, 1992, the Respondent issued a disciplinary warning to employee Rebecca Sue Kelly.

Rebecca Sue Kelly had signed a union card, had worn a blue ribbon during the 1991 union campaign, and had handed out union literature. She also was the subject of the discriminatory refusal to offer overtime discussed in section III,C,36, above, in July and August 1991. Kelly had also been given a 2-week suspension on February 7, 1992, allegedly for refusal to work overtime.

On February 26, 1992, Kelly's supervisor, Ethel Henderson, came to her and said that she and everyone else had to work overtime that day. Kelly told her she had to let her babysitter know. Henderson said to her that there would be no exceptions this time, "You have to work over."

However, at 5 p.m., the regular quitting time, Kelly observed two employees, Denisa Brown and Cheryl Tripp, leaving, along with Henderson. Kelly asked Assistant Superintendent Mary Malta why and Malta said she didn't know. Kelly said that was not right.

The next morning Henderson called Malta and Kelly into her office. She said she was told that Kelly was "bitching" last evening when Brown and Tripp left work. Kelly said she had just been suspended for 2 weeks for doing that, and it just wasn't right. Henderson said these employees had special permission to leave, and if Kelly got in on time instead of a half hour late she could leave at 5 p.m. also. Kelly said she was sorry but she did not know about a new rule about

coming in earlier. Malta said she had never heard about it either. Henderson said she had told Malta, and wrote a warning for Kelly.

The warning (R. Exh. 98) stated that it was given because Kelly used "foul language saying things that did not pertain to her." When she testified, Henderson said that two employees had come to her and told her that she was cursing on the floor. There was no identification of these employees, and no explanation of what she was saying that "did not pertain to her." Henderson contradicted herself in describing what Kelly said when she was confronted with this allegation on the morning of February 27. At one point she said she took Kelly's silence as a confession of guilt, and later claimed that Kelly had affirmed that she was cursing on the floor.

There was no other penalty for this warning, but I do not credit Henderson's testimony, nor do I credit the warning itself. I find, rather, that Kelly was warned because of her past union affiliations, and because she criticized the disparate enforcement of the order to work overtime.

I find that the Respondent has violated Section 8(a)(1) of the Act in this incident.

41. Paragraph 48(a)⁴⁵ of the complaint alleges that on or about December 9, 1992, the Respondent discharged employee Margie Bracey.

Margie Bracey worked for the Company from September 19, 1989, to December 8, 1992. She worked in packing under Mary Womack. She had exhibited her support for the Union early on when she refused to take a red ribbon from Ethel Henderson. She became interested in the Union 2 months before the campaign started and she distributed leaflets, wore a union T-shirt, visited employees at their homes, and generally talked about the Union. These activities were known to supervisors who observed her while passing out literature, wearing the union T-shirts, and refusing, publicly, to wear the Company's red ribbon.⁴⁶

Bracey testified that she was aware of a company rule that if you were out sick and did not call in for 3 days you were reported as having quit. She also stated that there was another rule that if you were out sick more than 1 day you had to bring in a doctor's certificate. This, Bracey said, was not enforced.

On December 3, 1992, Bracey got sick while at work. She had some kind of virus, she thought. She told her supervisor, Mary Womack, that she was sick, she was going home, and if she did not feel any better in the morning that she would not come in. Womack said all right and Bracey went home.

She still felt bad the next day, Friday, December 4, but she had told Womack she might not be in, so she did not call. However, she asked a friend, Bob Harris, to pick up her check. Harris went to the plant and picked up the check. He told Womack that Bracey was still sick. Womack said that if she felt better she could come in on Saturday.

Bracey did not call in on Saturday, but she was still too sick to go to work. She was no better on Monday, December

7, but she did walk to a pay telephone⁴⁷ about 7:15 a.m. and called the plant. She left a message with Womack's mailbox number.⁴⁸ She said, "This is Margie Bracey and I won't be in." Bracey repeated this same procedure on the December 8.

Then, on December 9, it was raining, so she went to the house of a neighbor, Floyd Adams. She tried to call but could not get through. When she dialed Womack's mailbox number, the machine switched her back to the recorder voice of the machine. Frustrated by this, Bracey called Womack's home. Womack's grandson, Johnny, answered the telephone.⁴⁹ Bracey explained to him that she had called the office but could not get through, and asked him to get in touch with Womack. He said he would call his grandmother for Bracey. He added that because she was sick she didn't need to be out in the weather.

Bracey returned to work on December 10 at 7:15 a.m. As she was going to the timeclock, Womack told her not to clock in, and that she had to see Personnel Director Gwen Anderson. When Bracey asked why, Womack said that she hadn't heard from her in 3 days. Bracey replied that she had called on December 7 and 8 and left messages on the answering machine. Womack replied, "Well, I didn't get the message," and repeated that Bracey had to see Gwen Anderson. Womack made no response when Bracey asked her if Johnny told her that she called.

Bracey then waited until Anderson came in, a little after 9 o'clock. When she arrived, Anderson called Bracey, Womack, and Debra Averette into her office. Bracey told Anderson that she had called in but Womack denied that she received the messages. Debra Averette was a supervisor and she handled the messages for Womack and Ethel Henderson, both of whom are elderly and might have had some difficulty with the telephone answering system. According to Bracey, Averette also denied that any messages had been received.

Lloyd Adams testified and he verified that Bracey was his neighbor and that she had used his telephone. He recalled that she had several conversations trying to get through and that she had finally contacted some person and left a message that she was sick.

Mary Womack testified that she knew Bracey left work on December 3, but she had forgotten the reason why. She said that she did receive some message from Averette but got none from Bracey. She said at one point that her grandson never told her about Bracey's call, but later she said that he had told her that someone called.

Neither the grandson, Johnny, nor Debra Averette was called to testify. There was no explanation that either of these people were unavailable to come and testify at this hearing.

I found Margie Bracey to be a candid and credible witness. She is an intelligent and careful woman, and from my observations of her while she was testifying lead me to believe her version of the events here. I find that in fact she

⁴⁷ She had no telephone in her home.

⁴⁸ Bracey said that when she called, she got a recording which told her that the corporate offices were open from 8 a.m. to 5 p.m. and if she knew the mailbox number of the person she was calling, dial it now. Bracey dialed Womack's mailbox number and left the message.

⁴⁹ Womack testified that her grandson was 18 years old at that time.

⁴⁵ This was originally numbered 48, but a new subpar. (b) was added and the original paragraph was renumbered 48(a). This was done on the record of the hearing on June 17, 1993.

⁴⁶ Bracey also served as an advisor to the Union and the General Counsel throughout this hearing. This was, of course, after she had been discharged.

did call the plant and left messages on December 7 and 8, and that she did leave a message with Womack's grandson after trying and failing to get through to Womack's mailbox on December 9.

I rarely have drawn any adverse inferences from the failure of witnesses to testify, but I think that this case is an exception to my usual practice. I, therefore, infer and find that Debra Averette, if called to testify would have verified the fact that Bracey called and left messages for Womack on December 7 and 8, and I infer and find that Womack's grandson, identified only as "Johnny" if called to testify, would say that he informed his grandmother that Bracey had called on the morning of December 9 to say that she was still sick.

I do not credit Mary Womack's forgetful and inconsistent testimony.

Since Womack, in my opinion, knew that Bracey had called as required by the Company's rule, the reasons advanced to Gwen Anderson for Bracey's discharge were false. I find, in fact, that these reasons were a pretext, enabling the Company to get rid of a prominent union activist under the color of the rule requiring calling in when an employee was sick.

I find this to be a violation of Section 8(a)(1) and (3) of the Act.

42. The consolidated complaint was amended at the hearing to add new paragraph 48(b), alleging that the Respondent suspended and then discharged employee Kae Thomas because it suspected she was a union adherent.

Thomas testified that she went to work at the Company on September 14, 1992, in the sonic welding department. Her supervisor was Karen Broadway (later Karen Rowton). On December 7, Thomas was suspended for 2 weeks because she was observed sitting down, in violation of a department rule. She was scheduled to return to work on December 21. She testified that on that date she was in the hospital.⁵⁰ She said she was not released by her doctor until December 28, and when she returned to work, she was told by a person who she thought was the evening plant manager that she could not work that night and that she had to talk to Karen Broadway or Edward Hakim about coming back to work. On the next day, Thomas talked to Gwen Anderson who told her that she was no longer employed there.

While she said she was in the hospital, or at least still under her doctor's care, Thomas called Brady Gray and left a message on his answering machine asking him to call Karen Broadway and tell her that she could not come to work. Gray, in turn, called Thomas and left a message that she should be sure to call Broadway. Later that day Gray ran into Broadway and told her about the message he had received from Thomas.

On the basis of this record, and considering Thomas' record of lying about her relationship to Campbell, her prior employment, and her filing of a false unemployment application in State of California, I frankly believe nothing that she said which is not corroborated by someone else. I have doubts that she was pregnant, that she suffered a miscarriage,

⁵⁰ She testified that she had suffered a miscarriage, but on December 18, she was apparently in the State of California because she filed for unemployment in that State on December 18 (R. Exh. 12) stating that she had been discharged on December 14, that her supervisor's name was "Mary Day," and that she had been discharged by "Karen Bradshaw."

or that she was in a hospital. She did call Brady Gray and left a message. He returned the call and left a message in turn. But there is no indication that she was even in the State of Louisiana on December 21 or 22, or whether she was in a position to check for her telephone messages.

Moreover, there is no evidence that anyone at the Company other than Brady Gray knew about her prior union membership. There is no evidence that she had anything to do with the Union at this Company or any other company. Indeed, if any there was the time of her hire, the union campaign of 1992 was over.

I find no credible evidence that the Company discriminated against Kae Thomas either by suspending her on December 7, or discharging her on December 29, 1992, and I find no violation of law in Thomas' discharge.

On December 29, 1993, the Acting Regional Director issued a complaint in Case 15-CA-12159 containing additional allegations of unfair labor practices based on the Respondent's actions. On January 6, 1994, the General Counsel moved to consolidate this case with the other cases consolidated before me. On January 18, at the reopening of the hearing, there being no objection, I granted the General Counsel's motion and ordered that Case 15-CA-12159 be consolidated with 15-CA-11539-2, et al. The allegations in this complaint will be listed consecutively, following the numeration already begun.

