Limestone Apparel Corp. *and* International Ladies' Garment Workers' Union, AFL-CIO. Cases 10-CA-13840 and 10-CA-13951

April 7, 1981

DECISION AND ORDER

On July 21, 1980, Administrative Law Judge Thomas E. Bracken issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. Charging Party filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

In this case we affirm and adopt the Administrative Law Judge's findings and conclusions that Respondent's discharge of Katherine Anderson and Clinton Foster violated Section 8(a)(3), including his finding that the reasons advanced by the Respondent to support its actions were pretextual. After the Administrative Law Judge rendered his decision, we issued our decision in *Wright Line, a Division of Wright Line*, 251 NLRB 1083 (1980), recently cited with approval by the First Circuit in *Statler Industries, Inc.*, No. 80-1455, March 12, 1981. That decision indicated that we would apply the analysis it set forth to all cases alleging violations of Section 8(a)(3) and (1) turning upon employer motivation. However, we find it unnecessary formally to set forth that analysis in those cases where an administrative law judge's findings and conclusions fully satisfy the analytical objectives of *Wright Line*. We find that such is the case here. Thus, where an administrative law judge has evaluated the employer's explanation for its action and concluded that the reasons advanced by the employer were pretextual, that determination constitutes a finding that the reasons advanced by the employer either did not exist or were not in fact relied upon.[2]

No substantive objective is served by our reiterating and recasting an administrative law judge's finding and conclusions in order to achieve formalistic consistency with *Wright Line* by inserting the term "*prima facie* showing" after the evidence which demonstrates the employer's wrongful motive on the record as a whole[3] and then stating that "the employer did not meet its burden of demonstrating that the same action would have taken place even in the absence of the employee's protected conduct" where the administrative law judge has concluded that the proffered explanation is pretextual. For a finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel.

We shall not, therefore, in any future cases in which we adopt an administrative law judge's finding of a pretext discharge point to any failure to make specific reference to *Wright Line*.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Limestone Apparel Corp., Limestone, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. *N.L.R.B.* v. *Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949). Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We find no basis for reversing his findings.

We hereby correct two inadvertent errors by the Administrative Law Judge. Katherine Anderson was the employee who complained to Inez Payne that she did not have a supervisor. Secondly, Respondent's direct knowledge of Anderson's and Clinton Foster's union activities was based on Payne's and Charles Oliner's having seen their yellow authorization cards on July 19, 1978, not July 20. With respect to that knowledge, we find that Payne and Oliner would have known on July 19 what the yellow cards in Anderson's and Clinton's possession were since they had been present at an employee meeting on July 18 when Plant Manager James Ford held up and read from such a card.

In agreeing with the Administrative Law Judge that Respondent violated Sec. 8(a)(1) by telling its employees that something would be done about any employee caught signing union cards, or passing them around, or talking about the Union "on our company time," we do not adopt his reliance on *Essex International, Inc.*, 211 NLRB 749 (1974). Rather, we adopt only that portion of the Administrative Law Judge's analysis which finds that Respondent's use of the phrase "company time" is ambiguous because such a term is susceptible to the interpretation that solicitation and union activities would be prohibited during all paid time including nonworking time such as breaks and lunch periods. See *Chicago Magnesium Castings Company*, 240 NLRB 400 (1979); *Florida Steel Corporation*, 215 NLRB 97 (1974).

[2] *Ibid.*

[3] *Ibid.*

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge or threaten to discharge any of our employees for supporting the International Ladies' Garment Workers' Union, AFL-CIO, or any other union.

WE WILL NOT threaten our employees that we will close the plant down, or threaten you with reprisals if the Union comes into the plant.

WE WILL NOT threaten our employees that they will lose their right to discuss grievances with us, if they select a union to represent them.

WE WILL NOT threaten our employees that we will install a training program that would greatly decrease your wages.

WE WILL NOT threaten our employees that no more money will be invested in the business if the employees select a union as their bargaining representative.

WE WILL NOT promise benefits, or solicit grievances and promise to remedy such grievances, in order to induce our employees not to support the Union or any other labor organization, provided, however, that nothing herein requires us to vary or abandon any economic benefits or any terms or conditions of employment which we have heretofore established.

WE WILL NOT promulgate or maintain a rule forbidding employees to solicit for a union at times when they are not actually working, nor will we solicit employees to stop asking other employees to sign union cards.

WE WILL NOT prohibit our employees from discussing the Union at times when they are not actually working.

WE WILL NOT coercively interrogate our employees concerning union activities.

WE WILL NOT give employees the impression that union activities are under surveillance.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to form labor organizations, to join or assist the above-named Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL NOT refuse to reinstate employees who do not engage in disqualifying strike misconduct.

WE WILL offer the following employees 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 other rights and privileges, discharging if necessary any replacements, and WE WILL make them whole for any earnings lost as a result of our unlawful conduct against them, plus interest:

Katherine Anderson
Virginia Whaley
Clinton David Foster
Patricia Nelson
Terri Broyles
George Wayne Cooper
Anne Little
Teresa Ingram

LIMESTONE APPAREL CORP.

DECISION

STATEMENT OF THE CASE

THOMAS E. BRACKEN, Administrative Law Judge: This case was heard at Johnson City, Tennessee, on February 12, March 27, 28, 29, and 30, and May 8, 1979. A charge was filed by the Union on July 24, 1978,[1] resulting in the issuance of Case 10-CA-13840 on September 15; the second charge was filed by the Union on August 30, resulting in the issuance on October 6 of Case 10-CA-13951, a complaint and order consolidating cases. The complaints alleged that Limestone Apparel Corp.[2] the Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein the Act.

The Respondent filed an answer to the original complaint on September 19, and on October 16 filed an answer to the complaint and order consolidating cases, denying in both answers any material allegation of violation of the Act. On the first day of the hearing, February 18, 1979, new counsel appeared on behalf of the Respondent and, at its request, a continuance was granted,

[1] All dates are in 1978 unless otherwise stated.

[2] The name of the Respondent in Case 10-CA-13840 was amended on the record from Limestone Clothing Corp. to Limestone Apparel Corp.

as well as leave to file an amended answer. On February 20, 1979, an amended answer was filed, denying any violation of the Act, and also asserting some affirmative defenses. On the same date the Respondent filed a motion for a bill of particulars. By Order dated March 8, 1979, Respondent's motion was granted in part and denied in part. The General Counsel on March 9, 1979, filed a response to the Respondent's motion, and on March 15, 1979, filed a further response.

The primary issues are whether Charles Oliner is an agent of the Respondent,[3] and whether the Company, the Respondent, unlawfully interrogated, coerced, and threatened employees during the Union's organizing drive, and discriminatorily discharged three union supporters, Katherine Anderson, Clinton David Foster, and Regina Price, in violation of Section 8(a)(1) and (3) of the Act; whether the work stoppage engaged in by certain employees of the Respondent was an economic strike or an unfair labor practice strike; and whether the Respondent unlawfully failed and refused to reinstate its employees, Terri Broyles, George Wayne Cooper, Teresa Ingram,[4] Anne Little, Patricia Nelson, and Virginia Whaley, upon the termination of the strike.

Upon the entire record, including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the General Counsel, the Union, and the Respondent,[5] I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company, a Tennessee corporation, is engaged in the manufacture of apparel at its factory in Limestone, Tennessee, where during the past calendar year it purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The International Ladies' Garment Workers' Union, AFL-CIO, hereafter Union or ILGWU, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent operates a factory in Limestone, Tennessee, in which it serves as a contractor doing work for clothing manufacturers on chiefly blue jeans. The building used by the Respondent had at one time been owned by the Wood Manufacturing Corp. and, when that company became bankrupt, Charles Oliner had purchased its machinery at public auction, named the new enterprise Limestone Clothing Corp., and continued to use the same building. The record does not indicate how long the plant operated under that name, but in early February it began to operate as Limestone Apparel Corp.[6] Two daughters of Charles Oliner owned the stock of the Respondent corporation, and at some point sold 25 percent thereof to James Ford, a person who had broad experience in the garment industry in Tennessee. As Ford testified, Oliner hired him to serve as the plant manager.[7] February 6 was Ford's first day as plant manager, and Oliner introduced him to the assembled employees as "the new partner" and "plant manager." Prior to this time Limestone Clothing Corp. had been making blue jeans for the manufacturing firm of Bobby Brooks, and the Respondent, Limestone Apparel, continued to work as a contractor for Bobby Brooks, as its sole customer. Some employees of the prior company were also retained by the Respondent.

On February 7 or 10, Inez Payne commenced work at the factory as an efficiency consultant, and was in fact the person directly under Ford in responsibility for operating the factory. The 40-employee work force was called together by Ford, and he introduced Payne to them, telling them, as Payne testified without contradiction, that "the Company had been bought, and ah, what he planned to do with it." When asked on cross-examination if he discussed employee grievances at this time, she testified that he said, "We're new here and Mrs. Payne is here. She will be working with you, real close with you on the floor. If you have any problems she'll be glad to listen to you." In March the Respondent secured a large contract for jeans from a new customer, Snapfinger, and in April received a contract from a third customer, Robert Lewis.

B. *Credibility*

As in many of these cases the resolution of testimonial conflicts is critical. Because of the number of witnesses and the length of the hearing, there are many such conflicts in this case. I have carefully considered each of them. I have particularly noted those instances which Respondent's brief indicates as reflecting on the testimony of certain witnesses for the General Counsel. I have found the testimony of the General Counsel's witnesses, with one exception, to be generally reliable, and have credited their testimony. From my observation, as well as from consideration of the record, I am convinced that they were striving to tell the truth as best they could recall it, and letting the chips fall where they would. They also withstood long, searching, and grueling cross-examination, while the hearing was conducted under the rule of exclusion of witnesses. However, I do have reser-

[3] In the answer filed by the original counsel for the Respondent, it was admitted that Oliner was an agent of the Respondent. In the Respondent's amended answer it was denied that Oliner was an agent.

[4] The complaint states Cooper's name as James Wayne Cooper, but he testified that his name was George Wayne Cooper. Ingram testified that her first name was spelled Teresa, not Theresa, as in the complaint.

[5] A subsequent reply brief submitted by the Respondent was not considered because the Board's Rules and Regulations make no provisions for such a brief.

[6] Limestone Clothing Corp. continued to exist as an enterprise of Oliner, with an office in New York City.

[7] Ford was also the president of the corporation, although the record does not indicate how this was effectuated. He testified that the corporate structure of the Respondent started on February 28.

vations about the testimony of Anne Little[8] and I do not generally credit her except when her testimony agrees with findings made herein.

