

Ace Hardware Corporation and General Drivers, Warehousemen and Helpers Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 16-CA-10936

23 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 16 September 1983 Administrative Law Judge Richard L. Denison issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's findings and conclusions only to the extent consistent with this Decision and Order.

Contrary to the judge, we find that the Respondent did not violate Section 8(a)(1) of the Act by informing employees how to cancel their checkoff authorizations and offering assistance in doing so. Furthermore, while we affirm the judge's finding of an 8(a)(1) violation regarding solicitation of grievances, we do so with additional rationale.

According to the testimony credited by the judge, the Respondent's distribution manager, Nason, stated in response to an employee's question about withdrawal from the Union that it was not his job to go around and assist people in getting out of the Union, but that if they would come to him or members of management he could assist them in getting out and would help them in any way possible. The credited testimony reveals that Nason held up a checkoff authorization card and also stated that management had not approached anyone concerning the matter of canceling dues deductions but, if employees wanted to go to their supervisor or him, he would see what he could do. From the foregoing, the judge concluded that Nason informed employees how to cancel their checkoff authorizations and offered assistance in doing so, thereby violating Section 8(a)(1) of the Act.

We do not agree with the judge's conclusions of law. Established Board principle holds that while employers may not solicit employees to withdraw from union membership, they may, on the other hand, bring to employees' attention their right to resign from the union and revoke dues-checkoff authorizations so long as the communication is free of

threat and coercion or promise of benefit.¹ In both *Perkins Machine Co.* and *Cyclops Corp.*,² the Board approved the employer's supplying of withdrawal information and forms. In *Perkins*, the communications were sent to employees unsolicited, while in *Cyclops*, the employer placed the information in employees' pay envelopes, although only 13 employees had actually inquired about deauthorization procedures. This case is controlled by the foregoing cases and thus the Respondent's action was not violative of the Act.

The judge further found that the Respondent, by means of the same speech, solicited employee grievances and impliedly promised their redress when the distribution manager suggested that employees and management meet for a meal and informal problem-discussion session off company premises after hours and that the Company would pay for it.

The Board has long held that the essence of the violation in solicitation of grievances is not the solicitation itself but the inference that the employer will redress problems.³ Crucial to a conclusion of implied redress is a finding that the employer interfered with, restrained, and/or coerced employees in their union activities, which is manifested by such factors as change in past practice, announcement of new policy, and timing and context of such change.⁴ Here both the timing and context of the Respondent's announcement of a new practice imply a promise to redress grievances. Nason convened an employee meeting to discuss the Union's activities on the day subsequent to the Union's renewed activities, which consisted of its distributing leaflets to employees regarding insurmountable employee/management problems. At the meeting Nason read a management protest letter against the Union; made disparaging remarks about the union leadership; informed employees that the Respondent's truckdrivers whom he described as exemplary had recently decertified the Union; asked employees about their "insurmountable problems"; and announced the offer of a "continental breakfast" or informal meeting during nonworking hours to discuss employee problems.

In these circumstances, we find, in concurrence with the judge, a violation of Section 8(a)(1) of the Act.

¹ *Perkins Machine Co.*, 141 NLRB 697 (1963); *Cyclops Corp.*, 216 NLRB 857 (1975).

² *Perkins Machine Co.*, supra; *Cyclops Corp.*, supra.

³ *Giovanni's*, 259 NLRB 233 (1981); see *Uarco Inc.*, 216 NLRB 1 (1974).

⁴ *Granite City Journal*, 262 NLRB 1153 (1982); *Burger King*, 258 NLRB 1293 (1981); *NLRB v. Berger Transfer & Storage*, 678 F.2d 679 (7th Cir. 1982).

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By means of a speech by Distribution Manager James D. Nason soliciting employees' grievances and impliedly promising to redress those grievances, the Respondent violated Section 8(a)(1) of the Act.

