

Robert E. Anderson and Richard E. Anderson, co-partners d/b/a/ Anderson Cabinets and Carpenters District Council of Greater St. Louis, AFL-CIO.
Cases 14-CA-11167, 14-CA-11420, and 14-CA-11454

March 28, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On August 31, 1978, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in answer to the Respondent's exceptions.

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,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order,³ as modified herein.

¹ The Administrative Law Judge found, *inter alia*, that Respondent violated Sec. 8(a)(1) of the Act "by imposing more onerous working conditions because the employees, through their bargaining representative, enforced the terms and conditions of the outstanding collective bargaining agreement." In reaching this conclusion, the Administrative Law Judge relied on the credited testimony of several former employees that Respondent's then supervisor, Jim Anderson, made statements to the effect that he was going to run the shop "by the book," that he had obtained information about writing up disciplinary slips, and that employees would no longer have permission to attend to personal matters such as getting sodas and smoking on company time. However, the record does not establish that these threats were implemented, and the complaint alleges only that Respondent threatened more arduous working conditions if the Carpenters was retained as bargaining representative. Accordingly, we do not adopt the Administrative Law Judge's finding that more onerous working conditions were imposed but find that Respondent threatened to impose them in violation of Sec. 8(a)(1) of the Act.

² Member Murphy notes that the Administrative Law Judge's statement, "It is well established that the filing of a decertification petition, standing alone, does not justify an employer in withdrawing recognition from an incumbent union," appears to be contrary to the Board's decision in *Telauto-graph Corporation*, 199 NLRB 892 (1972). However, this misstatement does not affect the result herein, as Respondent clearly withdrew recognition in the context of its unlawful conduct.

³ The Administrative Law Judge, in his recommended remedy and Order, treated discriminatee Floyd T. Wildhaber as an unlawfully discharged working employee rather than as an unlawfully discharged striker, recommending that Wildhaber be made whole for losses suffered by reason of Respondent's discrimination against him without any requirement that such backpay commence only upon Wildhaber's unconditional application for reinstatement. Members Jenkins and Truesdale agree with the Administrative Law Judge's recommended remedy in this regard, for the reasons set forth in the Board's recent decision in *Abilities and Goodwill, Inc.*, 241 NLRB 27 (1979—Members Penello and Murphy dissenting). Member Murphy, however, as discussed in the dissenting opinion in *Abilities and Goodwill, Inc.*, would not grant backpay from the time of Wildhaber's discharge, but would find any backpay obligation of Respondent to commence only at the time that Wildhaber made an unconditional offer to return to work.

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, as modified below, and hereby orders that the Respondent, Robert E. Anderson and Richard E. Anderson, co-partners d/b/a Anderson Cabinets, St. Louis, Missouri, their agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(h):
“(h) Threatening to impose more onerous terms and conditions of employment if its employees retained Carpenters as their exclusive bargaining representative.”
2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT coercively interrogate employees concerning their union activities.

WE WILL NOT threaten employees with plant closure or loss of benefits unless they abandon their support for the Carpenters.

WE WILL NOT promise employees increases in wages or benefits if they abandon their support for the Carpenters and select some other labor organization as their collective-bargaining representative.

WE WILL NOT sponsor the circulation and filing of a decertification petition.

WE WILL NOT threaten to relocate the plant to a place where the Carpenters would be unable to act as collective-bargaining representative.

WE WILL NOT threaten to impose more onerous terms and conditions of employment if our employees retain Carpenters as their exclusive bargaining representative.

WE WILL NOT threaten to close the plant if employees refuse to return sums of money received as settlement of a wage restitution claim.

WE WILL NOT tell employees that their union activities are the subject of company knowledge and surveillance.

WE WILL NOT discourage membership in and activities on behalf of Carpenters' District Council of the Greater St. Louis Area, AFL-CIO, by

discharging or otherwise discriminating against employees in their hire or tenure.

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

WE WILL recognize and bargain collectively with Carpenters' District Council of the Greater St. Louis Area, AFL-CIO, as the collective-bargaining representative of all our production and maintenance employees, exclusive of office clerical employees and supervisors, and if we reach an agreement, WE WILL embody the terms of that agreement in a signed written instrument.

WE WILL offer to Floyd T. Wildhaber full and immediate reinstatement to his former position or, in the event that the position no longer exists, to substantially equivalent employment, without prejudice to his seniority and other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of pay or benefits which he suffered by reason of the discrimination practiced against him, with interest.

