

**The Nestle Company, Inc. and United Food and Chocolate Workers Local 1974, affiliated with Retail, Wholesale Department Store Union, AFL-CIO-CLC. Case 3-CA-10943**

29 February 1984

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 21 October 1983 Administrative Law Judge Julius Cohn issued the attached decision. The General Counsel filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

### ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

<sup>1</sup> In excepting to the judge's finding that the Respondent's layoffs and transfers in the repair and maintenance department were motivated by lawful business considerations, the General Counsel cites evidence that: (1) all of the recommendations made by Plant Engineer Hovland on 27 June 1981 for staff reductions in the repair and maintenance department had been implemented by 1 January 1982, 3 months before the disputed layoffs and transfers; and (2) the division I workers who were transferred in March 1982 to the central shop were routinely sent back to division I to do the same work they had been doing before their transfer. In adopting the judge's finding, we have relied on record evidence, in addition to that cited by the judge, which responds directly to these two points. First, the record indicates that the Respondent's industrial engineer, Donald Shipman, strongly urged continued reductions in the repair and maintenance department, even after 1 January 1982, submitting two memo's in this regard on 5 January and 17 February 1982. Second, the Union's own committeeman, Francis Potts, testified that the workers were returned to division I initially because of a shutdown in that division (when maintenance work normally increases dramatically) and later because a large number of employees in division I went on vacation.

### DECISION

#### STATEMENT OF THE CASE

**JULIUS COHN, Administrative Law Judge:** This case was heard in Fulton, New York, on March 21, 22, and 23, 1983. Upon charges filed by the United Food and Chocolate Workers Local 1974, affiliated with the Retail, Wholesale Department Store Union, AFL-CIO-CLC, herein called the Union, the Regional Director for Region 3, on April 30, 1982, issued a complaint pursuant to Section 10(b) of the National Labor Relations Act, as amended, herein the Act. The complaint alleges that The Nestle Company, Inc., herein called the Respondent or Nestle, engaged in nine enumerated acts in violation of

Section 8(a)(3) and (1) of the Act. The complaint also alleges two independent 8(a)(1) violations. The Respondent filed an answer denying the commission of any unfair labor practices.

All parties were given an opportunity to participate, to produce relevant evidence, to examine and cross-examine witnesses, to file briefs, and to argue orally. Briefs submitted by the General Counsel and the Respondent have been carefully considered.

#### Issues

The following issues are in dispute:

1. Whether the Respondent, through its plant manager, Charles Cieszeski, threatened to retaliate against maintenance employees because of their grievance activity in violation of Section 8(a)(1) of the Act.

2. Whether the Respondent through Supervisors Dennis Hovland and George DeSacia threatened maintenance employees with reprisals for filing grievances in violation of Section 8(a)(1) of the Act.

3. Whether the Respondent violated Section 8(a)(3) and (1) of the Act by taking the following actions as punitive responses to grievance activity in the repair and maintenance department:

(a) Laying off three employees, reassigning six employees from one maintenance division to another, reassigning two employees from the day shift to shift work, and transferring two employees from repair and maintenance to the production department.

(b) Monitoring employees as to the length of their breaks and disciplining four employees for taking extended breaks.

(c) Prohibiting employees on two employee committees from holding meetings on company time.

On the entire record<sup>1</sup> of the case and from my observation of the witnesses and their demeanor, I make the following

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent, incorporated under Delaware law, maintains its principal office and place of business in White Plains, New York, and operates various plants and facilities, including a plant in Fulton, New York, herein called the Fulton facility. At all times material herein, the Respondent, at its Fulton facility has been engaged in the manufacture of chocolate and cocoa related products. Only the Fulton facility is involved in the proceeding herein.

During the past 12 months, the Respondent, at its Fulton facility, in the course and conduct of its business operations received goods and materials, valued in excess of \$50,000 directly from points outside the State of New York. The complaint alleges, the Respondent admits, and I find that Nestle is an employer engaged in commerce

<sup>1</sup> After the close of the hearing, the General Counsel moved to correct the record with respect to certain typographical and minor errors of transcription. There being no opposition, the motion is granted.

within the meaning of Section 2(2), (6), and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

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

## III. BACKGROUND

Since 1941, and at all times material herein, the Union and its predecessor have represented the production and maintenance workers at the Respondent's Fulton facility. Until 1974, when the Union affiliated with the Retail, Wholesale Department Store Union, it bargained as an independent local. At the time that these proceedings took place, the bargaining unit covered approximately 850 workers, including about 150 maintenance employees and 700 production workers.