43. The complaint in Case 15-CA-12159 alleges in paragraph 8(a) that the Respondent on various occasions between February and June 1993, by Mary Womack, informed employees that other employees had been laid off because of their union activities and membership. Paragraph 8(b) alleges that Mary Womack threatened employees with layoffs because they joined, supported, or assisted the Union.

Larry Coleman, an employee in the gift packing department since 1979, became an active union supporter in early 1993. He wore union T-shirts and participated in union activities. In 1993 he was elected to the union bargaining committee and he attended bargaining sessions during worktime.

Coleman testified that he had several conversations with Mary Womack about his activities on the bargaining committee. These conversations took place in the plant, in work areas. In these conversations Womack told Coleman that he should not be in the Union, that he would lose his job. She said to him that he would be the first one to be laid off if they had layoffs. This was because he was in the Union. She said to him, "look around at all the people getting laid off, Union people."

Womack denied that she had any discussions with Coleman concerning whether he was prounion or antiunion. She had heard in 1992 that he was elected to represent employees, but she had no discussion with him about that.

I found Coleman to be a frank and candid witness and I believe his version of the conversations with Mary Womack, and I do not credit her denials here. See sec. III(c)(13), (14), and (41).

I find by threatening Coleman with layoff and threatening that other employees would be laid off because of union activities, the Respondent has violated Section 8(a)(1) of the Act.

44. Paragraph 9 of the complaint in Case 15-CA-12159 alleges that about June 7, 1993, the Respondent implemented a work rule precluding employees from talking during work.

Diane Lackey testified that she started with the Company in October 1991 and remained there until August 1993. Since 1992, she had been a member of the Union's bargaining committee. She originally worked on the "long john" line.⁵¹ The work on the long john line was decreasing and in April 1993, the workweek was reduced to 2-1/2 days. Early in June 1992, the employees (or some employees) were called in to Hakim's office and told that the line was being discontinued and that they were to be reassigned by seniority. Lackey was transferred to the 11 p.m. to 6 a.m. shift in the ultraviolet (UV) room.

On June 16, while she was working in the UV room a person passed by in the corridor outside the room. Lackey was seated at a machine and she could see the person passing by and she said hello to the person. Then a security guard named Eddie Ferrand came in another door and wrote her up for talking to the other person. He said it was against the rules. Lackey testified that before that there was no rule against employees talking.

However, in the warning that Ferrand wrote up he charged in one place that she was written up for "talking to another employee in the doorway passing by" which pretty much matches what Lackey said she did. In another part of the warning, the wording was a little different. It stated "The following employee was talking to another employee standing in the doorway when she should be working." The Respondent did not bring Ferrand in as a witness in this matter to tell us what this last charge means. Did he mean that Lackey was in the doorway or that the other employee was in the doorway or that the other employee was passing by or were they both in the doorway? It makes no sense at all.

In Ferrand's absence we do not know why he announced a rule against talking that night in the UV room. Edward Hakim testified that he makes the rules at this Company. With regard to talking, Hakim stated that there was no rule against talking, that employees could talk but could not leave their machines and wander around or go to other departments. In other words, they could not quit working, to talk to other employees.

Here, there is no evidence that Lackey stopped working or even slowed down. The warning makes no sense, and there is no evidence that there was any rule against talking.

There is evidence here that Lackey attended union meetings, and she was a member of the bargaining committee and a union activist. This incident shows an unwarranted bullying of a woman who, from all the credible evidence, was passing the time of day to a passerby. Her union activity, as a member of the bargaining committee, was well known to the Respondent. There is no explanation for this incident from the Respondent. I, therefore, find a violation of Section 8(a)(1) in this matter.

45. Paragraph 10 of the complaint in Case 15-CA-12159 alleges that in late April 1993, the Respondent, by N. Edward Hakim, at its facility, denied the request of employee Emma Kennedy to be represented by the Union during an interview. Paragraph 11 of this complaint alleges that Emma Kennedy had reasonable cause to believe that the interview described in paragraph 10 would result in disciplinary action being taken against her. Paragraph 12 of the complaint alleges that Hakim conducted the interview, even though he

had denied the employee's request for union representation described in paragraphs 10 and 11.

Emma Kennedy was employed from August 1992 to October 1993. She worked in bottle packing and her supervisor was Debra Averette. Kennedy was a union representative, wore T-shirts, and participated in union activities including the membership on the bargaining committee. She had to notify her supervisor, Debra Averette, whenever she had to attend bargaining sessions.

In April 1993, Kennedy was working in the warehouse when another employee, Mary Driver, complained that Kennedy had called her a "bitch." Averette, Driver, and Kennedy went up to Edward Hakim's office.

When they got there Hakim turned on his tape recorder and Kennedy asked that she be allowed to have a union representative there. Kennedy explained that she believed, when Hakim turned on the recorder, that she could be in for some discipline. Hakim denied Kennedy's request, stating that the Union "had nothing to do with this."

Hakim talked to each of the participants in the row, Driver and Kennedy. Kennedy denied that she had called Driver a "bitch." Hakim said he did not believe Kennedy's denial and gave her a 2-week suspension.⁵²

This is a clear case of a violation of the *Weingarten* rules.⁵³ Kennedy was afraid, once the tape was turned on, that she might be disciplined. She requested representation, the Respondent refused, and Kennedy was disciplined. I find a violation of Section 8(a)(1) in this incident.

46. Paragraph 13 of the complaint in Case 15-CA-12159 alleges that about January 22, 1993, the Respondent suspended employee Felicia Kennedy.

Felicia Kennedy worked on the evening shift, 3:30 p.m. to midnight, in the screen printing department. On January 22, 1993, a Friday, Kennedy called her supervisor, Mike Burke, to tell him she and another employee would be late, she was having car trouble. Before this he had told employees that if they were going to be late, not to come in at all. Kennedy asked Burke if they should come in, and he said yes, they were short-handed. Despite this, when Kennedy and Ellen Talley got there, Burke had warnings prepared and he told them to go home, they were suspended for that day, and to come back Monday. They did that and returned on Monday to work as usual.

On cross-examination, Felicia Kennedy was evasive and forgetful, not remembering a number of lateness warnings she had received. She did recall that she was given a 2-week suspension on December 15, 1992, for causing a disturbance which required security guards and a threat to call the Monroe police to convince her to leave the plant.

I must admit that there was some confusion at the hearing in developing Kennedy's record on attendance. From the credible testimony of Supervisor Mike Burke, I find that Kennedy was consistently late, and that she had been warned numerous times about being late. In this case, I do not feel

⁵² Unfortunately, the person who drafted the complaint did not include an allegation that the 2-week suspension was a violation of law. Now, the General Counsel in his brief moves that I allow him to amend the complaint to include such a violation. I do not think that the incident was fully litigated, and in that case such an amendment would not accord with good practice, and would be highly prejudicial to the Respondent. The motion is, therefore, denied.

⁵³ *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

⁵¹ Long johns are pajamas or nightwear for children.

that a 1-day suspension is excessive, nor do I find that the General Counsel had established a prima facie showing that the warning and suspension she received on January 22, 1993, was due to any union or concerted activity on her part, but rather to her tardiness on that night, as well as a number of nights before that.

I find no violation of law in this incident.

47. Paragraph 14 of the complaint in Case 15-CA-12159 alleges that on or about March 30, 1993, the Respondent excluded certain employees from participating in a softball team sponsored by the Respondent.

Jesse Dougan, an employee in the pad printing department, was a member of the Union's bargaining committee, he had passed out leaflets and wore union T-shirts. Supervisors had seen him engaging in these activities and, indeed, membership on the bargaining committee would have revealed his sympathies to the Hakims directly.

Dougan was aware of the softball team in past years, and in 1993 he decided that he would like to play. He showed up to practice, and one evening there was a team meeting. The coach, security guard Compton Tarayton (Terry) Pugh, told them that Edward Hakim did not want them to use "his" equipment, so they couldn't play as a team because they were union members. Pugh said that Hakim had taken the team's equipment back. Pugh and assistant coach Mark Henagan went around signing up players, but if you were union, you couldn't play. Dougan testified that he went and played on a team sponsored by the Union.⁵⁴

Darrin Stewart, employed in the rollerprint department from December 1992 on, also wore a union T-shirt which, he said, was seen by his supervisor, Sam Wheeler. Stewart testified that a sign-up sheet was posted at the plant. Stewart signed up, but Terry Pugh came to him and said that Hakim had told him if employees had "any part of the Union" they couldn't use the Company's equipment.

After that an employee named Tommy Robinson organized a team for the Union and Stewart went to play for that team.

Calvin James, another rollerprint employee, testified that the company team had had two practices when Pugh told them that Hakim had said they couldn't play with the equipment because they were for the Union.

Tommy Robinson was a veteran of 5 years in pad printing and 3 previous years with the softball team. Robinson also testified that Pugh told the players that Hakim didn't want them to use his equipment, so they couldn't play on the team because they were union members.

Robinson then organized the union team.

Terry Pugh testified that he was the coach and manager of the team, elected as such by the players. Pugh testified on the day of the third practice in the spring of 1993, Supervisor Mark Henagan, who was the assistant coach of the team, came to him and told him that the Company would not sponsor the team. He gave no reason, and nothing was said about the Union.

Pugh went to the practice, but the field was wet and he called a team meeting. He told the players that they had to get a sponsor to purchase equipment and jerseys. He said

that the Company was not sponsoring them and they had to come up with their own money to sponsor themselves.

Pugh stated that he did not tell them that Hakim had taken the equipment back because he did not want union supporters on the teams, and he did not tell the players that, if they were union, they couldn't use the equipment any more.

Pugh also testified that he had a conversation in mid-March, before the third practice, with an employee named Elmore (Rambo) Shorts Jr. Shorts told Pugh that the Union was sponsoring a softball team and asked if Pugh would help him coach it. Pugh refused because, as he said, the union team was going into a division of the city softball league, and Pugh wanted to stay in the industrial division.

On cross-examination, Pugh said that he had been a security guard at the plant since November 19, 1991, but that he was not aware of the Union, and despite having been employed all through 1992, had not heard any rumors about a union campaign.

David Dewayne Butler, the Company's head electrician, testified that he had always been on the softball team. He attended the third practice and heard Pugh say that the Company was no longer going to sponsor the teams. When asked if Hakim's name came up during the discussion that evening, concerning not sponsoring the team, Butler said, "No, his name never came up, but he is the Company."

Two other employees, Benny Whitfield and Jason Edwards, testified that Pugh said the Company was not going to sponsor the teams, but there was no mention of the Union.

