Wolverine, Division of U.O.P., Inc. and Aluminum Workers International Union, AFL-CIO. Case 10-CA-12827

# April 3, 1978

# DECISION AND ORDER

# By Members Penello, Murphy, and Truesdale

On December 8, 1977, Administrative Law Judge Hutton S. Brandon issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in answer to the General Counsel'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, 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 complaint herein be, and it hereby is, dismissed in its entirety.

# **DECISION**

# STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge: This case was heard at Decatur, Alabama, on September 1 and 2, 1977. The charge was filed by Aluminum Workers International Union, AFL-CIO, herein called the Union, on May 25, and the complaint was issued on June 27. The issue presented herein is whether Wolverine, Division of U.O.P., Inc., herein called Respondent, discriminatorily discharged its employee Kermit Stovall in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended.

235 NLRB No. 91

Upon the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

#### FINDINGS OF FACT

#### I. JURISDICTION

Respondent, a Delaware corporation, is engaged in the manufacture and sale of aluminum and copper tubing with an office and plant located in Decatur, Alabama. During the past calendar year, Respondent sold and shipped products valued in excess of \$50,000 directly to customers located outside the State of Alabama. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), 2(6), and 2(7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background

As a background to this case, the General Counsel produced testimony regarding speeches and actions of Respondent occurring several months prior to the basic alleged unfair labor practice herein, the separation from employment of Kermit Stovall by Respondent about May 13. For the most part, these speeches and actions by Respondent were related to a previous campaign by the Union at Respondent's plant in the spring and summer of 1976, which culminated in an election conducted by the Board in July 1976, an election that was lost by the Union.

In this connection, the General Counsel produced Kenneth Jordan, a former employee of Respondent who had worked for Respondent for about I year ending his employment there about April 1976. Jordan identified Kermit Stovall, the alleged discriminatee herein, as being active in the 1976 union campaign and stated that Stovall had given him a union authorization card to sign and various other union paraphernalia such as pencils, badges, and a pocket protector with the Union's name on it. Jordan further testified that he had attended union meetings at the request of Stovall. Jordan related that he also attended some meetings of employees called by Respondent to discuss its opposition to the Union. These meetings, which were before Jordan quit in April 1976, were conducted by Mr. Tommy Counts, plant manager, Mr. Ben Roberts, employee and community relations manager, or other Respondent officials. These meetings were generally for the purpose of, according to Jordan, telling the employees that they did not need any representation by any union, and that any problems could be handled between management and the employees.

At one of the meetings, Respondent announced a 25-cent-per-hour wage increase, according to Jordan, and indicated that another 25 cent-per-hour or 30-cent-per-hour raise would possibly go into effect in August. Jordan's testimony as to what the August increase was conditioned

<sup>&</sup>lt;sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>&</sup>lt;sup>1</sup> All dates are in 1977 unless otherwise stated.

<sup>&</sup>lt;sup>2</sup> Respondent's unopposed motion to correct the transcript, filed with its brief dated October 7, is granted and received in evidence as Resp. Exh. 1.

on was vague and conclusionary. In substance, Jordan testified that "I think the main thing was the outcome of how the election went was what I gathered from it."

In addition, Jordan testified that, when he was hired in 1975, the personnel director of Respondent, John Bates, inquired of Jordan before he was hired if Jordan would join a union if it came about. Finally, Jordan testified that about 3 months before he left Respondent he was transferred from the converting to the finishing department under a new supervisor, Hal Morris. In making the transfer, Bates introduced Jordan to Morris and told Morris in Jordan's presence that Morris wouldn't have to worry about Jordan, because Bates knew Jordan and his family; and that, as far as unions were concerned, Morris did not have to worry. Subsequently, at a time not specified by Jordan, Jordan wore a "pocket protector" with the Union's name on it to work. Hal Morris observed it and told Jordan he did not "need" to wear it. Jordan thereafter took off the pocket protector.

