

**Wolverine Worldwide, Inc. and United Brick and
Clay Workers of America, AFL-CIO. Case 14-
CA-11838**

February 6, 1980

DECISION AND ORDER

**BY MEMBERS JENKINS, PENELLO, AND
TRUESDALE**

On September 28, 1979, Administrative Law Judge John C. Miller issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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, Wolverine Worldwide, Inc., Hannibal, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

JOHN C. MILLER, Administrative Law Judge: This case was heard before me in Hannibal, Missouri, on December 11 and 12, 1978. The complaint alleged that Wolverine Worldwide, Inc. (herein called Respondent), engaged in interrogations, threats, and surveillance of employees in violation of Section 8(a)(1) of the National Labor Relations Act, as amended. It was further alleged that Respondent discriminatorily terminated one employee and suspended another in violation of Section 8(a)(3) and (1) of the Act.

Upon the entire record in this proceeding, including briefs filed by the parties and my observation of the witnesses and their demeanor, I make the following:

¹ Alternatively referred to as Riverview Park. I credit the testimony of Woodhurst and McGrew that Supervisor Worland engaged in surveillance at Nipper Park. As the complaint did not allege this as a violation, and as

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the manufacture, sale, and distribution of shoes, boots, and related products and maintains its principal office and place of business in Rockford, Michigan. Respondent's plant located in Hannibal, Missouri, is the only facility involved in this proceeding. The complaint alleges that Respondent's Hannibal plant manufactured and sold products valued in excess of \$50,000 which were shipped to points outside the State of Missouri. The complaint alleges, Respondent admits, and I find that the Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Jean Woodhurst, an alleged discriminatee, credibly testified that after receiving a second written warning and a 3-day suspension for absenteeism on June 19, 1978, she was put in contact with Junior Richards and Jim Mosley of the United Brick and Clay Workers of America, AFL-CIO (herein called the Union), in July 1978, and thereafter she distributed some 20 union authorization cards and asked employees if they wanted to sign cards on behalf of the Union. She attended four union meetings, at least one of which was held at her home. By letter dated July 26, 1978, Union Representative Mosley advised Respondent that employees Donna Swon, Sharon McGrew, Ann Farrell, and Jean Woodhurst were on the union organizing committee.

On July 30, 1978, the Union held a fish fry in Riverside Park for the hourly rated employees of Respondent, which was attended by approximately 30 to 50 people. The conduct involving 8(a)(1) allegations began with alleged surveillance by Edward Walker, Respondent's plant manager on July 30, 1978, and interrogation of and threats to employees by Walter Brewer, general plant manager, and Gary Holifield, foreman. The alleged 8(a)(3) allegations concern the termination of Jean Woodhurst and the 1-week suspension of Sharon McGrew on September 1, 1978. The 8(a)(1) allegations will be discussed in chronological order hereafter, and then the allegations of discriminatory discharge and discriminatory suspension will be discussed.

B. The 8(a)(1) Allegations

(1) Plant Manager Edward Walker created an impression of surveillance by driving past a union-sponsored picnic at Riverside Park¹ in Hannibal, Missouri, on July 30, 1978.

Jean Woodhurst credibly testified that, while employees were talking and eating at the picnic July 30, 1978, Walker drove by in his blue car. She stated she saw him and recognized the car because he usually drive it to work. Her testimony is not disputed that Riverside Park is out of the

counsel for the General Counsel did not amend the complaint. I consider it as pertinent background only.

way and would not be the normal traffic pattern for Mr. Walker if he were going to or from the plant. I do not credit Walker's testimony that he did not recall being in the area. If this were the only incident found in this case, I would ordinarily dismiss the allegation on the ground that the conduct alleged was isolated. Because of additional findings discussed later herein, I find that Walker's presence at the union-sponsored picnic created an impression of surveillance of union activities, which I find violative of Section 8(a)(1) of the Act.

(2) Since on or about August 1, 1978, Respondent's foreman, Gary Holifield, created an impression of surveillance by taking his breaks next to employees who were union supporters, actions which he had not done in the past.

