

Narricot Industries, L.P. and United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local No. 2316. Case 11–CA–21827, 11–CA–21828, and 11–CA–21856

January 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAMBER

On May 6, 2008, Administrative Law Judge Margaret G. Brakebusch issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief.¹

The National Labor Relations Board² has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions, as modified, and to adopt the recommended Order as modified. As discussed below, we agree with the judge that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the Union and that an affirmative bargaining order is the appropriate remedy for this violation.⁴

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

³ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also contends that the judge improperly credited one part, but discredited another part, of Supervisor Eric Hayes' testimony. We disagree. "[N]othing is more common in all kinds of judicial decisions than to believe some and not all" of a witness' testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), *revd.* on other grounds 340 U.S. 474 (1951).

⁴ We affirm the judge's findings that the Respondent violated Sec. 8(a)(1) by soliciting employees to resign their union membership and to revoke their dues-checkoff authorizations. In adopting the judge's finding in this regard, Member Schaumber does not pass on whether merely preparing letters revoking dues-deduction authorization on behalf of employees would be unlawful. Here, the Respondent went well beyond such assistance.

I. WITHDRAWAL OF RECOGNITION

As fully described in the judge's decision, the Respondent withdrew recognition of the Charging Party Union as exclusive bargaining representative of a two-facility unit of production and maintenance employees. The withdrawal of recognition, effective on the October 2, 2007 termination date of the parties' last collective-bargaining agreement, was based on the Respondent's receipt of a decertification petition signed by a majority of bargaining unit employees.

In an unfair labor practice proceeding challenging a withdrawal of recognition from an incumbent bargaining representative, the employer is required "to prove by a preponderance of the evidence that the union had, in fact, lost majority support at the time the employer withdrew recognition." *Levitz Furniture Co.*, 333 NLRB 717, 725 (2001). Here, the Respondent relied solely on the decertification petition as objective proof of the Union's actual loss of majority support. But when an employer engages in conduct designed to undermine support for the union and to impermissibly assist a decertification effort, the decertification petition will be found tainted and will not provide the employer with a basis for withdrawing recognition. See *SFO Good-Nite Inn, LLC*, 352 NLRB 268, 270–271 (2008), and cases cited therein.⁵ The judge found that the Respondent provided unlawful assistance to the decertification effort in violation of Section 8(a)(1) of the Act and found that this unlawful conduct tainted the petition, invalidating it as evidence of the Union's loss of majority. She therefore concluded that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition based on the unlawfully tainted petition. We agree with this conclusion based on the following evidence of unlawful assistance in the petition effort.

As detailed by the judge, both Human Resource Manager Kris Potter and Supervisor Eric Hayes actively participated in the decertification process. After employee Henry Vaughn asked for information about how to oust the Union, Potter prepared a decertification petition, gave it to Vaughn, and told him that about 220 signatures were needed.⁶ Potter also gave copies of the petition to employee Shirley Lewis and to intern Anja Baumann, directing them to return the signed petitions to him. In addition, after giving Baumann a list of unit employees, Potter told her that about 200 signatures were needed on the petition. At the end of each day that she solicited

⁵ In such circumstances, it is unnecessary to pass on whether the petition was tainted under the standards set forth in *Master Slack Corp.*, 271 NLRB 78, 84 (1984). *SFO Good-Nite Inn*, *supra* at 271 fn. 11.

⁶ We find no need to rely on the judge's speculation that misspellings on the petition were intended to disguise the Respondent's role in its preparation.

signatures, Baumann returned copies of the petition to Potter pursuant to his instructions. According to Baumann, Potter would express approval and tell her that he needed more signatures.⁷ Finally, Supervisor Hayes told employee Willie Mitchell that employees would receive a pay raise if the Union were decertified and that Mitchell could sign a copy of the petition on the desk in Hayes' office.⁸

This conduct is sufficient proof that the Respondent's officials provided more than the permissible "ministerial aid" in the initiation and circulation of the decertification petition.⁹ The Respondent's conduct was "aimed specifically at causing employee disaffection with their union." See *Hearst Corp.*, 281 NLRB 764, 764-765 (1986), *affd. mem.* 837 F.2d 1088 (5th Cir. 1988). The petition was therefore tainted, and the Respondent could not lawfully rely on it as evidence of the Union's actual loss of majority status privileging the Respondent's withdrawal of recognition.

The Respondent contends that the judge should have considered other evidence (an alleged decline in union membership, alleged vacancies in steward positions, the claim that union membership was concentrated among certain groups of employees, and testimony that an unspecified number of employees discussed removal of the Union), which showed that employees' disaffection with the Union began before the Respondent engaged in the conduct found to have constituted unlawful assistance to the decertification effort. We disagree. The Board has not found that this type of evidence, even if considered collectively, would be sufficient as objective proof of a union's loss of majority support. Furthermore, as previously stated, the Respondent did not rely on any of this

⁷ Member Schaumber does not pass on whether the mere provision of an employee list to facilitate the collection of signatures on a decertification petition would constitute unlawful assistance. He finds the violation based on the cumulative evidence cited above.

⁸ The judge also found that Potter made an unlawful promise to Baumann that employees would receive wages and insurance benefits comparable to those received by employees at the Respondent's nonunion facilities. We reverse the judge's finding inasmuch as there was no complaint allegation regarding this conduct, the Respondent had no notice that it would need to defend the legality of this statement, and the issue was not fully litigated. We have modified the Order and notice accordingly.

⁹ We therefore find it unnecessary to pass on whether Baumann acted as the Respondent's agent in unlawful support of the decertification effort. We also reverse the judge's finding that Weave Manager Tim Beals provided unlawful assistance by failing to remove a copy of the decertification petition placed by an employee on a break room table. The Respondent's rules permitted the petition's placement at this location, and there is no evidence that Beals took any affirmative action to encourage employees to read or sign it.

evidence when it withdrew recognition.¹⁰ We therefore conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from, and failing and refusing to bargain with, the Union.¹¹

II. THE AFFIRMATIVE BARGAINING ORDER

The judge recommended that the Respondent be required to recognize and bargain in good faith with the Union. The judge did not, however, rely on the specific circumstances of this case to justify the imposition of such an order. We adhere to the view, reaffirmed in *Caterair International*, 322 NLRB 64 (1996), that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Id.* at 68. In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent Industrial Plastics*, *supra*, the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considera-

¹⁰ *NLRB v. Mullican Lumber & Mfg. Co.*, 535 F.3d 271 (4th Cir. 2008), which issued after the judge's decision here, does not require a different result. In that case, the court denied enforcement of the Board's bargaining order emphasizing that the employer withdrew recognition based on a decertification petitioner's letter stating that a majority of unit employees no longer wanted their union and had signed slips in support of a decertification petition pending in a Board Regional Office. During the underlying unfair labor practice hearing, the General Counsel and union did not contest the accuracy or authenticity of the letter or of corroborative witness testimony introduced by the employer. Furthermore, there were no allegations that the respondent engaged in any unfair labor practices tainting the petition. Thus, in the court's view, the respondent in *Mullican* did what we find the Respondent here has failed to do, i.e., it proved actual loss of majority support based on an untainted decertification petition signed by an employee majority.

Member Schaumber acknowledges that *Hearst Corp.*, *supra*, relied on by the judge, is extant Board law and applies it for the purpose of deciding this case. In his view, even unfair labor practices such as those in this case might not taint a petition if there was affirmative evidence that a majority of unit employees both signed the petition and were unaffected by the unlawful conduct. However, here, the only other evidence with respect to employees' support for the Union at the time of the Respondent's withdrawal is the decline in union membership and that in itself is insufficient to show a loss of majority support under *Levitz*, 333 NLRB at 725. For these reasons, Member Schaumber expresses no view on *RTP Co.*, 334 NLRB 466, 469 (2001), *enfd.* 315 F.3d 951 (8th Cir. 2003), which was also relied on by the judge.

¹¹ We also affirm the judge's findings that postwithdrawal unilateral changes in unit employees' terms and conditions of employment violated Sec. 8(a)(5).

tions: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738. Consistent with the court's requirement, we have examined the particular facts of this case, and we find that a balancing of the three factors warrants an affirmative bargaining order.¹²

1. An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's withdrawal of recognition. An affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation, as the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, we note that the Respondent committed unfair labor practices both before and after its unlawful withdrawal of recognition that manifested its disregard for employees' Section 7 rights. Prior to the withdrawal of recognition, the Respondent solicited employees to withdraw from union membership and to revoke their dues checkoff, it provided unlawful assistance in the initiation and circulation of the decertification petition, and it promised a wage increase if the Union were decertified. After the Respondent withdrew recognition, it followed through on the unlawful promise by making unilateral changes in wages, the employees' 401(k) plan, their health and welfare plans, and holidays. Under these circumstances, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that employees' Section 7 right to union representation can be vindicated. This will give employees an opportunity to fairly assess the Union's effectiveness as a bargaining representative and determine whether continued representation by the Union is in their best interests.

2. An affirmative bargaining order also serves the Act's policies of fostering meaningful collective bargaining and industrial peace. It removes the Respondent's

¹² Member Schaumber does not agree with the view expressed in *Caterair International*, supra, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) violation." He agrees with the United States Court of Appeals for the District of Columbia Circuit that a case-by-case analysis is required to determine if the remedy is appropriate. *Saginaw Control & Engineering*, 339 NLRB 541, 546 fn. 6 (2003). He recognizes, however, that the view expressed in *Caterair International*, supra, represents extant Board law. *Flying Foods*, 345 NLRB 101, 109 fn. 23 (2005), enfd. 471 F.3d 178 (D.C. Cir 2006).

incentive to delay bargaining or to engage in any other conduct designed to further discourage support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table. It fosters industrial peace by reinstating the Union to its rightful position as the bargaining representative chosen by a majority of the employees.

3. As an alternative remedy, a cease-and-desist order alone, without a temporary decertification bar, would be inadequate to remedy the Respondent's withdrawal of recognition and refusal to bargain with the Union because it would allow another challenge to the Union's majority status before the employees had a reasonable time to regroup and bargain with the Respondent through their chosen representative in an effort to reach a collective-bargaining agreement.¹³ Indeed, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violation in this case.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Narricot Industries, L.P., Boykins, Virginia, and Murfreesboro, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Promising its employees increased wages if they remove the Union as their bargaining representative."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

¹³ We note that union negotiator Jason Weitzel testified that the parties were on the verge of a complete agreement when the Respondent withdrew recognition in late September 2007.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promise our employees increased wages if they remove the Union as their collective-bargaining representatives.

WE WILL NOT unlawfully assist employees in their attempt to remove the Union by soliciting employees to sign a petition to remove the Union.

WE WILL NOT unlawfully solicit our employees to resign their union membership or their authorization for dues deduction.

WE WILL NOT refuse to recognize or to bargain with United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local No. 2316 as the exclusive bargaining representative of our employees in the following appropriate unit:

All production, maintenance, and plant clerical employees employed at our Boykins, Virginia facility to include our operation at Murfreesboro, North Carolina; excluding all office clerical employees, professional and technical employees, guards, truck drivers, and supervisors as defined in the Act.

