Master Slack Corporation *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO. Case 26-CA-9900

29 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 25 July 1983 Administrative Law Judge Richard J. Linton issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

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

[1] In adopting the judge's findings that the Respondent was privileged to withdraw recognition from the Union on the basis of a petition signed by a majority of unit employees indicating they no longer wanted to be represented by the Union, we note particularly that the Respondent's commission of unfair labor practices in *Master Slack Corp.*, 230 NLRB 1054 (1977), occurred many years before the petition's circulation, and that the Respondent has complied with the ordered remedies in many significant respects well before the petition's circulation. Thus, the Respondent had bargained in good faith and, indeed, had executed a collective-bargaining agreement with the Union, had offered reinstatement to all eligible discriminatees, and had posted a notice to employees agreeing to take the action ordered by the Board. In this context, we find no basis to disturb the judge's reliance on the unambiguous testimony of the petition's signers that the matters raised in the prior and pending Board litigation had no impact whatsoever on their signing of the petition. Accordingly, in these circumstances, and notwithstanding that the Respondent has continued to litigate the scope of its backpay liability before the Board, we find, in agreement with the judge, that the petition was not tainted by the unfair labor practices and that, on the date recognition was withdrawn, the Union did not in fact enjoy majority support.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This case was tried before me in Bolivar, Tennessee, on March 1 and April 5 and 6, 1983, pursuant to the November 2, 1982 complaint, subsequently amended, issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 26 of the Board. The complaint is based on a charge, later amended, filed September 30, 1982, by Amalgamated Clothing and Textile Workers Union, AFL-CIO (the Union or Charging Party) against Master Slack Corporation (Respondent or Master Slack).[1]

In the complaint the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act on September 10 and 22, 1982, by announcing to its Bolivar, Tennessee employees that it was withdrawing recognition of the Union and promising such employees that they would soon receive improved benefits, and Section 8(a)(1) and (5) of the Act by various acts between August 16, 1982, and January 1, 1983, in which it notified the Union that it was refusing to meet and bargain and thereafter so refusing, by withdrawing recognition of the Union, and by unilaterally increasing the wages of unit employees.

By its answer Respondent admits certain factual matters but denies violating the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Master Slack Corporation, a corporation with an office and place of business in Bolivar, Tennessee, manufactures textile products. During the past 12 months Respondent sold and shipped from its Bolivar, Tennessee facility, goods and materials valued in excess of $50,000 directly to points outside the State of Tennessee. Respondent admits, and I find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

1. Nature of the case

This is one of those refusal-to-bargain cases in which the Employer, Master Slack here, has withdrawn recognition from Union on the asserted basis it reasonably believed that the Union no longer enjoyed majority support. In the case before us a petition was submitted to Master Slack on August 16, 1982. The petition was signed by a majority of unit employees. Over their signatures they asserted that they did not want to be represented by the Union. Master Slack suspended bargaining on August 16 and withdrew recognition on September 10.[2]

[1] All dates are for 1982 unless otherwise indicated. Although the charge and complaint use the abbreviation "Corp." in Respondent's name, I have spelled out the word so as to conform with the spelling appearing in other exhibits.

[2] I reject the General Counsel's contention that the August 16 suspension amounted to a withdrawal of recognition.

The General Counsel and the Charging Party do not contend that a majority of unit employees did not sign the petition.[3] Their common position is that Respondent was not free to withdraw recognition because certain unremedied violations from an earlier unfair labor practice case tainted the atmosphere as a matter of law, thereby rendering the withdrawal, as well as associated conduct, unlawful. The earlier case is reported as *Master Slack Corp.*, 230 NLRB 1054 (1977).

Going further, the Union argues that Master Slack was precluded from withdrawing recognition, whether in August or September 1982, because on July 28, 1982, the Board affirmed the Regional Director's June 24 decision to hold in abeyance the petition filed June 4 in Case 26–RD–552 because of the "blocking charge" rule. In effect the Union is asserting that the Board's ruling in Case 26–RD–552 is res judicata on the crucial issue in the instant proceeding.