ROBERT E. ANDERSON AND RICHARD E. ANDERSON;
CO-PARTNERS D/B/A ANDERSON
CABINETS

DECISION

FINDINGS OF FACT

STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me at St. Louis, Missouri, upon a consolidated unfair labor practice complaint,¹ issued by the Regional Director for Region 14, which alleges that the Respondent, Robert E. Anderson and Richard E. Anderson, copartners d/b/a Anderson Cabinets,² violated Section 8(a)(1), (3), and (5) of the Act. More particularly, the Consolidated Complaint alleges, *inter alia*, that the Respondent threatened employees with more onerous

¹ The principal docket entries in this case are as follows: Charge filed against Respondent by Carpenters' District Council of Greater St. Louis, AFL-CIO (herein called Union or Carpenters), in Case 14-CA-11167 on February 23, 1978, and amended charge filed against Respondent by Union in Case 14-CA-11420 on May 3, 1978; charge filed against Respondent in Case 11454 on May 12, 1978; consolidated complaint issued by Regional Director for Region 14, on June 2, 1978; Respondent's answer filed on June 12, 1978; hearing held in St. Louis, Missouri, on June 20 and 21, 1978; briefs filed with me by the General Counsel, the Charging Party, and the Respondent on August 7, 1978.

² Respondent admits, and I find, that it is a partnership which maintains its place of business in St. Louis, Missouri, where it is engaged in the manufacture, sale, distribution, and installation of wood cabinets. During the year ending December 31, 1977, a representative period, Respondent derived gross revenues in excess of \$500,000 and purchased at its St. Louis, Missouri, plant goods and merchandise indirectly from points and places outside the State of Missouri valued in excess of \$50,000. Accordingly, Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union and the Congress of Independent Unions (CIU) are labor organizations within the meaning of Sec. 2(5) of the Act.

working conditions if they retained the Union as their bargaining agent, promised employees benefits if they would abandon their support of the Carpenters, created an impression among employees that their union activities were subject to company knowledge and surveillance, threatened to close the plant if employees failed to return to the Company certain sums received as a result of a settlement of an unfair labor practice case and a civil action between the Union and the Respondent, solicited support for and filed a decertification petition aimed at removing the Carpenters as the bargaining agent, and coercively interrogated employees about their union activities. The Consolidated Complaint further alleges that the Respondent refused to bargain collectively with the Union as the bargaining agent for its production and maintenance employees and that it discharged Floyd T. Wildhaber because of his union activities. The Respondent denies the commission of independent violations of Section 8(a)(1) of the Act, contends that Wildhaber quit his employment, and justifies its refusal to bargain with the Union on the basis that it had, and continues to maintain, a good-faith doubt as to whether the Carpenters is the majority representative of its employees. Upon these contentions the issues herein were joined.

The Unfair Labor Practices Alleged

The Respondent is a partnership of two brothers, generally referred to as Bob and Rich Anderson, who operate a small cabinet manufacturing shop in St. Louis. They manufacture and assemble kitchen cabinets and install them at various building sites throughout the metropolitan area. They employ about 7-10 employees, some of whom are related to them by blood or marriage. Although the Respondent is not a member of the Associated Cabinet Shops of St. Louis, in 1976 it became a signatory to a 3-year agreement concluded between this Association and the Carpenters. The agreement covered its production employees and expired on April 30, 1978.

In July 1977, Carpenters Business Agent Larry Coleman came to the Respondent's shop to investigate allegations that the Respondent was continuing to pay less than the union scale and was failing to meet its obligation to make health and welfare payments. He was denied access to the Respondent's books and was refused permission to speak with the Respondent's employees. On August 2, 1977, the Union wrote to the Respondent, accusing it of serious contract violations. On August 3, 1977,³ the Respondent's shop was visited by a representative of the Congress of Independent Unions (CIU) for the purpose of organizing the Respondent's employees. I credit the testimony of former employee Robert Meenan to the effect that Jim Anderson, brother of the owners and shop foreman during the summer and fall months of 1977,⁴ advised him in advance of the arrival of the CIU representative that he was coming. The CIU agent came to the premises with the knowledge and permission of the owners and was introduced to employees

³ The first charge herein was filed on February 23, 1978. Hence, any events taking place before August 23, 1977, may be relied upon by the General Counsel only as evidence of animus, since they occurred before the commencement of the 10(b) period.