WE WILL NOT unilaterally change wages and benefits for our bargaining unit employees without first notifying their exclusive collective-bargaining representative and affording it a reasonable opportunity to bargain about the decision to increase wages and employee benefits and its effects on employees.

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.

WE WILL recognize and, on request, bargain in good faith with the United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local No. 2316 as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit set forth above regarding wages, hours, and other terms and conditions of employment, and, if an understanding is reached, reduce the agreement to writing and sign it.

WE WILL, on the request of the Union, rescind any or all unilateral changes to unit employees' wages, holidays, overtime premiums, health and welfare benefit plans, and other terms and conditions of employment unless and until the parties bargain in good faith to an

agreement or lawful impasse concerning any proposed changes thereto.

WE WILL make whole, with interest, our bargaining unit employees for any loss of wages or loss of benefits they may have suffered due to our unilateral changes in wages and benefits.

NARRICOT INDUSTRIES, L.P.

Jasper C. Brown Jr., Esq., for the General Counsel.

James M. Powell, Esq. and *J. Mark Sampson, Esq.*, for the Respondent.

Ira H. Weinstock, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARGARET G. BRAKEBUSCH, Administrative Law Judge. This case was tried in Jackson, North Carolina, on February 26, 27, and 28, 2008. The charges in Cases 11-CA-21827 and 11-CA-21828 were filed by the United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local No. 2316¹ (Union) on October 5, 2007.² The charge in Case 11-CA-21856 was filed by the Union on January 7, 2008.

On February 7, 2008, the Regional Director for Region 11 of the National Labor Relations Board (Board) issued a second order consolidating cases, consolidated complaint, and notice of hearing based upon the allegations contained in Cases 11-CA-21827, 11-CA-21828, and 11-CA-21856. The consolidated complaint alleges that on various dates occurring between June and September 2007, Narricot Industries, L.P. (Respondent) engaged in conduct violative of Section 8(a)(1) of the National Labor Relations Act (Act). Specifically, the consolidated complaint alleges that Respondent, acting through its supervisors and agents, promised its employees increased benefits if its employees removed the Union as their bargaining representative. The consolidated complaint further alleges that Respondent violated Section 8(a)(1) of the Act by soliciting employees to sign a petition to remove the Union and/or withdraw from membership in the Union and revoke dues checkoff and by unlawfully providing assistance to employees in the circulation of a petition to remove the Union. Additionally, the consolidated complaint alleges that Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the Union as its employees exclusive collective-bargaining representative, and by unilaterally implementing changes in wages, benefits, and other conditions of employment for its bargaining unit employees.

On the entire record,³ including my observation of the demeanor of the witnesses, and after considering the briefs filed

¹ The formal papers were amended at hearing to reflect the correct name of the Charging Party.

² All dates are in 2007, unless otherwise indicated.

³ Because of transcribing errors, a portion of the testimony of Kris Potter and Eric Hayes was omitted from the transcript. Following the hearing, the parties reached an agreement and stipulation concerning the testimony that was erroneously omitted from the transcript. Both joint stipulations are received into the record and I have considered the stipulated testimony. The document captioned as joint stipulation

by the General Counsel, Union, and Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Georgia corporation with an office and place of business in Boykins, Virginia, has been engaged in the business of manufacturing woven narrow fabrics, including seatbelt webbing. During the past 12 months, Respondent purchased and received goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Virginia. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent is engaged in the business of manufacturing and dyeing narrow textile fabrics used to construct vehicle seat belts. Respondent has maintained a manufacturing facility in Boykins, Virginia, since the early 1960s and the Union has represented Respondent's production and maintenance employees at that facility since 1976. The most recent collective-bargaining agreement covering the employees at the Boykins, Virginia facility was executed in February 2005, and remained in effect until October 2, 2007. By agreement of the Union and Respondent, the Union's representation of the production and maintenance employees was extended to also cover employees who work at Respondent's satellite facility in Murfreesboro, North Carolina. While the most recent contract did not provide for a wage increase for Respondent's employees, the contract provided for a bonus or incentive pay for employees.

The International Textile Group (ITG) is a textile group that owns various textile plants throughout the world. In early 2007, ITG acquired the Boykins and Murfreesboro facilities. There is no dispute that the majority of ITG's facilities are non-union. The Union became aware of the acquisition in or about April 2007, and met with representatives of ITG in approximately April 2007. As of October 1, 2007, Respondent employed a total of approximately 329 bargaining unit employees at its Boykins and Murfreesboro facilities. The majority of the employees are employed at the Boykins facility and approximately 15 employees work at the Murfreesboro facility. Respondent operates three shifts of 8 hours each, and four shifts of 12 hours each.

A majority of the complaint allegations relate to conduct by Kris Potter and Anja Baumann. Kris Potter (Potter) has been Respondent's human resource manager since April 2007. He serves as human resource manager for not only Respondent's Boykins and Murfreesboro plants, but also for Respondent's

nonunion plant in South Hill, Virginia. Anja Baumann (Baumann) is a German citizen who came to the United States on a work visa. She began working for Respondent as a quality control (QC) intern in November 2006. Her contract for employment provided for her to receive \$200 in weekly wages. In addition to paying Baumann a set wage amount, Respondent also provides Baumann with an apartment, utilities, and the personal use of a company car. In September 2007, Baumann began reporting to Training Manager Mary Worley; who reports to Potter. The General Counsel asserts that Baumann acted as an agent of Respondent during the relevant time period.

B. Bargaining

By letter dated July 20, 2007, the Union notified Respondent that it desired to negotiate a new or modified collective-bargaining agreement and proposed dates for the parties' negotiations. During the first bargaining session on July 30, 2007, the Union presented Respondent with proposals for contract modification. Union Representative Jason Weitzel testified that Potter was unable to set a date certain for the next bargaining session. After a series of e-mails, voice mails, and a certified letter to the Respondent by the Union, the parties set a second bargaining session for August 28, 2007.

Bargaining sessions were also held on September 19 and 20. The last bargaining session occurred on September 26, 2007. Weitzel testified that based on the progress that the parties had made during negotiations; he believed that the parties could have reached an agreement⁴ during the next scheduled negotiations meeting on October 1, 2007. The meeting never occurred, however, due to the Respondent's withdrawal of recognition on September 29, 2007.

C. Removing the Union

1. Respondent's preparation of the petition

Potter testified that sometime in late July or early August, employee Henry Vaughn met with him and asked what the employees could do to remove the Union. Potter recalled that he told Vaughn that he didn't have any idea and that he would find out and get back with him. When Potter met with Vaughn a few weeks later, he provided Vaughn with a prepared petition for circulating among the employees. Potter testified that he had received the sample petition from the corporate human resource (HR) department. The document was entitled "PETITION BY EMPLOYEES OF THE BOYKINS PLANT." The document contained the specific words: "WE THE EMPLOYEES OF THE BOYKINS PLANT OF NARRIOTT INDUSTRIES DO NO WANT TO BE REPRESENTED BY THE CARPENTERS UNION ANY LONGER." The wording specifically misspells "Narricot" as "Nariott" and erroneously uses the words "do no" rather than "do not." Following the descriptive language at the top of the petition were lines for the employees' names and signatures. Potter acknowledged that while he only gave Vaughn one copy of the document he was sure that Vaughn made additional copies. Although Potter

regarding Eric Hayes' testimony on direct examination is received as Jt. Exh. 2. The document captioned as joint stipulation regarding portions of Kris Potter's testimony on cross-examination is received as Jt. Exh. 3.

⁴ The parties stipulated that prior to withdrawing recognition from the Union, Respondent bargained in good faith.

denied that he specifically gave employees permission to copy the petition forms on company equipment, he admitted that the employees may have done so.

On cross-examination, Potter was asked why the Respondent's name was misspelled in the sample petition provided by the corporate HR department. While Potter acknowledged that Respondent's name was misspelled, he could provide no explanation. He was also unable to explain why the petition contained the apparent misspelling of "do no" rather than "do not."

Vaughn confirmed that he received the petition from Potter after he inquired about how the employees could get rid of the Union. Vaughn also recalled that Potter told him that approximately 220 signatures were needed for the petition. Vaughn explained that after receiving the petition form, he went to the library and made copies of the form. Vaughn denied that Potter told him what to tell employees when he solicited signatures for the petition. Vaughn recalled that when he spoke with employees, he told employees that there was a possibility that employees could get different insurance without the Union. Because he knew that the collective-bargaining agreement was going to expire the first of October, Vaughn hurried to get the number of signatures needed on the petition.

2. Baumann's participation in the petition solicitation

Baumann testified that she heard from other employees that Henry Vaughn had a petition to get rid of the Union. After speaking with Vaughn, Baumann signed the petition. Vaughn also suggested that if she were interested in helping with the petition, she should speak with Potter. At Vaughn's instruction, Baumann met with Potter in late August or early September. Baumann told Potter that she had just signed the petition and that she was interested in learning about what she had just signed. Baumann testified that because she was from Germany, she had not understood how unions function in the United States. Potter told her that there was a union at the facility and that it cost Respondent money. He also explained to her that the contract was expiring in October and that about 200 signatures were needed on the petition. During the same meeting, Potter provided Baumann with a list of employee names and a blank copy of the petition form. After her meeting with Potter, Baumann returned to the quality control lab and made at least 10 copies of the petition form.

Using her own computer, Baumann retyped the list of employees. She explained that she created a list that better reflected employees' shifts and departments. The following work day, Baumann began using the list to speak with employees. She estimated that she solicited employees to sign the petition for approximately 4 hours a day for a week and a half. Although Baumann worked on first shift, she came to work early and stayed beyond her shift to talk with employees on second and third shifts. She admitted that she was paid for the time that she solicited employees to sign the petition. During this period of time, she was also paid for 6 to 7 hours overtime.

When Baumann met with employees she told them that she was working on an HR project. She recalled that she told employees: "I'm working on this petition here and we need signatures to get the Union out of here." Baumann said that she told employees that she was working on an HR project in order to

have something to say in starting the conversations. She confirmed that even though many of the employees did not personally know her, the employees spoke with her after she told them that she was working on an HR project. Baumann asked them what they knew about the Union and what they thought about the Union. Baumann told employees that about 200 signatures were needed on the petition.

Baumann recalled that when she spoke with employees she tried to pull them away from where they were working on the production floor in order to better speak with them with less noise. She recalled that she either took them into the break room or just outside the production area. Baumann explained that she stopped the petition solicitation after a week and a half because employees would no longer talk with her and because she heard other employees talking about her.

At the end of each day that she solicited employee signatures, she took the copies of the petition to Potter. She recalled that after the second or third day that she gave him the petitions; Potter began telling her that he needed more signatures. In order to get more signatures, Baumann worked overtime. She recalled that during the period that she circulated the petition, she came in an hour early and stayed over an hour in the afternoons. Baumann testified that Potter would have known that she was working overtime to circulate the petition because he saw her arrive early during this period of time.

Potter testified that between April and October 1, he had only one conversation with Baumann about the Union and the conversation occurred in mid to late August. He specifically denied that she ever asked him any questions or that they had any conversations about the Union other than the one conversation. He also denied that he had any conversations with Baumann when she submitted the petition forms to him.