Edward Hakim testified that he recalled a "couple of people" coming to him and asking him to sponsor a team. One of these people was Mark Henagan and Hakim said he told Henagan that he would not sponsor the team. He added that the Company was not sponsoring any teams that year, including little league or minor league teams.

A couple of weeks later Henagan came back and told Hakim that they couldn't get the money, and would have to disband the team if they didn't get help. Hakim asked him how much money was needed, and told Henagan to go and get a check for the money. Hakim said he didn't know anything about the teams, and the only players he knew were Henagan and Pugh.

I find Pugh's testimony to lack credibility. For a security guard not to know that there was a union campaign going on, with all of the incidents reported here during 1992, is simply incredible. I do not believe Pugh was telling the truth on that point, and on the question of Hakim's withdrawal of support. Henagan gave Pugh no reason for the withdrawal. I do not believe that Pugh then went ahead, with no more interest in the reasons why, and told employees they had to get up the \$260 entry fee for the team as well as bats, balls, and jerseys.

As far as Hakim's testimony, I do not credit that either, for reasons I have already explained.

The fact that Mark Henagan, the go-between the team and Hakim, did not testify was also significant. I think an inference can be drawn from this fact, and that inference would be that if Henagan testified, he would not have corroborated the testimony of Hakim and Pugh.

As far as the other employees who testified here for the Respondent, I think Butler's prescient remark about Hakim, that "he is the Company" explains why these people all testified that it was the Company, and not Hakim, that withdrew

⁵⁴The two teams, company and union, played each other during the season, and, according to Dougan, the Union won.

support. They knew who withdrew the support, and they knew why as well.

Therefore, based on the credible testimony of Dougan, Stewart, James, and Robinson, I find that the Company withdrew its support for the softball teams because Hakim did not want equipment he had purchased being used by union supporters, and I also infer and find he did not want the Company's name connected with a team made up, at least in part, of union supporters.

I had some problems with the question of whether, even where, finding that the Company withheld its support for the teams because of the Union and concerted activity of some players, the incident is a violation of the Act. The softball team is not a condition of employment with the Company other than the fact that the name of the Company is the name of the team, and the Company purchases its equipment.

But, in a sense, it is a benefit to employees, and their experience here showed that when the Company withdrew its support, the employees could not themselves find the money to pay the city's entry fee,⁵⁵ and the costs of bats, balls, jerseys, and the equipment. Thus, the withdrawal of support by the Company was a denial of a benefit which was granted to the employees by virtue of their employment. Moreover, the action of the Company sent a message to all employees that their loyalty to the Union would carry a price. I, therefore, find that this action of the Company interfered with, restrained, and coerced employees in the rights guaranteed them in Section 7 of the Act, and constituted a violation of Section 8(a)(1) of the Act.

48. Paragraph 15 of the complaint in Case 15-CA-12159 alleges that sometime in late November 1992 the Respondent refused to allow employees Wanda Shambro and Felicia Kennedy to rotate to sitting jobs.

Wanda Shambro had worked for the Company since July 1991. In the 1992 union campaign she had campaigned for the Union, wore a union T-shirt, and handed out literature. In July 1992, she had attended a meeting with Edward Hakim and other employees of the sleeper line. At that time she was transferred to the night shift in the screen printing department under Supervisor Roy Kestner. She worked on a screen printing machine with two other employees, Cynthia Jackson and Angelica Jacobs.

One night the date not specified, Shambro testified Supervisor Kestner came up to her and said he was going to move Jackson and Jacobs to another machine and bring Felicia Kennedy and Lynn Talley in to work with Shambro. Shambro asked, "Why?" and Kestner replied that, "He [Hakim] wants a change." He added that they could not rotate. The machine used in this department requires three people to operate. One loads, and one unloads, both of which positions require the operators to stand while working. A third position is a sitting position. Generally, the employees rotate so that each gets equal time in the sitting position. Shambro asked which employees could not rotate, and he said, "Only you and Felicia."

The next night Kestner began setting up the new crew. He said to Shambro and Kennedy that they could not rotate. Shambro protested. She said it wasn't right, and that the Company was doing this because Shambro and Kennedy

were union. Kestner replied, "Well, you know why they are doing it."

Shambro then asked if anyone else was doing this and Kestner replied that that was just the way it was. Shambro then told him that he could tell Hakim that she would file a charge in the morning.

Kestner left and went upstairs. He came back in 30 or 40 minutes and said, "Well, Wanda, just forget it." He told them to continue rotating. Kennedy and Talley would stay with Shambro on the machine, but they could rotate.

Felicia Kennedy had moved to the screen printing department at the same time as Shambro. She was told one night in November 1992 that she and Lynn Talley were being transferred to another machine with Shambro, but they would not rotate. Kennedy, who was pregnant, protested. Kestner then went to see Edward Hakim and came back to tell them that they could rotate, but had to stay together as a team.

In this incident, according to Shambro's credible testimony, Edward Hakim ordered the change in a crew in the screen printing department. There was no indication why such a change was thought to be necessary and, more importantly, why the president of the Company, who, as is evident from the record in this case, had many broad responsibilities, felt it necessary to reach down to a night-shift crew in one small corner of the enterprise, not only to change the crew around but to change the procedure used by that crew to inconvenience two employees who were active in the Union.

Kestner's reply to Shambro give the answer. In response to Shambro's charge that this was being done because they were union, he replied, "Well, you know why they are doing it." This undenied statement shows that the reason for the transfer and imposition of more onerous working conditions was motivated by the union activities of the employees affected. However, while the crews were changed, Hakim apparently changed his mind, and permitted the women to rotate as was their practice on this job.

I find that the threat and the intent to forbid rotating on this job was a violation of Section 8(a)(1) of the Act.

49. Paragraph 16 of the complaint in Case 15-CA-12159 alleges that about June 22, 1993, the Respondent suspended employee Carolyn Smith.

Carolyn Smith worked in the screen print department in mid-1993. She had participated in all the union activities, wore T-shirts, passed out literature, and was involved on the bargaining committee. These activities were observed by Supervisors Ida and Buddy Bradshaw, Edward and Saul Hakim, and other supervisors.

Smith testified that there was no rule against talking while working. This is in agreement with Edward Hakim's testimony. He stated that employees could always talk, but they could not leave their work stations, or go around talking and not working. Smith said it was common for employees to talk while they were working.

Smith stated that on June 22, 1993, she was standing at the back of the cutting department where people had to wait to go to the rest room or to get a drink of water. There is no question that she was away from her work station, but there is also no question that her waiting there was not a violation of any company rule. She was leaning against a table and I think it is true that she did talk to one or more of the women who were working in that area. In fact she admitted that one of them asked her for some chewing gum, and she

⁵⁵The city of Monroe supplied the fields, bases, and other facilities for the leagues.

gave her a stick of gum. A security guard came up to her and told her to stop talking to people who were working. Smith said to the woman, "Am I talking to you ladies?" They said, "No. The guard then wrote her up. She asked him to take her to the office, and he replied that he would take her there when he got ready. She went back to work.

Later, on her next break, she went to the guard and asked him if he was ready to take her upstairs. He said no, he would let it slide this time.

Smith returned to her machine, and late in the afternoon, a discussion took place between an employee, who was described as antiunion who came up to Supervisor Ida Bradshaw and complained about another (also antiunion) employee. The second employee didn't want to do certain work because she said she wasn't getting paid for it. Carolyn Smith spoke up and said she didn't blame her, that Smith wouldn't do it either if she wasn't paid. Other employees joined in, saying that they wouldn't do it if they didn't get paid.

Ida Bradshaw got up and went over to where the original reluctant employee was working. Later, Bradshaw came back to where Smith was working and asked her if she had got written up "earlier today for talking." Smith replied that she had not. She had given some gum, to another employee but wasn't talking. Bradshaw responded to this by saying that she was giving her 2 weeks. Smith said she would see her on July 6, which was in the next month.

The security guard, identified on a copy of the writeup introduced in evidence (G.C. Exh. 10) as Eddie Ferrand, apparently did not let the matter "slide" as he said to Smith, but took the writeup to Edward Hakim. Neither Ferrand nor Bradshaw testified here, but Hakim did. He said that Ferrand brought up the writeup and reviewed it with him. Hakim then told the guard to lay Smith off.⁵⁶

Hakim must have read the writeup, but contrary to his usual practice of interviewing the accused employee about which he testified he was proud, he just trusted the word of the guard and issued the 2-week suspension.

I believe, based on Smith's credible testimony, that the incident happened as she reported it. If Hakim had followed his usual careful practice, and invited her up to his office to hear her side of the story he may have decided the matter differently. He did not and, in the absence of the guard's testimony or Hakim's reasons for doing what he did, I infer and find that the reasons Hakim did this was that he was aware of Smith's union activities and this suspension was punishment for those activities. I find here a violation of Section 8(a)(1) and (3) of the Act.

On January 21, 1994, the Acting Regional Director issued an amended complaint in Case 15-CA-12390, containing additional allegations of unfair labor practices. On March 11, 1994, I granted a motion to further consolidate the matters

⁵⁶ The writeup, dated June 21, gives a different story from Smith's testimony. The writeup says Smith was leaning on a table talking to working employees in the screen print department. The guard told her she couldn't talk to these workers and to leave the screen print department. She refused, saying that she would go when she got ready. She told the guard to write her up, stating that she needed a couple of weeks off anyway. Ferrand, as noted, did not testify so there is no testimony in this record, other than Smith's, as to what happened. I do not credit this unidentified and uncorroborated piece of paper.

covered in this case with the matters already before me in Case 15-CA-11539-2, et al. The allegations in this complaint will be listed consecutively, following the numeration already begun.

50. Paragraph 9 of the complaint in Case 15-CA-12390 alleges that about June 25, 1993, the Respondent, by N. Edward Hakim at the plant, denied the request of employee Emma Kennedy to be represented by the Union during an interview. Paragraph 10 of the complaint alleges that the Respondent's employee, Emma Kennedy, had reasonable cause to believe that the interview described in paragraph 9 would result in disciplinary action being taken against her. Paragraph 11 of the complaint alleges that the Respondent, by N. Edward Hakim, at the plant, conducted the interview with employee Emma Kennedy even though the Respondent had denied her request for union representation. Paragraph 15 of the complaint alleges that on about June 25, 1993, the Respondent suspended Emma Kennedy.