4. The Respondent has not violated the Act in any other respect other than those specifically found.

5. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Ace Hardware Corporation, Arlington, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employees' grievances and impliedly promising that those grievances would be redressed.

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

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

(a) Post at its facility at Arlington, Texas, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent

⁵ If 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."

to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

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

WE WILL NOT interfere with, restrain, or coerce our employees in their rights to engage in union or other protected concerted activity, by unlawfully soliciting employees' grievances, and by impliedly promising to redress those grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ACE HARDWARE CORPORATION

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge. This case was heard at Fort Worth, Texas, on July 5 and 6, 1983.¹ The charge in Case 16-CA-10936 was filed by the Union on February 28. The complaint, issued April 28, alleges violations of Section 8(a)(1) of the Act arising out of a speech to assembled employees made by the Respondent's Distribution Center Manager James D. Nason, an admitted supervisor and agent within the meaning of Section 2(11) and (13) of the Act.

The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint. On the entire record in the case, including my consideration of the briefs and observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Based on the allegations of paragraphs 2 and 3 of the complaint admitted by Respondent's answer, I find that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Furthermore, based on the allegation of paragraph 4 of the complaint admitted by Respondent's answer, I find that the Union is, and has been at all times material herein, a

¹ All dates are 1983 unless otherwise specified.

labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. Introduction

Certain of the Respondent's employees are represented by Local 745. The collective-bargaining agreement between the Union and the Company contains provisions for the Union's representatives to have access to company premises and bulletin boards under certain limited circumstances. On the afternoon of February 17, James D. Nason, distribution center manager for the Respondent's Arlington, Texas facility, received reports from employees allegedly complaining that the union's representatives had entered the Company's premises and distributed literature in a manner he deemed contrary to the terms of the collective-bargaining agreement. Whether or not these reports are accurate is not in issue. Nason's testimony in this respect explains what prompted him to write a letter, dated February 17, to Charles E. Rogers of the Union, protesting the alleged violation of the contract, which he described as "bullying and strongarm tactics," and to assemble approximately 100 employees in the warehouse lunchroom on February 18 for a speech. Certain specific remarks which Nason allegedly made in this address are alleged as violations of Section 8(a)(1) of the Act.

Paragraph 6(a) of the complaint alleges that Nason "characterized the Union as 'crooks' in an oral statement to . . . employees." Paragraph 6(b) alleges that Nason "orally stated to . . . employees that members of the Union were animals." No detailed consideration of the evidence concerning these allegations is necessary. As counsel for the General Counsel quite candidly points out, remarks similar to those alleged to have been made by Nason have long been construed by the Board as expressions of opinion protected under the free speech provision of Section 8(c) of the Act. In my view, the cases cited by counsel for the General Counsel in his brief, on which he argues should be found a violation because the alleged remarks were calculated to disparage and undermine support for the Union, are clearly distinguishable from the instant case. Since these remarks, if made, do not constitute unlawful interrogation, threats, or promises of benefits express or implied, I find that the Respondent has not violated Section 8(a)(1) of the Act as alleged in paragraphs 6(a) and (b) of the complaint.

Paragraphs 6(c), (e), and (f) of the complaint, as amended, allege, respectively, that Nason violated Section 8(a)(1) by informing employees as to the manner by which they could terminate their union dues-checkoff authorization, promised benefits to employees if the Union were decertified, and orally informed employees as to the manner by which they could decertify the Union. Paragraph 6(d) of the complaint alleges that Nason also solicited employee grievances. Counsel for the General Counsel called employees Larry Rose, Steve Sifford, and James Mark Hull as witnesses in support of the complaint allegations.

