

Adams Millis Texturing Plant, formerly known as Tex-Elastic Corporation, Texturizing Plant and Textile Workers Union of America, AFL-CIO, CLC and Jo Ann Bryant and Betty L. Hyatt. Cases 11-CA-4847, 11-CA-4898, 11-CA-5321, 11-CA-5393, and 11-CA-5342

March 28, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

On November 28, 1973, Administrative Law Judge George J. Bott issued the attached Decision in this proceeding. Thereafter, the counsel for the General Counsel filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ 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 be, and it hereby is, dismissed in its entirety and that the settlement agreement in Cases 11-CA-4847 and 11-CA-4898 be reinstated.

¹ The Respondent 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, enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

GEORGE J. BOTT, Administrative Law Judge: Upon charges of unfair labor practices filed by the above-named Union and individuals,¹ the General Counsel of the National Labor Relations Board issued a consolidated complaint and notice of hearing on July 31, 1973, in which he alleged that Respondent had engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the

¹ The charges in Cases 11-CA-4847 and 11-CA-4898 were filed by the Union on March 9 and April 17, 1972, respectively. The charge in Case 11-CA-5321 was filed by Jo Ann Bryant on May 14, 1972. Betty L. Hyatt filed a charge on June 1, 1973, in Case 11-CA-5342, and Jo Ann Bryant

National Labor Relations Act, as amended, herein called the Act. The complaint also alleged that Respondent had violated the terms of a settlement agreement in Cases 11-CA-4847 and 11-CA-4898 and declared the agreement vacated and set aside. Respondent filed an answer and a hearing was held before me at High Point, North Carolina, on October 2 and 3, 1973.

Upon the entire record in the case and from my observation of the witnesses, I make the following:²

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Adams Millis Texturing Plant, formerly known as Tex-Elastic Corporation, Texturizing Plant, herein Respondent or Employer, is a North Carolina corporation with a plant at High Point, North Carolina, where it is engaged in the processing of textured yarns. During the 12-month period prior to the issuance of the consolidated complaint, Respondent sold and distributed products valued at in excess of \$50,000 to points directly outside the State of North Carolina.

Respondent is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Textile Workers Union of America, AFL-CIO, CLC, herein called the Union, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Settlement Agreement in Cases 11-CA-4847 and 11-CA-4898*

The events in these cases have their roots in the Union's attempt to organize Respondent's employees in early 1972. On or about October 11, 1972, Respondent and the Union entered into a settlement agreement in Cases 11-CA-4847 and 11-CA-4898, approved by the Regional Director of the Board on October 16, 1972, providing that Respondent would refrain from violating the Act, and also providing that Mae Beavers, Jo Ann Bryant, and two other employees not involved in the instant proceeding be made whole for any loss of pay they may have suffered as a result of the termination of their employment. The agreement noted that the employees "do not desire reinstatement." In the settlement agreement, Respondent also undertook not to interfere, restrain, or coerce employees, in any like or related manner, in the exercise of their rights guaranteed in Section 7 of the Act.

Beavers and Bryant, along with Betty Hyatt, who was not involved in the earlier case, applied for employment with Respondent subsequent to the execution of the settlement agreement and were refused. It is General Counsel's theory that the settlement agreement has been violated because the three applicants were denied employ-

filed an additional charge on July 11, 1973.

² The questions beginning on p 282, l 19, and ending on p 283, l 10 of the transcript, were asked by the General Counsel, not the Administrative Law Judge

ment because of their prior union activities, and he also contends that Hyatt was denied employment because she filed a charge with the Board.