Neither Bates, who retired in September 1976, nor Morris was called to contradict the testimony of Jordan. In view of this failure to deny Jordan's testimony, I accept it as generally accurate.<sup>4</sup>

Kermit Stovall also testified as to speeches and wage increases by Respondent in the 1976 union campaign. Stovall testified that Plant Manager Counts in his meetings with employees, the dates of which were not specified on the record, told employees that the employees did not need a "third party," and pointed out that, if the "Company went union," a lot of customers wouldn't purchase material from union companies, because they feared that when they needed their material Respondent would be on strike. Further, Counts pointed out, still according to Stovall, that a lot of the plants were closing because of excessive union demands. Counts added with respect to Respondent's Decatur plant that, if Respondent went union, the union demands would "probably" be too great, and they would "eventually have to close down." Further, Counts stated that under Respondent's procedures, when orders got slack, Respondent cut down the days of the workweek; but that, if a union came in, they could not do that; that they would have to lay off employees so that instead of every man carrying home a paycheck every week some men would be working 5 days a week and some would not be working at all.

With respect to the 1976 wage increase previously referred to above in Jordan's testimony, Stovall testified that Respondent's employees were granted a wage increase in March or April 1976 and were told by Plant Manager Counts that they might get another 30 cents per hour later, stating that they had to convince the stockholders that Respondent could earn the 30 cents by cutting down on

cost of material, cost of production, and spoiled work. In addition, Counts stated that, if the Union came in, they might get the 30 cents and they might not; that bargaining would start from scratch.

Finally, Stovall related in his testimony that Respondent monthly posted in the employee area a publication entitled "Highlights," which publication contained notices about "different union companies—companies with the Union that had to close down because the union demands are so great." Such postings were continuous and were not apparently limited to those times when a union campaign was going on at Respondent's plant.

No testimony was offered by Respondent with respect to the above aspects of Stovall's testimony. Accordingly, I accept those portions of Stovall's testimony which are not denied. Counts was not called as a witness, and no explanation of the 1976 wage increases was attempted by Respondent. No violations of the Act were alleged based upon the Jordan and Stovall testimony noted above, and certainly none could be found even if alleged, inasmuch as all incidents testified to by Jordan and Stovall occurred much more than 6 months prior to the filing of the charge herein.<sup>5</sup> The most that can be inferred from the testimony of Jordan and Stovall is that Respondent was opposed to union organization of its plant, a matter which was freely conceded by Respondent's witness and production manager, Hardie Haley. While none of the background testimony reflected above, which came into the record without objection by Respondent, was directed individually to Kermit Stovall, and even though all of the statements and conduct of Respondent as testified to by Jordan and Stovall would not amount to statutory violations had a timely charge been filed, I accept such testimony for the very limited purpose of shedding whatever light it might have on Respondent's motivation in its conduct with respect to Kermit Stovall as discussed below.6

Although not alleged as a violation, the General Counsel also introduced into evidence without objection from Respondent a letter from Respondent to its employees dated January 17 regarding its stock ownership plan. The letter reminded employees of the eligibility requirements for the plan including the requirement that employees not be "members of bargaining units covered by a collective-bargaining agreement." Presumably, the General Counsel relies on the letter as reflecting union animus. The legality of the plan was not sufficiently litigated before me to base a judgment thereon. However, I note the plan appears to be applicable to union members not covered by a collective-bargaining agreement and would thus appear to be lawful. See *The B. F. Goodrich Company*, 195 NLRB 914 (1972); *The Rangaire Corporation*, 157 NLRB 682 (1966). In any

Provided: That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.

<sup>&</sup>lt;sup>3</sup> A "pocket protector" as used herein refers to a flexible plastic or vinyl device inserted in a shirt pocket with a lip or flap over the front top edge of the pocket designed to receive clip-on pens and pencils and to protect the pocket from ink, pencil markings, etc.

<sup>4</sup> Jordan also testified that at one meeting "they said if the union come in there would be a lay off, and they didn't come and just say that, but in round about speaking, you know, that they—while a slow period they tried to scatter their men out to keep from laying the men off, and if they had representation they would be forced to lay off, and this was something to this effect." I find this testimony to be too vague and unreliable to establish union animus on the part of Respondent.

<sup>&</sup>lt;sup>5</sup> Sec. 10(b) of the Act provides the following, in relevant part:

<sup>&</sup>lt;sup>6</sup> See Local Lodge No. 1424, International Association of Machinists, AFL-CIO, et al. [Bryan Manufacturing Co.] v. N.L.R.B. 362 U.S. 411 (1960).

event, I do not rely on the plan as evidence of any union animus on the part of Respondent herein.