⁴ J. Anderson is an admitted supervisor during this period of time.

by J. Anderson. The shop employees listened to the CIU spokesman as he outlined for them the benefits of CIU membership. After concluding his remarks, he passed out CIU cards, which employees signed and returned. After leaving the plant, he called Bob Anderson and told him that he had collected designation cards from the employees who were present. On or about August 8, the CIU filed a representation petition (14-RC-8549) seeking to represent the Respondent's employees. This petition was later withdrawn.

During the afternoon of the day on which the CIU agent visited the shop, J. Anderson suggested to some employees that if they abandoned the Union the Respondent could establish a health insurance program with Blue Cross-Blue Shield, could set up a retirement plan, and might even have a little left over for a wage increase. A few days later, J. Anderson said that he had a conversation with his attorney and asked employees to forget what he had previously said because he was not allowed to say anything on behalf of the CIU. At or about this same time, he told employees that the shop was going to be run strictly by the book.

Early in August, the Union filed both a civil action and an unfair labor practice charge against the Respondent for failing to abide by the terms and conditions of the outstanding agreement. As a result of a settlement, concluded on September 27, the Respondent made back payments to the Union's health and welfare fund and was required to make wage restitution to various employees for the difference between the union scale and what they had been receiving. Sometime in September J. Anderson informed various employees that the Company would have to "go Carpenter" and pay employees backpay. He also stated that the Company would not be able to get rid of the Carpenters at that time but would have to wait until the contract expired. He said that his brothers, Rich and Bob, would have a hard time coming up with the money to pay employees backpay for the difference between the Carpenters scale and what they had been receiving and suggested that they might even have to sell their Cadillacs to do so.

Sometime thereafter J. Anderson also told employees that the shop would have to be run "by the book." He informed them there would be no more personal privileges on company time, such as smoking, getting sodas, or using the bathroom, and that such activities would have to be confined to the 10-minute break periods. He also said he had gone to the Carpenters' Hall and had found out how to issue warning slips for tardiness and absenteeism. He told employees that the Union had informed Rich and Bob who had reported their contract violations and stated that the Union would not stand behind the employee or employees in question because all the Union was interested in was the money they received as a part of the settlement. He also voiced the opinion that if the shop were to close it would reopen far away so that the union business agent, whom he referred to with an obscene term, would not be coming in and out.

After the backpay checks from the settlement were distributed at the union hall, J. Anderson again hinted to some employees that it would be a nice gesture if they would return their backpay checks to the Company. He told former employees Steven Holmes and Mark Gebhardt that the Company could not afford to remain open if employees

retained their backpay checks and asked them if they would return their checks. They refused. J. Anderson also asked former employee Robert Meenan why he had gone to the union hall to complain about the size of the check and asked Meenan to return his check. He told him that the Anderson brothers had to take out a loan to get the money to meet the backpay obligation. J. Anderson made the same request to other employees.

In the late fall or early winter, J. Anderson ceased being shop foreman and resumed his former job as truckdriver. He explained in his testimony that he changed jobs because the responsibility of the foreman's position was interfering with his family life. He also felt that he lacked the background and education for the position. Early in January Rich and Bob Anderson held a meeting at the shop of employees, including Robert D. Rhyneer. Rhyneer was the most experienced and highest paid cabinetmaker in the shop. Prior to the meeting in question, Bob Anderson had sounded him out about taking J. Anderson's job as foreman. Bob Anderson told the assembled employees that production was down and that the Company needed someone in the shop to keep it going, because he and Rich could not be in the shop all the time. He mentioned that J. Anderson would be driving a truck and would not be foreman any longer, and that his role in the shop would be limited to machine repair. I credit the corroborated testimony of several former employees that Bob Anderson also said that Rhyneer was being appointed foreman and asked for their assent to this appointment. All agreed that he would be the most suitable person for the job. Bob Anderson instructed employees to take their problems to Rhyneer, even if he or Rich were at the plant at the moment. From that point on, Rhyneer began assuming additional functions. He was the "saw man," meaning that he obtained work orders from the office and cut out component parts for cabinets. These parts were then passed along to other employees for additional phases of the production process. In addition to acting as a saw man, Rhyneer began inspecting cabinets. From time to time, he gave orders to other employees and started watching other employees as they performed their tasks. He had lengthy closed-door conferences with Rich and Bob Anderson when they were in the shop. Questions concerning work problems were brought directly to Rhyneer, whereas previously employees had gone either to J. Anderson or to Rich and Bob Anderson. On one occasion Rhyneer initialed the timecard of an employee who had neglected to punch out. I credit testimony of various employees that he granted them time off because of illness or in order to attend to personal errands. Rhyneer arrived at the plant half an hour before starting time and normally was the one who unlocked the doors to the shop, although other employees also had keys. Rich and Bob normally did not arrive at the shop until the middle of the morning and were in and out of the building all day attending to other aspects of the business. During their absences, Rhyneer was the only person in charge of plant production.