Jean Woodhurst testified that following the July 30, 1978, fish fry, Foreman Gary Holifield and engineer Bob Brown were present in her work area when she and employee Donna Swon took their breaks, including their luncheon breaks, and that such conduct occurred through most of the month of August and that it was unusual. In contrast, Holifield, who was in charge of that department, denied any surveillance and stated he went home most of the time for lunch. He further stated that he talked to Brown, plant engineer, about three times during the month and that, when the "fitting department" was on break, he regularly went to the "process 82" department, which had been having production problems and was located adjacent to Woodhurst's work area. While I do not doubt that Woodhurst believed she and Swon were getting extra attention from Holifield, the fact that he was foreman of the department and was required to oversee the operation made his presence required in the area. I also credit Holifield that he normally went home for lunch. His presence was also required there or in the adjacent work area embracing the process 82 department. Accordingly, I find insufficient credible evidence to support this allegation of surveillance and recommend that it be dismissed.

(3) On or about September 26, 1978, Holifield is alleged to have interrogated and threatened an employee with discharge because of her union sympathies and support.

Ann Farrell credibly testified that on September 26, 1978, shortly after finishing a discussion with Walter Brewer, general plant manager, Holifield approached her and asked her why the union man had not shown up, referring to a preelection meeting in St. Louis, and she replied that she did not know or care and wanted to be left alone. He then asked her if she was happy working, and she answered, "Yes." Holifield then stated he was glad to hear that; she was a good worker and he did not want to lose her.

Since Respondent (and Holifield, as foreman) was aware of Farrell's being on the organizing committee, when the union representative did not show up for the preelection meeting in St. Louis, it was natural to ask an employee on the organizing committee what had happened. Moreover, according to Farrell's own testimony, Holifield said he was glad to hear that she was happy because she was a good worker, and he did not want to lose her. While it is true that being happy may have implied that Farrell was no longer interested in a union, it also indicated she would not be looking for another job. The conversation was ambiguous at best, and I fail to perceive a threat to her continued

employment. Accordingly, even crediting the testimony of Farrell, I find that the interrogation of Farrell by Holifield on September 26, 1978, did not constitute either unlawful interrogation or a threat, and I recommend that these allegations be dismissed.

(4) On October 17, 1978, Foreman Gary Holifield interrogated an employee about her union activities. Farrell credibly testified that on Tuesday, October 17, 1978, someone from the Machinists Union was handing out cards and notices in front of Respondent's plant that there was going to be a union meeting. As she prepared to go to work Holifield asked her if she was responsible for the man in front, and she replied, "No." Holifield stated he was glad to hear that because he was going to "holler discrimination" because he did not get one (card or notice). Farrell told him he could have hers if he wanted one.

Holifield's testimony was substantially in accord with that of Farrell, and he indicated he approached her in a joking manner. Regardless of whether Holifield was joking or not, the inquiry may have been designed to, and did, elicit a response from Farrell indicating what, if anything, she had to do with the union representative handing out cards and notices about a union meeting. I find that how the inquiry was broached was immaterial because it was an improper inquiry which elicited this individual's reactions and sympathies to a new union organization effort. Accordingly, I find Holifield's inquiry of Farrell on October 17, 1978, an unlawful interrogation violative of Section 8(a)(1) of the Act.

(5) On or about September 26, 1978, Walter Brewer, Respondent's general plant manager, interrogated an employee concerning her union sympathies.

This incident also involved employee Ann Farrell. She credibly testified that on September 26, 1978, Walter Brewer asked her why they the union did not show up in St. Louis where there was supposed to be a hearing on an election petition. She explained that on Monday, the day before this conversation, the union and employer representatives were to meet about a petition for an election. It was on the following day that Brewer asked her why the union man did not show up, and she responded that she did not know anything about it; that she had not been informed. Brewer further informed her that Plant Manager Edward Walker had waited in St. Louis until noon and nobody showed up. Brewer also stated that this meant that the Union could not come in because they did not show up. Brewer then asked whether she liked working there, and she replied, "Yes." He then questioned, "[D]oesn't it make any difference to you whether the Union comes in or not?" She responded, "[N]ot really because no one is going to go by it anyhow." Further on in her testimony she stated that Brewer asked her if she was for the Union, and she said, "Yes," that some of the things needed to be changed there. The above incident occurred just prior to similar questioning by Holifield about the Union's failure to show up in St. Louis.

Brewer denied asking Farrell if she was in favor of the Union, although his testimony was along similar lines that he asked Farrell why the Union did not show up. According to his version, Farrell stated that she did not care and that she was happy, and he expressed his satisfaction that she was happy and tried to explain the things they were trying to do at Wolverine.