# B. The Separation of Kermit Stovall

## 1. The General Counsel's evidence

Kermit Stovall, the alleged discriminatee, initially started working for Respondent on February 10, 1969. Thereafter, he had a short break in employment due to military leave for about 2 months, but his employment after return from that leave was continuous for about 7 years prior to his separation on or about May 13. At that time he was a machine operator under the supervision of a management trainee, Nathaniel Winton.<sup>7</sup>

Stovall had been active in the Union's campaign at Respondent in 1976 and had served as one of four observers for the Union during the election in July of that year.

Following his participation in the 1976 election on behalf of the Union, Stovall applied for several jobs in the plant. He testified in detail with respect to only one such job, however, one in Respondent's machine shop. According to Stovall, he applied for the job8 but was subsequently told that he didn't get it notwithstanding the fact he had college-level training in mechanical drafting and design technology. Stovall testified that he was told by Chapman in the presence of the machine shop departmental supervisor, Wilbur Hayes, that his attendance record precluded him from getting the job. Stovall protested that his attendance record was not that bad and complained that Respondent was counting some time against him which was not supposed to be counted. Specifically, Stovall told Chapman that Respondent was counting against Stovall the time he had spent during the union election as an observer and the time spent in the preelection conference. In this connection Stovall testified that he had noted on his timecard for the day of the election that he got a code 80 marked on his timecard which indicated an absence with notification but nevertheless an unexcused absence. According to Stovall, Chapman responded to Stovall's assertions by stating that Stovall was for the Union, and Respondent did not want a union anyway, and Stovall was not doing the job that Respondent hired him to do.

Stovall applied for other jobs in the machine shop on other occasions but without success. While it is not clear from the record what period is covered or whether Stovall applied for all the jobs, it does appear from Stovall's testimony that 12 to 18 jobs were filled by Respondent in the machine shop.

It was Stovall's testimony that in or about April a new union campaign began to get underway. Stovall said that in connection with that campaign he passed out about 40 or 50 union cards to about 25 to 30 employees but had not received any signed cards back up to the time of his separation on May 13, although he had some "good promises." Also in April, Stovall began wearing daily a "pocket protector" with the Union's name on it in the plant for all to see and carried pencils with the Union's name on them in his pocket. No supervisor said anything to Stovall about the pencils or the pocket protector. While as noted Stovall passed out union authorization cards, he did not send the union his own signed authorization card until "sometime in May." 10

Sometime in the last 2 weeks of his employment Stovall had a discussion with some fellow employees regarding several employees quitting Respondent to go to work for another employer. The question arose as to what notice Respondent required its employees to give before quitting to insure that the "quitting" would not effect subsequent reemployment by Respondent if the need occurred. Stovall took it upon himself to ascertain Respondent's position on the point and inquired of his supervisor, Nathaniel Winton. Winton's response, according to Stovall, was to first inquire if Stovall was quitting. Stovall responded that he was not; that he just wanted to know for general information. Winton replied that some employees just called in and quit the same day, and he wasn't sure whether one had to give a 2-week notice or not. The conversation with Winton took place at Stovall's machine but was not witnessed by any other employees.

Stovall testified that on May 13 Production Manager Hardie Haley came by Stovall's work station where he was working on the second shift about 4:30 or 5 p.m. Haley told Stovall, from Stovall's version, "I understand this is your last day, you're quitting." Stovall replied that he was not quitting and that was not his last day. Haley turned and left.

Stovall thereafter went to see Winton and inquired, "What's this I hear about me quitting." Winton responded that he thought it was Stovall's last day, and he had turned in a form 109 on him. Stovall protested that it was not his last day; that he had not told Winton that he was quitting. Winton then, according to Stovall, said he would get everything straightened out and left in the direction of Haley's office. After about 20 minutes, Winton returned and told Stovall that he had everything straightened out and inquired of Stovall if he wanted to work the following days, Saturday and Sunday. Stovall declined the Saturday and Sunday work and said he would be in for work on Monday at his regular shift starting time of 4 p.m.

On Monday, May 16, Stovall reported for work, changed his clothes, and went back to his work station. There Haley

<sup>&</sup>lt;sup>7</sup> Stovall's relations with Winton, a relatively new supervisor, appear to have been good. Winton in the early part of the year had rated Stovall above average in all categories on Stovall's annual appraisal. Stovall had received only one "major step" reprimand about 6 years ago. Winton did testify that he had to occasionally get on Stovall for "visiting."