The Respondent's witnesses Ford and Payne, who had been the top operating management of the Respondent, did not impress me as witnesses in whose testimony I could have confidence as to its accuracy and reliability. Rather, I received the strong impression that they were advocates, artfully trying to furnish answers that helped their cause, rather than trying to state the facts as they actually remembered them. In addition, much of their testimony was elicited through grossly leading and suggestive questions which greatly impaired the probative value of their testimony. Witnesses Debbie Anne Arrowood and Robert E. Tibble impressed me in the same way as the plant employees called by the General Counsel, honest factory workers, with minimal education, telling the truth as best they could. Sergeant H. D. Kearns was also a credible witness, but had only a vague recollection of his visits to the picket lines.

A substantial portion of the testimony given by the witnesses for the General Counsel, alleging violations of the Act, focused on statements and conduct of Charles Oliner, whom I have found, in section III,D,7, below, to be an agent of the Respondent. Although Oliner continued to operate the parent company Limestone Clothing Corp., and his brother served as counsel for the Respondent throughout the hearing, he was not called as a witness, nor was his absence explained. The failure of the Respondent to call Oliner, its principal actor in these events, gives rise to the inference that he would not contradict the testimony of the other witnesses concerning his statements and conduct. I draw the inference that his testimony would have been adverse to the Respondent. *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) [Gyrodyne Co. of America]* v. *N.L.R.B*, 459 F.2d 1329, 1336 (D.C. Cir. 1972).

C. *The Union Campaign Begins*

On March 28 Mary Ellen Grace and Gwen Cotham, two full-time organizers for the Union, first appeared outside the plant of the Respondent and spoke to several employees when they came out to lunch. On April 4 and 12 they distributed union pamphlets to the employees but, in the main, as testified to by Grace, they conducted "a low-key house call campaign." One of the first employees contacted was Little, who had been hired by Payne as an operator on March 7. Little testified, without contradiction, that after signing a union application card she thereafter solicited about 40 employees to sign cards, and actually secured about 20 signatures for the period up to July.

[8] Little was an obviously partial witness who attempted to protect the Union and its members by her answers. One example is her testimony that Teresa Ingram did not lie down on the ground in front of a truck, whereas Ingram herself testified that she had lain down in front of a truck, as did other union witnesses.

D. *The Alleged 8(a)(1) Violations; Findings and Conclusions With Respect Thereto*

The General Counsel alleges that, following the Union's appearance, the Respondent's president, Ford, Supervisor Payne, and its agent Oliner engaged in some 23 acts of interference, restraint, and coercion. These allegations are denied in their entirety by the Respondent. The evidence as to these issues is set forth below.

1. Little's first conversation with Payne

Little testified that on or about April 9 she was having trouble with her sewing machine, when the chief mechanic, Rick Carter, came to repair it. When Carter asked her if she had signed a union card, she felt "like I was being questioned," and requested to speak to Payne. Little then went to Payne's office, where she told Payne that she believed that she was under suspicion for signing a union card, and she then stated that she had done so. Payne then proceeded to tell Little that the Company had been bought out of bankruptcy, and that it could not afford to operate under a union. She then asked Little who had signed union cards and, when Little denied knowledge, Payne named three employees, and asked if they were backing the Union. The conference closed with Payne asking Little to discourage union activity.

According to Payne, Little had come to her and asked to speak with her in private, on the day after Payne had seen union organizers pass out cards or literature to employees out on the street. Little opened the conversation stating that she guessed Payne knew people were passing out cards for the Union on the previous day, and Payne agreed that she knew. Little then told her that she knew operators had seen her talking to the organizers, but she assured Payne that she was not working for the Union, that she was talking to them because they were from her hometown in Virginia. Payne replied that such conversations were outside the plant and all right with her, that all she was concerned about was the efficiency of the plant.

I have previously found Little and Payne not to be credible witnesses, and I also find Little's testimony in this instance to be highly implausible. I would dismiss this allegation of the complaint.

2. Little's second conversation with Payne

Little testified that several days later she had another conversation with Payne in her office, and Payne asked her "who had turned the company into the union." Little replied that she did not know, and that the two organizers would not release the information. She was then asked by Payne not to contact other employees about the Union.

According to Payne, Little had come to her on a break and informed her that union activity was getting strong, and she could not understand why they were trying to organize a small plant that was just getting started. Payne replied that she did not understand it either, and Little then stated that she would find out for her who was pushing the Union. Payne told Little that she had no right to tell her what to do or what not to

do. They then discussed how the plant was doing; Payne told Little she was doing well on her job, and made her a utility girl.[9]

Since I have not found Little a credible witness and her testimony was controverted, I shall recommend that this allegation of the complaint be dismissed.

3. The meeting on April 18

The General Counsel contends that on April 18 James Ford and Charles Oliner each twice violated Section 8(a)(1) by their remarks to employees.

a. *According to General Counsel's witnesses*

Little testified that she attended a meeting of the employees right after lunch at which Ford, Oliner, and Payne were present. Ford introduced himself as the president of the Company and then read a "letter" concerning unionism and the plant.[10] Ford then informed the employees that he had been negotiating with several insurance companies as to securing a hospitalization policy and he thought that he now had one that would be suitable for the employees. However, when he stated the cost to be borne by the employee and requested a showing of hands, most of the employees turned it down. Ford then told them that they had five paid holidays, and discussed with them when they would like to take their vacations. Little also testified that Ford said, "If we had a union, we had a third party, then we had relieved our right to negotiate with him, take our grievances up with him or Mr. Oliner." She also testified that Oliner spoke, telling the employees that he bought the Company out of bankruptcy, that he had lost $50,000, and he asked them to discourage any union activities.

Regina Price testified that she was 1 of 10 to 12 employees called to a meeting by Payne that afternoon. Ford told them that he had found some good insurance for the employees, then talked about their vacations and holidays. When Ford asked the employees to vote on the insurance by raising their hands, some employees did and some did not. Price also testified as follows:

> Charles Oliner, he told us if there's a union brought in that he would close the plant down, that he'd put locks on the doors so nobody wouldn't work, that he would not have a union in there. He said the contract they was getting was not under a union, and that he would not have a union in the plant.

Patricia Nelson, who had worked in the Limestone building since June 1977, testified that she attended a meeting of 8 to 10 employees at which Ford told them that he had talked to several insurance companies and had found one that he thought would be good for all the employees, and that the Company would pay $2 every payday towards the cost of this insurance. Prior to this there was a hospitalization policy with the Western Southern Life Insurance Company, for which the employee was required to pay the total cost. She testified that Ford also told the employees, "If we had any grievances or anything to bring it to him or Mr. Oliner or Inez." Nelson also testified that the meeting was then turned over to Oliner and he stated to the employees that he could not stay competitive if a "third party" came in.

b. *According to the Respondent's witnesses*

Ford testified that he opened the meeting by reading a statement on the Company's position "as far as how labor unions are concerned," and that this statement, General Counsel Exhibit 3, was later also posted on the bulletin board. He then told the employees that he had found an insurance program suitable to their needs, and that he would talk to them later in smaller groups.

Ford also testified that Oliner spoke to the employees about the negotiation of a new contract with Snapfinger,[11] and how it would make the plant profitable if they got it. He also discussed competition in the South and in the North, and why contractors were coming south. Ford denied that he or Oliner said that the Company could not operate under a union or that it would lock the doors if a union came in. Ford did meet with smaller groups that day and the next, about the insurance program, and he explained what benefits it would pay, how much it would cost each employee, and the fact that the Company would contribute $1 a week to the premium. Oliner was also present at these meetings and told the employees he had agreed to the insurance proposal, and that he thought it was a good plan.

Payne, when asked what Ford said at the meeting, testified that he told the assembled employees that the vacations would be in July, and the number of paid holidays they would receive. Next, he talked on insurance, stating that he had decided on one insurance company, and that he would get together with them in small groups, and go over with them what the selected company could offer them. According to Payne, the next item was Ford's stating to the employees that there had been talk "about union and union activities," and that he proceeded to read a letter on how the Company stood. Ford asked Oliner if he wanted to speak, and Oliner talked about the Snapfinger contract, and that in the past a lot of money had been lost, but the future looked very good. Oliner then said the company would pay a dollar or $2 on the insurance policy. While Payne stated she did not remember Oliner talking about a union, she did remember him talking about a third party:

> He—he said—I believe his comment was on this—on this union situation, if we—if we—when the business got—you had, ah, to go union or some kind of—he put it, you know, we wouldn't be competitive.

Patricia Nelson was the most impressive witness in describing Ford's and Oliner's meeting with the employees and I credit her testimony, that Oliner told the employ-

[9] A utility girl is an employee who can do several operations and is paid at a higher rate than an operator.

[10] G.C. Exh. 3 is a one-page document captioned "Statement on Unionism."

[11] The complete company name of Snapfinger does not appear in the record.

ees that the Respondent could not stay competitive if a third party came in. This testimony was corroborated by Payne who remembered that Oliner spoke about a third party. It is also clear from Payne's testimony that she, and everybody else present, knew that when Oliner said the third party he meant the Union, and if the Company had "to go union" as she put it, it could not be competitive, and therefore would have to close the plant.

Nelson's testimony that the Company offered to pay a weekly amount toward the cost of a hospitalization plan was corroborated by Ford and Payne. I also credit her testimony that Ford solicited grievances. This was uncontradicted.

The General Counsel offered no evidence other than the statement read by Ford to the employees, that Ford threatened to close the plant, if the Union were selected by the employees as their collective-bargaining agent. I do not find such a threat in this written statement, and would dismiss this allegation of the complaint.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The test applied in determining whether a violation of Section 8(a)(1) has occurred is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *Electrical Fittings Corporation, a Subsidiary of I-T-E Imperial Corporation*, 216 NLRB 1076 (1975); *Jimmy Dean Meat Company, Inc. of Texas*, 227 NLRB 1012 (1977).

Based on the foregoing facts, and applying the above legal principle, it is found that the Respondent engaged in interference with, and restraint and coercion of, its employees in violation of Section 8(a)(1) of the Act by the following actions and conduct of its president and its agent: (1) by Oliner's threat that if a union (third party) came in the plant he would close the plant down, (2) by Ford's promise that the Company would pay part of the cost of hospitalization plan,[12] (3) by Ford's solicitation to the employees that they bring any grievances they had to himself or Oliner or Payne.[13] There is nothing in the record to indicate that such an offer had ever been made before. I do credit Payne's testimony that in early February, when Ford introduced her to the employees, he told them that if they had any problems Payne would listen to them. This is a far cry from telling the employees to bring grievances to the president and to the president's partner, as well as to Payne. While the Respondent made no specific promise to correct grievances, the structure of this meeting provides a "compelling inference" that the employer, by its conduct at this meeting, by implication promised that the employees' grievances would be corrected. *Raley's Inc.*, 236 NLRB 971, 972 (1978); *Reliance Electric Company*, 191 NLRB 44, 46 (1971).

[12] Prior to this meeting the Respondent had not contributed to any hospitalization plan, nor does the record show in any manner that the Company was planning to institute a partially paid hospitalization plan prior to the advent of the Union. Obviously, this promise of a benefit was intended to discourage interest in the Union.