B. The Testimony

Larry Rose, a merchandise handler and alternate union steward at the Respondent's Arlington, Texas facility, attended the February 18 lunchroom meeting, which he estimated was attended by about 75 rank-and-file employees and members of management. According to Rose, Nason was the only speaker at the meeting. At first Nason apologized for being a few minutes late. Then Nason delivered a short address followed by a question and answer period. Nason remarked that he was sure the employees were aware that a Teamsters business representative had been there the day before, and that he was very upset by the way they had conducted themselves. Nason had a Teamsters authorization card in his hand plus a copy of the bulletin board notice the union representatives had placed on the bulletin board the previous day. After some preliminary remarks about the legal difficulties then being encountered by the Teamsters International President, who Nason described as being on trial for embezzlement, Nason held up the authorization card. He read some of the language of the card concerning union dues, which Nason interpreted as permitting the Union to charge employees from a few dollars dues up to \$500. Then Nason stated that he could not come and tell them how to get out of the Union because that was against the law, but that the employees could come to him if they wanted to to find out some information about decertifying. He said that the truck-drivers had decertified the Union, and that "this is a good example that the management-employee relationship could go quite well without a third party." Nason said that he did not come to tell them to get out of the Union, but that he could help them if they came to him for information concerning a decertification petition at the end of the contract. Then Nason opened the floor for questions or for any employee to voice any problems they had. Rose raised his hand and asked why it was that if an employee and a supervisor had a "discrepancy," and the employee went to a higher official to have it resolved, the employee was rebuked or punished for it. Nason answered if there were any problem of that nature the employees could come to him personally and talk to him about it. Then another employee from the shipping department asked whether, if they were to decertify the Union, the Company would give them better benefits than the Union had already obtained for them. Nason answered, "Well, at this time we couldn't promise you anything, but as far as I know relations between management and the employees would be a lot better off without a third party." According to Rose, "the closest thing that I got out of it is he could not guarantee any better benefits." The meeting ended with Nason saying that in order to iron out any problems employees had that management was unaware of, he could schedule a continental breakfast meeting at some time in the future. On cross-examination Rose adhered closely to his direct testimony. He conceded that he had received a 3-day suspension on December 16, 1982, a disciplinary notice on January 4, a 3-day suspension on March 1, and had been terminated on April 12.

Steve Sifford, a merchandise handler in the receiving department since February and union steward since late February, also attended the meeting. Sifford remembered that after Nason's opening remarks, in which he said that he had called the meeting because he felt strongly about the union representatives' "strong-arm tactics" in entering the building and passing out material to the employees the previous day, Nason stated that some employees had requested that union dues not be taken out of their checks. He said that management had not approached anyone on this matter, but if they wanted to go to their supervisor or to Nason he would see what they could do. Then Nason threw the floor open for questions and invited the employees to tell him what their problems were. One employee from the shipping department asked whether the benefits and pay would change if they were to decertify the Union. Nason answered that when their drivers had decertified, they did not lose any of their benefits, but that it was not in his jurisdiction to say. He stated that some of the other Ace Hardware locations had a credit union instead of having a union, and asked the employees if they would like to have one. He said that it was not a promise, but just a statement. Then other employees, including Larry Rose, also asked questions. Toward the latter part of the meeting, Nason asked if the employees would like to get together after work on a week night or weekend and discuss their problems at a continental breakfast in order to work out their problems and find out where they were. He said that he would pay for the breakfast if they would have the meeting. Nason also remarked that the drivers had decertified the Union on their own, and that their benefits had not changed and would not change. On cross-examination, Sifford remembered that Nason's remarks concerning the union officials being "animals" came up in connection with a statement concerning the Teamsters International president having been in trouble with the law for which he could possibly be indicted. Sifford insisted that Nason stated that "all Teamsters were crooks." Sifford agreed that at no time during the course of his speech did Nason specify what kind of benefits the employees would receive if they were to decertify the Union.