Between the different versions, I credit Farrell that she was asked if she did not care if the Union came in and whether she was for the Union. While Brewer's initial inquiry about why the union representatives did not show up at St Louis may not have been illegal or coercive, subsequent questioning about her feelings about the Union constitute unlawful interrogation. It is logical that, upon learning that Farrell, a union committeewoman, no longer was enthused about the Union, Brewer's interest in her changed position prompted further inquiries about her sympathies and support of the Union. I find that these further inquiries constituted improper interrogation that is violative of Section 8(a)(1) of the Act.

C. The 8(a)(3) Allegations—The Alleged Unlawful Termination and Suspension

The complaint alleged that on or about September 1, 1978, Jean Woodhurst was unlawfully terminated and further that on the same date Sharon McGrew was unlawfully suspended for 7 days. With some variations, both employees were disciplined for absenteeism or failure to show up for work.

Suspended pending discharge hearings on the same day as Woodhurst, was terminated were Sharon McGrew and Sandy Rickey. The three women went to see Ed Walker, the plant manager, who advised Woodhurst she was discharged because of "chronic absenteeism" and that McGrew and Rickey were terminated because of their refusal to work on Saturday.

Holifield testified that the Company's disciplinary procedures were: (1) oral warning, (2) written warning, (3) written warning and 3-day suspension, (4) written warning—discharge. He further testified that total absences, regardless of whether excused or not, were what mattered. He did indicate that leaves of absence were granted for long illnesses, and a good attendance record was 1 day absent a month. Poor attendance was four absences in a month.

A review of Woodhurst's and other employees' attendance records follows:

Jean Woodhurst. Jean Woodhurst was hired on March 10, 1978, and terminated on September 1, 1978, for chronic absenteeism. Her absence record was as follows: In March she was not absent; in both April and May she was absent for 1 day, but was not disciplined; in June she missed 4 days from work, and received a written reprimand on June 5 and a second warning and 3-day suspension on June 19; in July she was not absent; and in August she missed 3 days from work, resulting in her third warning and termination on August 28.

In elaboration of Woodhurst's absences, the following was based on undisputed attendance records or Woodhurst's credited testimony.

Woodhurst was absent 1 day in April, 1 day in May, 4 days in June, and 3 days in August. She was suspended on August 28, 1978, pending a discharge hearing in part because she did not work on Saturday, August 26. The Company required employees to work Saturday when work was available, and an absence from Saturday scheduled work was rated equally with an absence during the week. There is little factual dispute about the absences in question.

Woodhurst was absent from work on Saturday, June 3. She received a written warning for failure work. Her absence was prompted by her inability to get a babysitter. Woodhurst was absent sick on June 12 and 13 and again on Saturday, June 17. On Monday, June 19, she was called in by Holifield, given a 2nd written warning, and suspended for 3 days for "missing 3 days out of 6." When she argued that she had missed only 2 days, Holifield informed her that Saturday was a regular working day. It was *subsequent* to her second warning and 3-day suspension that she contacted Jim Mosley, a union representative. Thereafter she solicited employees to sign union authorization cards and attended four union meetings and a fish fry sponsored by the Union at Riverview Park on July 30, 1978.

On August 8 Woodhurst missed work because her little boy was sick. On August 11, a Friday, she was given her check and advised that she was to work on Saturday, August 12. She told Holifield she was going out of town, and he told her she had better be at work. On August 12 her sister called in to say she would not be in to work. She did not receive any discipline for her absence on August 12. Woodhurst did not go to work on Saturday, August 26, because a coworker, Sharon McGrew, whom she rode with, was sick. When she reported to work on Monday, August 28, she was advised by Holifield that she had missed too much work and was suspended. Sharon McGrew, Sandy Rickey, and Woodhurst were all suspended that same day. The employees were granted a hearing on their discharges on September 1, 1978. At the hearing Woodhurst questioned why others who had absentee records worse than hers were not getting fired. She was advised that they were not there to answer her questions, and her discharge was upheld.

The record is replete with instances where a number of employees' absences were tolerated while others were disciplined. A review of the disparate treatment is in order.

[Employee Minnie Blaine missed approximately 31 days of work in 1978 before finally being terminated on August 28. Despite 7 days of absence in May, employee Vickie Graham received no discipline. Employee Jackie Kerley received no discipline, not even an oral warning, for 3 days of absence in June. Employee Sharon Miner did not receive any discipline, including any oral warnings, although she was absent 6 days in April, 4 days in June, and 3 days in July. Her first warning occurred in August. Employee Dorothy Shannon received no warnings (written or oral) despite absences of 12 days in May and 5 days in September. Employee S. Gard did not receive any oral or written warnings despite absences of 4 days in August and 3 days in September.]