In contrast to Potter, Baumann testified that when she submitted the signed petition forms to Potter each day he responded by saying "good" or telling her that they needed more signatures. Baumann recalled a specific conversation with Potter after her second or third day of circulating the petition. During the conversation, Potter gave her materials to show a comparison between the employees' current insurance benefits and those that would be available to employees with ITG. The materials reflected that there were more doctors and hospitals available to employees under the nonunion plan. Potter also told her that the employees in Respondent's nonunion facility (South Hill) had received a raise. Potter explained that all of the employees working at the ITG's nonunion plants have a higher pay scale. Baumann recalled that Potter told her that without the Union, the employees would earn a "bit more money." After her conversation with Potter, Baumann told employees about the raise for employees at the South Hill facility. Baumann testified that she also told employees that she had been told that ITG benefits were not coming to the Boykins plant as long as the Union was there. She told employees that the employees at the Boykins plant would receive more money if they didn't have a union. Baumann also told employees that most of the ITG companies did not have unions and she pointed out the fact that employees at the South Hill had received a raise and the employees at the Boykins plant had not. She told the employees that while she could not tell them when or how

much, she could see a raise coming for them. Additionally, she showed the insurance comparison to the employees.

During the first week in September, Union Vice President Brenda Fields observed Baumann talking with employees in the production area between 7:45 and 8 a.m. After 7 or 8 minutes of observing Baumann, Fields approached her. Fields asked Baumann if she had the petition that was being circulated in the plant and Baumann confirmed that she did. When Fields asked Baumann why she had the petition, Baumann told her that she was doing the job that she was told to do by Potter. Fields also asked Baumann why she had the petition when she was only going to be at the facility for the short term and it didn't matter to her. Baumann pulled out some papers that Fields understood to pertain to insurance information. Baumann told her that with the new insurance policy employees could go to a wider range of doctors. Fields countered by pointing out that a new insurance plan would probably have a higher premium and higher doctors' fees and prescription costs. Union President Vickie Eley joined Baumann and Fields during their conversation. Eley testified that she heard Fields ask Baumann why she was circulating the petition. She recalled that Baumann responded that she had to do it because Potter told her to do it. Eley also recalled that although Baumann told them about the new insurance she also assured them that she would no longer circulate the petition.

Employee Willie Mitchell recalled that during the first part of September Baumann approached him while he was working in the production area. Baumann told him that she had paperwork that management had asked her to get employees to sign in order to get rid of the Union. She asked Mitchell if he wanted to sign it. Mitchell saw that she also had a typed list of names on a clipboard. Mitchell declined to sign the petition and she left to speak with someone else.

While Baumann was soliciting employee signatures, employee Katrina Powell asked about removing her signature from the petition. Baumann told her that she would have to talk with Potter because he had the petitions.

3. Potter's involvement with other employees

Potter initially testified that he also spoke with employees Shelton McGee and Shirley Lewis about the petition and that both Lewis and McGee submitted signed copies of the petition to him. Later in the hearing, Potter testified that he only remembered receiving copies of the petition from Baumann and Vaughn. Potter, in fact, testified that he did not think that he gave Lewis a copy of the petition. Lewis, however, testified that she approached Potter and asked for his help in getting a copy of the petition. Lewis maintained that approximately 5 or 6 years previously, she had also tried to get the Union out of the plant. After receiving the copy of the petition from Potter, she went back to her department and began talking with employees about signing the petition. Lewis explained that she asked the employees in the work area and then took them into the bathroom to sign the petition. Lewis testified that while she obtained one copy of the petition from Potter, she obtained a second copy of the petition form from Vaughn. She placed one of the copies of the petition in the breakroom and the other copy she used when talking with employees. Lewis gave no testi-

mony as to how long the copy of the petition remained in the breakroom. There was no testimony that any supervisor or manager restricted her placing the petition in the break room. Lewis denied that Potter told her what to say to employees or that Potter told her that employees would get a raise or better benefits without the Union.

4. Potter's continuing involvement with the petition

While Potter admitted that he spoke with both Vaughn and Baumann about the petition, he denied giving them instructions as to what they should say to employees. He asserted that he told them that they could talk with employees about the petition during their breaktimes, before or after work, and off Respondent's premises, however, they could not talk with employees during worktime. Baumann, however, denied that Potter ever told her that she was restricted in soliciting employees' signatures during working time.

Potter admitted that he told Vaughn and Baumann to return the petition forms to him and that he told these employees that a majority of the employees' signatures were needed. While Potter denied that he ever told any of the employees circulating the petition the number of signatures that were needed, he also acknowledged that he kept a running tally for his own personal information. As Potter collected the petition forms, he reviewed a list of employees, and checked off the names of employees as their names appeared on the petitions.

5. The circulation of the petition at the Murfreesboro facility

Tim Beals is the weave manager at Respondent's Murfreesboro facility. He estimates that approximately 15⁵ hourly employees work at the Murfreesboro facility. Beals testified that he first saw a copy of the petition on the break room table sometime during August and the petition remained there until sometime before September 17, when Vaughn removed the petition. Although he could not recall the date, he recalled that Vaughn removed the petition one morning between 7:30 and 7:45 a.m. He denies that he ever physically received a copy of the petition. He recalls however, that when he observed the petition, the document contained five or six signatures. He testified that only employee Tarkesha Beale asked him about the petition. He told her that it was a petition and it was "pretty simple." He asserts that he told her that she could either sign it or not sign it.

It is undisputed that rule 9 of Respondent's plant rules provides for progressive discipline for "selling, collecting, soliciting, or distributing literature on Company time or property without prior Company approval (except there may be solicitation or distribution for Union purposes on Company property but not on Company time)." The progressive discipline provides for a verbal warning for the first offense, a written warning for the second offense, and discharge for the third offense. Supervisor Beals acknowledged that while the petition violated rule 9, no discipline was ever issued to any employees as a result of the violation. Beals also testified that he had observed magazines, newspapers, and paperwork to raise money for

⁵ He estimates that this same number of employees have been present since September 2005, when he transferred from the Boykins facility.

churches or charities. Beals denied that he had ever issued any discipline for literature or information in the breakroom.

6. Supervisor Eric Hayes and the circulation of the petition

Employee Shelton McGee worked in the seatbelt weaving department until his transfer to the warehouse in the summer of 2007. While working in the seatbelt weaving department, he was supervised by Eric Hayes. In approximately August 2007, McGee received a copy of the petition to remove the Union from employee Henry Vaughn. After receiving the petition from Vaughn, McGee spoke with Supervisor Eric Hayes about the petition. McGee asked Hayes if he could put the petition in the supervisors' office. The office is shared by Hayes and two other supervisors. Hayes told him that he didn't have anything to do with the petition because he was a salaried employee. McGee then placed the petition on Hayes' desk in the supervisors' office. McGee estimated that the petition remained in the office for a period of no more than 3 days. During the time that the petition remained on Hayes' desk, McGee told other employees about the petition. He told them that the petition was to get rid of the Union and that it was located in the office. McGee did not know how many employees signed the petition while it remained on Hayes' desk. When McGee retrieved the petition several days later, the petition form was half filled with signatures. McGee acknowledged, however, that he collected approximately 50 signatures in total.

Employee Oddie Mercer was aware of the petition's circulation in August 2007. He specifically recalled a conversation that he had with Hayes around the latter part of August. Hayes came to the work area and asked Mercer and two other employees to accompany him to the office. Mercer identified the other employees as Bridgette Newell and another employee whose first name is Kim. Once inside the office, Hayes handed Mercer a piece of paper. Mercer recalled that Hayes told him: "I just came from my meeting and Charles wants to get rid of the Union. If you sign this paper to get rid of the Union, you'll get a two dollar raise." In his testimony, Mercer never identified the last name or title for "Charles." Mercer told Hayes that he had been looking for a \$2 raise since he first began working for Respondent. Mercer handed the paper to the other two employees and walked away without signing it. Employee Bridgette Michelle Newell testified that Shelton McGee told her about the petition in Hayes' office. She denied, however, that she was ever present when Hayes spoke with Oddie Mercer about signing the petition or about the employees getting a \$2 raise. Newell recalled, however, that during the time that the petition was circulated, she heard the rumor that if the employees got rid of the Union, they would get a \$2-an-hour raise. She acknowledged that all of the employees were talking about getting the \$2-an-hour raise and better benefits. Newell acknowledged that her signature appeared twice on the petition. While she identified both signatures as her own, she testified that she could not remember adding one of the signatures. She recalled that the second signature appeared to be signed at the same time as employee Kimberly Carter.

Employee Willie Mitchell testified that on or about mid to late August, he had a conversation with Hayes in the seatbelt weaving department. Mitchell testified that Hayes told him that

there was a petition going around to eliminate the Union. He told Mitchell that the petition was in the office if Mitchell wanted to sign it. Mitchell also recalled that Hayes said: "And if you go ahead on and sign it and get rid of the Union, you ought to get more money. You get more money, you get a raise." Mitchell's only response was "Okay."

Hayes acknowledged that McGee asked him about leaving the petition on his desk. While Hayes testified that he told McGee that he could not be involved with the petition, he does not dispute that the petition was placed in the supervisors' office and remained on his desk for as long as a week. Supervisors Roger Langley and Randy Long also use the same office. Hayes' desk is approximately 2 feet by 4 feet in size and contains a telephone. Hayes admitted that he never told McGee not to put the petition on his desk. Hayes also testified that when the petition appeared on his desk he never called HR or asked what he should do with the petition. He confirmed that neither of the other two supervisors did anything with the petition or removed the petition. He also denied that he told any employees that the petition was in his office or that he encouraged them to sign the petition. Hayes admitted that he knew that employees were coming into his office to sign the petition because he saw their signatures on the petition. He denied, however, that he promised any employee better insurance or a pay raise if the Union was removed.

D. Revocation of Union Membership

The General Counsel alleges that Respondent, acting through various supervisors, unlawfully solicited employees to withdraw from membership in the Union and revoke dues checkoff. There is no dispute that Respondent prepared the letters for employees to revoke their authorization for payroll deductions for union membership, fees, and assessments. The record contains letters dated September 17, 2007, that were signed by Phillip Bell, Betty Whitfield, and Angela Towns. Each signed letter contains a certified mail number. There is no dispute that these letters were sent by certified mail by Respondent to the Union.

1. Supervisor Beals' involvement

Beals testified that sometime in July 2007 employees Betty Whitfield, Angela Towns, and Phillip Bell asked him how they could get out of the Union. Beals recalled that when Bell asked him about how he could get out of the Union, he referred Bell to Potter. When Whitfield and Towns asked him, he told them that he would get an answer for them because he did not know what to tell them. Beals contacted the HR office at the Boykins plant and was told that there were two periods when employees could "get out" of the Union. He learned that employees could do so at their anniversary date and during a time frame specified in the collective-bargaining agreement. He also learned that the employee would have to sign a document and send it to Respondent and to the Union by certified mail. Beals testified that the same day that he received the information from HR he reported the information back to these employees who had inquired.