All of the Fulton facility's maintenance functions are performed in the repair and maintenance department, which is divided into four divisions. Production work is done in a separate department. Each of the repair and maintenance division does ordinary maintenance and overhaul work for a corresponding production division, except for the central shop which does heavy or special projects. Division I shop services the heavy mass chocolate (bulk chocolate), division II shop handles beverages such as Quick and Strawberry, and division III shop handles bar goods production.

Between January and March 1982 production had declined and rumors that layoffs were imminent in the repair and maintenance department circulated about the plant. By March approximately 300 production workers had already been laid off. Bruce Doud, the chief steward in the repair and maintenance, testified that rumors about layoffs in that department had propelled him to seek assurances from Dennis Hovland, the chief engineer, that no such reductions were imminent. Repair and maintenance employee Earl Pettit and Local Union President John MacLean also testified to hearing rumors about repair and maintenance layoffs, as early as February 1982.

During the first 3 months of 1982 the Union began to file an unusually large number of grievances, most of which were generated in the repair and maintenance department.<sup>2</sup> The big bone of contention between the parties was the Union's persistent claim that production workers and supervisors were performing repair and maintenance work in violation of the collective-bargaining agreement.

The General Counsel claims that Nestle responded to what it perceived to be excessive and petty grievance activity by repair and maintenance workers, particularly in division I, with retaliatory actions, herein alleged as unfair labor practices. The Respondent contends that every one of its decisions in March and April 1982 were based on economic and managerial analyses motivated exclusively by lawful considerations.

<sup>2</sup> Plant Manager Cieszeski testified without contradiction that the repair and maintenance department normally generated more grievances than the production department.

The General Counsel also asserts that the Respondent unlawfully coerced and restrained employees by threatening them with layoffs because of their grievance activity. The Respondent similarly denies this charge.

## IV. THE UNFAIR LABOR PRACTICES ALLEGED

### A. *The Independent 8(a)(1) Violations*

#### 1. The March 15 meeting

The complaint alleges that on March 15, 1982, during the course of a regularly scheduled third-step grievance meeting, Plant Manager Charles Cieszeski threatened to retaliate against repair and maintenance workers because of their grievance activity. At the meeting the Respondent was represented by Cieszeski and Personnel Manager Hugh MacKenzie, while International Representative Myron Johnson, Local Union President John MacLean, Chief Steward Bruce Doud, and Union Committeeman Francis Potts were present for the Union.

Initially, the parties disposed of several items on the agenda, which was prepared in advance by the Union in consultation with company officials. The first item was expeditiously resolved when the Respondent admitted to making an improper shift assignment and agreed to pay the grievant for 2 hours of overtime.

The discussion became heated when it focused on the problem of supervisors performing repair and maintenance work<sup>3</sup> and at this point there is some dispute as to what followed. According to the union officials Cieszeski became uncharacteristically angry. He described the grievances as "petty" and "nit-picking" and complained that he was tired of watching repair and maintenance workers standing around and doing nothing. Cieszeski remarked that everyone would be better off if employees paid attention to their jobs instead of filing grievances and noted that the repair and maintenance department was already overstaffed and that he was going to have to take a "good, hard look at it."

Cieszeski admitted the statements attributed to him. He and Mackenzie both asserted, however, that his comments as to overstaffing in the repair and maintenance department were in response to complaints by MacLean about reductions through attrition. None of the union officials who testified could recall any remarks made by a union representative at the March 15 meeting which would have prompted Cieszeski to bring up overstaffing. Joe Procopio's minutes of the meeting,<sup>4</sup> however, indicate that Cieszeski did not mention overstaffing until Myron Johnson warned that as long as there were massive layoffs in effect at Nestle, the Union would zealously

<sup>3</sup> Three of these grievances were highlighted in the record. One was a complaint about a supervisor helping a maintenance worker dump a barrel of trash. Another involved a supervisor adjusting a door knob, and a third involved a supervisor moving a chair. All three grievances were later dropped by the Union.