Early in February the Union held a meeting of Anderson's employees at the union hall to discuss proposals for a new contract. About six persons, including Rhyneer, attended the meeting and made suggestions for proposals. These proposals were incorporated into a letter, dated February 27, in which the Union gave the Anderson brothers

60 days' notice that it wanted to negotiate a new agreement to replace the contract which was due to expire on April 30.

On the morning following the gathering at the union hall, a few employees, including Rhyneer, held a conversation in the company office at the plant just before starting time and talked about union representation. I credit the testimony of Donna Thien that Rhyneer brought up the idea of forming a company union. He suggested that Blue Cross-Blue Shield offered a better health insurance program than the Carpenters did and made the further suggestion that the employees would be better served by using the monthly dues now being paid to the Carpenters for higher wages and a profit-sharing plan. In response to a question, he replied that Bob and Rich Anderson had no idea that he was making this proposal and asserted that he thought up the idea himself. Rhyneer continued to discuss the idea of a company union with employees throughout the day.

The following day Rhyneer spoke with the employees again. He said he had talked with his lawyer and was advised that if he wanted to go ahead with the formation of a company union he would have to resign as foreman, since he could get into trouble if he continued to pursue this idea while remaining a foreman. Miss Thien agreed that the best thing to do was to do what his lawyer told him, so Rhyneer said he would speak to Bob and Rich when they came in and would resign as foreman. Later that day, Rhyneer told Miss Thien and Miss Selby that he was no longer foreman because the Andersons would not give him any more money.⁵ However, Rhyneer continued to perform the same functions he had in the past, and no one was appointed to replace him as foreman.

Shortly thereafter Rhyneer and leadman Tom Hardy, the stepson of Bob Anderson, circulated a handwritten decertification petition, which various employees signed. On February 14, they circulated a typewritten petition to the same effect, which Hardy, Rhyneer, and Rhyneer's sister, also an employee in the shop, later took to the Board office. The petition was submitted on February 21 in support of an RD petition which Rhyneer filed in his own name (Case 14-RD-610). On February 23, the Union filed the first of the three charges which have given rise to the consolidated complaint in this case.

A few days after the filing of the RD petition, several employees, including Rhyneer, went into the office together and informed Bob Anderson that the RD petition had been filed. His response was a remark to the effect that he would negotiate with whomever the employees selected.

About this point in time, Miss Thien began having second thoughts about decertifying the Carpenters and asked the Carpenters to have a meeting with employees at the hall. Such a meeting was held, but only Miss Thien and employees Floyd Wildhaber and Shirley Selby attended. Apparently the Carpenters satisfied these employees as to the quality of their representation. They notified the Andersons that Miss Thien was appointed shop steward. Miss Thien asked Rhyneer if it would be possible for her to withdraw her name from the RD petition. It is unclear whether

⁵ I discredit testimony in the record from Bob Anderson, his relatives, and Rhyneer to the effect that Rhyneer had never accepted the position as foreman in the first instance because the Company and Rhyneer could never get together on a nominal pay raise which Rhyneer was demanding as the price of becoming foreman.

Rhyneer still had the petition in his possession or whether it was on file at the Regional Office. In any event, Rhyneer said that it was impossible to have a signature removed, so Miss Thien let the matter drop.

About March 13, Bob Anderson approached Miss Thien, Miss Selby, and Wildhaber and asked them who had filed the charges at the Board. They replied that they did not know. Miss Thien and Miss Selby were discharged 2 days later for reasons not at issue in this proceeding. Thereafter, Wildhaber was appointed shop steward by the Carpenters, and the Employer was so notified.

On April 11, the decertification petition was dismissed, and all parties, including the Andersons, were notified of the dismissal. The Acting Regional Director stated as the reason for his dismissal that he had concluded that the petition was company-sponsored because Rhyneer was, in his judgment, a supervisor within the meaning of the Act. The dismissal was appealed to the Board, and the Board affirmed the Regional Director in an order dated May 23. This order contained the proviso that the petition would be subject to reinstatement depending on the outcome of the instant case.