Beals confirmed that on September 17 Danny Mallon⁶ in the Boykins HR office brought three copies of a letter to the Murfreesboro facility for the employees to revoke their authorization for dues deduction. He denied that he had been previously notified that he was going to receive the letters. He asserted that he only learned of the letters when they appeared on his desk. Beals told Whitfield and Towns that he had the letters for them. Whitfield and Towns signed the letters and returned them to him on September 17. Beals returned the signed letters to Respondent's HR office.

Employee Betty Whitfield testified that she asked Beals about how employees could get out of the Union and she recalled that her initial conversation with Beals concerning this issue occurred sometime in September. Beals told Whitfield that he did not know, however, he would get back with her. On September 17, 2007, Whitfield and Beals again spoke in the break room. Employee Angela Towns was also present during the conversation. Beals told Whitfield and Towns that there was a paper on the break room counter that they needed to see. Beals told the employees that they could sign the paper or they could not sign the paper. Whitfield testified that the paper that Beals referenced was a typewritten letter to the Union and Respondent revoking authorization for union dues deduction. Whitfield signed and dated the document and left it on the counter. Whitfield confirmed that she never sent the letter to the Union or the Respondent and she did not know who did so or who added the certified mail number that was added after she signed the document. Angela Towns also testified that sometime prior to September 17; she had also asked Beals how she could get out of the Union. When Beals spoke with her on September 17, he told her that since she had signed the petition she could sign the paper to change the withholding of union dues from her check. Towns signed the authorization for dues revocation letter on September 17. After signing the document, Towns returned it to Beals. Beals recalled that Towns asked him if she should sign the letter since she had already signed the petition. He recalled that he told her that one document was to get the Union out of the plant and the other document was for her to get out of the Union. He explained that they were two different documents.

2. Potter's involvement

Potter recalled that employees Phillip Bell and Henry Vaughn approached him about how they could stop paying union dues and revoke their membership in the Union. Potter denied that he gave Phillip Bell (Bell) a form by which he could resign his union membership and denied knowing how Bell obtained such a form. Potter acknowledged, however, that he was familiar with the language contained on Bell's revocation form dated September 17, 2007. He further explained that the wording for the revocation document was forwarded from his corporate HR department to his HR assistant, Christine Murphy, at his request. Murphy prepared the revocation document for the employees at Potter's direction. The signed revocation forms were collected by Respondent and sent to the Un-

ion by certified mail. There is no dispute that Respondent paid for the certified mailing. Potter testified that he did not recall if he had given the dues revocation letters to supervisors for distribution. He acknowledged that he had heard rumors that supervisors had collected such letters.

Employee Edna Worrell recalled that in August she told Henry Vaughn that she was considering getting out of the Union. Vaughn told her that if she wanted to do so, she needed to speak with Potter. Worrell did not, however, go to Potter as Vaughn suggested. Worrell recalled that on September 17 she was approached by Potter as she was walking toward the bathroom near the QC lab. Potter asked: "Don't you need to see me?" Worrell asked: "About the Union?" and Potter said "Yes." Worrell recalled that she then told Potter that she was not getting out of the Union. Potter then asked Worrell "Are you just going to stay in and govern yourself?" When Worrell asked what he meant by "govern," Potter clarified by asking if she just wanted the rules to stay the same. Potter also told her that she had a limited time to get out of the Union and to sign the paper that was in Christine Murphy's office.

E. Events Occurring in Late September

Potter acknowledged that during the time that the petition was circulated in the facility there was discussion and rumors in the plant about Respondent granting a wage increase and changing the insurance benefits. Specifically, the rumors involved employees' getting a change in insurance benefits and wage increase if the Union were gone.

On September 24, 2007, Respondent's plant manager, Ed Hull, gave a notice to employees addressing a union handbill. In the notice, Respondent denies the Union's assertion that without a Union, ITG would act improperly. Potter testified that Respondent's notice was specifically prepared to respond to a union handbill that was published on September 24, 2007. In the notice, Hull asserts that the vast majority of ITG employees is not represented by a union and yet has competitive wages and benefits as well as a safe environment and access to a grievance procedure. The notice further informs employees that if they have any questions about the petition concerning the Union, they are free to talk with Hull, someone in HR, or their department managers or supervisors. Potter confirmed that the notice was prepared by corporate HR and posted on all of the bulletin boards in the facility. Potter and Hull also distributed the notice to employees during shift change.

F. Respondent's Withdrawal of Recognition

In describing his discussions with corporate HR, Potter initially testified that Respondent was "gathering" petitions and then he corrected his testimony to reflect that he told corporate that Respondent "had petitions being submitted by employees." Potter initially testified that he never told corporate HR the specific number of petitions that he had received. He opined that at some point he notified corporate HR that he had the signatures for an excess of 50 percent of the employees. Upon further examination, however, he confirmed that he told corporate HR that he had 212 signatures.

By letter dated September 29, 2007, Respondent's attorney informed the Union that a majority of its employees had pre-

⁶ During the course of the hearing, the complaint and answer were amended to include Mallon as a supervisor.

sented a petition to Respondent stating that they did not want to be represented by the Union any longer. The letter was sent to the Union by regular mail and by e-mail. Respondent confirmed in the letter that it was withdrawing recognition from the Union at the end of the collective-bargaining agreement on October 2, 2007. After Union Representative Weitzel opened his e-mail on Sunday, September 30, he sent a letter in response to the Respondent's withdrawal of recognition. In his letter of October 1, Weitzel asked Respondent's attorney to identify the objective evidence that supported the allegation that the Union no longer represented Respondent's employees. In a letter dated October 1, Respondent's counsel informed the Union that Respondent had received a petition signed by over 200 bargaining unit employees, stating that they no longer wanted to be represented by the Union. Respondent's counsel informed the Union that the petition was available for inspection at a mutually convenient date and time. When the union representatives inspected the petition, they discovered that some of the names had been signed more than once and there was no indication when the signatures were obtained. Weitzel testified that he also noted that Respondent's name was misspelled in the petition.

G. Respondent's Unilateral Changes

The parties stipulated that on November 11, 2007, Respondent implemented a wage increase and eliminated a double time overtime premium for working in excess of 48 hours in a week. The parties further stipulated that effective January 1, 2008, Respondent implemented a change to its health and welfare benefit plans, holidays, and 401(k) plan. Potter acknowledged that Respondent did not negotiate or bargain with the Union prior to making the changes in wages and benefits on November 11, 2007, and January 1, 2008.

III. ANALYSIS AND CONCLUSIONS

A. Whether Respondent Unlawfully Solicited Employees to Withdraw Union Membership

The General Counsel alleges that Respondent, acting through Supervisors Tim Beals and Kris Potter, unlawfully solicited employees to withdraw their membership in the Union and to revoke dues checkoff. There is no dispute that employees Angela Towns, Betty Whitfield, and Phillip Bell⁷ asked Supervisor Tim Beals how they could resign their union membership. Not knowing the correct answer, Beals consulted HR. He discovered that employees could resign their membership and revoke the authorization for dues payment during two specific time periods. He also learned that the notification must be in writing and sent by certified mail. Beals credibly testified that he relayed this information to Towns and Whitfield. Having provided the requested information, Beals apparently took no further action. On September 17, HR Supervisor Danny Mallon gave Beals three letters that had been prepared for his employees. The three letters prepared for Whitfield, Towns, and Bell were fully typed with the requisite language needed to revoke authorization for union dues, fees, or assessments and included

⁷ Potter testified that Bell also asked him about the process for withdrawing his membership from the Union.

the mailing addresses for the Union and Respondent. The only items requiring completion were the date, certified mail number, and the employee's signature. Potter acknowledged that Respondent's corporate office provided the revocation wording and the letters were then prepared at Potter's direction. Beals gave the forms to the employees for completion. After receiving the signed forms, Beals returned the forms to Respondent's HR department. Respondent does not dispute that it sent the signed forms to the Union and paid the certified mail expense.

Employee Edna Worrell testified that when she had told Henry Vaughn in August that she was thinking about getting out of the Union, he referred her to Potter. Even though she did not follow Vaughn's suggestion, Potter approached her on September 17. Potter initiated the conversation by asking her if she did not need to talk with him. He then questioned her choice to maintain the status quo and reminded her that she only had a limited time to get out of the Union and to sign the necessary document in the human resources office. While Potter did not recall speaking with Worrell about the petition, he did not rebut the September conversation about her withdrawing from the Union.

Based on the record as a whole, I find that Respondent, acting through Kris Potter, unlawfully solicited Worrell to resign her membership in the Union and revoke her authorization for dues deduction as alleged in complaint paragraph 8(b). In doing so, Respondent has violated Section 8(a)(1) of the Act. *Almaden Volkswagen*, 193 NLRB 706, 709 (1971).

Whitfield credibly testified that when Beals presented her and Towns with the revocation letters, he told her that it was her choice as to whether she signed the letters. Towns testified that Beals told her that since she had already signed the petition, she could also sign the letter revoking her membership. Beals, however, recalled that Towns asked him if she should sign the letter since she had already signed the petition. Beals testified that he explained to her how the documents were entirely different. Although Whitfield was also present during the conversation, she did not corroborate Towns' more coercive version of the conversation. Overall, I found Beals to be a credible witness and his testimony appeared straightforward and genuine. Accordingly, the record does not support a finding that Beals specifically solicited employees to resign their membership in the Union. It is apparent that he simply passed on to employees the document prepared at the direction of Potter and crafted by Respondent's corporate HR office. Although Beals may have told employees that they had a choice as to whether they signed the revocation letters, the record evidence reflects that Respondent unlawfully assisted in the employees' revocation of dues authorization. While the Board has found that an employer may lawfully provide information on how to resign from the Union, the employer may not attempt to ascertain whether employees will avail themselves of this right nor offer assistance, or otherwise create a situation where employees would tend to feel peril in refraining from such revocation. *Erickson's Sentry of Bend*, 273 NLRB 63, 64 (1984); *R. L. White Co.*, 262 NLRB 575, 576 (1982). In the present case, Respondent did not simply provide information in response to employees' inquiries. Without being asked to do so, Respondent prepared the letters of revocation and presented them

through Supervisor Beals. It is understandable that these employees would have felt compelled to sign the documents that had been specifically prepared for them. Employees were not told to take the letters and sign them after reflection or consideration. The employees were placed in a situation of either signing the letters or rejecting the letters. Because the letters contained reference to the certified mail number that was to be added, it was apparent that Respondent intended to send the letters to the Union after the employees signed the letters. Overall, it is apparent that employees would tend to feel coerced to resign their union membership and revoke their dues authorization. Under similar circumstances, the Board has found similar aid and support to employees in the filing of union membership withdrawal cards to taint the withdrawals and to be violative of the Act. In *American Linen Supply Co.*, 297 NLRB 137, 138 (1989), 945 F.2d 1428 (8th Cir. 1991), the employer's personnel manager solicited at least one employee to withdraw from the union and the employer further aided employees in withdrawing from the union by furnishing withdrawal forms and notaries during worktime to help them in processing the withdrawal forms. In the instant case, Respondent prepared letters for the employees to sign, encouraged the employees to sign the letters, and then mailed the letters to the Union by certified mail and at Respondent's expense. Accordingly, Respondent's assistance and solicitation violates Section 8(a)(1) of the Act as alleged in complaint paragraph 8(b).⁸

B. Whether Respondent Unlawfully Assisted Employees in the Circulation of the Petition

The General Counsel alleges that acting through Supervisors Potter, Beals, and Hayes, Respondent unlawfully provided assistance to employees in the circulation of a petition to remove the Union. There is no dispute that it is unlawful for an employer to initiate a decertification petition, solicit signatures for the petition, or lend more than minimal support and approval to the securing of signatures and the filing of the petition. *Sociedad Espanola De Auxilio Mutuo Y Beneficencia de P.R.*, 342 NLRB 458, 459 (2004). *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985). While an employer may not violate the Act by giving "ministerial aid," the employer's actions must occur in a "situational context free of coercive conduct." The essential inquiry is whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced

act of the employees concerned." *KONO-TV-Mission Telecasting Corp.*, 163 NLRB 1005, 1006 (1967).