<sup>4</sup> Procopio took minutes of the March 15 meeting in the normal course of his duties as the Union's recording secretary. Although the notes were taken in longhand and were not verbatim, Procopio testified that they were as inclusive and accurate as he could make them. The minutes were received into evidence without objection.

ly oppose any performance of bargaining unit work by supervisors.

Although statements alleged as unlawful threats must be evaluated in context<sup>5</sup> the differences among the various versions of the March 15 discussion are not significant. Whether or not Cieszeski's ambiguous allusion to possible layoffs in the repair and maintenance department was provoked by the Union, it was not unlawful.

At the outset it is important to note that all of Cieszeski's remarks took place in the uncoercive atmosphere, which in this case was underscored by the parties' 40-year-old collective-bargaining relationship, of a grievance meeting at which management and union officials met as equals. While Cieszeski may have become agitated or even angry at points, this does not necessarily indicate that his manner was confrontational or threatening.<sup>6</sup> On the contrary, the record reflects that the atmosphere at the March 15 meeting was cooperative, and that the parties were willing to compromise on a number of issues and were able to effectively resolve certain grievances.

Any inference that Cieszeski was threatening layoffs because of the grievances filed in the repair and maintenance department was clearly unreasonable.<sup>7</sup> The plant manager specifically cited overstaffing as the reason for the possible layoffs in the repair and maintenance department. His prediction that layoffs might result from business considerations was, moreover, supported by economic conditions at the plant, including the layoff status of approximately 300 production workers, of which the union officials were fully aware. Nor is it unreasonable to expect that the layoff of a substantial number of production employees would be followed by a reduction in repair and maintenance. In this context it is clear that at the March 15 meeting Cieszeski's comments merely gave voice to the unsurprising possibility that the Fulton facility might be subject to more layoffs in the near future. Since Cieszeski's comments on March 15 could not have reasonably been understood as threats to retaliate against repair and maintenance workers for their union activity, in light of all the circumstances, the 8(a)(1) allegation should be dismissed.

## 2. Doud's encounters with Hovland and DeSacia

The complaint alleges that Supervisors Dennis Hovland and George DeSacia threatened reprisals against repair and maintenance workers for their grievance activity. Bruce Doud, the chief steward in the repair and maintenance department, testified that he approached George DeSacia, during the week of March 22, for the purpose of scheduling a grievance meeting. DeSacia declined to set a time for a meeting and added that he per-

sonally felt that the Union should hold off on the grievances until "things cool[ed] down a bit."

Having failed to obtain a satisfactory response from DeSacia, Doud approached Hovland, DeSacia's supervisor, with the same request. Hovland, according to Doud, also refused to schedule a meeting commenting that "what with layoffs and all [Hovland] was hoping [the Union] would let things cool down." Neither Hovland's nor DeSacia's refusal to schedule a grievance meeting was alleged as an unfair labor practice and a meeting was in fact held at the end of April. Hovland also allegedly indicated that he was trying to do anything he could to prevent further layoffs and suggested that it was useless to file grievances because everyone knew what Cieszeski was going to do with them. Both Hovland and DeSacia flatly denied making threats and refusing to schedule meetings.

In agreement with the Respondent I find that even if Doud's testimony is accepted as true it does not establish that either Hovland or DeSacia committed unfair labor practices. The supervisors' statements, assuming arguing the accuracy of Doud's testimony, were vague and on their face unthreatening. Such isolated and ambiguous comments in otherwise uncoercive circumstances, and in the context of a longstanding, stable collective-bargaining relationship do not violate Section 8(a)(1) of the Act.<sup>8</sup>

## B. The 8(a)(3) and (1) Violations

### 1. The layoffs, transfers, and reassignments

In March 1982 the Respondent reduced the number of employees in the repair and maintenance department, particularly in division I, through layoffs, transfers, and reassignments. The reductions were announced on March 17, 1982. John MacLean, Bruce Doud, and repair and maintenance committeeman Francis Potts were summoned to the personnel conference room by Hugh MacKenzie who outlined the coming changes.<sup>9</sup>