[13] While the complaint alleges that Oliner solicited grievances on this date, there was no testimony to that effect; but there was the credited testimony of Nelson that it was Ford who solicited grievances. This unlawful activity of Ford was related to, and intertwined with, the allegation in the complaint as to Oliner, and was fully litigated at the hearing so as to justify a finding of a violation of Sec. 8(a)(1) of the Act.

4. The Company's meeting of mid-July

The General Counsel alleges and the Respondent denies that, at a meeting on July 18, the Respondent, by Ford and Oliner, (1) threatened employees (a) with discharge and reprisals if they joined the Union, (b) that they could no longer talk directly to supervisors if they selected the Union as their bargaining representatives, (c) with plant closure if they selected the Union, (d) with a training program at reduced wages, (2) solicited employees' grievances, and (3) prohibited its employees from soliciting for the Union during their nonworktime.

On Tuesday afternoon, at approximately 4 p.m.[14] all employees were summoned to a meeting in the lower end of the plant. Ford, Oliner, and Payne were present for the Respondent.

a. *According to the General Counsel's witnesses*

Virginia Whaley, an employee since June 1, testified that Ford held up a union card, and proceeded to tell the employees that, when he and his wife had a disagreement, they did not need a third party to mediate,

> . . . that they sat down and discussed it among themselves, and that if we brought a third party in, we gave up the right to come to him with our problems, and our grievances.

Ford then turned the meeting over to Oliner who proceeded to tell the assembled employees that he had lost money in the plant, and that he could get a training program in which he would pay the employees $1.45 an hour instead of $2.65, and that, if the Union came in, he would have to close the doors.

Clinton David Foster, another employee, when asked what took place at this meeting, testified that Ford pulled out a union card and began to read it aloud:

> He said, "Now when you sign this union card," he says, "you're giving up your freedom to come directly to me." He said, "You'll have to come through a third party." And then he went on to say that it would be harmful to the plant if the Union did come in, and asked us not to sign union cards. And he went on to say that if we were caught signing union cards or passing them around or talking about union on our company time that he would do something about it. Then he asked us again not to sign union cards; that he couldn't work through a third party or something like that.

Foster further testified that Ford then introduced Oliner who spoke, telling the employees that they did not need a third party, that if the employees had any problems, to bring them to Ford or himself, and that he

[14] Ford testified that this meeting was held on July 19. Payne thought it was on July 18, as did the majority of the other witnesses, and I so find.

and Ford would try to work them out. Oliner also told them that the Company could bring in a training program that would pay $1.45 an hour instead of $2.65. He further recalled that Oliner said something about losing $50,000 and that:

> Then Charlie said that why should contractors bring their contracts to a union plant when they could take them to an un-union plant and get their work done cheaper. He said they would lose contracts that way and would have to shut the doors because we wouldn't have work to do.

b. *According to the Respondent's witnesses*

Ford testified that an employee had previously brought a blank union card to him, and that he opened the meeting by showing the card to the employees, and then read it to them verbatim. He told them that they had a right to sign it or not to sign it, and to think very carefully before signing it or any other card. He also admitted that he told the employees that if they had any problems to let him or Payne know about them, as they were there to help with any problems that came up. When asked if anything else was said, he testified:

> No, Charlie—Mr. Oliner made some comments about the Union, about the competition we were in. He made a comment about us being a contractor, that we didn't make work for ourselves; we made it for another person and, therefore we had to be more competitive—Our prices were as high as we could make them and still get work.

While Ford denied that Oliner said the Company would close the plant if the Union came in, or that he said he could not work with a union, he did testify that Oliner told the employees that he was a union cutter, and had been all his life. On cross-examination, when Ford was pressed if he made any reference to a third party, he finally admitted that after reading the card he said "that having someone come in from outside and make your decision was probably somewhat like a marriage, that if you and your husband have problems then somebody would solve them for you."

Payne testified that Ford read the union card to the assembled employees, and then when asked if he said anything else about the Union replied: "He did not make any comment except that, ah, like the card said that, ah, you have, ah, a third party to do your bargaining for you, I believe is the comment."

Whaley and Foster were credible witnesses and it is now found that the speeches given by Ford and Oliner on July 18 occurred substantially as Whaley and Foster described them. On the foregoing facts it is found that the Respondent engaged in interference with, and restraint and coercion of, its employees in violation of Section 8(a)(1) of the Act by the following actions and conduct of its president, and its agent:

Section 8(a)(1) of the Act was violated by Ford's remarks in which he threatened that if any employees were caught signing union cards, or passing them around, or talking about the Union "on our company time" he would do something about it. Plainly any employee in that factory would realize that when the boss said that, if he were disobeyed, he would do something about it, such boss meant he would discharge or take some kind of harmful reprisal against the employee for such disobedience. Ford's remark also constitutes a too broad and illegal no-solicitation rule. The Act preserves to employees the right to engage in union and other protected activity in the employees' nonworking areas during nonworking hours. Certainly the term "company time" is susceptible of being understood by the employees as meaning, from the moment of entering the Company's premises, and clocking in on the job, to the moment of clocking out and leaving the plant. By prohibiting solicitation and distribution during "company time," the rule does not distinguish between the time actually spent in job performance, and those hours during which the employees are on breaks, lunch, or not actively at work. Hence, this rule violates the Act. *Essex International, Inc.*, 211 NLRB 749 (1974).

The Act was violated by Ford's threat that, if the employees selected a union (third party) to represent them, they gave up their right to come to the Respondent and present their own grievances. Section 9(a) of the Act provides employees with a statutorily protected right to present their own grievances to management, even when employees have selected bargaining representative. Ford's declaration was a misstatement of the law and violates the Act. *Graber Manufacturing Company, Inc.*, 158 NLRB 244 (1966), enfd. 382 F.2d 990 (7th Cir. 1967); *Tipton Electric Company*, 242 NLRB 242 (1979).

The Act was violated by Ford's solicitation of grievances and implied promise to correct them, when he admittedly told the employees that if they had any problems to let him or Payne know about them; and by Oliner's solicitation of grievances and implied promise to resolve them when he told the assembled employees that if they had any problems to bring them to Ford or himself, and he or Ford would try to work them out.

The Act was violated by Oliner's threat that if the Union came in he would have to close the doors, and by his threat that he could bring in a training program that would pay the employees $1.45 an hour instead of $2.65 an hour. Oliner's reference to the institution of the training program which would cut employees' wages by $1.20 per hour was clearly a warning that, if they did not abandon their activities for the Union, he would punish them by cutting their hourly rate of pay almost in half.

5. The union organizing committee

On the evening of July 18, approximately 10 employees of the Respondent met at the home of Virginia Whaley, for the purpose of forming an in-plant organizing committee. Union Officials Grace and Cotham conducted the meeting, and had employees sign a list indicating that they were willing to serve on the committee, and agreeing that their names could be sent to the Respondent in a telegram advising it of this committee. Anderson and Foster were present at the meeting, and were 2 of the 10 employees who signed to serve on the com-

mittee. On the following morning, July 19, Grace telephoned James R. Goldberg, the southeast regional counsel for the ILGWU, at his Atlanta, Georgia, office and gave him the names of the employees who had agreed to serve on the organizing committee. As a result of this call Goldberg caused the following Western Union mailgram to be sent to the Respondent:

> Limestone Apparel Corp, Attn Paul Ford Plant Manager
> PO Box 38
> Limestone TN 37681
>
> This is to advise you that the following employees are members of the ILGWU AFL-CIO Organizing Committee: Anne Little, Virginia Whaley, Rebecca Chandler, Alberta Tina Stevenson, Patricia Nelson, Patsy Landers, Clinton David Foster, Katherine D. Anderson, Judy K. Foster, Sandra Loper. These employees are engaging in proper union activities. A copy of this telegram has been sent to Curtis L. Mack Regional Director NLRB 101 Marietta Tower Suite 2400 Atlanta, GA 30303.
>
> James R. Goldberg Southeast Regional Counsel ILGWU 457 Plaster Ave, Atlanta, GA 30324.
>
> 1100EST

Goldberg testified that about an hour after he sent the telegram, at or about noon, he received a telephone call from Western Union, in which he learned that the office secretary of the Respondent had refused to accept the telephoned mailgram on behalf of the Company, and that there was no such person there as Paul Ford, although there was a James Ford. Goldberg then instructed Western Union to change the message from the attention of Paul Ford, to the attention of James Ford, and resend the mailgram. On the following day, July 20, Goldberg received in the mail a confirmation copy of his July 19 mailgram, which was to the "attn Paul Ford" (G.C. Exh. 11). Goldberg thereafter had several conversations with L. Hillis, a customer's relations supervisor at Western Union, about delivery of the mailgram, and on July 26 Hillis sent Goldberg a mailgram (G.C. Exh. 13) which read as follows:

> Confirming our telephone conversation today reference your message 4-024900E200 Dated 7-19 to Limestone Apparel Corp, Attn James Ford Plant Manager Copy Message, PO Box 38, Limestone, TN 37681: This message was not telephoned to the addressee until 07-21 due to addressee's unavailability and secretary declining to accept for him. However, a mailgram copy was sent to the addressee as a simultaneous transmission of the telephone message. This mailgram copy would have been received by the addressee with his morning mail delivery on July 20.
>
> L. Hillis, Supervisor, Customer Relations Western Union Telegraph Company

Ford testified that on Thursday, July 20, his secretary had informed him that there had been a telephone call for Paul Ford and she had refused to accept the call. On Friday morning, July 21, he had gone to the post office to pick up company mail, and included therein was a mailgram to the attention of Paul Ford (Resp. Exh. 33). This mailgram had, as its first paragraph, "This is a confirmation copy of a previously phone-delivered telegram." The rest of the message was identical to that of the mailgram set forth above, naming the employees of the Respondent who were on the organizing committee.

I find from the above that the General Counsel has not met his burden of proof that the Respondent received the mailgram on July 19 or 20. The Western Union representative, Hillis, in his July 26 mailgram to Goldberg, admits that the message was not telephoned and received by the Respondent until July 21. His statement that a mailgram copy "would have been received by the addressee with his morning mail delivery on July 20" is speculation. The record thus shows that the Respondent first received the mailgram notifying Ford of the names of the employees on the committee on July 21, when Ford picked it up at the local post office.

6. The events of July 19

a. *The morning conferences of Oliner*

On the morning following the union meeting at Whaley's house, Little went to work at her regular time. She testified that at or about 8 a.m. Oliner came to her machine and requested that she go to the office with him. She then went to the president's office, wherein she had a long conference with Oliner:

> When we first went in he asked me if I was not the ring leader behind the union activity. I was told that he was aware that we had a meeting. He would like to know how many attended, what percentage I thought had signed up. Again I was told about the company being in the red, being bought out of bankruptcy. He felt like it was the younger employees and not the older employees who were more or less discouraged and wanted to know if I would please—he felt like they would listen to me—would I please refrain from asking anyone else to sign a card, discourage—do not, you know, even talk to the union.