Emma Kennedy who has previously described herself as a union adherent and who was a member of the bargaining committee for the Union, a wearer of union T-shirts, and a distributor of union literature, testified that she worked in the Company's bottle packing department under Supervisor Debra Averette. She testified that on June 25 it was hot in this department. She and some of the other women brought in covered cups and thermos-like bottles to hold iced water to drink during these the days. On June 25 a security guard who she thought was named Eddie Ferrand⁵⁷ came up to her and asked if she was drinking water. She told him that she was.⁵⁸ He then went to get Debra Averette and the three of them went up to Edward Hakim's office. Hakim asked Kennedy if she had a problem with his taping the conversation. She said there was no problem. She then asked him if she could have a union representative. He said the Union had nothing to do with it. Kennedy asked for a union representative because she really didn't know what could happen while she was there. She thought she might be disciplined. After he denied her the union representation, Hakim showed her a paper which apparently was a notice prohibiting eating and drinking. Kennedy testified that this notice was not posted in her department, but in the sewing department. Hakim told her that she should not have been drinking and gave her a 1-month layoff. He told her that if she was caught on the premises she would be arrested.

Kennedy stated that a lot of people in her department ate and drank in the working areas. There was a water fountain in her area but Kennedy said that she saw men spitting in the fountain while they were chewing snuff. She did not want to use that fountain. Debra Averette was present and could have seen people eating and drinking while she was there.⁵⁹ She saw Kennedy drinking, but never reported her.

When Kennedy returned to work on August 2, there were some people from the Occupational Safety and Health Administration (OSHA) in the plant, and management had brought in a cooler of Gatorade with little paper cups to

⁵⁷ The guard was Ed Curley, but Kennedy did not know his last name, just the first name.

⁵⁸ Kennedy was aware that there was a rule against drinking anything, including water, in the plant.

⁵⁹ Hakim asked her who those people were, but she refused to be a "snitch" and would not tell him.

drink it out of in the work area. After the OSHA inspection was over, the cooler was removed.

Averette and security guard Ed Curley testified that Kennedy was drinking from a cooler, and Averette said that she never permitted people to drink in her department, although they could bring coolers in to their work stations.

Here again is a clear *Weingarten*⁶⁰ violation. It is an example, also, as to why *Weingarten* is a salutary rule, considering the threatening and bullying tactics indulged in by Hakim in his interview with Kennedy. There are enough extenuating circumstances here, other people violating the rule without punishment, snuff dippers spitting in the water fountain, as well as the lack of representation, to allow me to find that the interview itself and the resulting suspension were unlawful. I find that by refusing Kennedy union representation, and by disparate treatment shown her, a union activist and member of the Union's bargaining committee, the Respondent has violated Section 8(a)(1) and (3) of the Act.

51. Paragraph 12 of the complaint in Case 15-CA-12390 alleges that about October 8 and 13, 1993, the Respondent, by N. Edward Hakim, at the facility, threatened not to transfer an employee to another department unless she obtained written permission from the Union agreeing to the transfer. Paragraph 13 of this complaint alleges that about October 20, 1993, Hakim threatened an employee with termination if she did not obtain written permission from the Union agreeing to transfer her to another department.

Wanda L. Smith had worked for the Company in 1985, and then returned in 1988. She had worked in the sewing department from November 1988 to August 1993. There were layoffs in the sewing department, and Smith was eventually transferred to the molding department. In June 1993 she began to serve on the Union's bargaining committee.

In September 1993, Smith was on the 11 p.m. to 7 a.m. shift in molding. About 1 o'clock in the morning she began to feel a burning in her eyes and her face started to swell. She told her supervisor and he told her to go home. The next morning she went to the company doctor, having obtained permission from Company Safety Director Andy Keefover. The doctor told Smith that she had an allergy, but could go back to work. If she continued to have problems she would have to be moved out of molding. A note from this doctor was put into the files of the molding department, but was not offered in evidence here.

Smith returned to work on a Sunday and her supervisor, Clint Ryder, had two masks, which Keefover had supplied, for her to try out. She tried both masks. She could not breathe through either of the masks, so Ryder sent her home. He told her that Hakim was out of town and that she could not work until he got back.

On that Friday, Smith went to pick up her check at the plant and Ryder told her that Hakim was back in town. Smith then met with Hakim, Keefover, and a woman named Glenda who was described by Smith only as having something to do with the art department.

Hakim told Smith that there were no fumes or anything in molding to cause any allergy problems. He said that the only opening he had at that time was in Sabah Futayyeh's department, but in order to be transferred she would have to have

a note from the Union stating that she wanted to be transferred.

Smith then went to the union office and saw someone named Steve Uri. He gave her a note, but the note was not on union stationery and it was to be signed by her, requesting a transfer, and not by a union official. Smith took the note and brought it to the company offices.

After this, Smith was called back to Hakim's office, Hakim and Glenda were there. Hakim told Smith that the note she had obtained was not acceptable. It was not from the Union, it was from her. He told her that in order for her to be transferred, she had to have a doctor's excuse from her own doctor, and a letter from the Union stating that she wanted to be transferred. He also told her that she was not laid off and she could not draw unemployment.

Smith then made an appointment with her doctor for October 14 (the meeting with Hakim was on October 8, a Friday). Smith's doctor faxed Hakim a letter stating that she needed to be transferred out of the molding department. Smith also went back to the Union, but whoever she saw at the union office told her that she did not need a letter.

Despite Hakim's assertion, Smith applied for unemployment. Then she returned for another meeting with him on October 20. This time Gwen Anderson, the personnel director, was there with Smith and Hakim. At this meeting Hakim told Smith that unless she had got a letter from the Union, stating that they wanted her transferred by October 25, the following Monday, he would fire her.

Over the weekend Smith received a letter from the unemployment office saying that she had a right to be transferred out of the molding department, since the letter from her doctor stated that, and she was granted unemployment benefits.

On October 26, Gwen Anderson called Smith and told her she was transferred to Sabah Futayyeh's department.

Hakim's testimony does not differ substantially from Smith's description of this incident.

In this case, Hakim again indulged himself in threatening and bullying a woman whose only transgression, aside from her membership on the Union's bargaining committee (which was public and known to the Company) was suffering an allergic reaction to something, probably in the molding department. Hakim's reaction to this problem was to declare that there was no problem. He is not a physician, but he seemed to know more than his own company doctor about which air or pollution problems might occur in the molding department. I find, here, that Hakim's conduct in forcing Smith to go to the Union for a letter granting permission for him to transfer Smith⁶¹ and to obtain another letter from her own doctor, and presumably at her own expense, before he would transfer her.

I find that these actions were a pretext to harass this union representative and to coerce her in the exercise of her rights to assist the Union. I, therefore, find this to be a violation of Section 8(a)(1) and (3).

52. Paragraph 14 of the complaint in Case 15-CA-12390 alleges that in late November or early December 1993, the Respondent, by Sabah Futayyeh, at the plant, impliedly threatened an employee with discipline if he did not corroborate the Respondent's version of events leading to the dis-

⁶¹ In his own testimony, the Union, in its letter, would have to agree not to file charges over this matter.

⁶⁰ *NLRB v. J. Weingarten*, supra.

charge of another employee. Paragraph 16 of this complaint alleges that about July 16, 1993, the Respondent suspended employee Robert Harrell for 2 weeks. Paragraph 20 of the complaint alleges that about October 8, 1993, the Respondent terminated employee Robert Harrell.

In regard to these incidents, all of them are connected, but the events of July 16 and October 9 described in paragraphs 16 and 20, precede the November-December incident described in paragraph 14.

Robert J. Harrell was employed by the Company in July 1989 as a vinyl cutter. His job consisted of laying out 20 layers of vinyl sheets for cutting. The piles of vinyl sheets were laid out on a table and were held in place by two heavy iron bars, each about a foot long and an inch-and-a-half thick. When the vinyl had been laid down and held in place, Harrell would put a steel glove on his left hand to protect the hand, and he would cut the vinyl according to a desired pattern with an electric knife.

Another employee, Chester L. Howard, had the same job at an adjoining table.

As it happened, these two men did not get along. Harrell was prouidion and made no secret of it. He wore a blue shirt, he had campaigned for the Union, and served on the union bargaining committee. Howard was antiunion. He had joined an antiunion group of employees who called themselves "the caucus" about 6 weeks before the election which was held on June 4, 1992.

Harrell and Howard apparently had argued and bickered about the Union for some time, but things came to a head on July 16, 1993. On that day they had what Harrell described as a "little bit of a confrontation." Harrell called Howard a "brown-nosed mother fucker," maybe more than once, and Howard got fed up. He went to their assistant supervisor, Carol Seymour, then to Supervisor Sabah Futayyeh.

Futayyeh took them up to Hakim's office. There they had a meeting which resulted in Harrell being suspended. Harrell testified that he at first denied, then admitted that he had used the above-quoted epithet in his argument with Howard. Harrell apologized to Howard, and was given a 2-week lay-off.

Since the tape of this meeting (R. Exh. 148) was never sent in by the Respondent, and since Hakim testified that the confession by Harrell was obtained in a "one on one" conversation which may be included on the tape, I think an inference is permissible, and I infer and find that the "confession" was forced by Hakim, and while it was made by Harrell, is more likely to have been extorted by threats, coercion, and bullying, an atmosphere which, as has been seen, was used by Hakim in the interviews, a practice which is not conducive to free and uncoerced words or actions by employees.

In these circumstances, I find that the reason for this forcing of the confession by Hakim was a continuation of his unlawful pressure on rank-and-file employees who had served, or were serving, on the Union's bargaining committee. I find that this suspension is a violation of Section 8(a)(1) and (3) of the Act.

Sometime later, in an incident not set out in the complaint, Mike Henagan and Futayyeh were discussing production problems with Chester Howard. Harrell, who was standing at his work station, could not help but hear this conversation. Harrell was interested in what they were saying, and he

paused to listen more carefully. Futayyeh told him to go back to work. He told her that he worked at the same table and did the same job. She said that it didn't concern him, and repeated the order to go back to work. Harrell then picked up one of the iron bars used to hold down the vinyl sheets, but it slipped out of his hand and landed with a loud crash on the table. Futayyeh was startled by this, she described what happens "on TV, movies, I read the newspaper. When somebody (gets) mad, they can do crazy things." . . . "I see people when they get mad in job. When they lose their job, I know they kill each other. They kill. They hit. They do a lot of criminal things because they are mad, and that is the first thing, you know, that crossed my mind." Futayyeh testified that she gave Harrell a warning for the iron bar incident and told Harrell that she would send him to jail. Nothing further developed from this incident, except that a warning was issued on October 5, signed by Assistant Supervisor Carol Seymour (R. Exh. 124) in which Seymour seems to be saying that she was the one who was startled by the dropping or, as she put it, slamming of the bar down on the table. This would be inconsistent with Futayyeh's testimony that she was the one who was there for the iron bar incident.