Continuing violations of the Act justify a Regional Director in vacating a settlement agreement and proceeding with a complaint which covers Respondent's unlawful conduct before as well as after the settlement. In determining whether the settlement agreement has been violated, presettlement conduct may be considered as background evidence on the question of Respondent's motive in its postsettlement activities.³

The threshold question, therefore, is whether there is "evidence of substantial unlawful conduct following the settlement agreement,"⁴ but Respondent's total treatment of Beavers and Bryant both before and after the settlement agreement, as well as its activities in regard to employees generally, may be considered for whatever light they may throw on Respondent's motives in their cases and in Hyatt's.⁵

B. *The Discharges and Refusals To Rehire*

1. Jo Ann Bryant

a. *Basic Findings*

Bryant, a spinning machine operator on the second shift who had been employed for approximately 2 1/2 years at the time, was discharged on March 25, 1972, by Overseer Denva Hall, after she had permitted her machine to run with yarn of two different weights for from 4 to 6 hours, resulting in a substantial amount of unusable production.

Bryant was active in the Union's effort to organize Respondent's employees; she attended all union meetings, secured employee signatures to authorization cards, passed out union literature, spoke to at least one supervisor about the Union, and attended the Board hearing on the Union's petition for an election.

Respondent knew that Bryant was a union activist, for her activities just described would alone have brought that fact to Respondent's attention, but I also credit her testimony that Supervisor Gurley Pack, who died in August 1972, knew that she was and tried to discourage her activities.⁶ Bryant testified that the night after she signed a union card, Pack told her he knew what was going on in regard to union activity and advised her to get out of the "mess quickly," warning her that the Company was "after" her.

Pack made antiunion remarks on other occasions and attempted to turn her away from the Union, Bryant said. On February 11, 1972, Pack "damned" the Union, and, in return, Bryant "damned" the Company, which angered

Pack who stated that employee workloads would be heavier if the Union organized Respondent. Later that same night, while Bryant, Beavers, and Hyatt were sitting in Hyatt's car, Pack entered the car and discussed the Union and Respondent's reaction to it with the employees. Bryant said that Pack stated that Supervisor Elkins had told him that he was going to issue warning slips to employees if they overstayed their break periods by a minute. Pack was critical of Elkins' proposal, he said, and told the employees that he had urged Elkins to speak with employees about the Union instead. Bryant also testified that Pack advised them that they could talk with Lackey, Respondent's president, if they had any problems in connection with the current union activity, but Bryant said she replied that she intended to remain loyal to the Union.

Near the end of February 1972, Pack warned Bryant about leaving union literature in the restroom. When she denied it, Pack told her that her name "had come up three times in the office today" in connection with the problem. Bryant said she was unable to secure additional information from Pack.⁷

Bryant also said she heard Pack state near the end of February that the "union is driving everybody crazy" and that, pointing toward employee Brown, the person who Bryant said brought the union cards into the plant, he would "run that son-of-a-bitch off."

When the hearing on the Union's petition for an election concluded, Bryant telephoned the local newspaper and gave an account of the hearing. Since she had the rest of the day off, she passed out union literature to the employees on the first and second shifts. On March 23, the day of her discharge, she entered the plant with a copy of the newspaper containing a story on the Board hearing and showed it to Hall, her supervisor, who merely laughed. Later that day, Bryant placed the newspaper near her machine, but Hall took it from her, advising her that newspapers were not permitted in the plant.

At 10:30 p.m., Elkins appeared at Bryant's machine and informed her that she had mixed yarn running on her machine. Elkins left and returned with Hall who took Bryant to his office and terminated her.

Bryant admitted that all employees were aware that yarn should not be mixed. She conceded that different deniers have different color markings and code numbers to enable one to detect mixed yarn, and she agreed that it was her responsibility to check the machine and the yarn to prevent it from happening. She suggested, however, that Elkins departed from his usual routine that night by coming directly to her machine as he entered the plant, and she also implied that someone else could have been responsible for putting different weights of yarn on her machine. I find

³ *Northern California District Council of Hod Carriers and Common Laborers of America, AFL-CIO*, 154 NLRB 1384, *affd sub nom. NLRB v Northern California District Council of Hod Carriers and Common Laborers*, 289 F.2d 721 (C.A. 9, 1968), *Baltimore Luggage Company*, 126 NLRB 1204, 1208.