2. Evidentiary ruling

At trial Respondent announced that it intended to call all of the nearly 90 employees who signed the petition (Tr. 322, 412), and argued that under certain case law it was entitled, even required, to elicit their testimony concerning whether they subjectively felt that any conduct, past or contemporaneous, of Respondent had any impact on their decision to sign (Tr. 434, 436, and 574).[4]

Citing *NLRB v. Gulfmont Hotel Co.*, 362 F.2d 588 (5th Cir. 1966), the General Counsel objected to any such subjective evidence by the employee signers on the basis that it would be irrelevant in the absence of evidence that Respondent had become aware of that subjective opinion at the time it withdrew recognition (Tr. 432, 433, and 435). I overruled the General Counsel's objection, granted a continuing objection to the entire line of questioning (Tr. 436, 438), and permitted Respondent to elicit from some 20 signers the reasons they signed and whether they believed that the unremedied allegations (relating, as we shall see, to reinstatement and backpay from the earlier case), had any impact on their decision to sign. Having earlier indicated my intention to foreclose such testimony after a representative number of witnesses testified along this line (Tr. 411, 426–427), I finally ruled, over objection, that Respondent would not be permitted to call any additional witnesses in pursuit of that line of inquiry (Tr. 574–576). Respondent made an offer of proof that the other 65 or so signers, if permitted to testify, would testify similarly to the others (Tr. 578–581). I denied Respondent's motion to call the additional witnesses (Tr. 581, 604). As I expressed at the hearing, even if case law did permit or require an employer to call enough signers to show that a majority of the unit did not want the recognized union to represent them, a representative number of witnesses would have to be acceptable. Were it otherwise, a trial would be almost endless if the plant employed 1000 employees, 2000 employees, or even more (Tr. 576).

Because I indicated that I might infer that the additional 65 signers would testify as the other 20 witnesses (Tr. 577), the General Counsel, asserting that such an inference would deny him the right to cross-examine the remaining signers, objected to my not permitting Respondent to proceed with the other witnesess (Tr. 532). That objection, the General Counsel made clear, was subject to his primary objection that the entire matter was irrelevant as a matter of law (Tr. 583).

B. *Background*

1. Respondent's operation in Bolivar, Tennessee

Respondent's Bolivar, Tennessee plant is basically a sewing machine operation with related functions. The operators sew men's and boy's slacks as described in the underlying case, 230 NLRB at 1062.

As established in the previous litigation, the appropriate bargaining unit consisted of some 400 employees at the time of the July 1983 election, won by the Union.[5] Respondent closed its plant in October 1974 and reopened it in November 1975. There was never any allegation that the closing was unlawful. Approximately 80 laid-off employees were recalled when the plant reopened in November 1975.

As stipulated by the parties, Respondent posted the remedial notice, ordered by the Board in the earlier case, from July 25, 1980, until September 29, 1980 (Tr. 253).

Collective-bargaining negotiations, begun January 8, 1981 (Tr. 253), resulted in a contract effective from August 26, 1981, through August 25, 1982 (Jt. Exh. 9).

General Manager Hulon Stringer testified that the bargaining unit contained 161 employees on August 16, 1982 (Tr. 284). The unit description, admitted in the pleadings herein, and basically the same as that specified in earlier case and in the collective-bargaining contract, is:

> All production and maintenance employees, including shipping and receiving employees, employed by Master Slack Corporation at its Bolivar, Tennessee facility excluding all office clerical employees, guards, and supervisors as defined in the Act.

2. The earlier unfair labor practice case

In *Master Slack Corp.*, 230 NLRB 1054 (1977), enfd. 618 F.2d 6 (6th Cir. 1980), the Board found that Respondent committed serious and flagrant violations of Section 8(a)(1), (3), and (5) of the Act in various respects.[6] The violations included interrogations, threats to move or close the plant, threats of discharge, and discharges of 28 employees during the period, basically, of 1973–1974. Among other provisions, Respondent was ordered to offer reinstatement to 20 of the 28 discharged employees and make all 28 whole.

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[3] The General Counsel affirmatively conceded at trial that he makes no contention that the petition was not signed by a majority of the unit employees (Tr. 317).

[4] Respondent's citations include *Pittsburgh & New England Trucking Co. v. NLRB*, 643 F.2d 175 (4th Cir. 1981), and *Automated Business Systems v. NLRB*, 497 F.2d 262 (6th Cir. 1974).

[5] It was not until January 4, 1974, that the Union was certified (Tr. 251).

[6] Trial on the allegations had been held before Administrative Law Judge Thomas A. Ricci in Bolivar, Tennessee, on various dates in February through March 1976.