Several days after the March 17 meeting the reductions announced by MacKenzie were implemented. Specifically, general shop employees William Clark, Tom Cook, and Charles Towe<sup>10</sup> were laid off.<sup>11</sup> Fred Hickey, Al Switzer, Gary Hallett, Earl Pettit, Walter Blauvelt, and William Penta were reassigned from division I to the central division. James Guynn and Edward Baron were transferred from repair and maintenance to the production department and Francis Potts and Robert

<sup>8</sup> *Square D Co.*, 204 NLRB 154 (1973); *Hayes-Albion Corp.*, 190 NLRB 146 (1971). The General Counsel correctly notes that the fact that Doud was not actually dissuaded from filing grievances is not controlling. I have found, however, that Hovland's and DeSacia's comments did not reasonably tend to restrain or coerce the steward in his union activity. See *Hanes Hosiery*, 219 NLRB 338 (1975).

<sup>9</sup> MacKenzie explained on the stand that although he had received his orders to reduce the repair and maintenance department by March 8, he did not announce the plan at the March 15 grievance meeting because he had not, at that point, ascertained which employees were going to be affected.

<sup>10</sup> The parties stipulated that Towe's layoff had no practical effect as he was on disability and not working at the time.

<sup>11</sup> All three were recalled in May 1982.

<sup>5</sup> *Marine World U.S.A.*, 251 NLRB 1211 (1980).

<sup>6</sup> See *Hawaiian Hauling Service, Ltd.*, 219 NLRB 765 (1975), enf. 545 F.2d 674 (9th Cir. 1976), where the Board acknowledged that frank and even discourteous behavior is to be expected when parties engage in collective bargaining and grievance handling.

<sup>7</sup> All four union officials who had been present at the March 15 meeting testified that they had in fact inferred from Cieszeski's remarks that any repair and maintenance layoffs would be retaliatory in nature. Such inferences however, even if drawn in good faith, are not controlling if they are unreasonable. Cf. *Arrow Industries*, 245 NLRB 1376 (1979).

Weldin were reassigned from the day shift to shift work in division I.

The General Counsel contends that the reductions in the repair and maintenance department were a retaliatory response to the escalating number of grievances emerging from that department.<sup>12</sup> In support of this proposition the General Counsel points to Cieszeski's remarks at the March 15 grievance meeting, DeSacia's and Hovland's respective comments to Bruce Doud and their alleged refusals to schedule a grievance meeting, and the contemporaneous timing of the reductions and the accelerated grievance activities in the repair and maintenance department.<sup>13</sup>

While these facts in combination produce a weak case that the repair and maintenance reductions were unlawfully motivated, the Respondent has successfully demonstrated its actions were, in fact, governed by lawful, business considerations.<sup>14</sup> Specifically, the Respondent showed that while layoffs in the Fulton facility, which occurred each year at regular intervals, had historically been confined to the production department, the repair and maintenance work force had been decreasing steadily through attrition since 1978. Furthermore, in June 1981 pursuant to a direct request by the newly appointed president of Nestle, the Respondent embarked on a campaign to reduce the Fulton facility's overhead.

James Willard, the Respondent's general manager of the chocolate division, a corporate level position, promised Nestle's president in June 1981 that he would deliver a cost-cutting program by the coming September. Willard also made some preliminary recommendations as to potential staff reductions in a number of areas including personnel and quality control.

Concern at the corporate level about high overhead at the Fulton facility was communicated to Plant Manager Cieszeski through a memo from Willard dated June 16, 1981. Cieszeski promptly responded, promising that his staff would develop a list of cost-cutting measures. Toward this end Plant Engineer Dennis Hovland on June 27, 1981, submitted to Cieszeski an internal memo suggesting staff reducing and the consolidation of operations in the repair and maintenance department.

Nestle, also in June 1981, detailed its manager of industrial engineering, Donald Shipman, to study the

Fulton facility's overhead problem. Shipman defined overhead as those costs *not* directly incurred in turning out a specific unit of production. Accordingly the wages of production workers are not included in the calculation of overhead, while those of repair and maintenance and quality control workers are. To summarize his highly detailed testimony and a plethora of accompanying exhibits, Shipman found that productivity at the Fulton facility was declining at the plantwide level generally, and in the repair and maintenance department specifically. This decline in productivity resulted in "penalty costs" which represent the increase in the costs of production from one year to the next. Penalty costs cut directly into a company's profits. Noting also that between 1977 and 1981 production had significantly declined without an equivalent decrease in overhead staffing, Shipman concluded that overhead had become an increasing burden. In addition he testified that the ratio of production workers to repair and maintenance workers had declined between 1977 and 1981 from 5.75:1 to 3.9:1, a trend which, in his expert opinion, he characterized as unhealthy.