<sup>8</sup> According to the testimony of B. M. Chapman, employee relations and safety supervisor, the application was in early August 1976 and Stovall was rejected for the job prior to August 21, 1976.

<sup>&</sup>lt;sup>9</sup> A duplicate of the "pocket protector" worn by Stovall bearing the name of the Union in silver letters on the front flap was received into evidence as G.C. Exh. 3. That exhibit subsequently was found missing from the exhibit files. However, the General Counsel and Respondent stipulated

to the receipt of a duplicate Exh. 3. The stipulation is hereby approved and received into the exhibit file as G.C. Exh. 4 and the duplicate G.C. Exh. 3 has been inserted in the exhibit file.

<sup>10</sup> Jordan testified that, when making a delivery of materials for his present employer to Respondent about 2 weeks prior to the hearing herein, he was told by an unidentified employee that the union campaign was going again. I do not regard this to be supportive of Stovall's claim of a union campaign at the time of his separation, because it took place some 3 months later.

<sup>&</sup>lt;sup>11</sup> A form 109 is a personnel action form reflecting an employee status change such as in departmental assignment, termination, quitting, etc.

came and got him and took him to Winton's office. In Winton's office, Haley told Stovall that he no longer worked for Respondent; that Stovall had quit. Stovall said he did not quit and testified he made the following statement to Haley:

Hardie, when you talked to me Friday afternoon I told you it wasn't my last day and you walked off, and then I went to Winton and told Winton it wasn't my last day, and Winton told me he would go and get everything straightened out, and came back to me and asked me if I [would] work Saturday and Sunday, and I told him no, that Saturday and Sunday is strictly voluntary work because we work straight, eight to four Monday through Friday, and I worked eight hours that Friday afternoon and I was back in at four o'clock Monday afternoon to go to work until Hardie called me off and told me that I no longer worked for the Company.

Stovall testified that Winton stated that Stovall had misunderstood him about getting the papers straightened out, and that what Winton had meant was that the separation papers were straightened out. Stovall testified that he then stated to Haley that he thought an employee had to work out a 2-week notice in order to quit. Haley allegedly responded, "I'll just consider that you worked out a two-weeks' notice, and we'll consider that you worked it out and you quit." Stovall returned to the work area where he told his fellow employees he would not be working for Respondent anymore. Then he changed his clothes and went to the personnel office where he saw Acting Personnel Director Jim Snider.

After explaining the situation to Snider, Stovall was told by Snider that Snider was just filling in; that things were new to him; that his job was to hire, not fire; and suggested that he set up an appointment for Stovall with Employee Relations Manager Ben Roberts. Stovall then left.

On May 17, Stovall met with Roberts around 10 a.m. Roberts told Stovall that he would have to do some checking and would get back to Stovall around 2:30 that afternoon. Stovall did not hear from Roberts that afternoon but did talk to him the following day by phone. In that conversation, Roberts reported to Stovall that from the information Roberts had gathered Stovall had quit.

Stovall, who testified that he did not make any application for employment with any other employer from the time of his first conversation with Winton about notice required for quitting and his separation, put in a new application for employment with Respondent in June, but as of the date of the hearing he had not been rehired by Respondent. There was no evidence, however, that Respondent had hired any permanent full-time employees subsequent to Stovall's application. Although there appears to be no stated policy on the part of Respondent not to rehire former production employees into production jobs, there was evidence submitted of only one rehire of a former employee, David Puckett, and that was after a 16-year hiatus. Further, there was no evidence submitted regarding an established policy of Respondent not to allow revocations of resignations once submitted. On the other hand, there appears to have been no prior occasion when

Respondent was requested to allow a revocation or withdrawal of a resignation.

Stovall denied that he ever applied for work at Reynolds Aluminum Company or ever went to work for that employer. The significance of such denial will be seen hereafter.

It is the General Counsel's position that Stovall never indicated to Respondent that he desired to quit his employment, and that he never in fact did quit. That Respondent's actions with respect to Stovall were subterfuges designed to rid Respondent of an employee who was beginning another union campaign, the General Counsel argues, is evidenced by Respondent's admitted opposition to the Union, as well as Stovall's testimony that he did not at any time quit. Further, the General Counsel contends that, even if there was some good-faith, although mistaken, belief on the part of Respondent that Stovall had quit, its adamant refusal to allow Stovall to withdraw his "quitting" was discriminatorily motivated and based upon union considerations.