3. The backpay proceeding

Because the parties were unable to agree on the amount of backpay due under the terms of the Board's Order,[7] a backpay proceeding was held in June 1981 before Administrative Law Judge Philip P. McLeod. His supplemental decision, issued March 4, 1982, is pending before the Board on exceptions by the parties. Judge McLeod ordered Respondent to pay backpay totaling $382,327. For the limited purpose of summarizing the background and better understanding the issues in the instant case, I take official notice of the supplemental decision, the pleadings, briefs, and exceptions.[8]

4. Contentions of the parties

As briefly referred to earlier, the General Counsel and the Union contend here that certain unremedied unfair labor practices tainted the atmosphere in which the employee petition circulated with the result being that Respondent cannot rely on that petition.

As the parties stipulated (Tr. 252), on June 23, 1980, Master Slack made offers of reinstatement to the discriminatees as ordered by the Board. The General Counsel contends that the issues raised in the proceeding before Judge McLeod include whether Respondent, in recalling employees in 1975, improperly caused the discriminatees[9] to lose seniority in relation to nondiscriminatees who had been laid off when the plant was closed, and whether the discriminatees should be accorded seniority superior to that of nondiscriminatees.

Under the policy apparently described in Respondent's employee handbook, all employees laid off for more than 6 months lose all seniority. When Respondent recalled 80 employees on November 1975, it granted equal job classification seniority to all 80, discriminatees and nondiscriminatees alike. The General Counsel's position in the backpay proceeding appears to be that because the discriminatees were ordered reinstated without loss of their seniority, and because Master Slack, through its handbook policy, should have recalled the nondiscriminatees as new employees for seniority purposes, Respondent has continued to discriminate against the dischargees. This is so because there are employees among the nondiscriminatees who, if the handbook policy is not applied, have greater seniority than the discriminatees. It is unclear to me why the discriminatees, who would have been laid off with everyone else when the plant closed in 1974, should be accorded superseniority.

Finally, Respondent's counsel represented on the record that Master Slack had not made any payments of backpay because that is a contested matter in the backpay proceeding (Tr. 292).

In sum, the General Counsel argues that until there has been full compliance with the Board's earlier order, including payment of backpay, the withdrawal of recognition did not occur in a "context free of unfair labor practices" as required by Board law. Pointing to undisputed evidence that at least some unit employees were aware of some of the unresolved issues, particularly the backpay matter, the General Counsel argues that the unremedied violations, particularly in light of the background, are of such a character as to taint the August 16 employee petition as a matter of law.

Respondent argues that the background is stale, and that it cannot be penalized for pursuing its right to litigate these residual matters in a backpay proceeding. Countering that, the General Counsel contends that there is no restriction on Respondent's right to litigate in the backpay proceeding, but simply that Respondent cannot have in both ways—the right to litigate the unremedied unfair labor practices, and also the right to withdraw recognition. Respondent observes, in effect, that it is the right of the employees to say whether they wish to be represented by the Union, and that Respondent has merely complied with the will expressed by the majority of the bargaining unit.

C. *The Complaint Allegations*

As amended at trial,[10] paragraph 11 of the complaint contains four allegations. It is there alleged that Respondent violated Section 8(a)(1) and (5) by:

11.

(a) On or about August 16, 1982, by letter, Respondent notified the Union that it was refusing to meet and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above in paragraph 7.

(b) On or about September 10, 1982, Respondent, by letter, withdrew its recognition of the Union as the exclusive collective-bargaining representative of the employees in the unit described in paragraph 7.

(c) Since on or about August 16, 1982, Respondent failed to and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above in paragraph 7.

(d) On or about August 16, 1982, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the employees in the unit described above in paragraph 7.

By paragraph 12, in conjunction with paragraph 14, it is alleged that Respondent violated Section 8(a)(1) of the Act when:

On or about September 10, 1982, and on again about September 22, 1982, Respondent, acting through Hulon Stringer, at its Bolivar, Tennessee, facility, announced to its employees that it was withdrawing its recongition of the Union and promised its employees that they would soon receive improved benefits.

[7] As we shall see, a controversy existed over certain reinstatement matters as well. The backpay specification (Jt. Exh. 1r) issued January 7, 1981 (Tr. 253).

[8] Although most of these documents were placed in the rejected exhibits file, I indicated at the hearing that in all likelihood I would take official notice of them for this limited purpose (Tr. 255, 258).

