

**GM Assembly Division General Motors Corporation
and Louis Segal and Lynn Rollerson, Cases 32-
CA-139 (formerly 20-CA-12344) and 32-CA-
1112**

September 28, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On June 15, 1979, Administrative Law Judge James R. Rasbury issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and Respondent filed an answering brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,¹ findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaints in Cases 32-CA-139 and 32-CA-1112 be, and they hereby are, dismissed in their entirety.

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

² In dismissing the complaint allegations that Foreman Clem Holquin unlawfully hid the grievance book of alternate committeeman Louis Segal and threatened an employee with job loss, we do not necessarily agree with nor do we pass upon the Administrative Law Judge's finding that the litigation of these alleged violations is precluded because of a settlement agreement and litigation in Cases 32-CA-608 and 402, *et al.*, involving similar conduct by Holquin. Case 32-CA-139 was on appeal to the General Counsel from the Regional Director's refusal to issue, complaint therein at the time the settlement agreement was reached in Cases 32-CA-608 and 406, *et al.*, and the parties could not have contemplated settlement of allegations which the Regional Director had found without merit. However, the clear language of the notice posted pursuant to the settlement covers the instant allegations involving Holquin, and hence any finding or remedy as to Holquin's alleged 8(a)(1) violations would merely be cumulative. Holquin's alleged misconduct, however, can properly be considered as background to the complaint allegation that Segal was discriminatorily discharged, but even considering these facts there is insufficient evidence to establish that Segal was justified in assaulting General Foreman Larry Campiotti. We therefore find, in agreement with the Administrative Law Judge, that Segal's discharge was not disparate or discriminatory.

DECISION

STATEMENT OF THE CASE

JAMES T. RASBURY, Administrative Law Judge: This case was heard before me in Oakland, California, on December 12, 13, and 14, 1978.¹ The charge in Case 32-CA-1112 was filed by Lynn Rollerson on July 28, and a copy thereof was served on GM Assembly Division, General Motors Corporation (herein called General Motors or Respondent) on or about the same date. On October 31 a complaint was issued alleging that Respondent had violated Section 8(a)(1) of the National Labor Relations Act, as amended (herein called Act), by threatening an employee if she persisted in filing a grievance, by refusing to honor an employee's request for union representation at an interview, and by suspended said employee following an interview which was conducted without honoring the employee's request for union representation.

The charge in Case 32-CA-139 was filed on January 7, 1977.² A complaint in Case 32-CA-139 was issued on September 29, alleging Respondent to have violated Section 8(a)(1) and (3) of the Act by harassing, threatening, and then discharging Louis Segal. Respondent's answer in Case 32-CA-139 was filed on October 11, and while admitting certain jurisdictional requisites it denied the commission of any unfair labor practices. A similar denial of the commission of unfair labor practices was filed by Respondent in Case 32-CA-1112 on November 10.

Although the facts and circumstances of these two cases are totally unrelated, because of the common Respondent the cases were consolidated by Order of the Regional Director for Region 32 on November 8.

Upon the entire record, including my observation of the witnesses and after due consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is now and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Delaware with its principal place of business located in Detroit, Michigan. It operates a facility in Fremont, California, where it is engaged in the manufacturing and assembling of automobiles and trucks. During the past 12 months Respondent, in the course and conduct of its business operations at Fremont, California, purchased and received goods, materials, and supplies valued in excess of \$50,000 directly from suppliers located out-

¹ Unless otherwise specified all dates hereinafter shall refer to calendar year 1978.

² There is no proof of service of the charge in Case 32-CA-139. The index of the General Counsel's formal documents shows 1(b) to be an affidavit of service of the initial charge in Case 32-CA-139; however, that affidavit is dated July 28, 1978, and relates to Case 32-CA-1112. However, I do not regard this omission as fatal in view of the fact that it was not raised as an issue by Respondent, and there is proof in the record that Respondent received a copy of the complaint issued in Case 32-CA-139 and was not in any way denied due process because it was fully informed of the alleged violative conduct.

side the State of California. On the basis of these admitted facts I herewith find Respondent to be and at all times material herein to have been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that Local 1364, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein called Union), is now and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Lynn Rollerson: Case 32-CA-1112

1. The issues

The difficult problem is one of resolving credibility. (1) Was Rollerson threatened with discharge if she persisted in filing a grievance? (2) Did Foreman Larry Saffold refuse to honor Rollerson's request for union representation at an interview in which she could reasonably expect to be disciplined?