## 2. Respondent's evidence and argument

Respondent's evidence with respect to its failure to transfer Stovall into the machine shop in August 1976 was presented through the testimony of B. M. Chapman. Chapman testified that he participated in the program for the selection of the best employees for openings in engineering such as the machine shop job. Selection follows interviews and evaluations. Applicants are rated on a number of factors including attendance, disciplinary records, and education, with a number of points being assessed each factor. According to Chapman, while Stovall's absenteeism record was not bad, it did detract from his rating when compared to the other applicants. Based on this system, Stovall rated 8 points out of a possible 20 and was not the highest rated applicant. Further, Chapman denied that Stovall had accused him of counting Stovall's time spent in the election in July against his attendance record. In this connection, Chapman pointed out that the attendance records relied upon by Respondent in making the selection for the machine shop job did not include the month July in which the election took place. Although the selection process took place in August, Chapman testified, after examination of Respondent's records and without contradiction of the General Counsel, that the computer printouts regarding employee absences in July were not available at the time the selections were made, so that only absences for the 1-year period through June 1976 were

With respect to Stovall's "quitting," Respondent presented two witnesses, Nathaniel Winton and Hardie Haley. Winton in his testimony acknowledged that Stovall had initially asked him how much notice would an employee have to give before he quit his job. Winton advised Stovall that some did not give any notice at all, but usually 2 weeks' notice was desired and would be sufficient. Winton then inquired of Stovall why he was asking and if he intended to quit. Stovall said he did not know at that time.

According to Winton, a couple of days later he inquired of Stovall if anything definite had developed as far as his trying to get another job. Stovall replied "not yet," but that

he would let Winton know as soon as anything developed. <sup>12</sup> In this conversation Stovall indicated to Winton that he was trying to get another job at Reynolds Aluminum Company in the tri-cities area. <sup>13</sup>

Again, about 2 day, later in another conversation with Stovall, Winton asked if anything else had been definitely decided by Stovall as to whether he was going to quit. Stovall responded by saying yes, that he was going to quit, and added that it looked like Friday, May 13, would be his last day of work. This last conversation Winton placed as occurring in the week ending May 13.

Notwithstanding Stovall's notice to quit, Winton admittedly, pursuant to practice on each Thursday, on May 12 asked Stovall if he wanted to work overtime (Saturday and Sunday). Stovall declined.

While the exact date is not clear from Winton's testimony, Winton said he had still another conversation with Stovall about Stovall's quitting. At that time Winton told Stovall he was going to fill out the separation papers, and Stovall told him to go ahead. Winton began filling out the papers, presumably the form 109, on May 12 but did not complete it until May 13 and turned it in the early part of the second shift that day. Subsequently, on the same day between 8 to 10 p.m., Winton had another conversation with Stovall in which Stovall then told him that he was not sure whether or not that night would be his last night. Winton responded that he had already handed the paperwork in; that everybody had gone home and it was "kind of impossible to get the information back."

Stovall nevertheless reported for work on May 16, and Hardie Haley brought Stovall to Winton's office. In the office, Stovall said that Winton was supposed to have "taken care of everything"; that he had not quit and it was okay for him to come back. Haley responded, according to Winton, that as far as he was concerned Stovall had resigned as of the preceding Friday, and he was no longer an employee of Respondent.

Hardie Haley, production manager and Winton's immediate superior, testified in support of Winton that it was May 5 when Winton told him that he believed that Stovall would be leaving very shortly. When Haley asked Winton how he knew, Winton replied that Stovall had told him that he was trying to get a job with Reynolds and the chances of getting the job were good. The next day Haley mentioned the matter to Operations Manager John Quarrels. Thereafter, on May 10, Winton told Haley that the night before that Friday, May 13, would be Stovall's last day. Haley then told Winton to give Haley a form 109 on Stovall that Friday afternoon. Haley received the 109 form on Friday and turned it into Quarrels' office along with a personnel requisition to replace Stovall. On his way from Quarrels office back to his own, Haley went by Stovall's work place around 5 p.m. and stopped and talked with Stovall. Haley testified he shook hands with Stovall and wished him well in his new job. The two then discussed Reynolds, and Haley advised Stovall that he had an uncle that worked for

Reynolds and stated it was a progressive company. According to Haley, he talked to Stovall 7 or 8 minutes and at no time did Stovall indicate he wanted to withdraw his resignation. After his conversation with Stovall, Haley closed up his office and went home.