Shipman recommended reduction in the quality control department and in the repair and maintenance department, especially in division I which Shipman found was least in need of high staffing levels. The quality control reductions were implemented on December 18, 1981. In all, that department lost five employees between November 1981 and May 1982. Four workers were laid off on December 18, 1981, and one was promoted. By August 1982 three of the four employees who had been laid off were recalled pursuant to an increase in production. Cieszeski made the decision on March 8, 1982, to implement Shipman's recommendations and actually implemented the repair and maintenance department reductions on March 22, 1982.

The record is replete with evidence that the Respondent's motives in reducing the repair and maintenance staff were based on business considerations. Accordingly, I find that the reductions did not violate Section 8(a)(3) and (1) of the Act. The Respondent's concern at the highest levels of corporate management, about the high overhead at the Fulton facility, was evident in the internal memos which circulated among corporate executives and plant-level officials, and in the very fact that Nestle devoted considerable resources to Donald Shipman's comprehensive study of the problem. The Respondent's economic defense is further buttressed by the undisputed fact that in implementing the repair and maintenance reductions, it adhered to the letter of the collective-bargaining agreement.<sup>15</sup> All changes were made in strict compliance with the seniority roster and no employees were singled out for their grievance or other union activity.<sup>16</sup> Furthermore, the reductions implemented in the

<sup>12</sup> The General Counsel also suggests in his brief that division I was particularly targeted for punitive measures and that the layoffs in the central shop were effected merely to lend an appearance of legitimacy to the division I reductions. There is little evidence in the record however that division I employees were more aggressive about bringing grievances than other repair and maintenance workers or that the Respondent had singled out this group as an object of hostility.

<sup>13</sup> The General Counsel also cites, as evidence of the Respondent's animus, a meeting called by Dennis Hovland in late February or the first week of March. Having just returned from a company conference in Florida, Hovland gathered the repair and maintenance workers to report that his budget was secure and that he did not anticipate layoffs in their department. At least a week later Hovland was ordered by Cieszeski to reduce the repair and maintenance staff. While Hovland's improvident assurances may demonstrate that he was uninformed and excessively optimistic, it does not demonstrate any animus toward the repair and maintenance workers. No evidence was adduced that Hovland knew about the imminent reductions at the time of the meeting or that he was deliberately lulling his subordinates into a false sense of security.

<sup>14</sup> See *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981).

<sup>15</sup> At the March 17 meeting at which MacKenzie announced the repair and maintenance reductions, he announced the layoff of employee John Watchus. After being informed by MacLean that Watchus was not next in line on the seniority roster and that his layoff would violate the collective-bargaining agreement, MacKenzie reversed the decision.

<sup>16</sup> Although it was not alleged as a violation the General Counsel contends, as evidence of the Respondent's unlawful motivation, that Francis Potts was transferred for the purpose of encumbering the grievance procedure.

quality control department, which was not marked by unusual or excessive grievances, but does contribute to overhead, lend additional credibility to the economic defense.

The General Counsel attacked the reasons given by the Respondent with evidence that the repair and maintenance reductions were not economically justified. He noted in his brief that the layoffs coincided with that time of year when production historically escalates. Additionally, Francis Potts testified that division I employees worked overtime prior to the reductions and that their overtime hours increased immediately thereafter. Potts and John MacLean both noted that the division I workers who were transferred to the central shop were routinely returned to work in division I on a per diem basis.

This critique of the repair and maintenance reductions does not demonstrate that the Respondent's asserted economic rationale is a mere cover for a punitive policy. The Respondent was clearly attempting to tighten its belt and do with less personnel in areas that contribute to overhead. Not surprisingly the implementation of this policy was a painful and perhaps at times an inefficient process. There is nothing sinister however in the Respondent's flexible approach of shifting work and personnel among the various repair and maintenance divisions in order to develop the best cost-cutting program.