[9] Based on colloquy of counsel before me, it appears that the dispute pertains to six of the discriminatees (Tr. 291–294).

[10] Par. 11(d) was added at trial (Tr. 100, 110, and 241). Respondent admits par. 11(b) and denies the others.

In its answer Respondent admits that on September 10 Stringer announced to the Bolivar employees that Respondent was withdrawing recognition from the Union, but it denies the remainder of the allegation.

Respondent admits the factual allegations in paragraph 13 that "On or about October 4, 1982, and again on or about January 1, 1983, Respondent" increased the wages of its Bolivar employees and that it did so "without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain" which respect to such conduct and "the effects of such acts and conduct." By paragraph 15 of the complaint the General Counsel alleges that the conduct described in paragraphs 11 and 13 violate Section 8(a)(5) and (derivatively) Section 8(a)(1) of the Act.

One quickly sees that the allegations of paragraph 13, pertaining to the wage increases, depend entirely on a resolution of the allegations in paragraph 11. If Respondent lawfully withdrew recognition, then, of course, it lawfully granted the pay increases. The reverse also is true.

It should be noted that all allegations are based on the suspension of bargaining and withdrawal of recognition. There are no allegations that Respondent violated the statute by interrogations, threats, discriminatory discharges, or any of the types of conduct it committed during the 1973–1974 period. Nor is there any allegation that the petition submitted on August 16 was tainted by any improper solicitation, suggestion, assistance, or other conduct by Master Slack.

D. *Respondent Suspends Bargaining and Withdraws Recognition*

1. Introduction

On June 4, 1982, Wayne Morris (Curtis Wayne Morris) filed a decertification petition in Case 26–RD–552 (Jt. Exh. 17). The parties stipulated that although there was an adequate showing of interest of at least 30 percent, the Regional Director determined that the showing of interest was less than a majority of the bargaining unit (Tr. 248, 585).

In a mailgram of June 11, 1982, the Union argued that because of unremedied unfair labor practices pertaining to reinstatement, Respondent had not yet complied with the Board's order at 230 NLRB 1057 and the petition should therefore be dismissed or held in abeyance (Jt. Exh. 18). Master Slack vigorously opposed the Union's motion in a 15-page brief (Jt. Exh. 19) expressing several points, including its assertion that the parties had enjoyed "an amicable bargaining relationship" for the past 18 months as evidenced by a contract executed on August 26, 1981, and that the alleged unremedied unfair labor practices were stale. It further argued that since bargaining negotiations had begun, the Union had not made even one allegation of misconduct by Master Slack; that of a current work force of approximately 160 employees, only 5, or some 3 percent, "were involved in the events which predicated the unfair labor practice charges," and of the remaining employees, approximately 70, or nearly 50 percent, "were not employed by the company at that time." By letter dated June 24, 1982, Regional Director Gerard P. Fleischut notified the parties that he had decided not to dismiss the petition but "because of the pendency of the unfair labor practice charges which are in part unresolved, the petition herein should be held in abeyance pending the Board's decision on the supplemental proceeding which is presently before the Board." (Jt. Exh. 20.) Master Slack's 17-page request for review, dated July 6, 1982 (Jt. Exh. 21), was denied by the Board by telegraphic order dated July 28, 1982 (Jt. Exh. 22). By letter dated September 20, 1982, the Regional Director notified Master Slack's attorney that "I have approved the petitioner's request to withdraw the petition" in Case 26–RD–552 (G.C. Exh. 3).

In the meantime, the Union's New York office sent a letter, dated June 11, 1982, in which it notified Stringer that it desired to meet for the purpose of modifying the contract (Jt. Exh. 10). This was followed by a letter of July 28 from Kenneth G. Wray, assistant southern director for the union, to Stringer suggesting meeting dates beginning August 11 (Jt. Exh. 11). Stringer replied by letter dated July 30 that the Union's meeting request had been forwarded to Respondent's attorney Stuart Newman for reply (Jt. Exh. 12). The August 16 reply by Newman is as follows (Jt. Exh. 13):