On the following Monday, Haley was advised from the gate house that Stovall had reported for work. Haley then went to Stovall's work station and saw him and asked him what he was doing there. Stovall replied that he had returned to work; and, when Haley stated that Stovall had quit the preceding Friday night, Stovall responded that there was a misunderstanding; that he didn't really mean to quit. Haley took Stovall to Winton's office where Haley explained to Stovall that he and Winton had a definite understanding from Stovall that he was quitting the preceding Friday and had turned in the form 109; that Stovall had quit and that he no longer had a job there; and that Haley "wished" he would go home. Stovall insisted that he didn't really quit; that he was only thinking about it. Haley testified he reminded Stovall that in his conversation with Stovall on Friday there was no indication that Stovall was not definitely quitting. Then Stovall requested that he be allowed to remove some material from his locker and to thereafter visit some of his friends and say goodby to them, which he was allowed to do.

Asked whether he had authority on May 16 to grant Stovall a retraction of his revocation, Haley testified he did not believe he had that authority, but he could have made a recommendation on the matter which would probably have been followed. However, Haley added that he did not believe that allowing a revocation would be justified since he concluded that "Reynolds" had just put Stovall off; so that Stovall wanted to work another week or a few more days, and he would be gone again. Accordingly, Haley concluded that, if the termination papers were retracted, "we would have to do it again within a few days."

On one occasion subsequent to his separation from Respondent and about 2 weeks prior to the hearing herein, Haley met Stovall at a local auto repair place. It was Haley's testimony that on that occasion Haley asked Stovall if he was working at Reynolds, and Stovall reported that he was. Then Haley asked him how he liked it, and Stovall allegedly replied that he liked it fine, and in fact "I would rather fight than switch." 14

The employee and community relation manager, Ben Roberts, testified that he met with Stovall on May 17, and Stovall complained that there seemed to be some misunderstanding about his quitting. According to Roberts, Stovall admitted to him that Stovall told Winton that he would be going to a new employer on May 16. Further, Stovall said that Haley had not given him an opportunity on Friday afternoon to tell Haley that he wasn't going to quit. Roberts told Stovall that he would check into the matter and get back in touch with Stovall that day. Roberts did check with Haley and Winton and then reported to Stovall by phone the next day that, based on his investiga-

Winton's interest in Stovall's quitting was based on his operating short in the department and Winton's desire to replace him immediately when he left.

left.

13 Winton also testified that in the period before his "quitting," Stovall was late coming to work. According to Winton, Stovall acknowledged he was late due to an appointment about a job at Reynolds. This assertion is not specifically denied by Stovall.

<sup>14</sup> Respondent produced another employee, Charles Elliott, a longtime friend of Stovall's, who testified that in a social meeting with Stovall at the home of Nick White, another employee of Respondent who was not called as a witness, Stovall claimed he was working at Reynolds making \$8.45 per hour. Stovall in rebuttal denied having made such statement.

tion, Roberts concluded that Stovall had given Respondent an indication he was going to be leaving on May 13; that Respondent had accepted that and made plans to work around that fact; and that Stovall was no longer employed with Respondent.

With respect to replacement of Stovall, it was Respondent's evidence that a new employee, Johnny Campbell, was hired and placed in Winton's department on May 16. It is clear from Respondent's evidence that Campbell was hired not as a direct replacement for Stovall; and, in fact, he apparently was hired prior to receipt of the paperwork, the form 109, and Haley's requisition for a new employee which accompanied the 109. It is nevertheless Roberts' testimony that Respondent continuously operates "light"; i.e., short of employees; so that there is competition between departments for the new hires which are made periodically. Thus, Campbell's assignment to Winton's department was, according to Roberts, related to Stovall's quitting even though Campbell was hired as a helper and was not initially capable of performing Stovall's specific job function.

Respondent's witnesses Haley, Roberts, and Winton all denied any knowledge of any union activity generally in the plant at the time of Stovall's separation and further denied any knowledge of any union activity on the part of Stovall prior to his separation.