On October 8, Harrell punched in and went to work. Before they had really started to work, Howard asked Futayyeh for a screwdriver. She went and got a screwdriver from another employee and returned to give it to Howard. She then, according to Harrell and Howard, began to stare at Harrell. Harrell at first did not see her, but he noticed a "smirk" on Howard's face and he turned around to see Futayyeh right behind him. He looked right in her face and she said, "[W]hat is wrong with you?" He said there was nothing wrong with him, and asked the same question, "What is wrong with you?" to her. She then told him to go to Mike Hennigan's office.

At this point, I think that Harrell knew he was in serious trouble. He was putting his metal glove on his left hand, preparing to go to work. To put this glove, more a gauntlet than a glove, designed to protect the wearer's hand, while guiding the work from the electric knife slicing into the vinyl, the wearer must fit the fingers so that they are tightly fastened. While Harrell was doing this, Futayyeh said that he was threatening her, balling his fist at her. According to Harrell he was just adjusting the glove, and balling the fist was necessary to assure a tight fit for the glove.

Harrell then said to Futayyeh that discrimination was against the law. Discrimination is a Federal offense. Futayyeh took him into Supervisor Ida Bradshaw's office and called Ida's husband, Buddy Bradshaw. When Buddy Bradshaw got there he asked what happened. Harrell told him that Futayyeh had said he threatened her. Then Futayyeh came to the office, picked up the telephone and said she was going to call the police. Then she changed her mind and said she was going to call Hakim. The Bradshaws and Futayyeh left the room, and came back 15 or 20 minutes later with two security guards.

The supervisors and the guards escorted Harrell up to Hakim's office. Harrell denied that he had threatened, or shaken his fist at Futayyeh, but she said he had, then mentioned that iron bar incident. Hakim commented, while the participants were telling their stories, that he already had a statement from the prior incident between Harrell and Howard.

Hakim then called Howard in as a witness. Howard testified that Harrell left the office when Hakim questioned him. Howard said that Hakim was not satisfied with his answers, that he seemed to have an entirely different version. After Howard was finished, he was dismissed and Harrell was brought back. Hakim told him that Howard had told the same story as Futayyeh, and said he was going to terminate Harrell. The guards then escorted Harrell off the premises.⁶²

In this incident Futayyeh said that she was afraid of Harrell. She said, "I know no doubt in my mind he is going to hit me." In her mind, also, I infer, were the grisly images she testified were dancing in her head at the time of the iron bar incident, "violent movies and police shows on television; graphic newspaper and television news accounts of killings or even massacres by vengeful" "disgruntled former employees."

I think this panic was feigned. Futayyeh's demeanor showed that she is an excitable, person, but more than that, a person who uses excitement and anger as devices to intimidate other people. I do not credit her testimony on this incident and I believe that if the whole thing was not staged to entrap Harrell into some overt threatening action, it became a pretext for his discharge as soon as he balled his fist inside the glove while talking about discrimination.⁶³

I likewise do not credit Hakim's or Futayyeh's testimony about what Howard said, rather, I believe they changed what Howard said in order to show Harrell that the weight of the evidence was against him.

Because of these circumstances, and because I tried to observe very closely the demeanor of these witnesses while they were testifying, I find that the reason advanced for Harrell's discharge are pretextual, and that the real reasons were his sometimes militant support of the Union and his membership on the Union's bargaining committee.⁶⁴ I find this discharge to be a violation of Section 8(a)(1) and (3).

The third incident in this section is covered by paragraph 14 of the complaint in 15-CA-12390, but since this matter happened after the Harrell suspension and discharge paragraphs, I have placed it in chronological order.

Chester Howard testified that a week or two after Harrell's discharge, sometime around the middle of October, Futayyeh called him in to her office. She explained to him that the Company had taken some actions against Harrell.⁶⁵ She showed him a piece of paper and asked him to read it. It stated that Harrell had threatened Futayyeh with an iron bar, and that he had shaken his fist at her. Futayyeh asked How-

ard if he understood the paper and he said he did. She then asked if he agreed with it and he said not exactly, it wasn't exactly the way he saw it.

Futayyeh then told Howard that this was the way she saw it, and the way the Company saw it. She asked if he would sign it, and he said that he and Harrell were not the closest of friends, but he couldn't do that. Futayyeh then asked Howard to take a seat. She called in four women, Carol Seymour, Bertha Martin, Charlene Shelton, and Myra Bess Smith. Futayyeh then began accusing Howard of disrupting the department. She said that he had held down production, and sabotaged materials, to which all of the women agreed. Futayyeh also charged that Howard had called her house and harassed her.

Howard slid back his chair and was going to rise, but Futayyeh ordered that he stay seated. She repeated the harassing charge, and then told him that he had just admitted it. He said that she had four witnesses, and "who would believe him." He said that that was right, and he began to think about signing the paper. He asked if he could take it with him. She said no, but she did agree to his request to think it over.

At this point, Howard thought he needed some help. He signed a union card so that he could request union representation if Futayyeh called him back in. When she did he announced that he wanted a union representative present, and she terminated the meeting. He never did meet with Futayyeh again on this matter.⁶⁶

Sabah Futayyeh denied that she had ever asked Howard to sign a paper supporting her position on the Harrell discharge. She denied that she ever had a meeting with Seymour, Shelton, McMartin, or anyone else together with Howard. She denied that she ever accused Howard of harassing her or calling her at home.

Charlene Shelton testified that the only meetings she had with Futayyeh and Howard were when he was called in for reporting late. She denied that she ever attended a meeting with Futayyeh, Seymour, Martin, and Smith where Futayyeh asked Howard to sign a piece of paper.

Carol Seymour and Bertha Martin denied that there was any meeting that they attended at which Sabah Futayyeh accused Chester Howard of disrupting, sabotaging, and harassing. These employees testified that Futayyeh never yells or screams at employees.

Charlene Shelton testified that Howard had attempted to get her to break the rules and go to Futayyeh's office to obtain a knife blade he said he needed for his work, and Edward Hakim testified that Howard had attempted to borrow money from him, saying that Hakim owed it to him because he had backed him up on "complaints." Hakim refused the loan, and, according to his testimony, Howard was wearing a blue shirt the next day.

I do not credit the testimony of Hakim, who I have found throughout to be self-righteous, defensive, and completely untrustworthy on material issues.

Similarly, I do not credit Futayyeh, who may well have been influenced in her relations with employees by her ad-

⁶⁶I note that Howard received a number of warnings beginning, significantly on October 15, 1993, a week or so after Harrell's discharge. There were apparently none given before. However, there are no allegations in the complaint concerning these warnings.

⁶²Harrell was put back to work on April 25 or 26, 1995.

⁶³The fact that Futayyeh said it was his right fist he shook at her could be explained by the fact that the right had to be used to adjust the glove on the left. In her television-included world of criminals she certainly could have mistaken any movement of either hand as a threat.

⁶⁴I note in support of this finding Chester Howard's credible testimony that both Futayyeh and Hakim had encouraged Howard to train someone else for Harrell's job because, several weeks before these incidents, they said Harrell would not be around very long. Indeed, Howard recalled Hakim saying that they were "going to get rid of" Harrell.

⁶⁵I do not know what Futayyeh meant by this statement. I do know that there was some sort of criminal action against Harrell in the city court of Monroe. (See J.Exh. 1(e), affidavit of N. Edward Hakim dated May 16, 1995.) There is no evidence in the record that Howard testified in this action, or what the result was.

mitted visions of beaten and bloody victims of disgruntled employees with "criminal eyes." Her descriptions of herself, and her staff's descriptions of her as quiet, sedate, and even tempered are obviously false from my own observations of her. I, therefore, do not credit the testimony Futayeh gave about either the Harrell matter or the Howard matter.

I credit Howard in his testimony as to this last incident, and I find that by threatening and coercing Howard, the Respondent has violated Section 8(a)(1) of the Act.

53. Paragraph 17 of the complaint in Case 15-CA-12390 alleges that about July 18, 1993, the Respondent issued a written warning to employee Diane Lackey. Paragraph 18 alleges that about July 19, 1993, the Respondent suspended Diane Lackey for 1 week. Paragraph 19 alleges that by the conduct described in paragraphs 17 and 18, the Respondent caused the termination of Diane Lackey.

Diane Lackey, a union bargaining committee member, had worked on the long john line, and when that line was closed down she was transferred to the ultraviolet (UV) room.⁶⁷

On July 18, 1993, Lackey arrived at work about 11 p.m. on the third shift, and told her supervisor, Ricky Brown, that she had forgotten her safety glasses. He said he would go to get her another pair. While he was gone, a security guard came into the room and told her he was going to write her up for not wearing safety glasses. She told him that Brown was getting her a pair, but the guard wrote her up anyway.

Later Brown told Lackey she was being laid off for a week. She told Brown that she was fed up with harassment, and that she was going to quit. He urged her not to, and she said she had a week to think it over.

On July 23 she went in to get her paycheck. She was going to turn in her badge and quit. She met another supervisor, Rich Doss, and told him of her intention. He agreed to take her up to the personnel office. On the way up she told him that she was fed up with harassment. She had more service than other people who were working days and she couldn't work the night shift with harassment every night from the security guards. The guards were always standing around and looking for something wrong. The guards checked their time on breaks, and had taken a radio out of the UV room. Lackey got her final paperwork done and left the building.

The UV room uses ultraviolet light to "flash cure" ink used to print designs and images on plastic. Ricky Brown testified that if the cornea of the eye is exposed to the slightest amount of ultraviolet light one will receive an instant flash burn. Brown said that there are no exceptions to the rule that everyone must wear safety glasses (tinted to shield the eye from ultraviolet flashes) at all times.

Brown testified that the 1-week suspension was given to Lackey the next day by Safety Director Keefover. Brown called Lackey and told her she was suspended. He said that he never told her that he had been written up for being too lenient, and he never had a conversation with her when she said she was being harassed.