> Dear Mr. Wray:
>
> This is in response to your letter of July 27, 1982, to Mr. Hulon Stringer in which you proposed certain dates for us to meet and negotiate modifications in the terms and provisions of the current collective bargaining agreement. We must decline your request to meet and bargain at this time.
>
> As you are aware, a petition to decertify your union, supported by an adequate showing of interest, was timely filed with the National Labor Relations Board in Memphis by a bargaining unit employee on June 4, 1982. On June 14, your union moved to dismiss the decertification petition. On June 24, the Regional Director denied that motion and decided to hold the petition in abeyance pending final resolution of certain compliance issues currently on appeal before the Board.
>
> In addition, the Company has received another petition signed by a majority of unit employees disavowing their interest in continued representation by your union.
>
> Accordingly, based on significant questions raised by all of the foregoing, it is the company's position that collective bargaining at this time would be inappropriate.
>
> Clearly, the quickest and most reliable way to answer the pending, unresolved question concerning representation is through the Board's election procedures. However, the unit employees' attempt to invoke the Board's electoral processes was precluded by the union's motion to dismiss their petition. The Company believes that a swift resolution of the union's current status is in the best interest of all parties concerned. Accordingly, the Company calls upon the union to assist in bringing this issue to a close by waiving its opposition to processing of the

election petition by the Board as soon as possible, thus allowing unit employees to voice their preference through an orderly election process. The company is willing to abide by the decision of its employees, whatever that decision may be, and will be pleased to cooperate fully with the Board in making the necessary election arrangements.

We look forward to hearing the union's response to this proposal. Should you have any questions about the company's position on this matter please contact me.

Very truly yours,

Jackson, Lewis, Schnitzler & Krupman
Stuart Newman

2. The speech of August 16, 1982

General Manager Hulon Stringer credibly testified that on August 16, 1982, he read, word-for-word, a prepared speech to assembled employees (Tr. 595–596). As the General Counsel acknowledged at the hearing, the complaint does not allege that the contents of this speech violate Section 8(a)(1) of the Act in any manner (Tr. 601). The text of the speech, with footnotes added by me, reads (R. Exh. 1):

I decided to get everybody together for a few minutes today so that I could review some very important developments which have taken place regarding the Union here in Bolivar. First, let me spend a couple of minutes giving you some background information.

A little over two months ago, one of our employees filed a petition with the Labor Board in Memphis asking that the Labor Board conduct an election at our plant to see whether our employees still wanted to be represented by this Union.

The union did not want to see this kind of election take place. So, they filed papers with the Labor Board in which they claimed that the election should be blocked because of some legal technicalities. (The Union's objections to the election was based on conduct which occurred almost 10 years ago!) We did not think that this was right, and opposed the Union's request all the way to the National Labor Relations Board in Washington, DC. Unfortunately the Labor Board decided that we could not have an election at this time.

That's the way things stood until this morning. I was given a petition this morning by several of our employees which was signed by a majority of all the employees in the plant.[11] One of the employees who gave me the petition explained that since it looked like the Labor Board was not going to do anything with the first petition, the employees decided that the only thing to do was to have an "election of their own." He thought that I might be able to take some action based on the new petition.

Since I am no expert in the labor laws, I talked to other Company officials and asked them what to do in view of the fact that the contract is about to expire. Based on all the factors, including the petition pending before the Labor Board and the latest petition I received, we decided it would not be appropriate to meet with the Union at this time. We sent a letter to one of the Union leaders today setting out the Company's position. And I would like to read that letter to you now:

(Read Letter)[12]

We are checking a little bit further to determine what we can and should do in the future based on all that is now going on. I don't have all the answers right now, but as soon as I do, I will be back in touch with you.

One thing is clear—the current contract will continue in effect up through August 25. We will abide by its terms until that time, and based upon what the Union does and what we find out, we will decide the fair and legal thing to do *after the contract expires.*

To sum all this up, as you can see, what we want is to have this whole issue resolved as soon as possible. We have thought all along that you had the right to express your feelings about this Union in a Labor Board election. We hope that the Union will finally agree with us, and let you do just that.