1. Potter's involvement in the unlawful assistance

Henry Vaughn testified that when he asked Potter how the employees could remove the Union, Potter told him that he would check into it for him. Potter did not, however, simply report back to Vaughn to explain the decertification process. Potter responded by providing Vaughn with a prepared petition and told him that approximately 220 signatures were needed on the petition. Interestingly, there was no testimony from Potter, Baumann, or Vaughn to confirm that Potter ever informed Vaughn, Baumann, or any other employee that they could contact the Board or about their right to file a decertification petition with the Board. Vaughn never testified that he asked Potter to prepare the petition or even to give him sample language for the petition. The petition was created by Respondent's corporate office and given to Vaughn and Baumann by Potter. I find it suspect that the petition was drafted with two very obvious mistakes; the misspelling of Respondent's name and the misspelling of the word "not." As discussed above, "Narri-cot" was misspelled as "Narriott" and "not" was spelled as "no." Because the word "not" is central to the message of the document, it is difficult to believe that the misspelling is simply an oversight. It is also unlikely that Respondent's corporate personnel accidentally misspelled the company name. It seems much more likely that this document was created to appear as though it had originated with rank-and-file employees. The fact that Respondent attempted to disguise the origination and author of the document creates the impression of unlawful assistance and involvement.

In addition to working through Vaughn, Potter also provided a copy of the petition to Anja Baumann and to employee Shirley Lewis. In addition to giving her the copy of the petition, Potter provided Baumann with a list of all of the employees in order to facilitate her solicitation for signatures. Additionally, Potter gave Baumann documentation concerning the insurance that would be available to employees if they removed the Union as their bargaining representative. Baumann used these materials in talking with the employees. Baumann testified that Potter never cautioned her to solicit employee signatures only during nonworking time. Baumann approached employees while they were working and pulled them away to talk with them about the petition. There is no evidence that any supervisor interfered with her doing so. She also received overtime in order to reach more employees.

There is no dispute that once Vaughn and Baumann secured signatures on the petition, the signature pages were submitted to Potter. Potter kept a running tally of the employee signatures. As he collected the forms, he reviewed a list of employees and checked off the names of the employees as their appeared on the petitions. Baumann recalled that after her second or third day of soliciting signatures, Potter told her that he needed more signatures. Baumann recalled that at the same point in time in which Potter told her that he needed more signatures, he told her about the raise that the employees had received at Respondent's nonunion plant and about the insurance available to employees if they were nonunion. Baumann took

⁸ Complaint par. 8(c) alleges that Respondent unlawfully provided assistance to employees in the circulation of the petition through the conduct of Supervisor Tim Beals in September 2007. Specifically, the complaint alleges that Beals informed employees of a petition to remove the Union and instructed employees to read it. As discussed above, Respondent used Beals as a conduit to solicit employees to sign the forms to withdraw their membership from the Union. The record is not clear, however, that Beals was involved in soliciting employees to sign the petition. I recommend the dismissal of complaint par. 8(c) as it relates to the allegation that Beals informed employees of a petition to remove the Union and instructed employees to read it. The record does reflect however, that Beals was aware of the petition's presence in the break room and there is no evidence that Beals did anything to remove it or to dispel the appearance of management support and approval for the petition. Thus, his conduct supports a finding of unlawful assistance that is discussed in another portion of this decision.

this information and used it in her conversations with employees as she solicited signatures.

As discussed above, there is ample record evidence that Potter unlawfully provided assistance to employees in the circulation of the petition. The evidence demonstrates that with the benefit of corporate office, Potter created the petition for employees to remove the Union. He not only gave Baumann a roster of employee names to assist her in circulating the petition, he gave her information to use with employees to promise them better insurance benefits and increased wages if they rejected the Union. He required the employees soliciting signatures to return the petitions to him and he maintained a running tally of the number of signatures. The Board has found that where an employer has provided the specific petition language and instructed employees to return the signed petition to management, the employer has exceeded lawful assistance. *Mariott In Flite Services*, 258 NLRB 755, 768-769 (1981); *Silver Spur Casino*, 270 NLRB 1067, 1071 (1984).

In asserting that it provided only lawful and ministerial assistance to employees, Respondent points to the Board's decision in *Washington Street Brass & Iron Foundry, Inc.*, 268 NLRB 338, 339 (1983). In preparing a decertification petition to circulate among his fellow employees, a bargaining unit employee sought the advice of the employer's labor consultant. The consultant reviewed the employee's draft of the petition language and recommended one change in wording and recommended using the union's full name in the petition. The judge determined that there was no showing that the employer instigated the petition and noted that the only conduct in drafting the petition was to provide some "inconsequential" phrases upon the specific request of an employee. Unlike the circumstances involved in the instant case, the employees then circulated the petition without further manifestation of the employer's approval and without further involvement by the employer during the solicitation process. The Board affirmed the judge's decision without comment concerning the alleged unlawful assistance.

Citing the Board's decision in *Bridgestone/Firestone, Inc.*, 335 NLRB 941 (2001), Respondent argues that it lawfully prepared the petition and provided it to Vaughn only in response to his inquiry about removing the Union. Respondent is correct that the circumstances in *Bridgestone/Firestone* involved an employer's suggestion and preparation of a petition in response to an employee's inquiry. Had Respondent only provided petition language in the instant case without more, Respondent's assistance might also be merely "ministerial." Unlike the circumstances involved in *Bridgestone/Firestone*, however, Respondent did more than simply provide petition language in response to Vaughn's inquiry. Potter went on to provide copies of the petition to Baumann and Shirley Lewis. He not only collected the petition sheets from the employees and monitored the accumulation of signatures; he also encouraged Baumann to get more signatures. He did not rely on the employees to independently circulate the petition or file a decertification petition with the Board; he took possession of the petition, engineered its progression, and used it as a basis for withdrawing recognition. See *Pic Way Shoe Mart*, 308 NLRB 84 (1992).

Respondent also argues that it did nothing unlawful in providing Baumann with the list of employees because Baumann asked Potter for the list.⁹ Although both Potter and Baumann testified that Baumann asked for the list, I do not find their testimony credible. Baumann testified that one of the reasons that she contacted Potter was to understand what she had signed when she signed the petition. She recalled that she told Potter that she did not understand how unions functioned in the United States. If Baumann did not understand the union process or the petition procedure, it is illogical that she would have requested either the petition or a roster of employees from Potter in this initial conversation. Although Baumann appeared to provide candid answers to many of the questions posed by counsel for the General Counsel and the Union, she was also somewhat evasive and less direct in response to other questions. She testified under subpoena by the General Counsel and acknowledged that she had declined to speak with counsel for the General Counsel prior to the hearing. Based on her overall testimony, it is apparent that she viewed herself as aligned with management rather than the rank-and-file members of the bargaining unit. Her testimony that she asked Potter for a list of employees in that first meeting was simply an affirmation to Respondent's leading question. She was not asked, and she did not explain, why she asked for the list of employees. In fact, during the earlier examination by counsel for the General Counsel, she only recalled that Potter gave her the list of employees and her testimony included nothing about having asked for the list. Accordingly, I credit neither Potter nor Baumann's

⁹ In its argument that an employer may lawfully provide employees with a list of employees in connection with a decertification campaign, Respondent relies on the Board's decisions in *McClatchy Newspapers, Inc.*, 337 NLRB 1161, 1178 (2002), and *Times-Herald, Inc.*, 253 NLRB 524, 524 (1980). In *Times-Herald*, the Board found that an employer was not responsible for a supervisor's participation in a decertification effort, noting that he was also a member of the bargaining unit. Although a member of management provided the supervisor/unit employee with the telephone number for the Board's Regional Office, there was no evidence relating to the circumstances in which solicitations were made. During its discussion, the Board referenced its earlier decision in *Consolidated Builders, Inc.*, 171 NLRB 1415 (1968), in which an employer had lawfully provided a list of employee names and addresses to an attorney representing a decertification committee. There was no discussion, however, in the Board's decision in *Times-Herald* to indicate that the employer had provided such a list to the supervisor/bargaining unit employee in issue. In *McClatchy Newspapers, Inc.*, the administrative law judge found that the employer did not unlawfully assist in the inception or fruition of a decertification petition. No exceptions were filed and the Board dismissed the complaint; which also included other allegations of Sec. 8(a)(1) and (3). In her discussion of the alleged unlawful coercion related to the petition, the judge cited the Board's decision in *Times-Herald* in relation to an employer's providing a list of employee names to a decertification committee. While the judge listed the conduct that was alleged to have constituted unlawful assistance, providing a list of employee names was not included in the alleged conduct. I note, however, that in *Consolidated Builders, Inc.*, the case cited by the Board in its *Times-Herald Inc.*, decision, there was no evidence that the employer did anything to assist in the decertification effort and simply responded to the attorney's written request for the names and addresses of employees.

testimony that Baumann independently asked for the list of employee names.

Respondent submits that there was nothing unlawful about Potter's tracking the number of employee signatures. Respondent argues that inasmuch as the tracking was accomplished after the employees' signing the petition, it could have had no impact on the employees' willingness to sign the petition. In support of its argument, Respondent relies on *McClatchy Newspapers, Inc.*, above at 1178, in which the employee circulating the petition gave periodic reports on his progress to management and was complimented and praised on his efforts. Although management received the reports of the progress without remonstrance, the judge noted that the employer's tacit approval of the decertification effort did not equate to assistance.

Without a doubt, Potter did far more than simply provide "ministerial assistance" to employees. He engineered, directed, and supported the petition effort. The Board dealt with similar employer involvement in *Condon Transport, Inc.*, 211 NLRB 297 (1974). In *Condon Transport*, the Board affirmed the judge in finding that the employer violated Section 8(a)(1) by its overall assistance to, and support of decertification activity. The judge explained: "It may well be that the law permits an employer, upon request of employees, to provide on an isolated and limited basis certain information otherwise unavailable to them or beyond their personal knowledge. However, such privilege may not be construed as a license for an employer to use employee requests as a pretext for enmeshing itself in virtually every stage of the decertification process." The judge went on to find that the degree of involvement was such as to make the employer a full partner in the effort to oust the union, and would "create an atmosphere whereby employees, despite indifference or only marginal opposition to the union, would be encouraged to support management's implicit intention in this regard." In the instant case, the overall evidence demonstrates that by virtue of Potter's sustained interaction with Vaughn, Baumann, and other employees, in addition to the support given by Hayes and Beals, Respondent clearly became a significant participant in the petition process and engaged in conduct violative of Section 8(a)(1) of the Act.