## 2. The Respondent's policy on taking breaks

Under the collective-bargaining agreement the maintenance workers at the Fulton facility are entitled to two 10-minute breaks in addition to their lunch period, during the course of an 8-hour day. The complaint alleges that the Respondent discriminatorily monitored employees as to the length of their breaks and enforced the 10-minute limitation in violation of Section 8(a)(3) and (1) of the Act. On April 5, 1982, George Bough received a write-up, which is apparently a written reprimand in this case combined with a warning that future infractions may result in disciplinary action, for taking an 18-minute break. Bough did not dispute that he took a break in excess of 10 minutes.

One day later, on April 6, 1982, Richard Roach, a division I craftsman, according to the Respondent's undisputed records, left the shop floor for his 9 a.m. break at 8:57 a.m. Accompanied by two coworkers David Ascenzi and Pat Battista, Roach proceeded to the cafeteria where he remained until he returned to the shop floor at 9:10 a.m. Upon his return Roach was met by his immediate supervisor, David Place, who informed him that he was going to be written up for taking a break in excess of 10 minutes. After Roach asked who had reported him,

Place responded that two central shop supervisory had observed Roach in the cafeteria, timed him, and reported his excessive break. Ascenzi and Battista were also written up for the same incident.

Although the General Counsel correctly points out that monitoring and disciplining employees because of their protected activity violates the Act,<sup>17</sup> the record in this case does not support the accusation. The record does indicate that the 10-minute limit on breaks was only sporadically enforced. George Bough, Richard Roach, and John MacLean all testified without contradiction that employees routinely stretched their breaks to 15 or 20 minutes without being disciplined. On the other hand, there is considerable evidence that enforcement of the 10-minute limit was not unprecedented. John McLean admitted on cross-examination that in 1981 Nestle announced that the break periods would be strictly limited. After the Respondent communicated its new policy it issued a number of warnings, which were not limited to division I employees, for excessive breaks. MacLean also acknowledged on the stand that supervisors from time to time "spoke" to employees about their excessive breaks, although, as far as MacLean knew, none of these "talks" ever resulted in disciplinary action. Moreover, Richard Roach testified on cross-examination that he had been "talked to" about the length of his breaks prior to April 1982.<sup>18</sup>

The record is barren of any evidence connecting Nestle's break policy and the writeups issued to Roach and his colleagues, with the grievance activity in the repair and maintenance department generally, and division I in particular. There is no evidence that any employees or departments suffered disparate treatment.<sup>19</sup> MacLean, Bough, and Roach all acknowledge that Nestle's official policy was to enforce the 10-minute limitation and that the employees were generally aware of this.

Nor is there any evidence to support the allegations that the Respondent unlawfully monitored employees as to the length of their breaks. The sole basis for this allegation seems to be Roach's testimony that he was observed by two supervisors, to whom Roach was not directly responsible, that they timed his break and reported his infraction of company rules. The contention that the Respondent violated the Act through two supervisors who happened to witness a rule infraction and report it is plainly frivolous the General Counsel adduced no evidence that the supervisors were in the cafeteria with an intent to monitor the employees' activities or that they reported the excess break with an unlawful motive. There being no evidence linking either the enforcement of the break policy or the "monitoring" of employees to

ess. Without contradiction Chief Steward Doud testified that after Potts' reassignment to shift work, he had to assume Potts' duties as union committeeman for the day shift. Because Doud worked in the central shop and Potts worked in division I, whenever Doud needed to perform Potts' union functions, he had to follow the established procedure of having the supervisors in charge of each department prearrange the interdepartmental union visit. While it is clear that Potts' reassignment had the incidental effect of putting a burden on the grievance procedure, the record indicates that Potts was not subject to discriminatory treatment but was reassigned in accordance with his place on the seniority roster.

<sup>17</sup> *Jaybil Steel Products*, 258 NLRB 1180 (1981) (monitoring); *PPG Industrial*, 251 NLRB 1146 (1980) (discipline).

<sup>18</sup> When asked on cross-examination whether he had been talked to about the length of his breaks in November 1978, Roach admitted that it was possible. Accordingly, I find that Roach was warned about his breaks prior to the surge of grievance activity in division I.