Little also testified that Oliner asked her what the employees' grievances were, and she told him they were postdated paychecks, pressure, working conditions, seniority, restroom facilities, some place to eat, and overtime. Oliner asked her if she thought a union could help solve the grievances, and she replied that she was not sure. Late in the conversation Ford entered the room and Oliner asked Little to tell the president what she had previously told him, and she did so. She remembered Ford saying that at that time they could not "operate under a union." She also testified that Ford asked if she thought a union could help the employees with the grievances, and that she and Ford did converse on a personal matter. As she left the office, Oliner told her that he could not and would not operate under a union, that he would close the plant down.

Ford testified that, when he went into his office, Little and Oliner were talking, and that he got in "on the end of the conversation." When asked how much of the conversation he heard he stated that he heard the part where Little was telling Oliner about wanting to send her son to ministry school. He recalled no grievances being discussed except that the matter of hot water in the bathroom did come up, and he then left and checked it out. He denied that he told Little that he could not work with a union, only admitting that he told her he had not worked in a union plant. He also denied that Oliner said he could not work with a union, or that he or Oliner said that the Company would close its doors if the Union came in. As previously noted, Oliner did not testify, and by Ford's admission, he was present only at the end of the conversation when Little and Oliner were talking about Little's plans for her son, and hot water in the bathroom. Little's testimony is therefore uncontradicted, and I credit it.

Foster testified that on the same morning he was told by Debbie Tibble to go see Oliner in Ford's office. Oliner opened the conversation by asking Foster if he had any problem he would like to talk over. When Foster informed him that his machine had broken down, and had not been fixed, Oliner asked if the Union was going to fix it. He then spoke of a training program in which the Company could pay the employees $1.45 an hour instead of $2.65. Oliner then talked about the investment of more money in the plant, but that he could not do so if the Union came in, as he could not lose any more money, having already lost $50,000. He also told Foster that he knew about the union meeting on the night before. Foster's testimony was totally uncontradicted and I credit it.

b. *The roadside confrontation between Oliner and Grace*

Later that morning, Grace and Cotham came to the plant to talk to employees on their lunch break. The two organizers talked to about 14 workers who were seated on a wall in a churchyard, that was on the opposite side of the road from the plant, for about 5 minutes. At or about 11:40 a.m., Oliner and Ford came out of the factory, crossed the street and approached the two organizers. Oliner asked Grace if she was the "union lady" and upon answering that she was, she introduced Cotham, and the parties shook hands. Grace testified that Oliner then proceeded to tell her that the employees did not need a union, that the older people were satisfied, and that it was only the newer people who were dissatisfied. Grace then replied that she was just telling the employees what rights they had.

Oliner then proceeded to tell Grace that he was an old union man himself, that Ford had lost $25,000 on the operation, and that he did not need the plant as he himself had lost $50,000. He also told her that Bobby Brooks would pull their orders if the Union came in, as Brooks was only paying $33 a dozen, "And if the Union came in that he wouldn't remain competitive." She then testified as follows: "And he said that he wouldn't fight the Union like Farah did. And I said, 'Well, are you saying that you will close the plant?' He says, 'Yes,' and I said, 'Well, I consider that a threat.'"

Oliner then proceeded to tell her that the Union had forced a lot of factories to close, and that New York looked like a ghost town, as about 5,000 shops had gone out of business causing a lot of people to lose their jobs. Grace argued that the Union was not out to put the Respondent out of business, and would help the plant's operation if it came in. When Oliner stated that he did not have to pay the employees $2.65 an hour, but could put in a training program that would allow him to pay $1.45 an hour, Grace disputed his ability to qualify for such a program. On cross-examination Grace agreed that Oliner had said that he did not understand why the Respondent was singled out for unionization, while other plants in the South were not unionized, and further agreed that Oliner said if other plants were not organized, he could not be competitive and stay in business.

Anderson, Foster, Ingram, and Whaley were among the employees sitting on the wall, when the conversation commenced. Anderson described it as follows:

> Mr. Oliner came up to Mary. And he said, "So, you're the union lady?" And she said, "Yes, I am." And she introduced herself and Gwen Cotham. And he proceeded to tell her that he did [sic] want a union in the plant, that he could not operate with a union; he could not pay union wages; he would have to close the plant. He said higher wages would cause inflation at Limestone. And he kept saying that he had lost $50,000, and he could not work with the union; he would have to close the plant up. And he said that Bobby Brooks and Snapfingers would cancel their contract if the union came in.

Foster testified that the conversation started out with Oliner telling Grace that the Union was misleading and deceiving the employees. During the argument Oliner stated that contractors would not bring their work to the Respondent if "they was union." Grace then asked, "You mean if a union came in, you will shut the doors?" and Oliner replied, "Yes." Whaley testified briefly on this confrontation, stating that "I heard him tell her that if a union came in he would close the doors of the plant and that all the workers would lose their jobs." Ingram testified that she did not understand a lot of Oliner's statements as "he talked real fast," but that she did hear him say he would close the plant down if the Union came in.

Ford admitted that the conversation had taken place when he, Oliner, Payne, and a Snapfinger representative, David Starks, left the plant to go to lunch. He testified that Oliner said, "Oh, there's the union organizers. Let's go over and talk to them." Oliner and Grace then held a conversation which Ford described as follows:

> The discussion involved why the union wanted to fool with such a small plant; why they didn't pick on somebody that was a going concern; the fact that in New York there had been a lot of shops closed because the union was inflexible; the fact that this little plant was comparable with—to any of the

other plants in the area as far as working conditions were concerned, sanitary conditions concerned; the fact that I was a "softy" and that the union was trying to give me a bad time; that Oliner had already lost $50,000; the fact that if we were going to remain competitive, we would have to get more efficient; the fact that even in union shops they would not allow inefficient workers to stay there on the payroll; the fact that the older employees were not dissatisfied with the situation, but the younger employees were. That's the best I remember.

Ford also testified that on several occasions Grace said to Oliner, "What you're saying is that you're going to close the plant if a union tries to come in," but Oliner replied, "No, competition closes the plant; Union's don't close plants." Ford estimated that the conversation took about 45 minutes. He took no part in it, other than he kept saying, "Charlie, come on. Let's go have lunch." Ford's requests were ignored by Oliner.

Payne described the conversation as follows:

> It was just mostly Mr. Oliner talking to her about the union situations, what unions did and, ah, how they affected plants, making them not being competitive, losing their contracts and this type of thing. It was just back and forth between them. They kept saying to him, "So you're saying you'll go close the plant?" And he kept saying, "No, I'm not saying. I'm saying you will cost us out of the business if we have to raise our prices."

Payne said that Grace was defending the Union and their activities. She described the conversation as a "hot argument" in which Oliner was upset, and that it took some "coercing" to get him into the car, and leave for lunch.

I credit Grace's testimony that Oliner said that if the Union came in the plant the plant could not remain competitive, and that unlike Farah[15] he would not fight the Union but just close the plant. Neither Ford or Payne specifically denied Grace's statement, as both testified in generalities as to what Oliner said. Oliner, as previously pointed out, did not testify. I also credit the testimony of Anderson, Foster, Whaley, and Ingram which substantially corroborated the testimony of Grace. Payne did admit that Oliner said unions make plants lose their contracts. Ford admitted that Oliner blamed the Union for closing a lot of shops in New York. Certainly those employees sitting on the wall, hearing this "hot argument" for 45 minutes, got the full implications of Oliner's threats, that this small company could not exist with a union in the plant and that, therefore, it would be closed down if the employees selected the Union as their collective-bargaining representative.

On the foregoing facts, it is found that the Respondent engaged in interference with, and restraint and coercion of, its employees in violation of Section 8(a)(1) of the Act by the following actions and conduct of Oliner: (1) his interrogation of Little as to her being the ringleader of union activity, as to how many other employees had attended the union meeting, and what percentage of employees had signed union authorization cards; (2) by his creating the impression of surveillance of Little's, Foster's, and his fellow employees' union activities by telling Little and Foster that he knew that the employees had held a union meeting the night before, which was in fact the first one ever held by the Union; (3) his solicitation of Little to cease asking other employees to sign a union card; (4) his solicitation of grievances from Little and promises by implication that the employees' grievances would be corrected;[16] (5) his threatening statement to Foster that he could not invest any more money in the plant if the Union came in, as he had already lost $50,000 and could not afford to lose any more; (6) his threat to Foster that the Company could install a training program in which the employees' pay could be cut from $2.65 an hour to $1.45 an hour; (7) his remarks to Grace that, if the Union came in the plant, the plant could not remain competitive, and that unlike Farah he would not fight the Union but would just close the plant.

7. The agency of Oliner

For an employer to be responsible for the conduct of a nonemployee which interferes with the rights of employees under the Act, there need not be express authorization for the acts committed, as the Board has long recognized a statutory mandate to apply the "ordinary law of agency."[17] In making that determination, "the crucial question is whether, under all the circumstances, the employees could reasonably believe that [the nonemployee] was reflecting company policy, and speaking and acting for management. . . ." *Aircraft Plating Company, Inc.*, 213 NLRB 664 (1974). In the instant case that test is overwhelmingly met by the General Counsel.

Certainly on February 6, when Oliner introduced Ford to the assembled employees as the new partner and plant manager, the employees would reasonably believe that Oliner was at least an equal partner in the management of the plant. Some employees present had worked for Limestone Clothing Corp. in the same building, for the same customer Bobby Brooks, using the same machinery, when Oliner was its owner. To them, Oliner as a representative of the incumbent company was not new, but was simply continuing his role of being the top executive of the Company in those premises.

On April 18, when the employees were assembled again for a meeting, and Ford finished talking, Oliner took over, and forcefully impressed on the employees that he was a part of the management team, and vitally interested in the Company's welfare. He told the employees that the Company now had a good contract with Snapfinger, and, as he was quoted by Ford, ". . . . *we* needed this contract to make the plant profitable." Ford

[15] Farah is a name well known in the textile industry, and judicial notice is taken of *Farah Manufacturing Company, Inc.*, 214 NLRB 304 (1974), and the *Farah* cases cited therein.

[16] Ford recalled that Little complained about hot water in the bathroom, and he immediately checked it out.

[17] *International Longshoremen's and Warehousemen's Union, CIO, Local 6 (Sunset Line and Twine Company)*, 79 NLRB 1487, 1507 (1948). The quoted phrase is from Senator Taft's analysis of the 1967 amendments, 93 Cong. Rec. §7001 (daily ed. June 10, 1947).

further testified as to Oliner's speech, "He made a comment about *us* being a contractor, that *we* didn't make work for ourselves, *we* made it for another person and therefore *we* had to be more competitive." (Emphasis supplied.) Certainly Oliner's use of the words "us" and "we" was not lost on these employees. Then, on the same day, when Ford explained the proposed insurance program to the employees, Oliner had the final say on it, by telling the employees that he had approved of it, had agreed to it, and would pay part of the cost.