Respondent, also in support of its contention that Stovall "quit," produced an employee witness, Donald Kinney, who was employed in the same department as Stovall and who was an acquaintance of Stovall. Kinney testified that there was talk among the employees in the department on Friday, May 13, of "wetting" Stovall. Wetting is a customary practice among the employees in which an employee leaving Respondent's employment is wet down or showered by his fellow employees on his last day of work. The "wetting" of Stovall, however, apparently did not take place. Moreover, Kinney stated that Stovall had never specifically advised Kinney that he was quitting, although the two took work breaks together and spoke frequently.

Based on the testimony of all its witnesses, Respondent's position is that Stovall quit; and, although he tried to revoke the "quit," Respondent's refusal to allow such revocation was based on justifiable reasons unrelated in any way to union considerations.

#### C. Analysis and Conclusions

Resolution of the issue of whether or not Kermit Stovall advised Respondent that he was quitting turns essentially on the credibility of Respondent's witnesses Winton and Haley, on the one hand, and Stovall on the other. Based on the demeanor of the witnesses while testifying, and considering the record as a whole, I make that credibility resolution against Stovall. Stovall was not an impressive witness. Moreover, while Stovall denied that between the time he first talked to Winton about notice required for quitting and May 13 he made application with any other employer, he did not specifically deny that he had put in applications at other employers prior to that period. Nor did Stovall specifically deny Winton's testimony that Stovall had been tardy a number of times due to interviews with other employers.

Stovall's explanation of initially inquiring of Winton about "quitting" notice requirements as resulting from a conversation with fellow employees was wholly uncorroborated by any employee participant in the alleged conversation. This explanation also appears contrived, because notice requirements would ordinarily be a matter of little concern to an employee with no interest in quitting.

In weighing Stovall's credibility, I also cannot disregard his attempt to maintain the mask of employment by Reynolds. In this regard, he did not specifically deny that he told Haley prior to the hearing that he was working for Reynolds, although he did deny telling Charles Elliott the same thing. I credit Elliott, a friend of Stovall's and a fellow "farmer." Why Stovall would make such statements in view of the fact, insofar as the record shows, that he was never employed by Reynolds is open to pure speculation.

Winton and Haley, on the other hand, impressed me as being credible witnesses and worthy of belief. The fact that Haley went to Stovall on May 13 to congratulate Stovall on his leaving substantiates the existence on Haley's part of an honest belief that Stovall was in fact quitting. Had there been a subterfuge or illicit plan to terminate Stovall, it is highly unlikely that Haley would have gone to Stovall to alert Stovall to the fact that Respondent was through device intending to terminate him, or to give him the opportunity to withdraw the notice to quit. It is similarly unlikely that Haley would just turn and walk away, as Stovall's testimony has it, when Stovall told him he was not quitting.

In addition, rather than being indicative of an initial acceptance of Stovall's decision not to "quit," Winton's asking Stovall to work over the weekend (even if one accepts Stovall's version that the request occurred on May 13 rather than May 12) reflects an absence of any nefarious scheme to get Stovall out of Respondent's plant because of his union activities. On the contrary, Winton's request tends to support Winton's testimony that the solicitation of Stovall to work over the weekend following May 13 was purely routine. Accordingly, I find that Stovall did advise Winton of his intention to quit as of May 13, and that Respondent's acting and relying on that information was not in any way discriminatorily motivated.

I also do not credit Stovall's testimony regarding statements he attributed to Chapman in August 1976 regarding Stovall's application for the machine shop job. The remarks appear illogical and nonsequential. Furthermore, it is clear from Chapman's testimony, which I credit, that Stovall's attendance record, which was evaluated in connection with his application, did not include the period when he served as an observer in the election and could not have entered into consideration of his application for the machine shop job.

There remains the question of whether Respondent's refusal to allow Stovall to withdraw his decision to quit was unlawfully motivated. This is a much closer question on the facts in light of Winton's admission that Stovall did advise him in the evening of May 13, albeit after the "paperwork" had been turned in, that Stovall was not sure that was his last night. That Stovall was an experienced employee who had been rated above average in all categories by Winton cannot be denied. He presumably was therefore a desirable

employee who could not easily be replaced. Under these circumstances, and in the absence of a policy against allowing withdrawal of notices to quit, it would appear logical for Respondent to accept the withdrawal notice, particularly where, as here, a specific replacement had not been hired in contemplation of Stovall's departure or to take Stovall's place, although new employee Campbell may have been scheduled for Stovall's department.