In March, Larry Coleman phoned Bob Anderson and made a verbal request to get together for the purpose of negotiating a new contract. Bob Anderson stated that he would call him back but he never did. On April 24, Coleman again phoned Bob Anderson about negotiating a contract. Bob Anderson told him that there were matters currently pending at the Labor Board and he did not want to do anything until they were resolved. On April 28, just 2 days before the contract was due to expire, both Andersons called Ollie Langhorst, secretary-treasurer of the Carpenters, and told him that they had a good-faith doubt that the Carpenters represented their employees. Langhorst's only reply was to ask them if their lawyer had told them to make this statement. Bob Anderson replied in the affirmative.

The Carpenters struck all cabinet shops with whom they had contracts on May 1. However, no strike action took place at the Anderson establishment until Thursday, May 4, when former employee Thien and shop steward Wildhaber began to picket the premises. No other employees joined in the strike. Miss Thien and Wildhaber carried signs which read, in part, that the employees of Anderson were "On Strike" because the Andersons "refuse to bargain."

On Monday, May 8, Bob and Rich Anderson came out to the sidewalk where Miss Thien and Wildhaber were picketing and handed Wildhaber two checks, one for accrued vacation pay and the other for wages due. Bob Anderson told him that "you haven't shown up for work the last couple of days so you are being terminated for this." As of that moment, no replacement had been hired for Wildhaber. No contention has been advanced that either Wildhaber or Miss Thien were guilty of any picket line misconduct.

Analysis and Conclusions

I. The supervisory status of Robert D. Rhyneer

In dismissing the decertification petition filed by Rhyneer, the Acting Regional Director concluded that the peti-

tion was employer-sponsored because Rhyneer was a supervisor within the meaning of Section 2(11) of the Act. The Respondent challenged his determination in this proceeding, and the Board, in affirming the Director, stated that its affirmation was subject to revision, depending upon the outcome of this case. Because of both the Board's Order in Case 14-RD-610 and its decision in *Serv-U-Stores, Inc.*, 234 NLRB 1134 (1978), the question must now be resolved on the basis of the record herein.

Rhyneer was promoted to the position of foreman to take the place of J. Anderson, an admitted supervisor. I put little credence in the claim that the plant actually ran itself and did not need a foreman. In fact, Bob Anderson solicited Rhyneer to replace J. Anderson and told the employees who assembled for a meeting in early or mid-January that the shop needed someone to get the work moving, since production was down. The Respondent cannot convincingly say now that it did not need a shop foreman when, in January, it was telling its employees the reverse.

I have also credited the testimony of several employees that the thrust of the January meeting was to appoint Rhyneer foreman, not to ask him in front of his fellow workers whether he wanted to become foreman. This second contention of the Respondent is as implausible as the assertion that the shop was not really in need of a foreman at all. This claim is contradicted by the Respondent's own testimony. Hence, Rhyneer was placed in a supervisory post and was held out by the Respondent to its employees as being the incumbent in such a position.

Additional factors also support the conclusion that Rhyneer was a supervisor. There were, and presumably still are, large stretches of time throughout a normal workday when neither of the principals were present on the premises. Hence Rhyneer was and is the ranking person in the shop in the absence of its owners. This state of affairs argues strongly that he is a supervisor. Rhyneer began to carry out his supervisory responsibility immediately after his appointment by giving orders, overseeing production, granting employees excused absences, initialing a timecard, inspecting work, and generally taking charge by handling routine problems that arose on the production line so that Bob and Rich Anderson could attend to other aspects of the business. It is also clear that his purported resignation as foreman was a sham which bore no relation to the functions he continued to fill. In the light of these considerations, it is quite clear that, at least since mid-January, Robert D. Rhyneer was a supervisor within the meaning of Section 2(11) of the Act. I so find and conclude.

2. The independent 8(a)(1) allegations

The events which took place early in August 1977, when the CIU agent visited the Respondent's premises and solicited union cards from its employees in the presence of supervisor J. Anderson, lie outside the period of limitations and hence cannot be relied upon as a basis for findings of independent violations of Section 8(a)(1) of the Act. However, after August 23, 1977, the Respondent committed repeated violations of the Act through the words and conduct of its foreman, J. Anderson, as follows:

(a) After the Respondent had concluded a settlement of its 1977 back wage dispute with the Union, it agreed to

make restitution to several of its employees for the difference between the contract scale and what in fact the Respondent had been paying them. Shortly thereafter, J. Anderson took steps to try and recover these back payments for his brothers. While hinting about or requesting a return of payments was a chintzy thing to do, I do not believe that mere suggestions or requests to this effect constitute unfair labor practices, so I would dismiss paragraphs 3(G) and (H) of the complaint. However, when J. Anderson told employees Holmes and Gebhardt that the Company would not remain open if employees retained their backpay checks, he was making an untrue statement and one which his brother contradicted in the record in this case. Such statements constitute threats to close the plant if Holmes and Gebhardt did not return the wage restitution payments and is a form of illegal pressure prohibited by Section 8(a)(1) of the Act.