⁴ *W. Ralston & Co., Inc.*, 131 NLRB 912, 917.

⁵ *Northern California District Council*, *supra*.

⁶ Pack was hospitalized because of cancer a number of times during his last year of employment and was given fewer responsibilities when he was at work. However, Pack continued to act as a supervisor, and management did not indicate in any way to employees that he was not a supervisor or advise them that his condition was terminal.

⁷ Lonston Apple, who has been discharged but who was a supervisor for 4 or 5 months in 1972, testified that Bryant's and Beavers' names were mentioned at supervisor meetings in connection with the distribution of union literature in the plant. His memory was not good and his testimony is somewhat unclear, but I find in it evidence that Respondent was aware that Bryant and Beavers were union activists. Since his testimony also contains reference to Respondent's interest in keeping employees working and preventing gatherings of employees and the distribution of union literature in work areas, I do not find in it any indication that Respondent was singling out Bryant or Beavers with the intention of discriminating against them.

no evidence in the record, however, to support the suggestion that anyone other than Bryant was responsible for running mixed yarn for a number of hours, and I also credit Elkins' testimony that he routinely checked all machines that evening, beginning at approximately 10 p.m., and that he had not discussed Bryant with anyone before he discovered her error.

I also find that running mixed yarn for any length of time is a serious error and that Bryant's machine operated with and produced mixed yarn for at least 4 hours. It is also apparent that it is relatively easy to detect mixed yarn because of color and code markings, and it appears, therefore, that Bryant was extremely negligent. These findings flow in part from her own testimony, but they are also based on the credited testimony of Respondent's officials.

Elkins was not Bryant's supervisor in March 1972. He supervised the third shift, but he came to the plant an hour before his shift started to check the plant. He testified that mixed yarn is a recurrent problem and that he was looking for it because some had been discovered in packing recently. He testified that Bryant's machine had been running with mixed yarn for from 4 to 6 hours and that an experienced operator should have detected it immediately.⁸

Tuttle, who was plant superintendent when Bryant was discharged, testified credibly that Bryant's offense was of a greater degree than other cases. He explained that mixed yarn may be put on a machine erroneously and quickly caught, or it may be found in places where its source cannot be traced. In these cases, no one is or can be discharged, but in Bryant's case, where the machine ran for hours without being observed by the operator, her conduct was considered "inexcusable." He also said he knew of no other instance where a machine had been permitted to run so long with mixed yarn.

Hall, Bryant's supervisor, testified that her machine ran improperly for from 4 to 6 hours. He said that he had never experienced such a situation before, and that Bryant offered no explanation for her neglect or claimed that the machine had not been running long. He described her negligence as "gross." He also said he checked and found that the identification marks on the bobbins were visible.⁹

Although Yow, now training manager, testified that Bryant was the only person he recalled who had been discharged for mixing yarn, he also said that she was the only person who had ever permitted mixed yarn to run for such a length of time.

William Johnston, Respondent's vice president and general manager, testified credibly that never before had an employee permitted mixed yarn to run for 4 hours.

Contrary to the testimony of General Counsel's witnesses, I find, on the basis of the credited testimony of Respondent's witnesses, that Bryant's serious error was a dischargeable offense. This is apparent from the testimony

⁸ I also credit Elkins' testimony that he did not tell Pack that he intended to change his practice in regard to reprimands because of the union activity, and that he has, in fact, not changed it.

⁹ I also credit Hall's explanation for taking Bryant's newspaper from her that afternoon on the basis of his uncontradicted testimony that newspapers are not allowed in Respondent's working areas.