Respondent produced the attendance records of 42 of its 200 production employees. Counsel for the General Counsel contends *inter alia*, that, of the records of 42 employees produced, 5 had absences in excess of 20 days between January 1 and September 1, 1978 and 12 employees missed 10 or more days during the same period.

The attendance records noted above establish to my satisfaction that Respondent's disciplinary procedure is haphazard, at times inaccurate, and does not reflect any uniform application of discipline, but reflects in many instances the whims, caprices, or subjective judgments of various supervisors.

Foreman Holifield testified that the failure to administer discipline in several instances was an oversight. Employee L. Hayes was absent on August 26, 1978 (a Saturday), and Holifield admitted she did not have a good record and should have received discipline. Peggy Noel, absent on August 5, 1978 (a Saturday), according to Holifield, did not have a good record and should have been given discipline.

The record establishes to my satisfaction that Respondent administered its disciplinary system disparately. Despite Holifield's assertion that it did not matter whether absences were excused or not, some attendance records were marked "S" for sick and "U" for unexcused, and there appeared to be differences in the treatment afforded employees who had illness in the immediate family, either children or a spouse, as contrasted to illness of the individual employee.

With respect to Woodhurst and McGrew, however, the key question is whether they received disparate treatment *because* of their union activities. A critical point, admitted by Woodhurst herself, is that she did not contact the Union until a month *after* receiving her second written warning and 3-day suspension. Thus, if Woodhurst received disparate treatment *prior* to the Union's coming on the scene, it could *not* have been caused by her union activities or sympathies, but simply represents the Company's inequitable administration of its disciplinary procedure. Was the Company's reason for termination of Woodhurst based on reasonable grounds, or did it amount to a more strict standard of discipline for Woodhurst (and McGrew) because of their union activities? In deciding this issue, I note that Donna Swon and Ann Farrell were also listed as members of an organizing committee and encountered no work-related difficulties. Also, after the second written warning Woodhurst was absent on August 8, 1978, because of illness of her little boy and received no discipline. She was also scheduled to work on Saturday, August 12, and did not report because she and her husband were going out of town, despite an admonition that she had better be at work. Woodhurst failed to report to work on Saturday, August 26, because the driver of her carpool, Sharon McGrew, was sick. Woodhurst had no driver's license and was unable to report to work. Thus, she did miss scheduled work on two Saturdays in a row. Certainly, it is not the Company's responsibility to furnish her transportation to her job. The record indicates that both Woodhurst and McGrew often rebelled when Saturday work was mentioned, and that this, *inter alia*, was a factor in their seeking union representation. However, absent a contract, it is the Company's prerogative to set the days and hours of work, and, even though Saturday work may be anathema to many employees, it has the right to require attendance by its employees.

In addition, I note that in addition to Minnie Blaine, who had a much worse attendance record than Woodhurst, Sandy Rickey was also discharged for refusal to work on Saturday. There is no claim here that she was discriminatorily discharged. Moreover, there is no evidence to contradict Holifield's testimony that Debbie Bremlett was absent on August 26, 1978, and was also discharged.

Respondent, for whatever reason, be it pay, Saturday work, or the nature of benefits given by the Company, had a considerable turnover. Respondent submitted records of individuals who were terminated for excessive absenteeism.

See Respondent's Exhibits 54, 55, 57, 58, and 59. The extent of their absenteeism is not, however, set forth in the record.

With respect to Woodhurst, therefore, I conclude that, while her termination may have been inequitable in light of treatment afforded other individuals, I cannot find on this record that it was prompted by her union activities or sympathies. Accordingly, I recommend that the allegation with respect to Woodhurst be dismissed.

Sharon McGrew. Sharon McGrew was active on behalf of the Union, soliciting employees to sign union authorization cards and attending union meetings and the union-sponsored fish fry on July 30, 1978. She was initially suspended subject to discharge for failure to work on Saturday, August 26, 1978, and after a hearing her penalty was reduced to a week's suspension. She returned to work after the suspension and voluntarily ceased employment with Respondent for a better job on September 22, 1978.

With respect to events leading up to McGrew's failure to work on Saturday, August 26, 1978, there was a sharp conflict in testimony. David Jacobs, McGrew's supervisor, and Sandy Maple, the leadwoman in the finishing and packing departments, testified that it was company policy that Saturday work was mandatory if employees were notified prior to noon on Saturday. He further testified that with respect to overtime on Saturday, August 26, a notice to employees was posted on Wednesday, and, following custom, they reminded employees on Friday that Saturday work was scheduled. When he reminded McGrew of the Saturday work, she said she would not be there because she did not have a babysitter. When she further responded that she did not know if she could be there, he stated that she was expected to be there. Her final response was simply, "[W]e will see."