On July 19, when Oliner had the confrontation with Grace, he continued to represent himself as a part of management by asking Grace, "What do you want from *us*." Despite the fact that Ford kept saying, "Charlie, come on. Let's go have lunch," Oliner completely ignored the manager's entreaties, and kept talking to Grace for 45 minutes, mentioning again that he had already lost $50,000 in the Company.

Ford did not repudiate Oliner's statement at this time or at any other time, nor did he ever attempt to clarify to the employees Oliner's status with this Company. Nor could Ford repudiate Oliner as a member of management, because he well knew that Oliner was the central figure of the Respondent. Ford knew that it was Oliner who had hired him, and that Oliner's daughters owned 75 percent of the Company's stock, as opposed to his minority share of 25 percent. He knew that when Oliner came down from New York, an average of one trip a month for a period of 1 to 5 days, the Company paid his expenses. Ford also knew that Oliner took care of the payroll, which was paid through the computer in a New York bank. Occasionally, there would be a late payroll, and Oliner would send somebody to Limestone with the paychecks. Ford admitted that, during Oliner's visits to the plant, Oliner would review records with him and go over new contracts. The employees saw Ford regularly use the president's office as his own. They also saw him cutting out material and explaining to employees how certain jobs were to be performed.

From these uncontradicted facts it is clear that Oliner worked in concert with the Respondent, and could reasonably be viewed by the employees as its representative, reflecting company policy, and speaking and acting for management. *American Lumber Sales, Inc.*, 229 NLRB 414, 420 (1977).[18]

E. *The Alleged Discharge of Regina Price*

Price had been hired on March 3 as an operator, and worked under various people that she and other employees referred to as supervisors or floorladies. The week of May 8 was the last week she worked for the Company, and at that time Debbie Tibble was her supervisor. Price testified that around the first of April she signed a union card at her home in Telford, Tennessee. Right after she signed her card, she talked to about 10 ladies that she worked with, about the Union, and secured 4 signed cards, off the company premises.

On Friday, April 28, upon being asked by Payne to work on Saturday, Price replied that she could only work a half day. Price did work on that Saturday. Two weeks later on Friday, May 12, Debbie Tibble came to her machine with a paper, and told Price to sign it, as "everybody is supposed to work over. And if you don't work over, you have to talk to Mr. Ford or Inez Payne." Price did not sign the paper, and Tibble said nothing at that time to her. Paychecks were normally distributed on Friday at noon but on this date that was not done. At the 2 p.m. break about 10 or 12 employees, including Price, went to see Ford about this problem. Price described the conversation as follows:

> I believe Anne Little asked him how come we didn't get our checks, and he said they hadn't come in yet. He said they'd be in late this evening or early tomorrow morning. And I asked him if he was just holding our checks to make us work Saturday. He said, no, he wouldn't do a thing like that. I said, "Well, I can't work tomorrow." And he said, "You will work. Everybody will work." He said, "You will work tomorrow and every Saturday. Until further notice everybody will." I said, "If we had a union in here, you couldn't do us this way." I said, "You can't make us work on Saturday. You can't fire us for not working." He said, "I can fire you and call it something else."[19]

The conversation ended then and Price returned to her machine. About an hour later, she testified the following occurred:

> Debbie Tibble, our supervisor, came down to my machine, and she said, "Regina, if you can't come to work tomorrow, don't bother to come back because you're fired." And, I took it that I was fired. And that's all she said and left.

Price did not come in to work on Saturday, and on the following Monday or Tuesday returned to the plant and secured a paper to take it to the state unemployment office, to apply for unemployment benefits. On May 17, she filled out a claimant's statement for the Tennessee Department of Employment Security (Resp. Exh. 4). This application did not mention any union activities.

Patricia Nelson testified that she was present with the other employees when Price made her statement to Ford about the Union, and that the other employees told her to hush. Then, about 3:55 p.m. Tibble asked her (Nelson) to work on Saturday, and she told her that she could not. Tibble then told her that, if she did not show up, Ford would want to talk to her. Nelson did not come to work on Saturday, but did go in for her check. When

[18] In the Respondent's cross-examination of Grace, counsel developed that there was a meeting on Sunday, July 23, in a motel in Johnson City, Tennessee, at which Grace, Cotham, Mary B. Cameron, a state director of the Union, and Oliner were present. The strike had commenced on July 21 and Oliner had requested the meeting. At the meeting Oliner referred to himself as a mediator, which he obviously was not. (Roberts, "Dictionary of Industrial Relations" (1971): "An impartial third party or public official, or, rarely, a person chosen by both parties, who under Federal or State law, meets with the parties, acts as a go-between and suggests possible avenues for resolving the particular issue in doubt." Since this meeting took place after the dates in which Oliner engaged in acts violative of Section 8(a)(1), and no employees witnessed it, I do not rely on it as proof of Oliner's agency.

[19] This testimony was uncontradicted by Ford.

Payne asked her why she was not working she replied that she just decided to loaf. Nelson received no reprimand or warning for not working, either on that Saturday or on Monday when she came to work. Ingram also testified that she had been asked to work on a Saturday that summer by floorlady Charlie Hawk, and had not come in. When she came on Monday, she at no time received any reprimand for not working.

Ford testified that he did not fire Price or instruct anyone to do so. Payne denied firing her, stating that Tibble had no right to fire anyone unless she was away, and instructed her to do so. Debbie Tibble was not called to testify, nor was any showing made that she was not available.[20]

Respondent argues that no violation can be found as to Price, because (1) Tibble was not a supervisor, and therefore had no authority to discharge anyone, (2) Price was not engaged in union activities, and (3) Price was not discharged, she simply failed to show up for work—in essence, that she voluntarily quit. Little evidence was produced as to the duties of Tibble or any of the supervisors, or floorladies as they were alternately referred to by the employees. The major testimony presented as to the duties of these supervisors was given by Patricia Nelson. Nelson testified that at various times she worked under Doris Broyles, Irene Street, and Debbie Tibble. While Price gave some specific information as to what duties Street performed, she gave very little information on Tibble's duties, and the testimony she gave us as to Street clearly showed that Street was a leadperson, not a supervisor. When asked who she would go to, if she wished to get permission to leave work early, she replied, "First, you would ask the floorlady, like Irene or Debbie or Doris, and then they would have to take it to the front office." This, of course, is not indicative of the duties that establish a statutory supervisor. It is true that Payne gave testimony as to the duties of Irene Street, Debbie Wills,[21] and Debbie Tibble, but these duties were after the plant vacation in July, when Payne put each of the above over a section of the plant, whereas Price's encounter with Tibble was in mid-May, before Payne established this four-section arrangement. I therefore do not find that Tibble was a supervisor within the meaning of the Act. However, the record does establish that the Respondent placed her in a position of at least a leadperson, where employees, including Price, could reasonably believe that she spoke on behalf of management and, therefore, I find that her act of talking to Price was imputable to it,[22] whether or not it was "actually authorized or subsequently ratified."[23]

However, I do not find that Price was fired because of her union activities. She did not claim that she talked or acted on behalf of the Union in the plant at any time. She signed her card at home and secured four cards off the premises of the Company. Also, these activities were all performed in early April. That Price was not a union activist is shown by Little's answer when asked if Price carried on any union activity, "If she carried on any union activity I'm not aware of it."

It is also to be noted that neither the experienced union agents, Grace and Cotham, nor the union adherents believed that Price had been fired because of her union activities. This is obvious from the words and conduct of these persons. On July 21, when Grace was told by the employees on the church parking lot that they were going to strike, she asked them what they were striking for, and was informed that it was because of the firing of Foster and Anderson. Also, on July 23, when Grace and Cotham met with Oliner in Johnson City, Grace stated that there would be no settlement of the strike until the Company put Foster and Anderson back to work, with no mention of reinstating Price.

I also find that Price voluntarily quit. Tibble's statement to Price was in no way a clear declaration that she was fired, but at worst was a cranky, peevish expression of her disapproval of Price's answer.[24] Certainly Price had the duty to act in a reasonable manner, and come to work on Monday. Nelson and Ingram on occasion had missed work on Saturday, but had reported to work on Monday, and had been allowed to work without any reprimand. But Price did not do this. She did go to the plant the following week, but simply asked for a form so that she could apply for unemployment insurance. Based on the above record I do not find that the Respondent discharged Price for union activity, and find that she voluntarily quit. I shall recommend that this allegation be dismissed.

F. *The Discharge of Katherine Anderson and Clinton David Foster*

1. According to the General Counsel's witnesses

Anderson was hired on May 10 and assigned to a sewing machine on which she topstitched waistbands to pants. At times she was given repairs and other sewing to do by Payne or Debbie Tibble. Anderson testified that her first union activity was on July 12 when she signed a union card on her lunch hour at Little's request. She then received some blank union cards from Little, and on July 13 secured Foster's signed card. Thereafter, she worked on her lunch hour and breaks to persuade other employees to sign cards, estimating that she secured signed cards from 10 employees. In the week of July 17, Anderson did not work on Tuesday as she had car trouble. She did attend the Tuesday night union meeting at Whaley's house, and signed up to serve on the in-plant organizing committee.

On the following morning, July 19, she came to work at 7 a.m. On this day no one questioned her about her absence on the previous day. Foster's sewing machine was right next to hers, at a distance of about 2 feet, and his job was to sew waistbands to the pants. Anderson saw Foster leave his machine at or about 9 a.m. and go to Oliner's office. At or about 10 a.m. Foster returned to

[20] As pointed out by the Charging Party in its brief, the Company did have Tibble's husband, Robert E. Tibble, testify on other matters.

[21] In the transcript the lady's name is spelled both Wills and Wheels.

[22] *International Association of Machinists, Food and Die Makers Lodge No. 35 [Serrick Corp.]* v. *N.L.R.B.*, 311 U.S. 72, 80 (1940); *N.L.R.B.* v. *Dayton Motels, Inc., d/b/a Holiday Inn of Dayton*, 474 F.2d 328, 330-331 (6th Cir. 1973).

[23] Sec. 2(13) of the Act.

[24] Little's version of what Tibble said was a much milder statement: "Well, if you cannot work tomorrow, then we don't need you at all."

his machine with Oliner and Payne standing by. They proceeded to tell him that his production needed to be higher and that he was not sewing the pants properly. Payne, at times, sat at his machine and attempted to sew the waistbands on the pants, and these did not fit. Payne and Oliner left at or about 11:30 a.m.