James Mark Hull, a merchandise handler, remembered that the meeting lasted approximately 45 minutes. His account of what transpired was better organized and more detailed than the General Counsel's other two witnesses. Furthermore, he was the only one of the General Counsel's three witnesses who either did not occupy a position with the Union, or concerning whom no evidence of possible bias was introduced. According to Hull, Nason began the meeting by reading the notice which the union representatives had posted on the bulletin board during their alleged intrusion onto the Respondent's premises the preceding day. Nason stated that the union representatives had entered the facility without his permission, and accused the Union of strong-arm tactics which were not appreciated and would not be condoned. Then he read the letter which he stated he was going to send to the Union protesting their conduct. Next, Nason said that the president of the Union which represented them was in the process of being indicted on bribery charges for trying to bribe a Congressman, and that those repre-

senting the employees were crooks and animals, but that he was not going to be a policeman to keep the Union under control. Then Nason noted that several warehouse employees had come to members of management asking how they would go about getting out of the Union. Nason said it was not his job to go around and assist people in getting out of the Union, but, if they would come to him or members of management, he could assist them in getting out and would help them in any way possible. He said he felt like this was the least he could do. Then Nason opened the meeting to employees' questions. The first question came from Larry Rose who, according to Hull, asked if Nason was aware there were some production problems in his department in that there were some flaws in the way they filled their orders. Nason answered that he knew there were a few problems, but that the system was fair and equitable, had been around for a while, and managed to work. Then employee John Zimmerman asked what benefits the truckdrivers received. Nason answered by asking if they were aware that the truckdrivers had recently voted to get out of the Union, decertify, and negotiate a contract of their own. He said they were to be congratulated. Although Nason did not specifically state what benefits the truckdrivers had obtained, he did say that they would keep the benefits they had, and it would be over his dead body if anybody took them away. Then a third employee, who Hull could not identify, asked if the other employees were to decertify, what benefits they would get. Nason answered that he could not promise what benefits they would get because he was not empowered to do that, but assured them that they would keep the benefits they had. Hull also remembered that at one point in his remarks Nason mentioned that at another of the Company's warehouses they had a credit union, but Hull could not recall whether it was Nason who brought up the subject of a credit union or whether it arose in response to an employee question. Finally, Nason concluded the meeting by stating that he was not aware that the warehouse had any problems, but if there were any problems he suggested that the employees and management get together after work or on a Saturday for refreshments or a continental breakfast for the purpose of discussing these problems. Nason said if enough employees signed up to make such a meeting feasible, he would pay for it.

James D. Nason testified that he did not speak from a text or from notes, or otherwise record his speech at the time it was made. Nason denied calling the union officials crooks or animals. He insisted that he did not inform employees concerning how to terminate their checkoff authorizations, or promise any benefits to them if they were to decertify the Union. He also denied giving the employees information concerning the manner by which the decertification could be accomplished. He likewise denied saying that the truckdrivers should be congratulated for decertifying the Union, and stated that he did not specifically refer to a credit union during his remarks. According to Nason, he was prompted to make his February 18 speech by the conduct of the Union's business agents who entered the plant and distributed notices to employees on the previous day. He issued in-