¹⁰ Bryant's testimony that several other employees had run mixed yarn and had not been fired was based only on what other employees had told

of Respondent's agents set out above, and it also appears from the testimony of Personnel Manager Smith, who, having examined Respondent's records, testified that since February 1972 four employees had been discharged because of their errors in connection with mixed yarn.¹⁰

After Bryant and Beavers were discharged, the Union filed charges of unfair labor practices on their behalf, which, as indicated earlier, were settled on October 11, 1972, by an agreement by which the alleged discriminatees waived reinstatement but were paid backpay.

It was stipulated that since November 1972 Respondent has been advertising for help in the classifications occupied by Bryant, Beavers, and Hyatt.¹¹

Aware of Respondent's advertisements, Bryant filed an application for employment with Respondent's personnel office on November 15, 1972, and, not hearing anything in regard to it, visited Respondent's personnel office on December 4, where she was interviewed by Personnel Manager Smith. Smith told Bryant that in reviewing her application he would consider the circumstances surrounding her earlier discharge, and he added that it was Respondent's policy not to rehire anyone who had been discharged for cause. According to Bryant, she knew of three other persons who had been discharged and rehired by Respondent.

Bryant again visited the plant on June 1, 1973, with Beavers and Hyatt, and again spoke with Smith, who repeated that her application would be considered on the basis of her past record with Respondent. She has not heard from Respondent since.

Personnel Manager Smith testified credibly that Respondent does not rehire former employees who were discharged for misconduct connected with their work. Based on this policy, he said that he decided not to recommend Bryant for rehire after reviewing her record. He also testified credibly from company records that the three employees Bryant referred to had not actually been discharged for misconduct.¹²

2. Mae Beavers

a. Basic findings

Mrs. Beavers was fired on March 18, 1972, allegedly for fighting with another employee, which she demed. There is no question that Beavers laid her hands on an employee the day before she was fired, but the extent of her aggression and her motive for it is in dispute. Beavers testified that the other employee is a female homosexual who had previously made sexual advances to her and had also touched her body again just before their altercation. Beavers said that this latest advance caused her to shake the employee and warn her to keep her hands to herself, but she also testified that she also warned the employee

her that they had found on their machines when they started work.

¹¹ Hyatt was an inspector, but the credible evidence shows that Respondent now has a policy of promoting from within to the inspector classification. Hyatt, however, was also a qualified creeler.

¹² Vice President Johnston also testified that Respondent's policy is not to rehire those discharged for cause, but an employee's prior record of poor attendance is viewed more leniently.

about making reports to management about Beavers' union activities. I find as follows:

Beavers was also active on behalf of the Union and Respondent knew it.¹³ The alleged homosexual asked Beavers to visit a gay bar with her in October 1971, and according to Beavers' uncontradicted testimony, touched, or attempted to touch, her person on at least two other occasions. Beavers' reaction to these invitations seem to have been polite turndowns.¹⁴

According to the credited testimony of employee Page, on March 17, 1972, Beavers, Bryant, Underwood, Rowlands, and others were in the restroom and Beavers was telling the others about a telephone call that the homosexual employee had allegedly made to Superintendent Tuttle informing him that Beavers and others were members of the Union. Page heard some of the employees urge Beavers to "beat" that person, to go out and "stomp" her—"kick her ass." Beavers pondered the advice, and then left the restroom heading for the claimed informant's machine, with Page following. When Beavers reached the employee's machine, she said a few words to her, and then she pushed her up against the machine, took her by the shoulders and shook her a number of times.¹⁵

Page asked the employee whom Beavers had pushed and shaken what had happened, and she was informed that Beavers "had jumped her," but she did not fight back for fear of discharge. The employee did not want to report the incident, but Page took her to Supervisor Hall's office.