After lunch, Oliner and Payne returned to Foster's machine and Oliner sat down to show him how to sew the bands on properly. When Foster protested that the bands did not fit, Oliner told him to twist them, stretch them to make them fit, that he had to get the work out. Anderson testified that this went on until 3 p.m. when she told Oliner that her waistbands also did not fit. She then showed him that the bands that were already sewed on were so puckered from being twisted and pulled that she could not sew them. At 3:30 p.m. she and Foster left as it was quitting time. Anderson testified that during this period of time Foster had several union cards in the left hip pocket of his pants, and that the top half of the cards were sticking out of his pocket. Anderson also testified that her pocketbook was lying on the floor between Foster's machine and hers, open, with union cards on top of her lunch, a sweater, and various personal items.

Foster, who was hired by Payne on May 17, testified that, after signing a union card at Anderson's request on the parking lot, he thereafter worked for the Union, securing about six signed cards. He was also present at the July 18 union meeting at Whaley's house, and became a member of the in-plant organizing committee. He left the president's office, following his July 19 conference with Oliner,[25] and about 10 a.m. Oliner and Payne came to his machine. Foster's testimony corroborated Anderson's as to the events of that day. Foster, while testifying, was wearing blue jeans and, upon standing at the request of the Respondent's counsel, it was noted on the record that 1 inch of a yellow card protruded above his left hip pocket. The union cards were yellow, 3 by 5 inches. (G.C. Exh. 9.)

On the following morning, Thursday, Anderson testified that, as soon as she sat down at her machine, Payne came to her and asked why she was absent on Tuesday. Anderson then offered to show her the repair receipts she had for her car. Payne then asked Anderson if she had heard about the meeting that management had held for the employees on July 18, and Anderson replied that she had heard some gossip. Anderson then asked Payne to tell her about the meeting and "She said, 'Well, basically, we don't want a Union. We won't have a Union. And we'll close the plant first.' She said: 'Absolutely at no time under any circumstances are you to discuss union at all.' She said, 'Not even on your own time.'" When Anderson replied that what she did on her own time was her business, Payne started to criticize her work. Oliner came down and started shouting, "Production, production," and that he had lost $50,000. He then sat down at her machine and tried to show her how to topstitch, ruining four or five pairs of pants before abandoning the task, and he then left about 10:30 a.m.

An hour later, as the lunch bell rang, Payne came to Anderson and Foster and told them to pick up their checks, that they were through. Anderson and Foster left the plant, went across the road, and talked to Grace about their termination. They then went back into the plant and Anderson asked for their paychecks and separation slips. The office secretary gave Anderson an already prepared Limestone Clothing Corp. check dated July 20 in the amount of $50.65. The check had written on the left side "Terminated" and was signed by Oliner. Anderson then again requested separation slips, and this time they received "Separation Notices" which were printed forms of the Tennessee Department of Employment Security. These forms carried a caption, "Reason for Separation," with three boxes thereunder. Box A was "Lack of Work," Box B, "Voluntarily Quit," and Box C, "Discharged." The box "Lack of Work" was checked for both employees, and the form was signed by Ford. Anderson then stated that she wanted a check for the balance of her wages, and Ford called Oliner in to talk to her. Anderson then asked Oliner why they were being terminated. Oliner replied that they were cutting back, and employees with the least seniority and production were the first to go. When Anderson stated that there were two other employees doing the same work that she was doing,[26] who had less seniority and less production than she had, Oliner stated that he did not run the plant, that he just kept putting money out, and had lost $50,000. He then said he could not go on like this, he could not work with a union, and he was going to have to close the plant. Oliner then made out second checks for Anderson and Foster on the Limestone Clothing Corp. checkbook. Before leaving, Oliner told Anderson that if she went to New York he would get her a good job.

Foster corroborated Anderson's testimony and, in addition, stated that as they were leaving, Anderson said to Oliner that she knew the reason she and Foster were getting fired, that it was because they were on the organizing committee, and had signed union cards. Oliner replied that this was not "necessarily" true, that they were going to cut back to 30, 40, 50 employees, just keeping the old ones. Both Anderson's and Foster's testimony as to this exit interview was uncontradicted and is fully credited.

2. According to the Respondent's witnesses

Payne testified that, prior to the receipt of the Snapfinger contract, the jeans sewed by the Respondent had a simple waistband, easy to make. However, after the receipt of this large contract (sometime before the April 18 meeting), the new jeans required a contour band which was much more difficult to make. She had hired both Anderson and Foster and assigned them to sewing on the bands, which she admitted were among the most difficult and highly skilled jobs in the plant. She also admitted that she knew they had no sewing plant experience. Around June 15, the plant was running behind schedule

[25] This conference between Oliner and Foster is set forth in sec. III,6,a, above.

[26] Anderson identified these two employees as Lavina Leech and a Clara. This testimony was uncontradicted.

on bands for Snapfinger, so Payne put in a new system dividing the floor into four sections, each under a supervisor, with herself taking over the band section. At that time, in addition to Foster, Martha Smith, Terry Broyles, an unnamed lady, and utility workers sewed bands.[27] Anderson was assigned the job of closing the bands which was the last operation.

On July 19 when Anderson came to work, Payne questioned her about her absence on the previous Monday and Tuesday.[28] Payne described her reply in the following manner: "And she started screaming and cursing, and saying that, ah, it was our fault that her damn furniture—pardon—her damn furniture had been put out in the rain." When Anderson also complained that she had no supervisor, Payne informed her that she was her supervisor, and then discussed her attitude with her, telling her to calm down, and that she did not curse her employees. Payne testified that Anderson closed bands as well as any employee, but her efficiency was never high. When asked if she saw a pocketbook of Anderson on or next to her machine that day, Payne replied that she could have, but she did not remember one. Payne also observed Foster that day, and he was doing very poorly. She also had Barbara Wilcox to time Foster, as she had previously had Wilcox time other employees in the past several weeks. Payne first testified that she did not see any yellow cards sticking out of Foster's pocket, and then added, "I don't remember even what he wore. I don't remember anything about him except his bands." Payne also admitted that Oliner was present that day.

Payne testified that Gary Pate, a representative of Snapfinger, was present in the plant, and that he had been coming to the plant over a week to help with problems, as his company needed production badly. She had discussed the waistband problem with him, and then worked on a machine folder method that would do the waistbands in a faster manner. She then made some samples, and he took them away to see if they would be satisfactory to the manufacturer. On the following day, July 20, Pate telephoned Payne around 9:30 a.m., and told her that Snapfinger had approved the new method of putting the waistbands on, and they could proceed to switch over to the machine band. She then told Ford about Foster's low efficiency, and the problems she was having with Anderson, that she felt the Company could cut back, and that she felt that these two should be terminated. Ford replied it was up to her, so she proceeded to terminate them. She then went to the floor, told Anderson and Payne that the Company was going to cut back on the contour band section, that she was terminating them, and to go to the office and see about their checks.

Payne testified that she discharged Foster because of his low efficiency, and Anderson because of her attitude, absenteeism, and the problems she was having with her. She also did not think that they were retrainable, and did not know that they were union members, or that they had engaged in any union activity. Payne admitted that she still needed 10 to 15 more operators at this time,[29] and that terminating Anderson and Foster was not a matter of cutting back, just a matter of taking employees from the band section. She also admitted "the whole plant was in trouble as far as efficiency was concerned," and that it was only operating at 50- to 55-percent plant efficiency.[30] On July 20 there were about 8 to 10 employees in the banding section, and none of the remaining employees was transferred out, as they continued temporarily to perform the same work as before. Payne admitted that it would have taken a week to convert the operation to the new method. As the strike started on the day after the decision to put the new method into operation, this method was never effectuated.

According to Ford, the Snapfinger representative, Pate, came to the plant on Tuesday, July 18, and secured some samples of the new waistbands to take to Atlanta, in order to get a decision on their acceptability. On Thursday morning word was received at the plant that the customer would accept the new method of banding. He then discussed with Payne the matter of the least efficient and least qualified operators, and after inspecting the records that were present, they mutually agreed that Anderson and Foster should be terminated.

3. Conclusion

Whether the Respondent discharged Anderson and Foster for legitimate economic reasons or for discriminatory and unlawful reasons presents a difficult question of fact, the resolution of which depends upon a weighing of all the attendant circumstances, "to determine what motivation truly dominated the Employer in laying off or discharging the employees." *N.L.R.B.* v. *Jones Sausage Co. & Jones Aboltoir Co.*, 257 F.2d 878, 882 (4th Cir. 1958). In determining this question it must be borne in mind that an employee may be discharged "for a good reason, a poor reason, or no reason at all, so long as the terms of the statute are not violated." *N.L.R.B.* v. *Condenser Corporation of America*, 128 F.2d 67, 75 (3d Cir. 1942). Based upon the entire record, and the facts recited in this subsection, it is my conclusion and I find that Anderson and Foster were discharged for engaging in union activity, and that the reasons advanced by the Respondent for their termination are a pretext to disguise the real reason.

(a) Anderson and Foster were active in-plant organizers both of whom had signed union authorization cards, and then in turn sought to persuade other employees to sign similar cards. Both had attended the Union's first meeting on July 18 at Whaley's house, had agreed to be members of the in-plant organizing committee, and had agreed that their names could be set forth in the telegram that was to be sent to the Company advising it of this committee. While it is true that the record does not disclose that the Respondent received the mailgram until July 21, the day after their discharge, this does not mean that the Company did not have knowledge of what employees were on the committee. On the morning of July

[27] Ford testified that there were 8 to 10 operators in the banding section.

[28] Timecard records showed that Anderson had also been absent on June 5 and 6 and July 10 and 13.

[29] G.C. Exh. 15 shows that Respondent hired 33 employees in June, 17 in July before the strike, 3 after the strike commenced, and 2 in August.

[30] Payne had previously estimated that on April 18 the plant was operating at a 40-percent rate of efficiency.

19, when Oliner called Foster into the office, he told Foster that he knew about the union meeting the night before, and I infer that he knew that both Foster and Anderson attended this meeting, and were on the committee.

(b) The Respondent had direct knowledge that Anderson and Foster were union activists as Payne and Oliner would have seen their union cards on July 20. When Foster was operating his machine following his office conference with Oliner, I find that he had the union cards in his back hip pocket, and the top inch of the yellow card was visible to anyone in the area. I also find that Anderson's pocketbook was open on the floor, and that union cards were on top of its contents, and were readily visible. Payne admitted that she was around Foster's machine on and off that day, and did not deny that he had the cards in his pocket. Payne also did not deny that Anderson had union cards on top of her pocketbook, simply stating that Anderson could have had her pocketbook next to her machine that day. This, of course, does not shield Anderson and Foster from being discharged for cause. But dismissing active proponents of a union often tends to discourage other employees from becoming interested in a union. *N.L.R.B.* v. *Longhorn Transfer Service, Inc.*, 346 F.2d 1003, 1006 (5th Cir. 1965).