structions which resulted in the lunchroom assembly, which he described as composed of a "cross-section" of about 100 union and nonunion warehouse employees, clerks, clericals, and management people. He began his address by announcing that he was going to read a letter he had written to the Local Union concerning their activities the day before, which he stated would not be condoned. Nason said they were going to have an orderly business relationship at the facility, and not one of intimidation and threats. After reading the letter verbatim to the assembled group, he asked if it was correct that there were insurmountable problems in the warehouse. He said that neither he nor his staff had any indication of any problems or dissatisfaction in the warehouse, and asked the employees what was going on. Nason noted that at this time there was no union steward at the facility. Then, according to Nason, he invited the employees to speak up on any issue they would like to cover, and a number of those present asked questions. Nason remembered that John Zimmerman asked how to get out of the Union. Nason responded that he had not called the meeting with the intention of getting out of the Union, and that he did not feel free to discuss with him at that meeting the ways and means of getting out of the Union. Next, employee Don Brewer asked if they would still have the same benefits they were currently enjoying, and Nason answered that there would be no reason to change the fringe benefits, but that he was not going to comment on that in relation to withdrawing from the Union. Nason agreed that he referred to the fact that the truckdrivers and the office personnel still had their fringe benefits, and that the Company was not in the business of taking things away. Then Larry Rose asked what he could do to get clarification or an answer to a problem, if he could not get a satisfactory answer from his supervisor. Nason answered that he and the rest of the employees were free to do whatever they wanted to do, but that the orderly "procession" would be to contact the supervisor's manager, personnel, or to see Nason personally, and not necessarily in that order. Rose also wanted to know why they did not have a union steward, and Nason replied that that was not a concern of his, and that he could not get involved in the relationship between union stewards and the Union itself. According to Nason, he said that people were free to be in the Union, and free to be out of the Union. He mentioned that Texas was a right-to-work State, and that whatever they wished to do in this respect was their prerogative and that he was not going to interfere. Then John Zimmerman asked what steps they should take to get out of the Union. Nason testified that he answered that he did not feel comfortable with that question, but said that nine employees had individually approached management about getting out of the Union and/or stopping their union dues. At this point Nason held up a union dues checkoff authorization card, and said when they made a decision they should read what they were signing and know what they were getting into. He said that if they wanted to join the Union they should join the Union, and if they did not then not to join. He said that he was not going to act as a policeman, and was not going to solicit their withdrawal from the Union, and that what-

ever they did they did on their own accord. Then, in response to a question from Don Brewer concerning fringe benefits, which Nason states he declined to answer because "it could conceivably incriminate me," Nason stated that he really did not call the meeting to discuss ways and means of decertifying the Union. He said that the meeting was merely to call their attention to or attempt to get to the bottom of the "unnecessary activities perpetrated by the union representatives." Nason said that he told the employees, "You people are asking me to withdraw from the Union, and I cannot give you that type of information. You should read what it is you are signing—what you are getting yourself into. And when you sign a dues checkoff, part of that possibly will go to pay the way for trials of, say, Mr. Williams, currently the President of the Teamsters Union." Nason further remarked that Williams had been indicted by the Federal Government for activities "concerning bribery of a United States Senator." The meeting ended with Nason asking employees if they would be interested in a "general meeting" to discuss all types of activities corresponding to their employment with Ace Hardware. He said he would be willing to discuss whatever it was they would like to discuss with any employee at any time, and suggested that they could have a round table discussion either in the evening or on a Saturday morning. Subsequently, according to Nason, a large number of the employees "signed up" indicating that they were interested in attending such a meeting.

The Respondent also called employees John Zimmerman, William E. Polk, Mona Bandera, Michael F. Ellis Jr., Bobby Joe Dilmore Sr., and Melton Wayne Plemons, to testify concerning their recollection of Nason's speech. Zimmerman testified that he could not recall everything that went on during the meeting. He said that he could hear Nason only part of the time, partly because he was engaged in discussion with some of the other employees while Nason was talking. However, he claimed that he paid attention to Nason's remarks with respect to certain things. He remembered that Nason started out by speaking about the union officials that had been in the warehouse, describing their entry and pamphlet distribution as "strong-arm tactics." He could not remember whether Nason read or referred to a letter he had written the Union. Zimmerman remembered asking Nason what actions would be taken if the Union were removed from the warehouse, and whether or not that would result in "any type of pay deductions or anything." He remembered that Larry Rose asked a question of Nason, but could not recall the nature of the question. He remembered some discussion about the subject of dues checkoff, in that Nason mentioned that the people that decided to sign their checkoff list would be held liable by the Union for dues that were past and might possibly be sued. Other than these remarks, Zimmerman remembered little else about Nason's address. Nevertheless, and despite his inattention, he explicitly denied that Nason specifically told employees that they could terminate their union dues checkoff authorizations, or that Nason made any promises of benefits to employees in return for decertifying the Union. He remembered that

"there was something mentioned about a continental breakfast," but denied that Nason made any remarks about Teamsters Union officials, or made any reference to a credit union.