<sup>19</sup> Cf. *R. G. Barry Corp.*, 260 NLRB 120, 125-126 (1982). The law is clear that employees who are engaged in union activity may be disciplined for rule infractions so long as the protected conduct is not the reason for disciplinary action. *Life Savers, Inc.*, 264 NLRB 1257 (1982).

their union activities, I find that these allegations should be dismissed.

3. The Respondent's refusal to allow the credit committee and the recreation association board to meet on the company time

Nestle's employees operate a Federal Credit Union which is an independent entity connected organizationally to neither the Union nor the Respondent. There are seven members on the board of directors, only one of whom, Joe Procopio, is a union official. Loan applications are reviewed by a credit committee composed of John MacLean, Shirley Hogan, and Ed Beckwith.<sup>20</sup> George Bough and Hugh MacKenzie served as alternates.

Employees at the Fulton facility also run a recreation association which arranges social functions including dances, clambakes, and picnics. Shirley Hogan served as president of the recreation association board. John MacLean, Richard Roach, and David Ascenzi were also board members. The complaint alleges that the Respondent, in response to the grievances generated in the repair and maintenance department, reversed its policy of allowing both the credit committee and the recreation association board to meet on company time in violation of Section 8(a)(3) and (1) of the Act. I find this allegation to be without merit.

It is undisputed that prior to March 1982 the Respondent pursued a policy of releasing members of the recreation association board and the credit committee, whose working hours coincided with meetings, from their work stations. Employees whose shifts did not conflict with meetings attended on their own time without compensation by Nestle. On or about March 18, the Respondent announced that both committees would have to stop meeting on company time, citing personnel shortages as the reason for the decision.

In support of the business reasons given for the Respondent's change of policy MacKenzie testified that maintenance supervisors had complained that MacLean's absence from the shop floor during credit committee meetings imposed an undue burden on the department. Similarly, maintenance supervisors complained that they could not spare the division I craftsmen AA, who were on the recreation association board.<sup>21</sup>

<sup>20</sup> According to Joe Procopio, Shirley Hogan was an inspectress in the wrapping department and a salaried employee. It was unclear from the record what Ed Beckwith's job was. In any case there is no evidence in the record that either Hogan or Beckwith was employed in one of the departments allegedly targeted for discriminatory treatment.

<sup>21</sup> The General Counsel contends that the Respondent's discontinuance of the policy of releasing employees for committee meetings was per se unlawful having been occasioned by unlawful layoffs in division I. Having found that the division I layoffs were not unlawful (see part

There is little evidence linking the Respondent's decision to restrict meetings to nonworking times with the grievance activity in the repair and maintenance department. The General Counsel failed to demonstrate that the credit committee and recreation association board because of their membership or activities were treated differently from other employee groups at the Fulton facility. While MacLean testified that to his knowledge various employee groups continued to hold meetings on company time after March 18, 1982, there was no evidence that MacLean had any knowledge as to what the policy vis-a-vis other groups actually was. Neither committee functions solely for the benefit of repair and maintenance workers, nor is either group composed entirely of repair and maintenance employees. Both groups operate independently and are unconnected to the Union in any formal way. Even assuming that the Respondent sought to retaliate against repair and maintenance workers, it strains credulity to suggest that it would have selected such an indirect and farfetched method.

By contrast, the business reasons asserted by the Respondent are entirely credible and consistent with its March 1982 drive to reduce waste and cut costs. The Respondent's apparent economic motivation is underscored by the fact that as soon as employee attendance at meetings was no longer burdensome because of increased production and staffing levels, the Respondent resumed its policy of allowing employees to meet on company time. In view of the Respondent's showing that business considerations motivated its policy, I find that the 8(a)(3) and (1) allegation should be dismissed.

#### CONCLUSIONS OF LAW

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

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

3. The General Counsel has not established by a preponderance of the evidence that the Respondent has violated the Act as alleged.

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

#### ORDER<sup>22</sup>

The complaint is hereby dismissed in its entirety.

IV(B)(1), supra, I conclude that the personnel decisions which the layoffs may have precipitated are not unlawful per se.

<sup>22</sup> 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.