Beavers also reported her run-in with the other employee to Hall immediately. I do not credit her testimony that the employee she pushed and shook rubbed her breasts against hers when she told her she wanted to speak with her, and that this, in part at least, caused her to shake her; nor do I credit her testimony that she reported such to Hall. I credit Hall's version that Beavers entered his office, "kind of shook up," and told him she had been "shaking and pushing" the other employee because she had been "telling lies on her" to Tuttle, and that this was the only explanation he got from her about the incident. He told the employee to calm down and return to her work while he investigated the matter. Hall spoke with Page and the other employee and learned that Beavers had pulled the employee from her machine, pushed her up against the machine, and shook her. Since fighting is against company rules and the aggressor, if discoverable, is always discharged, he decided to and did discharge Beavers on March 18. He maintained, and I credit his testimony, that at no time up to and through her discharge did Beavers claim that the other employee had been making passes at her nor did he hear her make such reports to any other supervisor. He also stated that Rowlands and Underwood had not reported to him any information about the sexual bent of the employee Beavers had problems with, and he

¹³ She testified that she had told the plant superintendent that she was for the Union, and she also said that Hyatt told Supervisor Pack that she, Beavers, and Hyatt had signed union cards.

¹⁴ Employees Rowlands and Underwood testified that the employee with whom Beavers had an altercation that preceded her discharge asked them for a date, stating that she was a homosexual. Each of them also courteously declined.

¹⁵ Employee Hatfield, a fixer, saw the incident. He said Beavers "shoved" the other employee against the machine and shook her more than

added that they could not have seen the incident from their work stations.¹⁶

I find that Beavers angrily pulled, shoved, and shook the other employee because she had been encouraged to do so by other union adherents after she informed them—or they informed her—that the other employee was informing on them, and I also find that the homosexual issue has been injected into the case to confuse or cover Beavers' real actions and motivations.¹⁷

I credit the testimony of Respondent's witnesses that "fighting" or "scuffling," or even "horse play," in the plant is dangerous and grounds for discharge, and that persons have been discharged for those offenses in the past.¹⁸

After her case was settled by the payment of backpay, without reinstatement, Beavers applied for work on November 15, 1972, and June 1, 1973. She was not reemployed on either occasion, and on June 1, 1973, Personnel Manager Smith told her that her prior discharge would be considered in deciding whether to rehire her. Since persons who have been discharged for misconduct are not subject to being hired again, Smith said that he did not recommend Beavers for reemployment.

3. Betty Hyatt

a. *Basic findings*

Hyatt went on sick leave in February 1972 and, on July 10, while on leave, she notified the Respondent that she was quitting her job. While employed, Hyatt joined the Union and talked to other employees on behalf of the Union. In September and October 1972, after she quit, she distributed union literature at the plant gate.

Hyatt testified that on February 11, 1972, Supervisor Pack asked her whether Jo Ann Bryant brought the union cards into the plant. When Hyatt denied that she had, Pack questioned her further about other employees, and he asked her to assist him discover the source of the union activity, promising her a first-shift job if she cooperated. Hyatt said she refused Pack's request, and that on the next night he asked her if she had seen any more union cards and told her that he knew that employee Underwood had given Bryant and Hyatt their union cards.

On March 12, 1972, Hyatt participated in the conversation with Pack in Hyatt's car which Bryant had testified about. She recalled him saying that Respondent's president had asked him to work the second shift that night to see what he could find out about the union activity and to try to talk the employees out of it.

Hyatt testified that while she was on sick leave, Pack telephoned her and warned her to "keep her nose clean" if she returned to work, reminding her of what had happened to Bryant and Beavers, and warning her that the same thing would happen to her if she did not forget the Union.

once. He said there was a "fight" going on, but he did not know who started it

¹⁶ Underwood and Rowlands testified that they saw the other employee move "breast to breast" to Beavers before Beavers "shook," but did not "shove" her. I do not credit them.

¹⁷ Beavers' credibility was badly damaged in her cross-examination in regard to what she told Hall immediately after the incident and what she said in her affidavits given the Board in the investigation of her case.