William Polk remembered very little about Nason's speech until his memory was prodded by specific questions from counsel. He remembered that Nason read a letter that he was going to send to the Union and that he remarked that the Union had broken the spirit of the contract. He also recalled that certain employees, including Larry Rose and John Zimmerman, asked questions. In response to Rose's question, which Polk could not remember, Nason replied that there was a chain of command to follow, that they should first go to their supervisor, and that if they were still not satisfied with the answer he had an open door policy. Zimmerman's question concerned job security, to which Nason responded that as long as work was available they would have a job. Another question by another unnamed employee concerned how they would negotiate a contract if a lot of people got out of the Union. According to Polk, Nason said he would not comment on that because they still had a union representing the employees. Polk also remembered Nason suggesting that they could get together and have another meeting at another location "just a get together to see how business is doing, or people that had problems, you know, you could bring them up at that time." In response to specific questions by Respondent's counsel, Polk denied that Nason made any reference to union officials or prounion employees as crooks or animals, that Nason told employees how they could terminate their dues-checkoff authorizations or decertify the Union, or that he promised any benefits to employees in return for decertification. On cross-examination Polk remembered Nason making a reference to the truckdrivers having decertified the Union. Also, after having been shown a copy of the affidavit which he gave to the investigating Board agent, Polk acknowledged that Nason stated that Teamsters President Roy Williams was being investigated, and that past Teamsters had been indicted for illegal activities. He also acknowledged that Nason stated he was not going to tolerate the Teamsters interrupting the business. He insisted, despite close questioning, that in response to a question about what would happen if the warehouse employees decertified, Nason insisted that he could not talk about that because the Union was still there. He remembered that at the outset of the meeting Nason remarked that the union officials had come into the plant and that he was not going to tolerate it. Thus, Polk exhibited a poor memory. What little he did recall was, at best, fragmentary. He vacillated concerning whether Nason's remarks about a Teamsters official referred to Roy Williams or another former Teamsters president. Polk's answers were precise only when specific leading questions were addressed to him.

Mona Bandera remembered that Nason began the meeting by reading a letter, but did not remember him having any other piece of paper in his hand. Nason began by stating he had called the meeting because of the intrusion of some union personnel the day before when they had passed out leaflets without going through

the correct procedures by going to the office. He said he was sending the letter to the Union because of the rudeness of these men. Then there were questions by employees. In response to a question by Larry Rose, Nason stated that if they could not talk to their supervisor about a problem they were having they could talk to another supervisor or to him. In answer to another employee's question about what the benefits would be if someone wanted to get out of the Union, he stated that he could not tell them any benefits, if there were any benefits, or if there weren't any benefits, and if he said anything about that he could get into trouble. Then he suggested that the whole Company should have a get-together or a continental breakfast to talk about what would help the Company, working conditions, and what would move the Company along or help the job run better. At this point Bandera's memory was exhausted. In response to specific questions she denied Nason informed employees how they could terminate their union dues-checkoff authorizations, promised benefits in return for decertification, or informed employees as to the manner in which they could decertify the Union. On cross-examination Bandera could not remember whether or not Nason mentioned anything about dues checkoff, decertification of the truckdrivers, or the Teamsters president.