As far as the radio was concerned, Brown testified that Keefover, not the guards, ordered it removed because it had only a two-pronged plug, and was not properly grounded.⁶⁸

⁶⁷ See sec. III.(c).(43), above.

⁶⁸ Keefover apparently did not consider using a three-pronged adapter.

Brown recalled when Lackey came in to the UV room that night. He testified that the procedure there is that when an employee (or any person) came into the building and whose destination is the UV room, that person must notify the guard that he or she does not have any safety glasses. The guard then will call the UV room, and the supervisor will take a pair of safety glasses from a supply available there, and bring the glasses to the person needing them.

The security guard who started all this, Billy R. Wilson, testified that he reported to work about 11 p.m. on the night of July 16.⁶⁹ Wilson was making his rounds, and when he got to the UV room he saw two employees there, Diane Lackey and Ben Waldo. Neither was wearing safety glasses. Wilson hollered at the supervisor that there were people here with no safety glasses, who had to be written up. They went to the lunchroom where Brown wrote up both employees and told Wilson to escort them out of the plant.⁷⁰

I believe there is a violation here. With respect to the suspension, I think it is denied that the rule is not one of those notalking, no eating, no discussing salaries rules we have dealt with. This is a necessary rule. However, there is some question about its enforcement, Waldo apparently was around from sometime in the afternoon without glasses, and I cannot believe that these "Centurion" ultraviolet machines are not heavily shielded, to prevent flashing at operators, the only evidence that the rule was enforced disparately against union supporters is the fact that in this instance Ben Waldo worked in the UV room, without glasses, all afternoon and evening until 11 p.m., without attracting the attention of the security guard. Then when the union bargaining committee member arrived at about 11 o'clock, the guard turned up to cite her, and, of necessity, to cite Waldo, too.

I credit Lackey's comments about harassment, and I do not credit Brown's denial that she ever discussed them with him. Her transfer to the night shift in the UV room, the constant attention of the guards, culminating in this suspension, was a severe form of harassment.

Because of these circumstances, I find that the suspension of Diane Lackey on July 16, 1993, constituted a violation of law.

As to the constructive discharge argument in paragraph 19, I rely on the record of harassment and I find that the conditions under which Lackey was forced to work were so difficult and unpleasant so as to force Lackey to resign. *Wolkerstorfer Co.*, 305 NLRB 592 (1991); *Crystal Princeton Refining Co.*, 222 NLRB 1068 (1976).

54. Paragraph 21 of the complaint in Case 15-CA-12390 alleges that about November 15, 1993, the Respondent issued a warning to, and suspended its employee Karen Brandon for 2 weeks. Paragraph 23 alleges that the Respondent did this because Brandon gave testimony in the hearing on Case 15-CA-115392-et al., this very case. Paragraph 26 alleges that by this conduct, the Respondent violated Section 8(a)(1) and (4) of the Act.

Karen Brandon was one of the original organizers of the Union and was active throughout the 1991 and 1992 cam-

⁶⁹ I believe this is the date of the incident. It matches two writeups for two employees that night.

⁷⁰ Waldo was a second-shift employee and had been wearing no glasses all evening up to 11 p.m.

paign and testified in this hearing on several incidents. I found her, throughout, to be a candid and reliable witness.

Brandon had worked through the two union campaigns as a bottle painter under the supervision of Sam Anderson and Debra Averette. On November 4, 1993, she was transferred to gift packing under the supervision of Sabah Futayyeh. That day, Brandon was put on sonic welding work. She had never done this work before and on the first day Futayyeh told her that her production was too slow, not only told her, but told her loudly, hollering at her.

On November 15, Brandon was 1 minute late in coming back from lunch. When Brandon and another employee, Latonya Tripp, tried to punch in Futayyeh stopped them. She told Brandon to go to her office and told Tripp to wait outside the door.

Inside the office, Futayyeh commenced to berate Brandon for coming back late. She was hollering, and when Brandon told her that she did not need to holler at her, she just kept it up.

After a while, Brandon stated, you get tired of people hollering, so she hollered back. This, apparently, was just what Futayyeh wanted. She called Don Pickens, a security or safety director. Pickens came down and they brought Brandon up to Joseph Hakim's office.

Present in the office were Pickens, Futayyeh, Pat Green, a union representative requested by Brandon, and Carol Seymour, Futayyeh's assistant. Pickens ran the meeting and he asked Brandon if she wanted to have the conversation recorded. She said no, but he recorded it anyway.⁷¹ Futayyeh gave her side of the story, Brandon gave hers, and Brandon was laid off for 2 weeks.

Brandon apparently came to work in Futayyeh's department about November 2, rather than the fourth. She received a first warning notice (R. Exh. 123(a)) for slow production and raising her voice to Assistant Supervisor Carol Seymour. On November 9 she was warned again (R. Exh. 123b) for slow production. On November 10, she was warned again (R. Exh. 123c) for not following orders and having a "smart mouth." On November 11 she was warned (R. Exh. 123d) for slow production. On November 12 things must have gotten to be too much for her. She was warned (R. Exh. 123e) for not calling in or coming in to work. Then, on November 15, Brandon was given a warning for coming back from lunch late. All of these warnings were written up by Seymour. The last warning contains no reference to the shouting which allegedly led to the suspension.

Futayyeh said that it was Seymour who met Brandon coming in late, and that Brandon began to yell at Seymour. Futayyeh went out to stop the "scene" and asked Brandon to come into her office. Futayyeh explained that they were going to write her up, according to the rules, but she started hollering and continued until Pickens arrived.

Both Futayyeh and Seymour testified that Futayyeh never talks loudly or yells or hollers.

If one looks at this incident together with the Harrell incidents (sec. III,(c),(52), above) I think it appears that Futayyeh was acting as an irritant, or provocateur, goading and provoking employees into reactive outbursts. Here we have an employee who had been employed by the Company for 6 years or more at the time of this incident; who had re-

ceived no warnings from her supervisors, Anderson and Averette, at least for the past 3 years or so, and now for no reason advanced by the Company, after testifying here on June 16, 1993. She was transferred to a new assignment and immediately given five warnings and a suspension.

As I noted, I credited Brandon's testimony here. I discredited Futayyeh and her staff, including Seymour in the Harrell and Howard incidents (sec. III,(c),(52)), and I discredit them here. Even Edward Hakim admitted that Futayyeh talked "clear, maybe above an average tone," and that was just her normal tone.

I believe the General Counsel has made a prima facie case that on her assignment to Futayyeh's department Brandon was forced to do work she had never done before, and was goaded and provoked until she received five warnings in 13 days, then responded because she presumed to remonstrate with her supervisor who was in her words "screaming" at her.

I believe that this evidence shows a calculated effort by the Company to either force Brandon to quit, or to react so that harsher and harsher discipline could be imposed. The Respondent has presented no credible evidence in its defense. I therefore find that, as alleged in the complaint, the Respondent by issuing warnings and by suspending Karen Brandon in November 1993, has violated Section 8(a)(1), (3), and (4) as alleged in the complaint.

D. The 8(a)(5) Allegations

1. The complaint alleges that on or about June 6, 1992, a majority of the employees in the unit described below designated and selected the Union as their collective-bargaining representative. The unit is described as follows:

All production and maintenance employees employed by the Respondent at its Monroe, Louisiana facilities, excluding all sales persons, office clerical employees, technical employees, professional employees, guards, supervisors as defined in the Act, and all employees of Packaging Techniques, Inc.⁷²

There is no dispute about the results of the election, or the description of the bargaining unit. The Company did, however, file objections to the election. Those objections were rejected by the Board and the Union was certified on December 7, 1992.

2. Paragraph 53(a) of the consolidated complaint alleges that the Respondent, through Edward Hakim, about July 14, 1992, offered employees recall from layoff to different shifts where employees had been employed before layoff, and implementing these recalls about June 14, 1992.

This allegation is similar to the allegation in paragraph 53(b) which I have considered, above, in sec. III,(c),(32) which also dealt with paragraphs 31 and 32 of the consolidated complaint.

In this incident, Felicia Kennedy testified that she worked on the bib line under Supervisor Irma Antley, and later Ida Bradshaw. On July 14, 1992, Kennedy met in Edward Hakim's office with a group of employees including Diane Joseph, Brenda Williams, Bertnie Mott, Rosie Matthews, and

⁷¹ This recording was never offered into evidence here.

⁷² This company was inadvertently described in the complaints as "Packing Techniques, Inc." See 317 NLRB 1252 (1995).

Wanda Shambro. Also present were Ida and Buddy Bradshaw.

Hakim told the group that the Company had lost the sleeper account with Wal-Mart and that he would need to lay off one employee and transfer two. He said that Kennedy and Shambro were the ones to be transferred. He told them they would be transferred to screen printing, asked them to sign a waiver (sec. III(c)(32)) and told them that if they did not accept the transfer, they would be terminated and would not be able to receive unemployment benefits.

They signed and were transferred. There is no evidence that the Union was ever notified of this layoff and transfer. I find that the Respondent's actions here are a violation of Section 8(a)(1) and (5). *Mike O'Connor Chevrolet-Buick-GMC Co.*, 209 NLRB 701 (1975).

3. Paragraph 54 of the consolidated complaint alleges that since about June 4, 1992, the Respondent unilaterally, temporarily laid off unit employees named in appendix A to the complaint, about the dates listed in the appendix A, and laid off other unit employees whose identities were unknown to the Regional Director, but particularly within the knowledge of the Respondent on other dates unknown to the Regional Director, but also particularly within the knowledge of the Respondent.

During the hearing, a number of employees whose names appear on appendix A, attached to the consolidated complaint, testified as to days or parts of days on which they were temporarily laid off in the period between June 4, 1992, the date of the election, and the several dates they testified in this proceeding, August 2, 3, and 4, 1993. These employees included Felicia Kennedy, Marilyn Smith, Vanessa Bailey, and Shirley Smith.

The testimony of these witnesses was credible, as far as their memories, and what limited records, or notes on layoffs they had would permit. Moreover, this testimony reflects only a fraction of the total layoffs which were effected at the plant.

It became apparent while these witnesses were testifying, that the verification of the number of employees, and the numbers of days or hours that these employees were temporarily laid off was going to be extremely difficult to ascertain. At one point in the hearing I felt that we should lay out the framework for backpay liability, assuming that violations were found on this paragraph to the complaint. Later, the task seemed so formidable, if we were required to bring in literally hundreds of employees to testify about when and for how long they were laid off⁷³ that I decided that it would be more effective if I did conclude that the layoffs were made by the Respondent without proper notification to the Union, to leave the backpay question to the compliance stage of the proceeding.