¹⁸ Credited testimony of Hall, Smith, and Johnston

Hyatt said that Pack reiterated that she would be fired if she did not forget the Union, and he commented that he had heard her name mentioned in the office in connection with the names of Bryant and Beavers and the Union.¹⁹

On June 1, 1973, almost a year after she quit her job, Hyatt went to Respondent's personnel office with Bryant and Beavers and filed an application for employment, having heard, she said, that Respondent was looking for experienced employees. She spoke with Smith who told her that if she were hired she might not be hired as an inspector—her last position—because Respondent was promoting employees from within to that classification. It also appears from the credited testimony of Smith that he would check her record before deciding whether to hire her, but he told her not to telephone him because the Company had her number and would call her if she were to be hired. Smith explained credibly that this is standard operating procedure. Respondent did not telephone Hyatt or hire her.

On the same day that she applied for work, Hyatt filed unfair labor practice charges against Respondent based on Respondent's failure to employ her.

Personnel Manager Smith testified that he did not know that Hyatt was involved with the Union until he received a copy of the charge she had filed with the Board. He said that he checked her record anyway and found that her attendance record was poor. In her 2 years and 3 months of employment, she had had 200 days of sick leave and excused absences. He also reviewed the rating given her by her foreman when she quit and concluded that it indicated that the applicant was "undesirable." He decided, he said, not to recommend her for employment.²⁰

I find that Smith did check Hyatt's employment record and that the amount of absenteeism discovered would have justified a decision not to rehire Hyatt. Whether that was the real reason she was not reemployed or was merely a pretext, which is the same question involved in Bryant's and Beavers' cases, will be treated next.

C. Analysis, Additional Findings, and Conclusions

Although Bryant and Beavers were known union activists and were discharged at the height of the Union's campaign after a number of years of satisfactory service, their cases are extremely weak without the testimony given by them and their friends about what a dead person told them. This is so because there is very little evidence in the case of union animus or unusual interest by Respondent in their union activities other than the remarks attributed to Pack, and because it has been found that, just prior to their

terminations, they had engaged in conduct warranting discharge.²¹ Hyatt's case, without Pack's admissions and warnings, is even weaker because she was not as active as the others, she was on sick leave during most of the period in which the union activity occurred, and she quit her employment almost a year before she reapplied for a job. Timing does not exist in her case, and, as in the cases of the others, her work record (absenteeism) was a legitimate ground on which to refuse to hire her.

I have concluded that even if Pack told Bryant and Beavers that the Respondent was aware of their union activities and was "after" them because of it, and also told Hyatt to forget the Union if she were rehired or she would be fired, as Bryant and Beavers were, General Counsel has not established by a preponderance of the evidence that their discharges were discriminatorily motivated. Although Respondent may be held to have violated the Act by Pack's interrogation, threats, and other conduct, his agency does not necessarily establish that he was accurately reflecting Respondent's motive in discharging Bryant and Beavers. I have noted before that Pack is the only management representative who it can be said, on this record, revealed an intention on Respondent's part to discriminate against employees. Supervisor Hall did not consult with Pack about discharging Bryant or Beavers, and he testified credibly that he took the actions he did on his own. Since their conduct warranted discharge, as I have found, their union activities did not shield them from it. Because the record does not establish that they were not discharged for cause, Respondent could refuse to rehire them under its policy of not rehiring persons who had been terminated for misconduct, and I credit Smith's testimony that he did not recommend them for rehire for that reason.

I also find, for essentially the same reasons, that Pack's remark to Hyatt that she would be treated like Bryant and Beavers if she continued to support the Union does not tip the case toward a finding that the refusal to rehire her was discriminatorily motivated. In addition to her poor attendance record, which was a legitimate ground on which to reject her application, she did not wait a reasonable time for Respondent to consider it, but, within a few hours, she filed a charge with the Board alleging that she had been discriminated against. I credit Smith's testimony that he did not refuse to hire her because she had filed a charge, but that he reviewed her file anyway and decided not to recommend her for employment because of her poor attendance record.

Pack, the only company agent whose statements would make the evidence preponderate in favor of a finding of discrimination against Bryant, Beavers, and Hyatt, is dead.