Michael Ellis testified that Nason was "a low-speaking man to begin with, and to be honest, I wasn't really listening to a lot of it. So, you know, I could have missed a lot." Independently, he remembered only that Nason spoke about the pamphlets which had been distributed the day before by union officials who he claimed had violated the contract by entering the warehouse. He recalled Zimmerman asking whether they would receive the same benefits if they were not part of the Union, and Nason's answer that he could not answer that question, and could not promise them anything. Ellis remembered that there were other questions, which he could not recall. Nason also talked about having an informal meeting of the employees on a Wednesday evening or Saturday morning, and mentioned something about the drivers decertifying. In response to specific questions, he denied that Nason told them how to terminate their union dues-checkoff authorizations, although he held one in his hand. He likewise could not recall Nason's promising employees benefits to decertify the Union, or informing employees how decertification could be accomplished. On cross-examination, after having been shown his Board affidavit, Ellis acknowledged that Nason held up a dues-checkoff authorization card, and stated that there was a way to get out of the Union if they wanted to, and that it could be done at a later time. He also acknowledged that there was a question concerning what would happen to employees' benefits if the Union were decertified, and that Nason replied either that he could not answer the question or he could not promise anything. Immediately thereafter in his testimony, however, Ellis retreated and insisted that he could not remember the question at all.

Bobby Joe Dilmore Sr. remembered only that Nason talked about a pamphlet the Union had distributed the

day before, read a letter which he had written to the Union, and also stated, in response to a question about getting out of the Union, that they could get out but had to wait for a certain time to do it and he could not say how. In response to specific questions, Dilmore denied that Nason promised benefits in return for decertification, discussed decertification, informed employees how to get out of the Union, or referred to the president of the Teamsters.

Melton Wayne Plemons remembered Nason's speech in greater detail and was more positive in his testimony than any of Respondent's employee witnesses that preceded him. According to Plemons, Nason began his address by reading a letter he was going to send to the Union concerning their leaflet distribution on the previous day. Nason also read the leaflet which he described as not having been distributed according to the rules. He also stated that he was not aware that there were problems in the warehouse and said perhaps they could discuss those things if there were. He then called for questions. The first question, from Larry Rose, concerned what the employees could do if they were unable to communicate with their supervisors. Nason answered that there was a procedure in management by which they tried to iron out the problems employees had. Then John Zimmerman asked if they were dissatisfied and tired of the Union how they could get out of the Union if they did not want to be in it. Plemons testified, "I think Mr. Nason said there was a procedure, that some of the truckdrivers had, last year, had taken action to where they were no longer in the union, but that it was not his job to tell John [Zimmerman] how to withdraw, and said it was a difficult process, and wasn't easy to do." According to Plemons, Nason did not spell out the details concerning how to go about getting out of the Union. Then another employee, whose name Plemons did not remember, asked what kind of benefits they would have without the Union or whether they would be better ones. Plemons testified, "and I think the reply was that there wouldn't be any decline, in fact, with an increase of productivity there should be no reason why there wouldn't be an increase in benefits, you know, to the employees." Then there was discussion concerning a future meeting in order to have open lines of communication between employees and management. At one point Plemons remembered Nason saying something about a meeting which was going to be held by the Union, and that the workers needed to be wise in their judgment at this meeting because they probably would be asked to sign a dues-checkoff form. He said that whenever they signed this form they were making a fairly long-term commitment, which they should weigh before making a reckless or quick action. He said it was much easier to join or sign up for union dues deduction than it was to withdraw should they later change their mind. Plemons, however, testified that Nason did not hold up any type of union card. On cross-examination Plemons recalled that although Nason did not refer to a Teamsters official he read the Teamsters address. He also remembered that in referring to the procedure available to employees for communicating with their supervisors, he said that if an employee felt a supervisor was not

dealing fairly with them they could bring in an independent second or third party supervisor and then try to work out an agreement. He also referred to the possibility of a third step for resolving the difference, but did not think there was any mention of arbitration.