Still, as the hearing wended its weary way on, during the testimony of Edward Hakim, on August 4, 1993, the General

⁷³Not to mention the fallibility of memories, and the lack of consistent documentation; missing witnesses, people not available, and the expenses and difficulty in locating and bringing in former employees who may have moved away. A review of the length of service of those who testified here would tend to show that most employees of the Respondent were relatively shorttimers. Thus, the employee complement would be a constantly changing figure, resulting in many more by witnesses than the present number of employees at any one time.

Counsel moved into evidence exhibits (G.C. Exh. 100-813), which consisted of a series of 13 cards headed "Employee's Daily Attendance Record." Each of these cards showed the attendance of an individual employee for the period of the Company's fiscal year running from July 1, 1992, to June 30, 1993.

Hakim testified that these cards were maintained by individual supervisors, and that they were used primarily for holiday pay and for determination of eligibility for vacation pay. He admitted that these records were not kept in a uniform pattern, but he did state, and examination of the cards bears out, that there was a uniform way of showing layoffs, the initials "LO" or "L/O" on the day an employee was laid off. As I have said, I have serious questions about Hakim's credibility, and those doubts extend to documents prepared by the Company, but I see no reason to doubt that his description of these cards was accurate, insofar as we are ever going to arrive at an accurate count of days and hours⁷⁴ of layoffs at this company. I would recommend to those who will handle compliance that they use these cards at least as a starting point in computing backpay.

Turning to the merits of this complaint allegation, Hakim testified that temporary layoffs were a necessary part of running the business. If materials do not arrive, or if demand for a product is slow or inventories are too high or if one operation slows or stops, then employees will have no work, and it is the Company's policy that if they have work, they work, if they do not have work, employees are laid off.

So, even after the election on June 4, 1992, the Company continued its traditional practice of laying off when there was no work in a particular department, or line. There is no evidence that the Company approached the Union during the last 6 months of 1992 with suggestions that something should be done about the Company's temporary layoff practice. The Company continued to act unilaterally on this and other matters, at its own peril.

Finally, after the December 7, 1992 certification Company Lawyer David C. Hagaman bestirred himself and by a letter dated January 7, 1993 (R. Exh. 99), announced the Company's readiness to negotiate and discuss details such as the makeup of the Union's bargaining committee and the choice of a neutral meeting place.

After some more letters were exchanged, the parties met at a Holiday Inn in Monroe on March 3, 1993. At this meeting Hagaman acted as the chief company spokesman. He was accompanied at most meetings by the Company's in-house lawyer, Madeline Slaughter, and by Joseph Hakim. Edward Hakim attended the first session on March 3. The chief spokesperson for the Union was Joan Suarez, the international vice president of the Union, and the manager for the southwest regional joint board. Suarez also serves as trustee on several union trust funds, was a member of a Presidential Commission on Unemployment review, and had, when she testified here on January 19, 1994, just returned from Brussels where she participated in a European Community Trade Union Congress. She has also served as chief negotiator for most of the first contract negotiations the Union has been involved in. Suarez was accompanied by counsel, either Carl

⁷⁴The cards sometimes show the letters "LO" with a number such as "LO4." Hakim indicated that this meant that the layoff was for 4 hours, not a complete day.

Bush, who later left the employment of the Union, or William Franz whose office was then the Union's counsel throughout this entire proceeding, along with an employee committee.

The temporary layoffs issue was raised by the Company at the first session on March 3. Hagaman testified⁷⁵ that the Company was most anxious to get the issue on the table as soon as possible. It was, said Hagaman at the meeting, a top priority, and he asked that the Union refrain from filing additional charges until the matter could be worked out. Suarez said the Union would consider the oral proposal made by the Company to accomplish the temporary layoffs by seniority, with the hire date determining seniority.

The Union agreed to a moratorium on charges up to March 25, and Hagaman included in a letter of March 10, an item called temporary layoffs, to be implemented on March 25.

The next series of meetings started on March 22. Hagaman stated that he had difficulty getting Suarez to talk about the temporary layoff issue. She said to him that the Union wanted to talk about other issues, and that his proposal on temporary layoffs was no more important than reporting pay, seniority, and other issues. At the end of the day, Hagaman said that if his proposal was not acceptable, let the Union give them a counterproposal. Hagaman cited the Union's position as being that the Union was not going to negotiate any matter regarding temporary layoffs, or any interim agreements without getting a whole contract.

The meetings scheduled for March 23 and 24 were not held due to a dust-up between the parties. On or about March 31, the Union made a proposal for layoff and recall procedures, to cover both temporary and permanent layoffs (R. Exh. 61). On April 6, Hagaman wrote to Franz, discussing layoffs in the blister pack and pad printing departments. He added to that letter a proposal for temporary layoffs similar to that he had given orally on March 3. Then, on April 13, Hagaman wrote to Franz again (R. Exh. 110) stating that the Company would effectuate temporary layoffs by "utilizing seniority on the affected job or operation." This proposal was not acceptable to Suarez at later meetings on April 24 and 25 and at subsequent meetings. The Union cited its counterproposal of March 31 (R. Exh. 61).

I can understand and sympathize with Hagaman's quandary here. The Company was continuing with its temporary layoffs. Hagaman (and Suarez as well) was aware of the substantial backpay liability which could result from this policy, so he was searching out what alternatives he could. Of course, he could have just started notifying the Union, by telephone or fax, when each layoff came up, but that might have been too simple.⁷⁶

So, looking for an answer, Hagaman announced at a meeting on July 15, that the Company accepted the Union's proposal of March 31, and that they intended to implement it.

⁷⁵I had some problems with Hagaman's reliability, particularly in the matter of the tapes, discussed above in sec. III(B). However, I think his testimony while he was on the witness stand was straightforward and credible. There was no real dispute between his testimony and that of Suarez, the only two participants who testified about the negotiations.

⁷⁶The Union, too, could have agreed to a stopgap notification system, to await finalizing in a complete contract, but I would assume they considered it more advantageous to keep the pressure on.

Suarez said that the Union could not accept that, that the temporary layoff question was tied in with other parts of the contract. She said that the Company could not accept this single part of the Union's proposal.⁷⁷

Despite this, the Company implemented the union proposal, and has been following it since July 15, 1993.

Suarez' testimony is in substantial agreement with Hagaman's. She maintained that the Company's proposal was deficient in that it covered only one aspect of the layoff issue. There was no provision for bidding, bumping, or safeguards which would be contained in grievance and arbitration procedures. These were the reasons the Union did not accept the Company's actions in agreeing to the March 31 proposal.

Suarez was handicapped in her testimony in that she admitted that she herself took no notes during the bargaining sessions, but relied on others to perform that function. However, she also said that she had not reviewed any bargaining notes before testifying here. Thus, she had to confess that she did not remember some things about which she was questioned. I do not discredit her testimony since there are really no areas where her testimony and Hagaman's differ on salient points, but her failure to review any notes shows a rather offhand attitude toward a vitally important issue.

The Board's policy in situations where, as here, the Company follows a practice of effectuating layoffs of employees for economic reasons and fails to notify the employees' collective-bargaining representative, and to bargain over the decision and its effects is to find a violation of Section 8(a)(5) of the Act. *Plastonics, Inc.*, 312 NLRB 1045 (1993); *Stamping Specialty Co.*, 294 NLRB 703 (1989); *Lapeer Foundry & Machine*, 289 NLRB 952 (1988).

However, in this situation, the testimony of Edward Hakim shows that there are times when it would be impossible for the Company to know, even hours, let alone days, in advance when such layoffs become economically necessary. The Company recognized this shop-floor problem, and from Hagaman's testimony it is clear that he was aware of the liability already incurred, and which was continuing even as the parties sat at the bargaining table.

Hagaman, from the opening of negotiations on March 3, pressed the Union for some sort of accommodation. He was met with a refusal to consider this issue apart from a number of other issues in a first contract. He might unilaterally have begun notifying the Union of proposed layoffs, but he did not do that, and continued to press the Union to negotiate on this issue. Finally, he took a proposal which the Union had given him and unilaterally implemented it. I think that, in view of the Union's intransigence on this issue, he was entitled to do that under the circumstances in this case. *Southwestern Portland Cement Co.*, 289 NLRB 1264 (1988); *M&M Contractors*, 262 NLRB 1472 (1982). See *Eastern Maine Medical Center*, 253 NLRB 224 (1980). *Bottomline Enterprises*, 302 NLRB 373 (1991); *Nabors Trailers v. NLRB*, 910 F.2d 273 (5th Cir. 1990).

This decision did not remedy the previous unilateral layoffs, and on the basis of the facts in this case, I find that by unilaterally continuing a practice of laying off employees on a temporary basis, without consultation on decisions or

⁷⁷On the well-known maxim that until everything is settled in a contract, nothing is settled.

effects with the Union, in the period from June 4, 1992, to July 15, 1993, the Respondent has violated Section 8(a)(1) and (5) of the Act.

4. Paragraph 55 of the consolidated complaint alleges that since on or about August 3, 1992, the Respondent created a new classification of temporary employees and established the terms and conditions of employment for that classification.⁷⁸

Barbara Crawford, assistant controller and bookkeeper (for an employer she described as Luv-N-Care, but which other testimony here shows is now Contract Manufacturing, Inc.) identified a number of exhibits as agreements signed by temporary employees when hired, in which the employees agreed to work on a temporary basis.

These agreements (G.C. Exh. 2(c)-(ww)) were all signed between August and November 1992.

Edward Hakim testified that it has been the practice of the Company, since he has been connected with it, to hire temporary employees for periods up to 6 months. The policy apparently was never formalized. However, after the June 4, 1992 election the Company began putting "things" down on paper which had not been done before. A form (G.C. Exh. 2(a)) was developed which temporary employees were required to sign in order to be employed.

There is not much evidence on this issue, but we do have Hakim's statement that new temporary employees were required to sign a newly developed form after the union election. This part of Hakim's testimony is similar to his testimony on other subjects which I have discredited. I do not credit Hakim's testimony on this subject as well, and I find that there is no credible evidence that any temporary employees were hired before June 4, 1992. That being the case, the Company was obliged to bargain about the policy to hire temporary employees. The failure to notify the Union and bargain about the issue is another violation of Section 8(a)(1) and (5) of the Act.⁷⁹

5. Paragraph 22 of the complaint in Case 15-CA-12159 alleges that about March 18 or 19, 1993, and about a week thereafter, the Respondent laid off its employees employed at its Texas Avenue plant.