(b) When J. Anderson told employees that if the shop were to close it would reopen far from its existing location so that union agent Coleman could not come in and out, he was guilty of interference with protected activities and violated Section 8(a)(1) of the Act.

(c) Shortly after the CIU representative left the plant, J. Anderson told employees that their selection of the CIU or a company union would result in better pay and benefits. He later told them that he had consulted a lawyer and that they should erase from their minds whatever he had said to them in this score. I conclude that these remarks were made in the first part of August and that a prosecution of the Respondent for such statements is barred by limitations. Accordingly, I dismiss paragraph 3(b) of the consolidated complaint. However, such remarks are illustrative of the attitude and sentiments of the Respondent and indicate an animus on its part which has a direct bearing on later events.

(d) Sometime in September, after it appeared that a settlement with the Carpenters was inevitable, J. Anderson told employees that the Company could not get rid of the Carpenters at that time but would have to wait until the contract expired. While not abundantly clear from the record, this remark may have been prompted by the fact that the CIU's representation petition, filed in early August, was untimely under the Board's contract bar rules. In any event, his remark that the employer intended to take steps to eliminate the bargaining agent constitutes interference with protected rights in violation of Section 8(a)(1) of the Act. It is also illuminating as to the origin of events which took place in February 1978 and thereafter.

(e) Anderson made statements, both before and after the commencement of the period of limitations, to the effect that he was going to run the shop "by the book," that he had obtained information about writing up disciplinary slips, and that employees would no longer have permission to attend to personal matters (such as getting sodas, smoking, etc.) on company time. His statement amounts to an imposition of more onerous working conditions in reprisal for union activities and is a violation of Section 8(a)(1) of the Act.

(f) J. Anderson also told employees that the Union had disclosed to the Respondent who had lodged the complaint concerning the withholding of wages and health and welfare payments. He said that the Union was not going to

protect the employee who informed on the Company. He asked Meenan why he had complained to the Union about the amount of the backpay settlement. This statement constituted a threat of reprisal, coercive interrogation, and an indication that union activities of employees were the subject of company surveillance, all of which are violations of Section 8(a)(1) of the Act.

(g) Robert D. Rhyneer, who took J. Anderson's place, committed unfair labor practices attributable to the Respondent, as follows:

(1) It is a classic violation of the Act for a supervisor to sponsor, circulate, or file a decertification petition. Rhyneer admittedly did all of these things and, in so doing, violated Section 8(a)(1) of the Act.

(2) In connection with his effort to decertify the Carpenters, Rhyneer suggested to employees on several occasions in early February that the elimination of the Carpenters would result in better health insurance coverage and an increase in other benefits. Such statements constitute illegal promises which violate Section 8(a)(1) of the Act.

(3) The consolidated complaint alleges that Rhyneer instructed employees not to remove their names from the decertification petition. The reference is to Rhyneer's remarks to Miss Thien when she requested to remove her name from the petition. I do not construe his remarks on this occasion as an instruction to her or as an act on his part prohibiting her from removing her name. Rather, it appears that he was saying to her that it was not possible at this juncture for her to remove her name. Whether accurate or inaccurate, the statement was merely an expression of opinion as to the rules and procedures surrounding the processing of a decertification petition and does not constitute a violation of the Act. Accordingly, I would dismiss paragraph 5(M) of the consolidated complaint.

The complaint also alleges that Robert Anderson interrogated employees concerning who filed charges against the Company with the Board. The question was in fact posed to Misses Thien and Selby and to Wildhaber in mid-March. It amounts to coercive interrogation which violates Section 8(a)(1) of the Act.

3. The Respondent's refusal to bargain

There is no dispute either that the Respondent told the Union on April 28 that it would not bargain or that it refrained from bargaining with the union prior to that date concerning revisions to the contract due to expire on April 30. Bob Anderson testified that he would not have bargained collectively with the Union at any time after February 21 because Rhyneer had filed a decertification petition and had come into the office with several other employees to inform Anderson of his action. Upon advice of counsel, he and his brother called the Union and proclaimed their good-faith doubt that the Union represented a majority of their employees.