C. Analysis and Conclusions

The resolution of credibility issues is always a difficult one. It is especially so in situations, exemplified by the instant case, where, in the absence of an authenticated text, witnesses are called on to relate an entire speech. In such instances differences in phrasing, as recalled by the witnesses, may well spell the difference under the case law between a finding of a lawful or an unlawful remark on the part of the speaker. At the outset I have carefully examined each witness' testimony in an effort to detect any deliberate falsification. I am satisfied that none exists, and that each witness, including Mr. Nason, presented what was truly believed to be the most accurate account of Nason's remarks each was capable of adducing almost 5 months after the event. However, individual capacities for accurate and detailed recounting of occurrences witnessed vary widely. Sometimes weaknesses in this area are readily revealed by remarks of the witness while testifying. Thus, John Zimmerman professed a lack of memory and noted that he heard only part of Nason's address. Likewise, Michael Ellis admitted that he really was not listening while Nason was talking and, consequently, had little independent recollection of what occurred. I find their testimony less reliable than that of some others.

In other instances the brevity or lack of independent recollection reveals the limited reliability of the witnesses' testimony. In this instance Polk, Bandera, and Dilmore obviously remembered only a portion of what Nason had said. In the case of Polk and Dilmore that was clearly a very small portion.

Nason, Rose, and Sifford plainly fall within the category of interested witnesses who exhibited the unconscious tendency to color their accounts to favor their particular cause. Thus, Larry Rose was the only witness who testified that Nason actually offered to assist employees with information on how to decertify the Union. Nason and all the employee witnesses denied this was a part of Nason's speech. I do not credit this portion of Rose's testimony. I find that the Respondent did not violate Section 8(a)(1) of the Act as alleged in paragraph 6(f) of the complaint, as amended.

Out of all the employee witnesses, concerning whom there was no apparent evidence of possible bias, James Hull and Melton Plemons exhibited the best memories and were the most articulate. Hull testified that in answer to a question about "getting out" of the Union, Nason answered it was not his job to go around and assist people in getting out of the Union, but that if they would come to him or members of management he could assist them in getting out and would help them in any way possible. Nason denied offering assistance to employees who wanted to revoke their dues-checkoff authorizations, but admitted holding up a checkoff authorization card in connection with a remark that employees

should read and know what they were signing. Likewise, Zimmerman remembered checkoff being discussed. Finally, Hull's account on this point generally coincides with Sifford's who testified Nason stated that management had not approached anyone concerning the matter of canceling dues deductions, but if they wanted to go to their supervisor or to him, he would see what he could do. I am persuaded that Nason did inform employees how to cancel their checkoff authorizations and offered assistance in doing so, thereby violating Section 8(a)(1) of the Act as alleged in paragraph 6(c) of the complaint.

Concerning the allegation that Nason promised employees benefits if the Union were decertified, only Sifford testified that Nason actually suggested employees at Arlington could have a credit union if the Union was removed. But in another portion of his testimony Sifford said Nason did not specify what benefits employees would receive if they decertified the Union. Nason denied the alleged remark. His denial is supported by Hull, who testified Nason said he could not promise better benefits, but assured them they would keep those they had, by Rose who phrased Nason's statement in terms of "better relations" coupled with a denial of possible better benefits, and by Plemons who testified Nason's answer based any future increase in benefits only on increased productivity. I do not credit Sifford's version, and find the General Counsel has failed to prove that Respondent has violated Section 8(a)(1) in this portion of Nason's speech, as alleged in paragraph 6(e) of the complaint.

Finally, all witnesses, including Nason, agree that Nason did suggest that the employees and management meet for a meal and informal problem discussion session off company premises after hours or on a weekend, and that the Company would pay for this session, which

some described as a "continental breakfast." In the context of Nason's address it is implicit that the purpose of this meeting was directed toward the redress of problems or grievances concerning which Nason had earlier expressed lack of knowledge, and invited employee questions. Thus, Nason violated Section 8(a)(1) as alleged in paragraph 6(d) of the complaint.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.
3. By means of a speech by Distribution Manager James D. Nason, in which he informed employees how to cancel their checkoff authorizations and offered assistance in doing so, and by soliciting employees' grievances and impliedly promising that those grievances would be redressed, the Respondent violated Section 8(a)(1) of the Act.
4. The Respondent has not violated the Act in any respects other than those specifically found.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent is engaged and is engaging in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]