2. The evidence

The party stipulated that Lynn Rollerson was hired on April 4, 1976, as an inspector. She was transferred or reduced to an assembler in October 1976; in May 1977 she was returned to the job of inspection and on April 24, 1978, she was discharged. She was rehired on July 24, 1978, as an inspector and was transferred on October 23, 1978, to a new department as an assembler.³ The parties also stipulated that her disciplinary record from the date of her hiring—April 4, 1976—until her discharge on April 24 reflected the following:

On December 22, 1976, received reprimand from her foreman for violation of shop rule 17. (Shop rule 17 deals with careless workmanship.)

On January 27, 1977, received reprimand from foreman for violation of shop rule 6, dealing with unexcused absences.

On May 2, 1977, received a reprimand for again violating shop rule 6.

July 23, 1977, received a serious reprimand from foreman for violation of shop rule 6.

September 21, 1977, received a final reprimand from Foreman Larry Isquirdo for violation of shop rule 17.

³ The testimony of Deborah Manduca, a labor relations representative for Respondent, is undisputed that Rollerson was rehired on July 24 as part of the grievance settlement between Respondent and the Union which was filed on the occasion of her discharge on April 24. The settlement also included the requirement that she request transfer to another department in production.

October 19, 1977, received a suspension for the balance of her shift plus 2 weeks from Foreman Isquirdo for violation of shop rule 17.

February 1, 1978, received a suspension for the balance of shift plus 2 weeks from Foreman Freitas for violation of shop rule 6.

On April 3, 1978, received a suspension for the balance of shift plus 30 days from Foreman Saffold for violation of shop rule 17.

On April 15, 1978, received a suspension pending discharge from Saffold for violation of shop rule 17.

On April 24, 1978, the suspension was converted to a discharge for violation of shop rule 42 which deals with repeated violation of shop or safety rules.

Rollerson testified that when she received her April 3 disciplinary notice, which called for a 30-day layoff, that she was told by Saffold that she would have to be off work for a minimum of 1 week after which she could return to work, and the remaining 3 weeks would be removed from her record. Upon her return to work on April 11 she stated that she went to the labor relations office and talked to some unidentified person in labor relations to ascertain if the 30-day suspension had been removed from her record. She learned that it had not. During her shift she saw her committeeman, Elmer Avery, and told him that she wanted to file a grievance against Larry Saffold because he had not fulfilled his promise to wipe out the remaining days of her suspension. According to Rollerson, a short time after she had advised Avery that she wanted to "write up" Saffold, Saffold came by her work station and said to her, "If you write me up, you're going right back out the door."

According to Rollerson, on April 15 at about midnight Saffold came by her station and advised her that she had overlooked three missing lug nuts and had failed to write them up on the ticket.⁴ Rollerson further testified that a short time later she was relieved of her job and told to report to the office of her foreman. Rollerson claims that she asked Saffold to have her committeeman, Elmer Avery, present. She also claimed that at that time, Debbie Manduca, the labor relations representative, walked in and asked her a number of questions about her job. Rollerson claimed that she again asked for her committeeman, Elmer Avery. She claimed that she asked Larry Saffold to call Avery, which Saffold attempted to do but, according to Rollerson, was unable to reach him. After Manduca had completed her questioning, according to Rollerson, Saffold then wrote up her "suspension pending discharge" and accompanied her toward the front door. Near the door she saw her committeeman, Avery, who said that he would get in touch with her the following day and try to get her reinstated.

Avery was called as a rebuttal witness and testified that he learned of Lynn Rollerson's problem from an employee referred to as Chopper, who Rollerson had stated went by

⁴ Rollerson's job as an inspector was to check and record the tires and tire sizes and to check all the wheels for the presence of all the lug nuts as well as their tightness. After making these inspections she was then to record in the appropriate block on a tag which accompanied each truck what may have been wrong and the fact that she had made the inspections.

on his forklift when she was being interviewed by Manduca and Saffold. Avery testified that he saw Rollerson and Saffold as they were nearing the exit door at the north end of the plant, and that he inquired as to what was happening. Rollerson replied, "They're firing me." At that point Avery said that he had Rollerson sign a grievance form. Avery was then presented with his copy of the statement of disciplinary action (Resp. Exh. 3).