On Saturday, August 26, 1978, McGrew phoned the plant and asked for Sandy Maple, but Jacobs answered the phone, whereupon McGrew gave the phone to her husband, who stated that Sharon would not be in to work that day and that he had made an appointment for her with the doctor the day before. Further conversation ensued, with Mr. McGrew stating he thought that overtime on Saturdays should not be mandatory, but voluntary. When asked whether Sharon should bring in a doctor's slip, Jacobs stated it did not matter, because, as far as he was concerned, she had lost her job. Jacobs described the subsequent hearing on her suspension as a review by the personnel department to find out if the suspension was justified or termination was called for. He indicated that at the hearing it was decided she should be returned to work after a week's suspension. Jacobs further stated that McGrew stated she had never refused any work, but stated she had often refused to work overtime during the week and on Saturdays.

Sandy Maple, an overall operator or assistant to Jacobs and a leadwoman, in effect corroborated Jacobs' testimony that McGrew stated she would not be in on Saturday because she did not have a babysitter. She stated that McGrew made no comment or indication that she was ill and offered the lack of a babysitter as the only reason for not being available to work. She further confirmed that McGrew, when told she was expected to be there, merely commented, "[W]e will see."

McGrew testified that on August 25, 1978, Jacobs reminded her about the Saturday overtime work, and she stated that she intended to come to work, but did not advise Jacobs one way or the other. She denied that she told him she did not have a babysitter. With respect to her calling in on Saturday, she confirmed that Jacobs, who spoke to her husband, stated she would probably be terminated because it was a different reason than she had given him the day before. When she reported to work on Monday, she was suspended pending discharge, and, when she attempted to give a doctor's excuse to Walker, the plant manager, he refused to accept it. At the September 1 hearing on her discharge, McGrew testified that Mr. Brewer stated she had never refused work, and she was reinstated subject to the week's suspension.

In view of McGrew's testimony that Jacobs stated to her husband that she would be discharged because her reason for not coming in, illness and a doctor's appointment, differed from the reason she gave him, I credit the testimony of Jacobs and Maple and find that she had previously indicated she could not work because of a lack of a babysitter. Since she was aware on Wednesday that they would be working on Saturday, it seems apparent that she did not wish to work on Saturday. This comports with her view that Saturday work should be voluntary and that employees should not be required to work on Saturday. While I might agree with McGrew, the Company's policy was that, when other than a skeleton crew was required on Saturday, work was mandatory. In view of the credited testimony, I find that McGrew's suspension was due to her attempts to get out of Saturday work. While discharge appeared an overreaction, the subsequent modification of her penalty to that of suspension appeared more reasonable. Reasonable or not, I cannot find on the basis of the credited testimony that her suspension was prompted by her union activities and sympathies. Accordingly, I recommend that the allegation with respect to McGrew be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Brick and Clay Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent, by terminating Jean Woodhurst on September 1, 1978, and by suspending Sharon McGrew on September 1, 1978, did not violate Section 8(a)(3) or (1) of the Act.
4. Respondent, by Walter Brewer and by Gary Holifield, its agents and representatives, did unlawfully interrogate its employees about their union sympathies and support in violation of Section 8(a)(1) of the Act.
5. Respondent, by the conduct of Plant Manager Edward Walker on July 30, 1978, gave the impression that it was surveilling employees' union activities and thereby violated Section 8(a)(1) of the Act.
6. Respondent did not otherwise engage in conduct violative of the Act.
7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in conduct which created the impression that employees' union activities were under surveillance and engaged in unlawful interrogation of employees about their union activities and sympathies, I shall issue a cease-and-desist order and require Respondent to post a notice that they will cease such activities.

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

ORDER²

The Respondent, Wolverine Worldwide, Inc., Hannibal, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Surveilling or giving the impression of surveillance of employees' union activities.

(b) Interrogating employees about their union activities or sympathies.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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

(a) Post at the plant premises in Hannibal, Missouri, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms furnished by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by 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.

(b) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

² 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.

³ 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."

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

WE WILL NOT interrogate employees about their union activities or sympathies.

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

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WOLVERINE WORLDWIDE, INC.