(c) The Respondent displayed strong union animus, as is evident by its many independent violations of Section 8(a)(1) as set forth above. This, in itself, is inadequate to justify a finding that the Respondent violated the Act, because Section 8(c) of the Act guarantees to an employer freedom to be unalterably opposed to unions and to express such a sentiment to his employees. *N.L.R.B.* v. *Threads, Inc.*, 308 F.2d 18 (4th Cir. 1962). Nevertheless, an employer's dislike for unions communicated to his employees is a factor which may be evaluated, along with other pertinent evidence, in arriving at the actual cause of the employee's discharge. *Maphis Chapman Corporation* v. *N.L.R.B.*, 368 F.2d 298, 304 (4th Cir. 1966).

(d) Anderson and Foster were discharged during the height of the Union's campaign, just 2 days after the first formal meeting held by the Union. While I recognize that this, without more, does not prove that no cause existed for their discharge, I find that this may be considered in determining the true motive for their termination. It has long been recognized that the timing of a discharge is persuasive evidence as to the employer's motivation. *N.L.R.B.* v. *Montgomery Ward & Co., Inc.*, 242 F.2d 497, 502 (2d Cir. 1957), cert. denied 355 U.S. 829.

(e) The Respondent's stated reasons for Anderson's and Foster's discharge do not stand scrutiny. Although Payne claimed that she discharged Foster because of his low efficiency, the Respondent produced absolutely no records to support this contention. There were production records according to Ford, as he claimed that, on the morning of July 20, when he and Payne discussed the banding section employees, they inspected the records of these employees so as to select the least efficient and least qualified for termination. This failure of the Respondent to submit such documentary evidence causes me to believe that its production records would not have supported its claim that Foster and Anderson were the least efficient employees in banding.[31] Payne admitted that the whole plant was in trouble as far as efficiency was concerned, so that, whatever Foster's production was, it was not unique, but was in keeping with the rest of the entire plant.

It is to be noted that Payne did not claim that Anderson had been discharged for lack of efficiency as Ford did. Payne's stated reason for discharging Anderson was because of her attitude, absenteeism, and the problems she was having with her. There was only one mention in the record as to Anderson's attitude and that was Payne's account of Anderson's loud and angry reply to her when questioned about being out for 2 days, in which Anderson referred to her "damn" furniture.[32] The timecards do show that Anderson missed 4 days in her period of employment. However, the record is bare as to any plant rules on absenteeism, or the rate of lost time for other employees compared to Anderson. Moreover, Payne admitted that she never warned Anderson about any absentee problem prior to that first discussion on July 19. Payne's third reason for discharging Anderson, the problems she was having with her, is unexplained on the record. Whether Payne meant personnel problems or job-related problems is not ascertainable. Anderson was a competent operator as Payne admitted that she closed bands as well as any other employee.

When Oliner made out the discharged employees' checks, he gave them a reason for their discharge that was different frOm Ford's or Payne's. He told them they were cutting back to a much smaller working force, and that the employees with the least seniority and production were the first to be let go. When Anderson then told him that she had more seniority than Leech or Clara, the other two employees doing the same work she was doing Oliner did not contradict her, nor were any records produced to show that her statement was incorrect. Oliner's further statement to Anderson, that if she could come to New York he would get her a good job, also indicated that she was a competent operator.

The Respondent's explanation of why it terminated Anderson and Foster in the middle of the day is so implausible that it is unworthy of belief, and points up in the sharpest manner that the reasons given for the discharge were pretextual. As repeatedly stated by Ford and Payne, banding was the bottleneck in the entire operation of the plant, and restricted the Company's ability to meet its customer's schedule. When Ford and Payne received word from Snapfinger that the folder method was acceptable, they knew it would take a week to convert the operation over to the new method. Certainly the Respondent's need to produce waistbands for Snapfinger that week was as crucial as it had been in the prior weeks. Yet, the Respondent decided immediately to cut back and discharge two banding department employees,

[31] If evidence, such as business records, is within the party's peculiar knowledge and control, and such evidence would strengthen the party's case if offered into evidence, that party is expected to introduce such evidence. The failure of the party to introduce such evidence raises an adverse inference. *Calip Dairies, Inc.*, 204 NLRB 257, 263 (1973); *Capriccios Restaurant, Inc.*, 249 NLRB 685 (1980).

[32] Payne apparently considered Anderson's use of the word "damn" as cursing, as she apologized on the record for repeating it.

thus cutting down on the number of waistbands it could provide that week, which of course cut down on the number of blue jeans it could deliver to Snapfinger that week. The Respondent stated in its brief that, when it received the approval for the change in the waistband construction on the morning of July 20, the Respondent's banding section became redundant. This is clearly not so as the Respondent admittedly retained six to eight employees to continue making the bands by the old method for at least a period of a week. Thus, when Ford checked on Anderson's and Foster's separation notice that the reason for their separation was lack of work, this was false. Not only did the banding department have plenty of work, but the entire factory was loaded with work; two more employees were hired that week, and three more the next week.

(f) Finally, in order to find Anderson's and Foster's discharges to be discriminatory, it is not essential that it resulted solely from their union activity. It is sufficient to find such discrimination, notwithstanding that a valid cause may have existed for their termination, if a substantial or motivating ground for their discharge was their union activity. *N.L.R.B.* v. *Whitin Machine Works*, 204 F.2d 883, 885 (1st Cir. 1953); *N.L.R.B.* v. *Lexington Chair Company*, 361 F.2d 283, 295 (4th Cir. 1966). And I find that a substantial or motivating reason resulting in their dismissal was their union activity and the said "union activity weighed more heavily in the decision to fire [them] than did dissatisfaction with [their] performance." *Whitin Machine Works, supra* at 885.

(g) It is also found on the foregoing facts that the Respondent engaged in interference with, and restraint and coercion of, its employees in violation of Section 8(a)(1) of the Act by Payne's admonition to Anderson that the Respondent would close the plant before it would agree to have a union represent the employees, and by her prohibiting the employees from discussing the Union any time on company premises, including the employees' own free time.

IV. REFUSAL TO REINSTATE STRIKERS

A. *The Strike*

About 10:45 on the morning following the discharge of Anderson and Foster, the two organizers, Grace and Cotham, went into the plant of the Respondent where they were met by Oliner in the hallway. Grace told him that the Union represented a majority of the employees, and she was there asking for recognition based on a card count. Ford then came up, and she told him that the Union had signed authorization cards and was asking for recognition. When Ford told them that he would have to contact his attorney, the organizers left. Grace admitted that she did not ask that Anderson and Foster be reinstated.

At 11:30 a.m. the employees came out of the plant for their lunch period, and gathered in their customary place on the parking lot across the street from the plant. As testified by Nelson, since Anderson and Foster had been fired, the employees decided to go on strike. When Grace was told that the employees were going to go on strike, she told them that they could not strike without taking a vote, and asked them what they were striking for. Little at this time made the motion "That we strike for unfair labor practices due to the firing of David Foster and Katherine Anderson." The motion was seconded by Nelson, as well as by two other employees, and the 20 to 25 employees present adopted the motion by acclamation. At Grace's instructions these employees made picket signs out of cardboard, and hand lettered them, as set forth in General Counsel's Exhibit 6, "ON STRIKE FOR UNFAIR LABOR PRACTICE AGAINST LIMESTONE APPAREL." The picketing them commenced and continued thereafter until it was discontinued on August 21.[33]

The Respondent contends in its brief that this was an illegal recognitional strike, not an unfair labor practice strike, and points to two factors as proof of this assertion. Its first reason, that Grace requested recognition from the Company on the morning of the day that the Union commenced picketing, does not of itself prove that the Union only sought recognition when it commenced picketing, some 65 minutes later. The Respondent's second reason is that, at the July 23 meeting in the Johnson City Motel, Grace made it "a pre-condition for calling off the strike that the Union be recognized as the collective-bargaining agent." But this is not all Grace asked for at that meeting, which had been requested by Oliner. Grace also told Oliner that, unless Anderson and Foster were put back to work, as well as that the Respondent recognize them, the strike could not be settled.

The record is uncontradicted that the employees went on strike because they were outraged at the firing of Anderson and Foster. They knew that the Respondent had held a captive audience meeting on July 18 at which various threats were made about the Union. They knew that on July 19 Oliner, while arguing with Grace, had angrily castigated unions and had threatened to close the plant. They knew that Anderson and Foster were fired the next day, and this was the last straw. Thus, on the final day of this tumultuous week they voted to strike because of the Respondent's firing of these two union adherents. On the basis of the facts found hereinabove, it is found that the strike in this case was caused in substantial part by the Respondent's conduct in discharging Anderson and Foster, which was in violation of the Act, and therefore it was an unfair labor practice strike.

B. *Alleged Misconduct*

1. The evidence

As soon as the signs were lettered, about 20 employees commenced picketing in front of the Respondent's plant on the Church Street side. About 5 minutes prior to the time for the lunch break to end, the pickets joined hands and stood in a long line before the side entrance which the employees regularly used.[34] Nelson and Cooper, who were two of the pickets, admitted that the purpose

[33] The testimony concerning the prestrike meeting is uncontradicted and credited.

[34] Resp. Exh. 8 is a newspaper picture taken that day, showing that the pickets were almost entirely female, with many dressed in shorts, in keeping with the warm temperature of that day.

of holding hands was to prevent people from going into the building. At the noon bell, four employees, Robert E. Tibble, Robert Arrowood, his sister Debbie Anne Arrowood, and his girlfriend, Linda Ricker, went through the lower end of the picket line. Tibble and Robert Arrowood went through without any obstruction, but Debbie Arrowood, who was 4 months pregnant, was struck in the stomach by picket Betty Cox as she followed the two men through the line. She continued on into the plant, worked the rest of the afternoon, and worked thereafter for about a month until she was laid off. Ricker's thermos jug hit the wall alongside of Cox, but Robert Arrowood could not say that Cox had actually touched his girlfriend. At the 2 o'clock break that afternoon, the pickets again joined hands as the employees began to return to the plant. There was no testimony that any employees were struck or hindered from going into the plant at that time. On subsequent days of picketing the employees did not join hands, but picketed individually.

The Respondent, in its brief, points to other picket-line incidents, which it terms "illegal coercive measures" that "bar the union and the participants in the strike from any relief under the National Labor Relations Act." The record shows the following with respects to these incidents:

2. Identified persons

Teresa Ingram: Ingram testified that around the first day of the strike she lay on the ground for about 5 minutes to prevent a truck from entering the plant. When Grace told her that she could not do this she got up and never did it again. In cross-examination Ingram testified that Anderson also lay down beside her.