Haley's explanation that, if Stovall had been allowed to withdraw his notice to quit, Respondent would probably have been faced with the same thing again the following week has some plausibility. This plausibility is enhanced by the fact that under Winton's testimony, which I credit, Stovall's statements to him late May 13 were equivocal. Less convincing are the assertions of Ben Roberts concerning Respondent's hiring system and methods of replacing employees. At best Respondent's explanations are weak.

However weak Respondent's reasons are for not allowing Stovall to remain an employee they still raise only a suspicion that Respondent's action in this regard was discriminatorily motivated. Mere suspicion cannot substitute for proof of an unfair labor practice. See, e.g., Kings Terrace Nursing Home and Health Related Facility, 229 NLRB 1180 (1977); DSL Mfg., Inc., 202 NLRB 970 (1973).

Here, there is no precedent for Respondent's refusal to allow an employee to withdraw a notice to quit. Thus, there is no standard by which the alleged discrimination may be measured and no showing of different treatment accorded other employees in similar circumstances. In this regard, the instant case may be distinguished from Sycor, Inc., 223 NLRB 1091 (1976), which involved a similar factual situation in which the respondent employer refused to allow a known union adherent to rescind a notice to quit. There, a violation of the Act was found based in part upon evidence that the employer had allowed a "less exemplary" employee to rescind a similar notice to quit.

In addition, there is no substantial proof here that Respondent was aware that Stovall was engaged in a new union campaign. Stovall's testimony that he was engaged in a new union campaign was completely uncorroborated. While he contended he passed out numerous authorization cards, he had not secured any signatures thereon. His testimony about when he signed a card was vague, although he claimed to have mailed it to the union sometime in May before his separation from Respondent. The card was never produced in evidence.

The only evidence in the record tending to establish any knowledge by Respondent of a renewed union campaign is Stovall's claim that he started to again wear his pocket protector and pencils with the Union's name thereon. While the wearing or use of these items may have been observable by all, including Respondent's supervisors and agents, there was no evidence that they attracted any particular attention from Respondent. Indeed, Stovall was already a well known union supporter by virtue of his service as a union observer in the election the preceding July. That he would continue in that support could have been expected by Respondent; so that his use of a union

"pocket protector" or pencils would not be particularly surprising to Respondent. These items, so far as the record shows, however, contained only the name of the Union no slogans or calls for support suggestive of a new union campaign. Stovall could well have been using the pocket protector and pencils for their practical and utilitarian purposes rather than for their campaign or public relations purposes. Thus, the use of such items by one individual alone does not necessarily serve as a flag to Respondent that a new union campaign was underway. In this regard, the instant case is distinguishable from those cases where the wearing of a union pocket protector or pencils by employees would serve to identify them to their employer as union supporters in the midst of an open and known organizational effort. Nor can the "small plant" doctrine be applied here as a basis to infer Respondent's knowledge of renewed union activity, for Respondent's work force exceeded 900 employees.

Under the circumstances above, I cannot conclude that there is sufficient credible evidence on the record considered as a whole to warrant an inference that Respondent had knowledge of a renewed union campaign led by Stovall. Accordingly, and since Stovall's general union interest and support had long been known to Respondent without credited evidence of retaliation by Respondent, I conclude that the General Counsel has not established that Respondent's refusal to allow Stovall to withdraw his decision to quit, although suspicious, was based on discriminatory reasons violative of Section 8(a)(3) and (1) of the Act. I make this conclusion with due regard and full consideration of the General Counsel's "background" evidence of Respondent's opposition to union organizational efforts. However, I deem such evidence sufficiently vague and so remote in time to Stovall's separation as to not affect my conclusion on the merits. Except for the one possible instance of coercive interrogation, the background evidence does not conclusively reflect Respondent's willingness to exceed statutory limitations in pursuit of its union opposition.

#### CONCLUSIONS OF LAW

- 1. Respondent, Wolverine, Division of U.O.P., Inc., is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. Aluminum Workers International Union, AFL-CIO, is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.
- 3. Respondent has not violated Section 8(a)(3) and (1) of the Act as alleged in the complaint.

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

# ORDER 15

The complaint is hereby dismissed in its entirety for lack of merit.

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.

<sup>&</sup>lt;sup>15</sup> 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.