Thank you for your attention. If anybody should have any questions, I will try to answer them individually after we get back to work.[13]

[11] The "petition" is a collection of several sheets bearing the caption, "We no longer want to be represented by Amalgamated Clothing and Textile Workers Union, AFL–CIO, CLC." On each sheet is a column heading for the signer's name and one for the date. The document was received in evidence as G.C. Exh. 4, and it consists of 12 pages. Stringer testified that he received the first eight pages on August 16, 1982, from Wayne Morris, Janette Kennedy, and Maxine Downey, and that he received the other four pages, bearing only five signatures dated August 26, 1982, to September 2, 1982, before September 10, 1982 (Tr. 79–81). In giving the eight pages to Stringer on August 16, Wayne Morris told him that as the Labor Board was giving them the "run around," the employees had decided to hold their own election and "here's the results." (Tr. 82.) As the record reflects, the employees did not conduct an actual election, but obtained employee signatures by Morris, Downey, and others soliciting signatures from employees. The first 8 pages contained 84 signatures dated from August 3 to August 16, 1982. Stringer testified that he determined that two employees, William D. Majors and Peggy O. Hill, whose signatures were on pages 5 and 6, respectively, were not employed as of August 16, 1982 (Tr. 83–85, 133). Stringer credibly testified that there were 161 employees in the unit on August 16, 163 on September 10, and that the number of signatures on each of these dates constituted a majority of the unit (Tr. 284, 285, and 302). Of course, 81 employee signatures would be needed to constitute a majority on August 16 and 82 on September 10. The actual numbers were 82 as of August 16 and 87 as of September 10, 1982. Although evidence was adduced at the hearing concerning whether a handful of the signers were temporary employees and not properly considered as part of the unit, neither the General Counsel nor the Charging Party contends that resolution of their status would change the results of the majority showing.

[12] Stringer credibly testified that at this juncture in his speech he did read the letter, dated August 16, 1982 (Jt. Exh. 13), from Respondent's attorney Stuart Newman to Kenneth G. Wray, assistant southern director for the Union (Tr. 603). The text of the letter is quoted earlier herein.

[13] Stringer testified that some handwriting on the exhibit was his notes and that he did not say anything other than what appears on the text of the speech (Tr. 595). That testimony is a bit ambiguous, for Stringer put sequence numbers from one to three on three of the last four paragraphs

Continued

3. The speech of September 10, 1982

Elvin Stewart, business agent for the Union, testified that the last conversation he had at the plant with General Manager Stringer occurred on August 26, 1982, pursuant to the request of the latter (Tr. 208–209). On that occasion Stringer advised Stewart that he would discuss any grievance existing as of the previous midnight and that matters were in the hands of Respondent's attorneys. Stewart conceded on cross-examination that during the course of the year he and Stringer had enjoyed a cordial relationship (Tr. 210), conducting 40 to 50 weekly meetings at which problems were discussed or resolved (Tr. 200, 210, and 216), and that he knew of no unfair labor practice charges that were filed during the term of the contract (Tr. 215).

By letter of August 30 to Attorney Newman, Kenneth G. Wray stated (Jt. Exh. 14):

> Dear Mr. Newman:
>
> This is to acknowledge receipt of your letter of August 16, 1982.
>
> We doubt your claims that ACWU no longer represents a majority of the Bolivar employees. You have proposed that the issue of representation be settled by proceeding to a Board election. I would like to point out that such an election is currently being blocked by the company's failure to comply with the Board's order to pay backpay to certain of its employees who were fired for union activities. The company could remove the obstacles it has placed to an election by paying those former employees, as it was ordered to do by the Labor Board and by the Court. I would like to again propose that we meet for the purpose of negotiating a new collective bargaining agreement.
>
> Please advise me of your response to this proposal.
>
> Very truly yours,
> Kenneth G. Wray
> Assistant Southern Director

Newman responded by letter, also dated August 30, informing Wray (Jt. Exh. 15):

> Dear Mr. Wray:
>
> As you know, we are the attorneys for Master Slack Corporation. Pursuant to Article XXXIII of the Collective Bargaining Agreement between the above-referenced Corporation and your Union, formal notice is hereby given of our client's intent to terminate all aspects of that Agreement. As Article XXXIII dictates, all obligations under this Agreement will be automatically cancelled as of September 9, 1982.
>
> Very truly yours,
> Jackson, Lewis, Schnitzler & Krupman
> Stuart Newman

Newman's reference to article 33 of the contract and the cancellation of the contract on September 9 points up the fact that the contract did not expire automatically but had to be terminated under article 33. That article provides for notice of not less than 10 days of intent to terminate the contract. After the notice time elapsed, "all obligations under this Agreement are automatically cancelled."