Katherine Anderson: Anderson tesfified that, a couple of days following the commencement of the strike, she saw a truck about to leave the plant, and she lay down in front of the truck, after asking the driver if he would run over her if she did so. She lay there for about 15 minutes until Officer Kearns, from the sheriff's department, pulled up, and she then got up. Anderson testified that this was the only time she lay in front of a truck during the strike. Anderson was not asked if Ingram also participated in this incident. Robert Tibble testified that he saw a truck with a load of material come into the plant without any problem. Then "maybe" 10 employees came up to the front of the truck, and "one of the striking girls" lay down in front of the truck. A deputy came up and moved the people away, and this truck then left the plant. Sergeant Kearns testified that there was only one time when he went to the plant and saw "some of them either sit down or lie down in front of the truck." He advised them that they had to move and they did.

Patricia Nelson: Robert Tibble testified that about 2 weeks after the strike started he and Robert Arrowood were in a truck, bringing in a load of work to the plant. At some unidentified point, but apparently near the plant, four or five of the strikers were running and trying to get in front of the truck, and then they stood still in front of the truck. Pat Nelson was one of these employees. Robert Arrowood testified to apparently the same incident, stating that the strikers were hollering, "Stop, stop, stop," as they ran along beside the truck. He further testified that no person touched the truck, and it continued on into the plant.

3. Unidentified persons

Robert Arrowood testified that late one evening he saw three or four women stand in front of a U-Haul van as it was trying to drive into the plant. The driver kept easing it forward, until someone hollered, "That's enough," and the women then stepped aside, and the van pulled in on the company parking lot. One of the women was a picket. Robert Tibble testified that he was driving the U-Haul truck toward the plant and that four strikers, not otherwise identified, stood straight across the road at the plant entrance. He stopped, blew his horn three times, and they started pushing on the truck. They then just moved out of the way, and he drove in on the company premises.

Arrowood also testified that, about a week after the strike started, a county garbage truck was coming up the hill and some "girls" ran along beside it; the driver drove off, not coming into the plant for its pickup.

Arrowood further testified that late one evening in mid-August he saw a man throw something twice at the parking lot. Later, when Arrowood checked his car, he saw that it had been hit on the side by two eggs. Arrowood had seen the thrower on the picket line, but could not identify him.

About a week after the strike started, Plant Manager Ford saw one of the male strikers park a jeep across the road leading into the plant, which prevented a truck from leaving the plant. The sheriff came along and the jeep was moved. Ford had seen one of the female strikers drive the jeep at various times, but did not know if it was her car.

C. *The Termination of the Strike*

On August 21 only six or seven pickets remained, and they met with Grace and Gotham on the picket line. Grace advised them that, because of the small number of pickets left, it would be better if they would try to win their case in the courts, rather than on a picket line. She then recommended that they go in the plant and ask for their jobs back. The pickets thereupon took down their strike headquarters and Nelson, Cooper, Ingram, and Whaley went into the plant. Nelson served as spokesperson and asked to speak to Ford. Upon being told he was not in, she then talked to Payne, telling her that they were asking for their jobs back, with all the rights and seniority that they had when they had gone on strike. The record does not indicate that they stated that their request to return to work was unconditional. Payne then handed them applications, and told them to fill them in and bring them back. Nelson replied that the Company already had their applications. The four employees then left the plant, and informed the two organizers what had happened.

By letter dated August 23, 1978, Goldberg, as attorney for the Southeast Regional Council of the ILGWU, wrote to the Respondent stating that Whaley, Ingram, Nelson, Cooper, Little, and Broyles were offering to

return to work immediately without any conditions. (G.C. Exh. 4.) The letter was admittedly received by Ford on August 25. There is no evidence that there was ever a reply to this letter, and the employees were never reinstated.

D. *Conclusion*

In determining whether a striker has, through her misconduct, subjected herself to lawful discharge, the Board considers whether the alleged misconduct is of such gravity as to require removal of the protective mantle which the Act affords striking employees. *Alcan Cable West, a Division of Alcan Aluminum Corporation*, 214 NLRB 236 (1974). Not every impropriety committed during the course of a strike deprives the employee of the Act's protection. *Coronet Casuals, Inc.*, 207 NLRB 304 (1973). Rather, each incident of alleged misconduct must be assessed in light of the surrounding circumstances, including the severity and frequency of the involved employee's actions. *Advance Pattern and Machine Corporation d/b/a Gibraltar Sprocket Co.*, 241 NLRB 501 (1979). It has also been long established that, in order to disqualify a striker from further employment, there must be proof that the individual accused did, in fact, participate in the disqualifying conduct. *N.L.R.B.* v. *Sea-Land Service, Inc.*, 356 F.2d 955 (1st Cir. 1966); *International Ladies' Garment Workers Union, AFL [B.V.D. Company]* v. *N.L.R.B.*, 237 F.2d 545, 550 (D.C. Cir. 1956).

By applying these principles to the facts of this case, it is evident that none of the actions cited by the Respondent would amount to such serious misconduct as to warrant the Respondent's refusal to reinstate the strikers.

It is true that, on the first day of the strike, Anderson, Nelson, Ingram, and Little on two occasions joined with other pickets in holding hands in a closed line to obstruct people from going into the plant.[35] As a practical matter the strikers did step aside, and employees did go through the line and there was no violence connected in any manner with the strikers named above. One striker, Cox, who was at the far end of the line, did punch one employee, Debbie Arrowood. However, no reinstatement is being sought for Cox. This holding of hands only occurred on the first day of the strike for about 10 minutes on each of the two times, and was not repeated thereafter.

Nelson was also involved in one other incident, in which she and three or four other strikers ran alongside a company truck that was going up the hill to the plant, and then stood in front of it. There is no evidence that the truck stopped, and it did drive into the company parking lot. No one touched the truck and no damage was done to it. The Board and the courts have ruled in cases similar to this one that, when employees' conduct is that of animal exuberance in response to the strike situation, such misconduct is not of such a serious nature as to justify the discharge of such employees. I find that Nelson was engaged in such animal exuberance and was not engaged in serious misconduct.

Anderson's and Ingram's activity in lying down in front of a truck was certainly an unintelligent action, and was a form of misconduct. It is also noted that there was no actual or implied threat of harm to the truckdriver or to the truck. The two strikers did expose themselves to serious injury, which only points up how unsophisticated and naive they were. In these circumstances, and in the light of their being unfair labor practice strikers, I find that this conduct is not of such a serious nature as to disqualify them from their right of reemployment.

It is therefore found that the Respondent, by failing to and refusing to reinstate Terri Broyles, George Wayne Cooper, Teresa Ingram, Anne Little, Patricia Nelson, and Virginia Whaley, violated Section 8(a)(3) and (1) of the Act.

Conclusions of Law

1. Limestone Apparel Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By terminating Katherine Anderson and Clinton David Foster, because of their support for the Union, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. By threatening employees with plant closure and loss of the right to discuss grievances directly with management if they selected a union to represent them, by promising to pay part of the cost of a hospitalization plan, by soliciting grievances, by threats of reprisal, by adopting a broad new no-solicitation rule, by threatening to install a training program that would greatly decrease their wages, by interrogating an employee concerning his union activities, by soliciting an employee to cease asking other employees to sign a union card, by creating an impression of surveillance of employees' union activities, by threatening an employee that no more money would be invested in the business if the employees selected a union as their bargaining representative, by prohibiting its employees from discussing the Union at any time on company premises, the Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

5. The strike which commenced on July 21, 1978, was caused and prolonged by the Respondent's unfair labor practices.

6. On August 25, 1978, the Respondent received an unconditional offer to return to work, made on behalf of Whaley, Ingram, Nelson, Cooper, Little, and Broyles.

7. By failing and refusing to reinstate the six employees named above on August 28, the next working day after their unconditional offer to return, because of their support of the Union, and because they engaged in protected concerted activity for their mutual aid and protection, the Respondent has violated Section 8(a)(3) and (1) of the Act.

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

[35] The record is silent as to Broyles participating in the picket line, and Whaley worked the balance of the first day, starting to picket on the following Monday.

9. The Respondent did not violate the Act by refusing to reinstate Regina Lynn Price.

REMEDY

It having been found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

It having been found that the Respondent discriminated against Katherine Anderson and Clinton David Foster by discharging them because of their union activities, I find it necessary to order the Respondent to offer them immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and to make them whole for any loss of earnings and other benefits suffered because of the Respondent's discrimination against them. Their loss of earnings shall be computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977), from date of discharge to date of a proper offer of reinstatement.

It having also been found that the Respondent unlawfully refused and failed to reinstate Terri Broyles, George Wayne Cooper, Teresa Ingram, Anne Little, Patricia Nelson, and Virginia Whaley on August 28, I find it necessary to order that the Respondent offer each of these employees immediate reinstatement to her or his former job, without loss of seniority or other rights or privileges, discharging if necessary any replacements hired, and make each of these employees whole for any loss of earnings each may have suffered by payment to each of them a sum of money equal to the amount she or he normally would have earned as wages during the period from August 28, 1978, to date of the Respondent's offer of reinstatement to each of them, less the employee's net earnings during that period. Their loss of earnings shall be computed in the same manner as set forth for the employees in the paragraph above. During the course of the hearing, counsel for the Respondent stated that the plant was "very inoperative," indicating that it was all but completely shut down. If the Respondent is not in operation at the time of the recommended Order provided herein, the offers of reinstatement shall be made consistent with the extent of future operations.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[36]

The Respondent, Limestone Apparel Corp., Limestone, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or refusing to reinstate its employees for engaging in union and concerted activities for their mutual aid or protection.

(b) Threatening its employees with plant closing and reprisals if the Union comes into the plant.

(c) Threatening its employees with the loss of the right to discuss grievances with management if they selected a union to represent them.

(d) Threatening its employees that it would install a training program that would greatly decrease their wages.

(e) Threatening its employees that it would not invest any more money in the business if the employees selected a union as their bargaining representative.

(f) Promising to pay part of a hospitalization plan, soliciting grievances, and promising to remedy such grievances, in order to induce employees not to support the Union.

(g) Promulgating or maintaining a rule forbidding employees from soliciting for a union at times when they are not actually working, and soliciting employees to cease asking other employees to sign union cards.

(h) Coercively interrogating to employees about their union activities.

(i) Creating the impression of surveillance of the employees' union activity.

(j) Prohibiting its employees from discussing the Union at any time on company premises.

(k) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Offer Katherine Anderson and Clinton David Foster immediate and full reinstatement to their former jobs or, if the jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for their lost earnings in the manner set forth in the section entitled "Remedy."

(b) Offer Terri Broyles, George Wayne Cooper, Teresa Ingram, Anne Little, Patricia Nelson, and Virginia Whaley immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs without loss of seniority or other rights or privileges, discharging if necessary any replacements for those employees, and make them whole for any loss of earnings they may have suffered by reason of the Respondent's refusal to reinstate them, in accordance with the provisions of the section entitled "Remedy" above.

[36] In the event no exceptions are filed, as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Preserve and, upon 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.

(d) Post at its plant in Limestone, Tennessee, copies of the attached notice marked "Appendix."[37] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

[37] In the event that 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."