2. Hayes' involvement in the unlawful assistance

Respondent does not dispute that employee Shelton McGee placed a copy of the petition in the supervisors' office and left it there for several days. During this period, McGee told employees about the petition's presence in the office. Hayes admitted that although McGee asked permission to put the petition on Hayes' desk, Hayes did not forbid him to do so. Although Hayes saw the petition on his desk, he did not tell McGee to remove it. He denies that he contacted HR to find out what he should do about the petition. Hayes was also aware that employees were adding their names to the petition while it remained in his office. Although Supervisors Langley and Long also shared the office, there is no evidence that either supervisor made any attempt to remove the petition or forbid its presence in the office.

Certainly the Board has found similar assistance to be unlawful. In *Placke Toyota, Inc.*, 215 NLRB 395 (1974), an em-

ployee placed a decertification petition on a supervisor's desk that was used by the supervisor to distribute work orders to employees and to retrieve completed work orders from the employees. The petition remained on the desk for several days, during which time employees signed the petition. The Board found that by allowing the petition to remain on the supervisor's desk for several days, the employer gave the petition its open support or at least the clear impression of open support. An employer does not maintain a "neutral position" when it not only drafts the petition, but also allows employees to sign the petition during working time and with supervisory assistance in making the petition available to potential signers. *Corrections Corp. of America*, 347 NLRB 632, 664 (2006). Thus, by allowing the petition to remain in the supervisors' office for employees to sign during working hours or whenever they wished to do so, Respondent conveyed to employees that the petition was supported and promoted by management.

Counsel for the General Counsel also presented the testimony of employees Oddie Mercer and Willie Mitchell concerning Hayes' alleged involvement in circulating the petition. Mercer contends that Hayes brought him into the office along with employee Bridgett Newell and another employee whose first name is Kim. Mercer alleges that Hayes told the employees that he had just come from a meeting with "Charles" who wanted to get rid of the Union. Hayes is alleged to have added that if the employees signed the petition they would get a \$2-raise. Overall, I do not credit Mercer's testimony. Although he alleges that Hayes told him that he had just come from a meeting with "Charles," he does not disclose the identity or title for "Charles." Mercer provides no further information that would identify the significance of this meeting and why Hayes allegedly made such a statement. Additionally, Mercer's description of the conversation is uncorroborated by Newell. Newell testified that although she heard rumors about employees getting a \$2-an-hour raise and getting better benefits, she denied being present for the conversation with Hayes and Mercer. She did, however, sign the petition while it was in the supervisors' office. Counsel for the General Counsel argues that Newell should not be credited because she signed the petition twice and yet recalled signing it only once. Newell does not dispute that her signature is included twice on the petition. The fact that she may not recall the specific circumstances of the second signing is not sufficient to discredit her entire testimony. Considering the overall testimony of Newell and Mercer, I do not credit Mercer's testimony concerning the alleged promise of benefits by Hayes. Had Hayes called three employees into the office at the direction of higher management to promise raises, it is likely that he would have done so with a more organized and informative appeal. Mercer's alleged recall of the conversation lacks sufficient detail or foundation to be credible.

With respect to the alleged conversation between Hayes and Mitchell, however, I find Mitchell's recall to be credible. He alleges that when he passed Hayes on the work floor, Hayes told him about the petition in the supervisors' office. Mitchell recalled that Hayes opined that if the employees got rid of the Union they "ought to get more money." Hayes gave a blanket denial that he ever told any employee that the petition was in the office or that he promised employees a pay increase if they

signed the petition. I found Mitchell's testimony to be more credible¹⁰ with respect to this conversation. Mitchell did not appear to embellish or exaggerate his description of the conversation. Inasmuch as Hayes' admittedly allowed the petition to remain in his office and available for employee signatures, it is not implausible that he casually directed employees to the petition.

As discussed above, I find that Respondent, acting through Eric Hayes, unlawfully provided assistance to employees in the circulation of the petition and unlawfully promised increased benefits if the employees removed the Union as their bargaining representative, as alleged in complaint paragraphs 8(a) and (c).

3. Beals' involvement in the unlawful assistance

Complaint paragraph 8(c) alleges that in September 2007 Beals informed employees of a petition to remove the Union and instructed them to read it. It appears that General Counsel and the Union rely on the testimony of employees Betty Whitfield and Angela Towns as a basis for this allegation. I do not find, however, that their testimony supports this allegation. As discussed above, Whitfield testified that she had a conversation with Beals about how she could resign her membership in the Union. On further examination, she was asked if she ever had "another discussion" with Beals about the "petition." It is apparent from her entire testimony that Whitfield misunderstood this question and answered in the affirmative. As she began to explain the second conversation, however, she clarified that Beals was talking with her about the letter to revoke her dues authorization. When she was asked to identify the document that she signed that had been referenced by Beals, she specifically pointed out that it was the letter and not the petition. In fact, on still further examination, Whitfield confirmed that while she signed the petition she had not done so during her meeting with Beals. She testified that she had no recall as to when she had signed the petition or how the petition had been given to her.

Towns confirmed that both she and Whitfield had been present in the breakroom during a September discussion with Beals. Towns testified that after she and Whitfield signed the petition that was present in the breakroom, she asked Beals how to get out of the Union. Towns recalled that Beals did not initially have an answer for her. Towns recalled that it was during a later conversation that Beals gave her the letter authorizing the revocation of union dues deduction.

Accordingly, based on the testimony of both Towns and Whitfield, there is no evidence that Beals informed employees of the petition or instructed them to read or sign it. Beals ac-

¹⁰ Respondent submits that Mitchell should not be credited because he had previously received counseling from Hayes. Mitchell denied that the prior counseling constituted a warning. While Mitchell was terminated from Respondent's facility in December 2007, he did not report to Hayes at the time of his discharge. Based on his testimony as a whole, I do not find the circumstances of Mitchell's discharge or counseling sufficient to discredit his testimony concerning this brief conversation with Hayes. Even assuming that Mitchell harbored some animus toward Hayes for this unidentified nondisciplinary counseling, Mitchell did not appear to exaggerate or embellish his testimony.

knowledged that during August he observed the petition in the break room and saw that it contained employee signatures. The petition remained in the break room for approximately a week. As discussed above, there is no evidence that Beals attempted to remove the petition or take any action that would dispel the perception that management supported and authorized the petition. Thus, Beals' tacit permission to allow employees' free and undisturbed access to the petition throughout the workday aided in the support and endorsement of the petition and violates Section 8(a)(1) of the Act.

4. Baumann as Respondent's agent

Section 2(13) of the Act provides that:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

In determining whether an employer is responsible for the actions of a rank-and-file employee, the Board has historically applied the general rules of agency and particularly the rules of apparent authority. *Corrugated Partitions West*, 275 NLRB 894, 900 (1985).

The Board has long held that where an employer places a rank-and-file employee in a position where employees could reasonably believe that the employee spoke on behalf of management, the employer has vested the employee with apparent authority to act as the employer's agent, and the employee's conduct is attributable to the employer.

Paragraph 8 of the complaint alleges that acting as an agent of Respondent, Baumann unlawfully promised employees increased benefits if they removed the Union as their bargaining representative and solicited employees to sign the petition to remove the Union. Baumann not only admits that she solicited employees to sign the petition, but she also admits that in soliciting employees, she told them about better insurance benefits and wage increases that would be available to them as non-union employees. Respondent maintains that Baumann is not an agent of Respondent as she did not have actual or apparent authority. The General Counsel and the Charging Party assert that Baumann possess both apparent as well as actual authority with respect to her solicitation activities.

The overall record evidence indicates that Baumann told employees that she was working on a HR project and that signatures were needed to get rid of the Union. During her talks with employees she asked them what they knew about the Union and what they thought of the Union. Based on the information given to her by Potter, she told employees that Respondent's nonunion plant received a raise and that all ITG plants that didn't have a union would get a raise. She told employees that the ITG benefits would not be available to the employees at the Boykins plant as long as they had a union and she showed them the insurance comparisons that she had received from Potter. While she did not promise a date certain, she told employees that they would earn a "bit more money" if they didn't have a union. Clearly, as an agent of Respondent, Baumann

promised employees better insurance benefits and a wage increase if they rejected the Union as their bargaining representative. Such conduct by an agent of Respondent would also serve to taint the petition upon which Respondent has relied in withdrawing recognition from the Union.

Citing *Precipitator Services Group*, 349 NLRB 797, 801 (2007), and *California Gas Transport, Inc.*, 347 NLRB 1314, 1317 (2006), Respondent argues that the General Counsel may not rely on statements by the putative agent herself to establish agency. Respondent maintains that evidence of agency status must be derived from conduct or statements by the employer. Respondent argues that Baumann's solicitation of signatures and the statements that she made to employees while soliciting signatures are solely Baumann's; without instruction or ratification by Respondent. Respondent further argues that the General Counsel presented no testimony whatsoever concerning anything that managers told employees about Baumann's circulation of the petition or her collection of signatures, or that Respondent otherwise held out Baumann as representing or speaking for Respondent.

The question is whether, under all the circumstances, employees would reasonably believe that Baumann spoke for, and acted on behalf of, Respondent's management. *Futuramik Industries*, 279 NLRB 185 (1986); *Community Cash Stores*, 238 NLRB 265 (1978). Phrased differently, the inquiry is whether the employer has placed the employee in the position of a conduit where employees reasonably believe that he or she speaks for management. *Three Sisters Sportswear Co.*, 312 NLRB 853, 865 (1993). Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that its conduct is likely to create such a belief. *Pan-Oston Co.*, 336 NLRB 305, 306 (2001).

Although it is apparent that Baumann promised employees better benefits and wages if they removed the Union as their bargaining representative, Baumann never testified as to why she wanted to get rid of the Union. On the contrary, she asserted that she initially spoke with Potter to get information about the Union. She testified that unions in Germany were different than those in the United States and that she spoke with Potter to learn more about the American unions. While Baumann was listed as an employee in the bargaining unit, her pay was actually established by her contract as a foreign intern. Her compensation included a contractually determined monthly amount as well as free lodging, utilities, and the personal use of a company vehicle. Thus, her pay and benefits were substantially different from those of other bargaining unit employees. There is no record evidence that Baumann had any personal interest or motivation to remove the Union. Having no interest of her own, it is apparent that she acted in what she perceived to be the interest and direction of management. There is no dispute that she solicited employees to sign the petition during working hours and in the working area.¹¹ In order to speak

with them more easily, she pulled them away from their work area. She came in to work early and stayed late to see employees on second and third shifts. When she spoke with employees, she carried a list of the names of the bargaining unit employees as well as documents showing the comparison between the union insurance and the insurance available through ITG for nonunion employees. Carrying the list of employee names and the insurance comparisons, Baumann told employees that she was working on an HR project and promised them better benefits and wages if they got rid of the Union. Employee Willie Mitchell credibly testified that when Baumann spoke with him, she had a typed list of employee names on a clipboard. She told him that she had the paperwork because management had asked her to get employees to sign to get rid of the Union. While Respondent argues that it cannot be responsible for what Baumann told employees about her agency status, Respondent cannot dispute that Potter provided her with the documents and the information that she needed to make these promises. Potter admits that he gave her this information to use in soliciting employee signatures. I don't find it credible that Potter gave Baumann information and tools that would assist her in obtaining employee signatures without his wanting employees to believe her and to rely on what she told them. It is also unrealistic that Respondent would not have known that employees would believe that Baumann was speaking for management under these circumstances. Therefore, it is apparent that Respondent clothed her with apparent authority to act in its behalf and is responsible for her actions even if Respondent did not specifically tell employees that she spoke for management. *Tyson Foods*, 311 NLRB 552, 561 (1993).