The final piece of correspondence is Newman's letter of September 10 to Wray reading (Jt. Exh. 16):

> Dear Mr. Wray:
>
> This is to advise you that our client, Master Slack Corporation, has a good-faith and reasonably grounded belief that your union no longer enjoys the support of a majority of unit employees at its Bolivar, Tennessee, manufacturing facility. Accordingly, our client no longer recognizes your union as the collective bargaining representative of Bolivar employees as of this date.
>
> Very truly yours,
> Jackson, Lewis, Schnitzler & Krupman
> Stuart Newman

The parties stipulated (Tr. 286) that on September 10, 1982, Stringer read the following speech to assembled employees (G.C. Exh. 7):

> On August 16th I called all of you together to advise you what had taken place as of that date concerning the Union.
>
> I have called you together this afternoon to advise you of what has happened since that time. As all of you already know a majority of our employees signed a petition stating that they no longer wanted to be represented by the Union. The group of employees that presented the petition to the Company told me that since the NLRB would not call an election they were conducting their own election. As a result of their election the Union lost a majority of our employees.
>
> Based upon these petitions and what many of you have told us, it is clear that a majority no longer want to be represented by the Union. Therefore, effective today we have withdrawn recognition from the Union as your representative.
>
> We think that withdrawing recognition is the only fair and legal thing to do at this time. As far as we are concerned, we are now a nonunion company. Therefore, we will be dealing directly with you.
>
> The Company will be looking to do everything possible to make this a better place to work. That includes adjusting your wages to help you and your family meet the rising costs caused by inflation. In this regard our Company officials are conferring with their legal department to determine what changes can and should be made and I expect to be back with you very shortly.
>
> On behalf of the Company I want to say that we are looking forward to working directly with you

and added "To sum all this up" at the beginning of a paragraph which, I find, he numbered as 3 and moved to the penultimate position. That is, I find that stringer reordered the sequence of the last few paragraphs.

again and if any of you have any specific questions I will try to answer them after we return to work.

E. *Analysis and Conclusions*

The basic legal principles are well settled. Absent unusual circumstances, a union is irrebuttably presumed to enjoy majority status during the first year following its certification. On expiration of the certification year, the presumption of majority status becomes rebuttable. *Pennco, Inc.*, 250 NLRB 716 (1980). That rebuttable presumption also continues to apply after the expiration of a collective-bargaining agreement. *Guerdon Industries*, 218 NLRB 658, 659 (1975). An employer who wishes to withdraw recognition from a certified union after the first year, or after the expiration of a collective-bargaining agreement, may rebut the presumption of majority status in either of two ways: (1) By showing that on the date recognition was withdrawn the union did not in fact enjoy majority support, or (2) by presenting evidence of a sufficient objective basis for a reasonable doubt of the union's majority status at the time the employer refused to bargain. Id. *Pennco; Guerdon.*

In the case before us Master Slack contends that it has rebutted the presumption under both options set out above. Without passing on the second option, I find that Respondent has established that the Union did not enjoy majority support on both August 16, 1982, and September 10, 1982.

Although a majority of the unit did not support the Union on the relevant dates, the law is equally well settled that an employer may not avoid its duty to bargain by relying on any loss of majority status attributable to his own unfair labor practices. *Pittsburgh & New England Trucking Co.*, 249 NLRB 833, 836 (1980).

> Thus, it is clear that prior unremedied unfair labor practices remove as a lawful basis for an employer's withdrawal of recognition the existence of a decertification petition or any other evidence of loss of union support which, in other circumstances, might be considered as providing objective considerations demonstrating a free and voluntary choice on the part of employees to withdraw their support of the labor organization.

Id. *Pittsburgh & New England.* However, the unfair labor practices must be of a character as to either affect the Union's status, cause employee disaffection, or improperly affect the bargaining relationship itself. Id. *Guerdon*, stated differently, the unfair labor practices must have caused the employee disaffection here or at least had a "meaningful impact" in bringing about that disaffection. *Deblin Mfg. Corp.*, 208 NLRB 392 (1974). In short, there must be a causal relationship between the unlawful conduct and the petition of August-September 1982. *Olson Bodies, Inc.*, 206 NLRB 779 (1973).

The General Counsel contends, in effect, that the causal relationship is demonstrated as a matter of law by virtue of the continued impact of the unremedied unfair labor practices in light of the background of flagrant and serious unfair labor practices. That argument begs the question.