¹⁹ Employee Underwood testified that on March 28, 1972, she told Pack that Bryant had been fired. According to her, Pack acknowledged the fact, and she then commented that Respondent had fired Bryant and Beavers because of their union activities. Underwood said that Pack "shook his head," and replied, "Yeah, I know," and walked away. Pack is dead and, of course, anything is conceivable, but because he is dead, I have scrutinized the testimony very carefully, as I must, and I find it unbelievable.

²⁰ The rating, which is in evidence, shows that Hyatt was rated "poor" on attendance and attitude.

²¹ Vice President Johnston's speech to employees, by and large, was protected by Sec. 8(c) of the Act, and the employees were not sure about what he said about solicitation for the Union and passing out literature. It is clear that he also talked about interfering with the work of others or

neglecting one's own work when he stated that employees would be discharged for violation of the company rule, which he was announcing for the first time, and it also appears that employees were not prevented from leaving union literature in nonworking areas of the plant. If Johnston did step outside of the line which the Board has established in the case of no-solicitation, no-distribution rules, which I do not decide, it was a minor deviation. Similarly, what Supervisor Brown is supposed to have told employee Woodell about the effects of unionization on her work appears, from her entire testimony, to have been a prediction of what union rules would result in, not what the Company would do, but in any case, she made no secret of where she stood with the Union, and she asked Woodell for his opinion. Woodell also told her she had a right to choose the Union if she wished.

He and the three were very friendly with each other. I do not reject all of their testimony about what Pack told them, and I find that he did talk with them about the Union in an attempt to discourage them in their activities and to gain their help in discovering the principal union activist, but, as I consider and reconsider their testimony and the entire record, I cannot erase a serious doubt that Pack's remarks were not conveniently exaggerated. I have already noted that I found Underwood's testimony to be incredible on its face, and I have the same reaction to Hyatt's. Rarely do we find in these pretext cases such damaging admissions of motive, and when the declarant is dead a reasonable amount of skeptical review is understandable. Although Pack was close to Bryant and Beavers—they visited him during his terminal illness—and although he talked freely with them about their union activities, he never revealed to them, as he is supposed to have disclosed to Hyatt and Underwood, that they had been fired for union activity, not for cause.

Beavers and Bryant overstated their cases in certain areas. Beaver's weaving and bobbing when she was trying to recall just what she had told Hall about it, right after her altercation with her fellow employee, and what she told a Board agent about her report to Hall has already been noted, and, in addition, I was not impressed with her testimony that she heard Pack state—in a plant where the noise level makes it impossible to hear what another person is saying unless you are within inches of him—that he was going to "run off" the most active union adherent because the "s-o-b" had brought the union cards into the plant. Bryant's fortunate presence when this statement was supposedly made I find hard to accept. Bryant misstated Elkins' role in discovering mixed yarn on her machine,

attempting to give the impression, so it seemed, that a trap had been set for her and that Elkins was about to spring it. She also exaggerated in regard to the Company's attitude about mixed yarn and what happens to employees who are responsible for it, as well as about rehiring after discharge for cause.

These doubts, questions, and reservations that I cannot escape in regard to what Pack actually said to the witnesses for the General Counsel is another consideration influencing my conclusion that Bryant, Beavers, and Hyatt were not discriminated against in violation of Section 8(a)(3) and (1) of the Act.

Having found that Respondent did not engage in any independent unfair labor practices after the execution of the settlement agreement, I shall recommend that the consolidated complaint be dismissed in its entirety and that the settlement agreement be reinstated.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of the Act.
2. The Union is a labor organization within the meaning of the Act.
3. Respondent did not violate the settlement agreement.

RECOMMENDED ORDER

It is hereby recommended that the consolidated complaint be dismissed in its entirety and that the Board reinstate the settlement agreement in Cases 11-CA-4847 and 11-CA-4898.