There is little in their dealings with the Carpenters over the years that could possibly justify use by the Andersons of the term "good faith." In 1976, they failed to live up to their contractual commitments until the Union brought pressure to force them to do so. In 1977, they repeated the same delinquency and thereby engendered the filing of both an unfair labor practice charge and a civil action in federal

district court. When these actions were being threatened by the Carpenters, the Respondent permitted a rival union to come on to their premises to solicit the support of their employees and aided and abetted this effort through the antiunion comments of their brother and foreman, Jim Anderson. When these efforts failed, J. Anderson informed employees that the Company would have to wait a few months to get rid of the Carpenters and coupled his remarks with a series of coercive acts and illegal promises.

In February the Respondent, by and through its newly appointed supervisor, Rhyneer, sponsored a decertification petition and promised employees a better deal if they would go along with the petition. The Respondents waited until the eleventh hour before the contract expiration date to inform the Carpenters that they no longer recognized them as bargaining agent. It is against such a background that a claim of good faith must be evaluated. To support this claim the employer must present clear and convincing evidence of loss of support by a union. The evidence must be capable of raising a reasonable doubt of the Union's continued majority. *Retired Persons Pharmacy v. N.L.R.B.*, 519 F.2d 486 (2d Cir. 1975).

As the Eighth Circuit put it in *Boyle's Famous Corned Beef Company v. N.L.R.B.*, 400 F.2d 154, 166 (8th Cir. 1968), a "supervisor cannot be used as a tool or instrument of management in fostering or aiding a new union, and strict principles of agency are not required to hold management responsible for the union activity of its supervisory employees." In this case, Bob and Rich Anderson let their brother and Rhyneer carry out the plans which they brought to ultimate fulfillment in the telephone call to Langhorst on April 28.

The Respondent's basic justification on April 28 for refusing to bargain with the Carpenters was the filing of a decertification petition on February 21, a petition which by that time had been dismissed by the Regional Director. It is well established that the filing of a decertification petition, standing alone, does not justify an employer in withdrawing recognition from an incumbent union. *Celanese Corporation of America*, 95 NLRB 664 (1951); *Autoprod, Inc.*, 223 NLRB 773 (1976). These and many other cases have consistently stood for the proposition that a claim of good-faith doubt as to the continued majority status of a union will not be entertained where it is raised in the context of employer unfair labor practices. Such is the manifest context of the Respondent's claim herein. Accordingly, I conclude that by failing and refusing to bargain with the Carpenters on and after April 28, 1978, the Respondent herein violated Section 8(a)(1) and (5) of the Act.

4. The discharge of Floyd T. Wildhaber

Wildhaber was the Union's shop steward at the time of his discharge on May 8. On that date he had been picketing in front of Respondent's place of business for 3 days in support of the Carpenters' strike of all unionized cabinet shops in the St. Louis area. Wildhaber did not in fact quit his job, and the Respondent admits that no replacements for him had been hired as of the time he was terminated. His absence from the shop on May 4, 5, and 8 was due to a strike and his participation therein, and the Respondent was well aware of this fact. Calling a strike a voluntary quit

or an absence from work justifying discharge is to write Section 13 out of the Act. This is just what the Respondent attempted to do when it fired Wildhaber because he had engaged in such union activities. The discharge plainly violated Section 8(a)(1) and (3) of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following:

CONCLUSIONS OF LAW

1. Respondent Robert E. Anderson and Richard E. Anderson, copartners d/b/a Anderson Cabinets, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Carpenters' District Council of Greater St. Louis, AFL-CIO, and the Congress of Independent Unions are labor organizations within the meaning of the Act.

3. All production and maintenance employees employed by the Respondent at its St. Louis, Missouri, shop, exclusive of office clerical employees and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Carpenters have been the representative for the purposes of collective bargaining of the employees in the unit described above in Conclusion of Law 3 and, by virtue of Section 9(a) of the Act, have been and are now the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to wages, hours, and terms and conditions of employment.

5. By failing and refusing to bargain with the Carpenters as the collective-bargaining representative of its employees in the unit described above in Conclusion of Law 3, the Respondent herein violated and continues to violate Section 8(a)(5) of the Act.

6. By discharging Floyd T. Wildhaber because he engaged in union activities, the Respondent violated Section 8(a)(3) of the Act.