Under *Olson* several factors are named as criteria for determining whether a causal relationship has been demonstrated. They include: (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Respecting the first factor, 8 to 9 years elapsed between the bulk of the illegal acts and the submission of the petition on August 16, 1982. As for factors two and three, there can be no doubt that the serious and flagrant unfair labor practices were of a character to have a possible long lasting effect on the bargaining unit and to discourage employees from supporting the Union. As for the fourth item, there is no direct evidence concerning the impact on employee morale. There is indirect evidence concerning the effect on organizational activities and union membership.

On this latter point, both employee Yvonne Money (Tr. 152) and Business Agent Elvin Stewart (Tr. 203) testified that they noticed no trends in the number of employees attending union meetings during the 1981–1982 period. From their testimony it seems that 40 to 50 employees would regularly attend union meetings during the time of the 1981–1982 contract, including well into the summer of 1982. Moreover, Stewart testified that the union members appeared comfortable to him in July 1982 on an occasion when they wore union T-shirts and buttons in the plant (Tr. 213–214). He counted 30 employees wearing such emblems in the lunchroom the day of his visit (Tr. 207). The significance of this evidence is its revelation that during the critical weeks of June and July 1982, the supporters of the Union felt every bit as confident in openly expressing where they stood as did the signers of the antiunion petition. The crucial difference is that it was the latter group, not the former, which constituted a majority of the bargaining unit.

Regarding the matter of whether employees discussed the previous case, the answer is affirmative. At union meetings Nathaniel McCellan would ask when he was going to receive his backpay. The backpay requirements seem to have been a rather common topic of discussion in the plant. Indeed, it became an unpleasant joke. Discriminatee Leroy Lake testified that other employees kidded him that the backpay, if it was ever paid, would be so long in coming that it would be the grandchildren of the discriminatees who would spend it (Tr. 229–230). One person who so teased Lake was Mary Nell Puckett, a "supervisor" or "assistant plant manager" (Tr. 231).[14] Other employees testified to seeing the notice Respondent posted pursuant to the order of the Board, and some others were aware of the pending litigation. Others, such as Curtis Wayne Morris, testified that they were not aware of any of the foregoing.

[14] Although there are certain references to Puckett's different titles in the record (Tr. 319, 337, and 591), there is no allegation she is a statutory supervisor or that her remark violated the Act.

All of the 18 signers of the petition who were called by Respondent and permitted to testify on the subject, prior to my foreclosing Respondent from calling the other signers, testified that, to the extent they heard the talk about the prior and pending litigation, or to the extent that they were aware of any such matters, none of those matters had any impact on their signing the petition.

Typical of the responses of the employees regarding their reasons for signing the petition is that of Barbara Griffin, hired in 1964, who testified that although she was aware of the unfair labor practice issues, they had nothing to do with her signing the petition. "I signed it because I didn't want the Union. I didn't feel the plant needed a union." (Tr. 363.)

In contrast to the long tenure of Griffin, sewing operator Judy Wiggins was hired in November 1981, not long after the collective-bargaining agreement had become effective. She testified that she heard the plant talk about the NLRB case, the seniority claims, the backpay claims, and the "lawsuit," and that it had no impact on her decision to sign. She signed because (Tr. 556):

> Q. Would you tell His Honor in your own words, as—in any way you want—why it was that you signed the petition?
>
> A. Because I didn't want the Union in the factory.
>
> Q. Can you tell His Honor why?
>
> A. I just didn't feel like it was doing any good. I just didn't want it there.

No signer of the petition testified that any of the past or pending litigation had anything to do with his or her signing the petition.

It surely must be concluded that there is no direct evidence of a causal relationship between Respondent's unlawful conduct of 1973–1974 and the 1982 petition. Moreover, I further conclude that the indirect factors are insufficient here to operate as a matter of law to preclude Respondent from withdrawing recognition.

In view of all the circumstances here, I find that Respondent' lawfully suspended bargaining on August 16, 1982, and that it lawfully withdrew recognition from the Union on September 10, 1982. Having lawfully withdrawn recognition, Respondent was free to announce and grant the wage increases which it did. *Hemet Casting Co.*, 260 NLRB 437 (1982). Accordingly, I shall dismiss the complaint in its entirety.

CONCLUSIONS OF LAW

1. Master Slack Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent did not, as alleged, violate Section 8(a)(1) and (5) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The complaint is dismissed in its entirety.

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