In analyzing agency, the Board will also consider whether the statements or actions of an alleged employee agent are consistent with statements or actions of the employer. Such consistencies support a finding of apparent authority. *Pan-Oston*, above at 306; *Hausner Hard Chrome of KY, Inc.*, 326 NLRB 426, 428 (1998). Baumann's apparent authority is bolstered by Respondent's treatment of the petition in other parts of the facility. There is no dispute that the petition was allowed to remain in the supervisors' office for a number of days. During

during work hours. Respondent is correct that no witness testified that Baumann or any other employee solicited signatures on working time in the presence of a supervisor. While there is no evidence that management officials specifically witnessed and sanctioned the working hours solicitations, Baumann admitted that she did so. While this conduct may not demonstrate Respondent's unlawful assistance, it supports the finding that Baumann acted with apparent authority. Baumann credibly testified that Potter never told her that she could not solicit during working time. Carrying her clipboard with the list of employees and the petition, she began soliciting employees the very next day after meeting with Potter. Although there is no evidence that Potter or any other management official observed Baumann in her solicitation efforts, other employees most certainly were aware of what she was doing. There was no evidence that any of the other employees involved in the solicitation acted with such disregard for Respondent's rules prohibiting solicitation during working hours. The fact that Baumann openly did so only bolstered employees' perception that she was acting with management's authority and approval. Her conduct, coupled with her telling employees that she was working on an HR project, provided strong evidence of her agency status to her fellow employees.

¹¹ Complaint par. 8(c) alleges that acting through Potter, Respondent allowed the use of worktime to solicit signatures on the petition. Respondent argues that there is no evidence that Potter or any other managerial employee was specifically aware of any employee solicitations

this time, Supervisor Hayes was aware of the petition and yet neither he nor the other supervisors using the office did anything to remove the petition or disavow management's support of the petition. The record also reflects that the petition was allowed to be placed in the break room for approximately a week at the Murfreesboro facility without removal or disavowal by management. It is also significant that Baumann's statements were consistent with Plant Manager Hull's notice to employees. In the September 24, 2007 notice, Hull told employees that the vast majority of ITG employees are not represented by a union and that ITG provides competitive wages and benefits including vacations, holidays, overtime, insurance coverage, and retirement benefits. While Respondent argues that this notice was only in response to a union leaflet, the notice nevertheless, follows the theme of Baumann's solicitations.

Aside from the issue of whether Baumann acted with apparent authority, the record also reflects that Baumann acted with actual authority. She solicited employee signatures using the petition form provided by Potter. There is no evidence that Baumann asked for a copy of the petition. She testified that when she first spoke with Potter, she told him that she had signed the petition and she asked him to explain what she had signed. Potter responded by giving her a copy of the petition and telling her that approximately 200 signatures were needed to remove the Union. She then began soliciting employee signatures and submitting the signatures to Potter at the end of each day. Baumann worked overtime to allow more opportunity to speak with employees on the other shifts. Baumann testified that Potter never told her that she could not speak with employees during working time. Although Potter testified that he cautioned employees that they were to only solicit signatures before or after work and during nonworking time, I find Baumann to be more credible in this regard. Inasmuch as she followed through on using the employee list and the insurance information, it is reasonable that she would also have followed Potter's directive to solicit on nonworking time, had she been directed to do so. The fact that Potter gave Baumann no restrictions on when and how to contact employees further demonstrates that she acted with Potter's actual authority. After 2 to 3 days of soliciting signatures for the petition, Potter told her that he needed more signatures and he told her about the raise at Respondent's nonunion plant and gave her the insurance documents to use when talking with employees. While Baumann's comments to employees that she was working on a HR project may not serve as direct evidence of agency, it is certainly indicative of her understanding that she was acting on behalf of management. Although she asserted that she simply told employees that she was working on the HR project in order to have something to begin her solicitation, it is also apparent that she did so in order to garner credibility with employees and because she apparently likely believed that she was acting with actual authority from Potter.

The overall record evidence supports a finding that Baumann acted as an agent of Respondent in soliciting employees to sign the petition. It is well settled that an employer violates Section 8(a)(1) of the Act by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining repre-

sentative." *Mickey's Linen & Towel Supply*, 349 NLRB 790, 791 (2007); *Wire Products Mfg. Corp.*, 326 NLRB 625, 640 (1998), *enfd. sub nom. NLRB v. Blankenship & Associates, Inc.*, 210 F.3d 375 (7th Cir. 2000). Clearly, as an agent of Respondent, Baumann actively solicited, encouraged, and promoted the signing of the petition in violation of Section 8(a)(1) of the Act.

Additionally, Potter's comments to Baumann about better wage rates and more extensive insurance at Respondent's non-union facilities tended to encourage Baumann in the circulation of the petition and thus also violated Section 8(a)(1). *Fabric Warehouse*, 294 NLRB 189, 191 (1989), *enfd. 902 F.2d 28* (4th Cir. 1990). As an agent of Respondent, Baumann's subsequent promise of the raise and the improved benefits to employees was also violative of the Act.

C. Respondent's Unlawful Recognition Withdrawal

Respondent argues that as an employer, it not only had "the right—it had the duty—to withdraw recognition" from the Union because a majority of its employees exercised their Section 7 right not to be represented by the Union. As discussed more fully below, I find neither duty nor right to withdraw recognition and find that Respondent acted in violation of 8(a)(5) by its withdrawal of recognition from the Union.

In its 2001 decision in *Levitz Furniture Co.*, 333 NLRB 717, 724, the Board overruled *Celanese Corp.*, 95 NLRB 664 (1951), and its progeny insofar as those decisions permitted an employer to withdraw recognition from an incumbent union on the basis of a good-faith doubt of the union's continued majority status. As Respondent asserts, the employer under *Levitz*, has the burden of showing that, at the time it withdrew recognition, a majority of employees did not support the union. Thus, Respondent relies on *Levitz* to support its argument that an employer may lawfully withdraw recognition from a union when it is able to show a numerical loss of majority status. It should also be noted however, that the *Levitz* case was decided in the absence of any other alleged unfair labor practices. In *Levitz*, there was no allegation that the employer was involved in any way in the circulation, support, or initiation of the petition that was relied on by the employer.

1. Respondent's argument concerning the Union's loss of support

Respondent asserts that once it shows that a majority of its employees did not support the Union at the time of its withdrawal the burden shifts to the General Counsel to show that Respondent violated Section 8(a)(1) and that there was a "causal connection" between the Section 8(a)(1) and the loss of majority. Respondent maintains that other than the signing of the petition employees evidenced their nonsupport of the Union by their failure to pay union dues.

In its brief, Respondent submits a comprehensive graph demonstrating union membership in each of its departments. The Respondent argues that prior to the initiation of the petition only 24 percent of the bargaining unit employees were members of the Union and thus argues that the Union no longer had the majority support of the bargaining unit employees. Although it would appear that Respondent appears to equate a decline in union membership and dues deduction authorizations

as a justification for withdrawal of recognition, the Board has been reluctant to view a decline in membership as a singularly significant factor and the absence of a majority of employees on dues checkoff has not established an objective basis for an employer's doubt of a union's representational status. *Atlanta Hilton & Tower*, 278 NLRB 474, 480 (1986). Majority support, in fact, has been determined to refer to whether a majority of unit employees support union representation, and not to whether they are union members. *Manna Pro Partners*, 304 NLRB 782, 783 (1991), *enfd.* 986 F.2d 1346 (10th Cir. 1993); *Petoskey Geriatric Village*, 295 NLRB 800 *fn.* 9 (1989). The Board has long held that there is no necessary correlation between membership and the number of union supporters. *Orion Corp.*, 210 NLRB 633 (1974); *Terrell Machine Co.*, 173 NLRB 1480, 1481 (1969).

In *General Dynamics Corp.*, 169 NLRB 131, 138 (1968); a case that preceded the *Levitz* decision, the employer withdrew recognition from the union, arguing that it had a good-faith doubt in questioning the union's majority. Although the Board ultimately found that the employer had a reasonable basis for doubting that the union still represented a majority of its employees based on a number of factors, the Board specifically added:

We must, however, emphasize that, in reaching this conclusion, we do not rely to any significant extent on the fact standing alone that less than a majority of the employees supported the Union through the checkoff arrangements. For we are aware of the fact that individual employees may not authorize checkoffs for wholly personal reasons unrelated to their interests in supporting a union as their bargaining representative.

Thus, a union may enjoy majority support even if less than a majority of employees maintain union membership or authorize their employer to deduct union dues from their paychecks. *Furniture Rentors of America v. NLRB*, 36 F.3d 1240, 1244–1245 (3d Cir. 1994); *NLRB v. Koenig Iron Works, Inc.*, 681 F.2d 130, 138 (2d Cir. 1982).

Respondent also cites two recent court decisions in its argument that a decline in union membership is relevant in withdrawal of recognition cases. Respondent cites *Tri-State Health Service v. NLRB*, 374 F.3d 347, 354–355 (5th Cir. 2004), and *McDonald Partners, Inc. v. NLRB*, 331 F.3d 1002, 1005–1007 (D.C. Cir. 2003). In both cases, the courts admonished the Board and the respective administrative law judges for a failure to consider membership and dues-checkoff data as one of the factors in evaluating the employers' alleged good-faith doubt of the unions' majority status.

Interestingly, these same cases were analyzed by the Board in a recent case involving an allegation that the employer unlawfully polled its employees to determine their support for the incumbent union. In *Wisconsin Porcelain Co.*, 349 NLRB 151, 152 (2007), the employer argued that the judge erred by failing to give any weight to evidence that only a minority of the unit employees were union members and that dues checkoff had declined from 43 percent in the fall of 1997 to 28 percent at the time of the poll. The Board stated that in both *Tri-State Health Service* and in *McDonald Partners, Inc.*, the courts acknowledged that in light of *Allentown Mack Sales & Service v.*

NLRB, 522 U.S. 359 (1998),¹² union membership and dues check-off evidence can “in some circumstances,” be probative “to some degree” of good-faith uncertainty. The Board also noted that both courts emphasized that the weight to be given to such evidence is dependent on the circumstances of each case. Special attention was given to the fact that in *Tri-State* dues checkoff fell from 11 to 0 in a unit of 30–40 employees and in *McDonald* dues checkoff fell from nearly all the employees to 0 in a unit of 100 employees. The Board contrasted this level of acute decline to the circumstances in *Wisconsin Porcelain Co.*, where 28 percent of the bargaining unit still authorized dues checkoff. This percentage is only slightly higher than the 24 percent on which Respondent relies in the instant case.