Karen Brandon testified that in March 1993⁸⁰ she was working with about 8 to 10 other employees doing bottle trimming at Texas Avenue. She stated that on the morning of March 16 Elizabeth Davis, the supervisor of that group, was late. When Davis came in the employees went to work. About 10:15 a.m. Davis told them that her child was sick, she had to take the child to a doctor, and so the employees had to clean up and go home. Davis told them to report the next morning, but when they arrived she was not there. They

⁷⁸ The Respondent argues that par. 55 is barred by Sec. 10(b) of the Act. I do not agree. These allegations involve the same legal theory as other allegations here, and the allegations arise from the same sequence of events. *Redd-I*, 290 NLRB 1115 (1988).

⁷⁹ While I believe that the Respondent should bargain with the Union concerning the employment of these temporary people, I do not believe that the General Counsel has shown that they are entitled to holiday pay since each of these employees agreed that they would not be eligible for any company benefits. This condition could be discussed in negotiations, but there is assurance that the waiver of holiday pay would not remain a condition of hire.

⁸⁰ Brandon later admitted that the March dates were used in error and that the incidents really occurred in January 1993

went home, and the next day, they reported again, but Davis was not there again. They did not work for the whole week. The Union was not notified of the layoff, or afforded an opportunity to negotiate about it.

It seemed to me, in a discussion on the record at the hearing, that this incident would be included within the general allegations dealing with temporary layoffs contained in paragraph 55 of the consolidated complaint, and dealt with therein (sec. III,(D),(3), above). I find that this incident constitutes a separate violation of Section 8(a)(5), but the remedy will be the same as that in section III,(D),(3).

6. Paragraph 23 of the complaint in Case 15-CA-12159 alleges that in late March 1993, the Respondent implemented a bottle production quota.

Karen Brandon testified that Elizabeth Davis, the supervisor for the bottle trimmers at Texas Avenue, received a telephone call sometime in March 1993. She told Brandon that the call was from Mike Henagan. Henagan had told Davis that Brandon and the other employees should be able to trim more bottles than they had been doing. They should do one "gaylord" a day.⁸¹

Before this no one was disciplined for failing to make production. Afterwards, two employees, Linda Head and Joanna Wesley, were laid off for failing to make production.

Linda Head testified that there were no quotas before January 1993. After that Davis told the employees that they should do so many bottles an hour. Head testified that on January 17, 1993,⁸² Mike Henagan told JoAnne Wesley and herself that if they couldn't do a gaylord in a day, then the Company would get someone who could. In January, Head and Wesley were laid off for a week for not meeting production quotas. Mike Henagan denied that he had specifically set quotas, but did say that he ordered a layoff for Wesley and Head because of poor performance. He did say that he had "implemented" a goal for Head and Wesley.

I do not believe that this incident was solely related to Head and Wesley. The testimony of Brandon and Head shows that the quotas were to apply to all employees. I believe that Henagan unilaterally set out these goals for production and I find that the goals which resulted in layoffs for two employees should have been discussed with the Union. I find a further violation of Section 8(a)(1) and (5).

7. Paragraph 24 of the complaint in Case 15-CA-12159 alleges that since about April 2, 1993, the Respondent laid off its long john production employees, and paragraph 25 of the complaint alleges that about May 31, 1993, the Respondent discontinued its long john production line.

With respect to paragraph 24, Erika Hughes, an employee on the long john line for more than 3 years and a member of the union bargaining committee, testified that she was laid off temporarily beginning in April 1993 for a number of days. Hughes was the only employee who testified here who

⁸¹ A "gaylord" is a box holding between 1000 and 2000 baby bottles. If employees had to trim 1000 bottles a day, that would be 125 per hour or more than 2 per minute. There is no evidence of how long it took to trim one bottle, so I cannot pass on the reasonableness of this quota.

⁸² The General Counsel accepted this January date, rather than the March date mentioned by Brandon and argued that the difference in dates was not prejudicial to the Respondent. I agree. The difference in dates really caused no hardship, nor worked any prejudice in this case.

kept a calendar showing the days she was laid off (G.C. Exh. 9). She said that no reasons were given by the Company for these layoffs.

Marilyn Smith and Diane Lackey also testified about these layoffs. I credit the testimony of these employees, but this paragraph 24 really duplicates a portion of the broader allegations contained in paragraph 54 of the consolidated complaint. See section III,(D),(3), and (5), above. There was no evidence here that the Company notified the Union about these layoffs, although, as has been already described, the Company was making efforts to negotiate an agreement on that issue. But, in any case, the remedy for a violation here is the same as the remedy for the companywide violations considered in section III,(D),(3). I therefore find an additional violation here of Section 8(a)(1) and (5), but the remedy will be the same as that provided for section III,(D),(3), above.

Paragraph 25 states that about May 31, 1993, the Company shut down the long john line without prior notice to the Union and without affording the Union an opportunity to bargain with the Company concerning the decision itself and its effects on the bargaining unit.

Erika Hughes, who I consider a credible and reliable witness, testified that the employees in the long john department were called to a meeting in Hakim's office on June 3, 1993. Hakim told them that the long john line was not making money, and that employees were going to be laid off. He had a piece of paper with the names of jobs written on it and he began to allow them to select jobs by seniority. Hughes had the most seniority and she had the first pick of the job on the list. Hakim would not give any reasons for this layoff, nor would he answer questions, but he did say that the layoff had been agreed to between the Company and the Union.

Diane Lackey, also a bargaining committee member, agreed with Hughes that Hakim said that the line was being discontinued. Lackey was the last on the list by seniority, and she was assigned to the third shift in the ultraviolet room.

Marilyn Smith, another bargaining committee member, gave basically the same description of the June 3 meeting. She was also transferred to the ultraviolet room.

On April 16, 1993, David Hagaman, the Company's lawyer and chief spokesman in the bargaining, wrote to Union Lawyer William M. Franz, who was not the chief spokesman, but did attend some of the bargaining sessions. On the second page of the letter (R. Exh. 75), Hagaman told Franz that, because of a downturn in business and lack of orders, the Employer would have to lay off the entire long john line of approximately 20 employees effective April 19, 1993. On May 10 (R. Exh. 76), N. Edward Hakim wrote to Franz enclosing a list of departments and the names of employees who were going to be permanently laid off on dates given on an attachment. Among these was the long john line, including Hughes, Marilyn Smith, and Lackey, with a prospective closing date of August 15.

This letter was amended by letter from Joseph Hakim to Joan Suarez, the Union's chief negotiator, on May 14 and 17 (respectively, R. Exh. 77 and R. Exh. 78). The closure date for the long john department was still August 15.

On May 21 (R. Exh. 79), Suarez wrote to Edward Hakim setting out her understanding of the Company's intentions for

implementing the layoffs.⁸³ On May 25 (R. Exh. 80), Edward Hakim replied to Suarez accepting all the understandings in Suarez' May 21 letter.

I do not think there is any question but that the Company notified the Union in a timely fashion about the closing of the long john department and I do not find that the General Counsel has established a violation of Section 8(a)(1) and (5) of the Act, based on this allegation.

8. Paragraph 26 of the complaint in Case 15-CA-12159 alleges that on or about April 22, May 21, 27, 28, and June 3 and 4, 1993, the Respondent laid off its bottle packing department employees.

Emma Kennedy testified that she was laid off in the bottle packing department on a number of days in May and June 1993. Emma Cain, another bottle packer, testified that she was laid off in April for a few hours on one day and also on some other days.

This testimony is vague, but I believe it accurately represents what happened. I find a further violation of Section 8(a)(1) and (5) here. See section III(D)(3), above.

9. Paragraph 27 of the complaint in Case 15-CA-12159 alleges that since about April 12, 1993, the Respondent laid off its sewing department employees.

While this allegation might indicate a full and permanent shutdown of the sewing department, the evidence shows that the allegation covers one temporary layoff. Wanda Smith, an employee in the sewing department from 1988 to 1993 testified that on April 23, 1993, the employees were notified by Supervisor Ida Bradshaw that they were laid off for lack of work. They were off from April 23-27, May 7, and a half day on May 10.

This is another allegation on which the evidence is clear and credible, and I find a violation of Section 8(a)(1) and (5). See section III(D)(3), above.

THE REMEDY

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

I shall recommend that the Respondent remove warnings from the files of employees I have found to have unlawfully received those warnings from the Respondent, and that those who have been unlawfully suspended by the Respondent shall be made whole by the payment to them of backpay for those periods they were unlawfully suspended, with interest.

I shall further recommend that employees who have been found in this decision to have been unlawfully discharged shall be offered reinstatement to their former or substantially equivalent positions with no loss in seniority or other rights and privileges, and that they shall be made whole for any losses in salary they may have suffered because of the discrimination against them by the payment to them of backpay computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

⁸³ This letter included a note of appreciation for the "Company's acknowledgment of its obligation to notify and bargain with the Union of proposed changes affecting wages, hours and conditions of employment."

I shall further recommend that the Respondent shall bargain in good faith with the Union concerning decisions to lay off employees temporarily, and concerning the effects of these decisions on employees, and that it pay to those employees who were temporarily laid off during the period from June 4, 1992, and July 15, 1993, backpay for the periods they were laid off during that time, with interest.

CONCLUSIONS OF LAW

1. The Respondents, Monroe Manufacturing, Inc., Contract Manufacturing, Inc., and Embroideries, Inc., are Louisiana corporations having offices and places of business in the city of Monroe, Ouchita Parish, Louisiana, and employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondents are a single-integrated business enterprise and a single employer within the meaning of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. On June 4, 1992, certain employees of the Respondent, in an appropriate bargaining unit, voted to be represented by the Union. The unit is:

All production and maintenance employees employed by the Respondent at its Monroe, Louisiana facilities; excluding all sales persons, office clerical employees, technical employees, professional employees, guards, supervisors as defined in the Act, and all employees of Packaging Techniques, Inc.

5. The Respondent has committed certain unfair labor practices in violation of Section 8(a)(1), (3), (4), and (5) of the Act, as set forth in this decision.

6. The unfair labor practices found to have been committed affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]