7. By the acts and conducts set forth above in Conclusions of Law 5 and 6; by coercively interrogating employees concerning their union activities; by sponsoring the circulation and filing of a decertification petition; by promising employees benefits if they would abandon their support for the Carpenters and select some other labor organization as their bargaining representative; by threatening employees with plant closure if they continued to support the Carpenters as their bargaining agent and if they refused to return to the Respondent money received as settlement of a wage restitution claim; by threatening to relocate the plant to a place where the Carpenters would be unable to act as the bargaining agent of the Respondent's employees; by imposing more onerous working conditions because the employees, through their bargaining representative, enforced the terms and conditions of the outstanding collective-bargaining agreement; and by telling employees that their union activities were the subject of company knowledge and surveillance and that they would be penalized for seeking the assistance of the Union, the Respondent herein violated Section 8(a)(1) of the Act.

8. The unfair labor practices found herein adversely affect commerce among the several States, within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent herein has committed certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take other actions designed to effectuate the purposes and policies of the Act. Since the violations in question are repeated and persistent and include a discriminatory discharge, I will recommend to the Board a so-called broad 8(a)(1) order designed to suppress any and all violations of that Section of the Act. *J. C. Penney Co., Inc. (Store #1814)*, 172 NLRB 1279, fn. 1 (1968). I will further recommend that the Respondent be required to offer full and immediate reinstatement to Floyd Wildhaber to his former or a substantially equivalent position and that it also be required to make him whole for any loss of pay or benefits which he has suffered by reason of the discrimination practiced against him, to be computed in accordance with the *Woolworth* formula⁶, with interest thereon calculated in accordance with the adjusted prime rate used by the U. S. Internal Revenue Service to compute interest on tax payments. *Florida Steel Corporation*, 231 NLRB 651 (1977); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). I will recommend that the Respondent be required to recognize and bargain collectively with the Carpenters as the duly designated representative of its employees and to post the usual notice, advising employees of their rights and of the results of this case.

Upon the foregoing findings of fact and conclusions of law, upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER⁷

Respondent Robert E. Anderson and Richard E. Anderson, co-partners d/b/a Anderson Cabinets, and their supervisors, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with Carpenters' District Council of the Greater St. Louis Area, AFL-CIO, as the collective-bargaining representative of its production and maintenance employees.

(b) Coercively interrogating employees concerning their union activities.

(c) Threatening employees with plant closure or with loss of benefits unless they abandon support for the Carpenters.

(d) Threatening employees with reprisal if they enforce the terms of an outstanding collective bargaining agreement.

(e) Sponsoring the circulation and filing of a decertification petition.

⁶ *F. W. Woolworth Company*, 90 NLRB 289 (1950).

⁷ 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.

(f) Promising employees benefits if they abandon support for the Carpenters and select some other labor organization as their collective bargaining representative.

(g) Threatening to relocate the plant to a place where the Carpenters would be unable to act as collective-bargaining representative.

(h) Imposing more onerous terms and conditions of employment because the employees seek to enforce the terms of a collective-bargaining agreement.

(i) Threatening to close the plant if employees refuse to return to the Respondent sums of money received as settlement of a wage restitution claim.

(j) Telling employees that their union activities are the subject of company knowledge and surveillance.

(k) Discouraging membership in and activities on behalf of Carpenters' District Council of the Greater St. Louis Area, AFL-CIO, or any other labor organization, by discharging or otherwise discriminating against employees in their hire or tenure.

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

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Recognize and, upon request, bargain collectively with Carpenters' District Council of the Greater St. Louis Area, AFL-CIO, as the collective-bargaining representative

of all of its production and maintenance employees, exclusive of office clerical employees and supervisors as defined in the Act, and, upon reaching agreement, embody the terms of said agreement in a signed, written instrument.

(b) Offer to Floyd T. Wildhaber full and immediate reinstatement to his former position or, in the event his former position no longer exists, to substantially equivalent employment, without prejudice to his seniority or to other rights which he formerly enjoyed.

(c) Make whole Floyd T. Wildhaber for any loss of pay and benefits which he has suffered by reason of the discrimination found herein, in the manner described above in the section entitled "The Remedy."

(d) Post at its St. Louis, Missouri, place of business copies of the attached notice marked "Appendix."⁸ Copies of the Appendix, on forms provided by the Regional Director for Region 14, shall be signed by a representative of the Respondent, shall be posted by it immediately upon receipt thereof, and shall 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 to insure that such notices are not altered, defaced, or covered by any other material.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary to analyze the amount of backpay due under the terms of this Order.

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

Insofar as the consolidated complaint herein alleges matters that have not been found to be unfair labor practices, said consolidated complaint is hereby dismissed.

⁸ 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."