In *Wisconsin Porcelain*, the Board not only considered the existence of the 28 percent of employees who continued to authorize dues deductions, the Board also found it significant that the number of union members and dues payers had been less than 50 percent for many years, and yet the parties had still enjoyed a long and stable collective-bargaining history. In the instant case, Respondent argues that in June 2005, the Union's membership represented only 45 percent of the bargaining unit employees and that by June 2006, the membership declined to 31 percent of the bargaining unit employees. There is, however, no evidence to indicate that the parties have had anything other than a stable collective-bargaining relationship during this period of decline and prior to the Respondent's September 2007 withdrawal of recognition.

Respondent not only argues that the petition demonstrates an actual loss of majority support but also asserts that the decline in membership solidifies the loss. I note, however, that despite the fact that union membership may have been declining over a period of years Respondent did not rely upon the decline as a basis for the withdrawal of recognition. In its letter to the Union of September 29, 2007, Respondent told the Union that it was withdrawing recognition because a majority of its employees had presented the petition. There was no reference to declining union membership or any other evidence of a loss of majority. Thus, while Respondent now asserts the loss of membership as further evidence to bolster its reliance on the petition, the Board has determined that it will only examine the factors that were actually relied on by the employer when determining the adequacy of an employer's defense to a withdrawal of recognition allegation. *RTP Co.*, 334 NLRB 466, 469 (2001), *enfd.* 315 F.3d 951 (8th Cir. 2003); *Holiday Inn of Dayton*, 212 NLRB 553, 556 *fn.* 1 (1974), *enfd.* 525 F.2d 476 (6th Cir. 1975).

2. Conclusions with respect to the recognition withdrawal

It is well settled that a withdrawal of recognition must occur in a context free of unfair labor practices. *Mathews Readymix*, 324 NLRB 1006, 1007 (1997); *Detroit Edison*, 310 NLRB 564, 565–566 (1993). Citing *Champion Home Builders Co.*, 350 NLRB 788, 791 (2007), Respondent asserts that the mere presence of unfair labor practices under Section 8(a)(1) does not, in and of itself, invalidate the employees' petition or Respondent's

¹² In *Allentown Mack*, the Court clarified that the Board must interpret “doubt” to mean uncertainty rather than disbelief. The burden is on the employer to prove good-faith reasonable uncertainty.

withdrawal of recognition. As the Board pointed out in its decision in *Lee Lumber & Material Bldg. Corp.*, 322 NLRB 177 (1996), not every unfair labor practice will taint evidence of a union's subsequent loss of majority support and there must be some "specific proof of a causal relationship between the unfair labor practice and the ensuing events indicating a loss of support."

Respondent argues that all of the complaint allegations involve isolated incidents and would only have affected a small percentage of the number of employees who signed the petition. Accordingly, Respondent asserts that there is an insufficient causal nexus between the alleged misconduct and employee disaffection as a whole to taint its withdrawal of recognition. Certainly there were a total of 212 employees who signed the petition and they did so under different circumstances and for varying reasons. While not all of the signatures on the petition may have been tainted by Respondent's unlawful assistance and support, the General Counsel need not prove that the employees were aware of Respondent's unfair labor practices. The Board has found that where an employer engages in unlawful conduct aimed specifically at causing employee disaffection with their union the employer's conduct will bar any reliance on an expression of disaffection by its employees, even if some of the employees may be unaware of the employer's misconduct. *Vanguard Fire & Supply Co.*, 345 NLRB 1016, 1045 (2005); *Hearst Corp.*, 281 NLRB 764, 765 (1986). Additionally, when an employer commits unfair labor practices in connection with an employee decertification effort, the Board does not require proof of how many employees were exposed to, or were aware of, the employer's illegal conduct. *House of Good Samaritan*, 319 NLRB 392, 396 (1995); *Manhattan Eye, Ear & Throat Hospital*, 280 NLRB 113, 115 fn. 7 (1986).

Additionally, this case does not involve simply random 8(a)(1) comments that occurred during the course of an otherwise independent circulation of a petition to remove the Union. The essence of the allegations involves Respondent's conduct which suggested sanction, support, and sponsorship of the petition. Although Vaughn may have initially contacted Potter about the decertification process, Respondent became an active participant in the petition process. In analyzing the processing of this petition, there is a valid question as to whether there would have been a petition and the 212 signatures without Respondent's unlawful involvement. See *Dayton Blueprint Co.*, 193 NLRB 1100, 1108 (1971).

In order to lawfully withdraw recognition from an incumbent union, an employer cannot rely on a tainted petition or the results of the employer's own efforts. *Shen-Lincoln-Mercury-Mitsubishi, Inc.*, 321 NLRB 586, 595 (1996); *Weisser Optical Co.*, 274 NLRB 961, 962 (1985). As discussed above, Respondent has clearly tainted the atmosphere for a free choice among its employees and, in doing so, has precluded its reliance upon the petition to justify its withdrawal of recognition. *Pirelli Cable*, 323 NLRB 1009, 1010 (1997); *Williams Enterprises*, 312 NLRB 937, 940 (1993), affd. 50 F.3d 1280 (4th Cir. 1995).

Inasmuch as Respondent relied solely on the petition as the basis for its decision to withdraw recognition from the Union and because the petition was tainted by the Respondent's unfair

labor practices, the Respondent has violated Section 8(a)(5) of the Act. *RTP Co.*, 334 NLRB 466, 469 (2001), enf. 315 F.3d 951 (8th Cir. 2003).

D. Respondent's Unilateral Changes

In November, Respondent held meetings with employees to announce changes in wages and benefits. During one of the meetings, Plant Manger Hull announced that there would be a new health care plan and that employees would receive pay raises. On November 1, Respondent implemented a wage increase and eliminated double overtime premium pay for work in excess of 48 hours in a week. On January 1, 2008, Respondent implemented a change in its health and welfare benefit plan, and changed its holiday schedule as well as its 401(k) plan.

Potter admitted that Respondent did not notify or bargain with the Union prior to making any of the changes in November 2007 and January 2008. The General Counsel also points out that the unilateral changes in wages and insurance benefits were the same type of wage and benefits promised by Baumann when she solicited employees to sign the petition. Inasmuch as Respondent unlawfully withdrew recognition from the Union, the Respondent has additionally violated Section 8(a)(5) of the Act by unilaterally implementing changes in wages and benefits for its employees. *Goya Foods of Florida*, 351 NLRB 94, 94 (2007); *Alexander Linn Hospital Assn.*, 288 NLRB 103, 105 (1988).

CONCLUSIONS OF LAW

1. Respondent, Narricot Industries, L.P., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local No. 2316 is a labor organization within the meaning of Section 2(5) of the Act.
3. By promising its employees increased benefits and wages if they removed the Union as their bargaining representative, Respondent violated Section 8(a)(1) of the Act.
4. By soliciting employees to sign a petition to remove the Union as their bargaining representative, Respondent violated Section 8(a)(1).
5. By soliciting employees to withdraw their membership in the Union and revoke dues checkoff, Respondent violated Section 8(a)(1).
6. By unlawfully providing assistance to employees in the circulation of a petition to remove the Union, Respondent violated Section 8(a)(1).
7. Respondent has violated Section 8(a)(5) and (1) of the Act since September 29, 2007, by failing and refusing to bargain with the Union as the exclusive bargaining representative of its employees in the following appropriate unit:

All production, maintenance, and plant clerical employees employed at Respondent's Boykins, Virginia, facility to include its operation at Murfreesboro, North Carolina; excluding all office clerical employees, professional and technical employees, guards, truck drivers, and supervisors as defined in the Act.

8. Respondent has violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union.

9. Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally changing wages, the 401(k) plan, health and welfare plans, holidays, and other conditions of employment of its bargaining unit employees.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act.

A determination has been made that Respondent has unlawfully refused to bargain with the Union as the collective-bargaining representative of its employees and that Respondent has unlawfully withdrawn recognition of the Union as the exclusive collective-bargaining representative of its employees. I shall therefore recommend that Respondent be ordered to cease and desist therefrom and, further, that it be ordered to recognize and bargain collectively on request with the Union as the exclusive representative of Respondent's employees with respect to their wages, hours, and other terms and conditions of employment. I further recommend that Respondent, on the request of the Union, rescind any or all unilateral changes to unit employees' wages, holidays, overtime premiums, health and welfare benefit plans, 401(k) retirement plans, and other terms and conditions of employment, and to maintain the unit employees' terms and conditions of employment unless and until the parties bargain in good faith to an agreement or lawful impasse concerning any proposed changes. Additionally, I recommend that Respondent make whole employees for any losses that they have suffered as a result of Respondent's unlawful withdrawal of recognition and the unlawful unilateral changes in wages and benefits. Counsel for the General Counsel argues that the current practice of awarding only simple interest on backpay and other monetary awards be replaced with the practice of compounding interest. The General Counsel also asserts that the Board should compound the interest owed on a quarterly basis, citing the practice of the Internal Revenue Service in assessing daily compounded interest with regard to the overpayment or underpayment of Federal income taxes. While I am mindful that the Board at one time referenced its consideration of modifying its interest calculation procedures, there is no existing Board authority to deviate from the past practice of ordering the award of simple interest. *Rogers Corp.*, 344 NLRB 504, 504 (2005). Accordingly, I do not recommend the award of compound interest as requested by the General Counsel.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Narricot Industries, L.P., Boykins, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising its employees increased benefits and wages if they remove the Union as their bargaining representative.

(b) Soliciting its employees to sign a petition to remove the Union as their bargaining representative.

(c) Soliciting employees to withdraw their membership in the Union and revoke dues checkoff.

(d) Providing assistance to employees in the circulation of a petition to remove the Union as their bargaining representative.

(e) Failing and refusing to bargain with the Union as the exclusive bargaining representative of its employees.

(f) Withdrawing recognition from the Union as the exclusive bargaining representative of its employees in the following unit:

All production, maintenance, and plant clerical employees employed at Respondent's Boykins, Virginia, facility to include its operation at Murfreesboro, North Carolina; excluding all office clerical employees, professional and technical employees, guards, truck drivers, and supervisors as defined in the Act.

(g) Unilaterally changing wages, the 401(k) plan, health and welfare plans, holidays, and other conditions of employment of its bargaining unit employees.

(h) 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 necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain in good faith with the United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local No. 2316 with respect to the wages, hours, and other terms and conditions of employment for its bargaining unit employees and, if an understanding is reached, reduce the agreement to writing and sign it.

(b) On the request of the Union, rescind any or all unilateral changes to unit employees' wages, holiday, overtime premiums, health and welfare benefit plans, 401(k) retirement plans, and other terms and conditions of employment, and maintain the unit employees' terms and conditions of employment unless and until the parties bargain in good faith to an agreement or lawful impasse concerning any proposed changes thereto.

(c) Within 14 days after service by the Region, post at its Boykins, Virginia and Murfreesboro, North Carolina facilities copies of the attached notice marked as "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 11, 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 con-

¹⁴ 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."

spicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a

copy of the notice to all current employees and former employees employed by the Respondent at any time since August 2007.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.