Larry Saffold testified that he is an inspection foreman in the truck department and has some 27 people working under him, and that Rollerson worked for him for a period of approximately 8 months. Saffold testified that he had counseled Rollerson at least five or six times for her failure to indicate in the appropriate block on the inspection ticket that accompanies each of the trucks what errors, if any, she had found⁵ and to indicate that she had made the inspection. Saffold testified that after he had counseled with Rollerson a number of times on at least three occasions he had the committeeman, Elmer Avery, participate in their discussions in an effort to help her in doing her job. (Although Avery was called as a rebuttal witness, he did not deny that he had participated in a number of counseling sessions with Rollerson and Saffold.) Saffold further testified that on April 3 he disciplined Rollerson for her careless workmanship. "I had her relieved and taken her down to the final line and showed her three jobs where she had failed to buy her mandatory block, station 31. And like I've already said, I showed her the jobs before and the jobs after, which indicated that the jobs were hers . . ." At that time she was given a 30-day suspension, which was what was called for in the Respondent's system of "progressive discipline." However, when Rollerson complained about her financial condition and her inability to be without work for 30 days Saffold agreed that he would only require her to be off the job 1 week and that she could return, but he did not indicate that he would in any way remove the additional 3 week suspension from her record. According to Saffold, he told Rollerson, "I want you to understand now that you'll do 1 week in street and that you're going to work the remaining 3 weeks off and that you've got 30 days solid on your record."

Saffold testified that he saw Rollerson on April 11 when she returned to work, that he cautioned her to keep an eye on the job and to take care of her mandatory blocks, and that was all that was said in their early evening conversation. After Rollerson had been on the job about 90 minutes Saffold stated he learned that she had again missed a mandatory block. Saffold testified that he could have sent her out on the street again for 30 days or suspended her pending final determination of discharge, but he elected to have another counseling session with her. Saffold called her committeeman, Elmer Avery, and together they discussed Rollerson's work record. On this occasion neither Avery nor Rollerson denied her very inadequate work record. As a result of this conference Saffold wrote up an AVO which was sent to the labor relations office (AVO stands for "avoid verbal orders." See Resp. Exh. 1 for a copy of the AVO which corroborates Saffold's oral testimony.) Two

⁵ This checking of the appropriate block in the proper manner was referred to throughout the hearing as "buying her block."

days later, on April 13, Saffold again counseled Rollerson in the presence of her committeeman, Elmer Avery, with regard to violating safety rule 17 and warned her that any further violations could result in formal disciplinary action. (See the AVO dated April 13—Resp. Exh. 4.) Saffold testified that on April 15, between 11 p.m. and 11:30 p.m. "Rollerson failed to document on the inspection ticket that there were three lug nuts shy on the right rear wheel." Saffold testified that he had Rollerson relieved from her job and took down the final inspection line to show her the mistake. Again, he said that he had her check the job ahead of the one with the missing lugs and the job behind the one with the missing lugs to make certain that she understood that it was her responsibility to have checked or inspected this particular truck for the missing lugs and to have indicated their absence in the appropriate place on the block or tag that accompanies each truck. He stated that she had no explanation, that she just said she did not understand how she had missed it. Saffold testified that he then proceeded to his office where he wrote up the statement of disciplinary action (Resp. Exh. 3), after which he asked her to sign it. When she refused to sign, as is indicated on the exhibit, Saffold asked her if she would like to request her committeeman. Upon receiving an affirmative answer Saffold wrote on the form "committeeman requested." He stated that he then called the union office in the plant and told them that he wanted to get ahold of Avery right away because he was working on a DLO (disciplinary layoff); that she was going out the door and Saffold wanted him right away. Saffold said that he permitted Rollerson to wait in his office while he spent the next 20 or 30 minutes doing his routine job on the inspection line, after which committeeman Avery showed up. According to Saffold, "Avery showed up approximately half an hour later. Had him into the office, explained to him what had happened. I told him exactly what I did. By that I mean I explained to him that I had her relieved, told her why I had her relieved; I had taken her down, showed her the job, showed her the ticket; brought her back to my office, ran a copy of the ticket, whatnot; got ahold of labor relations, found out that she was facing discharge; wrote out the discipline. She had read it, she had looked at it, she refused to sign it; she requested you [the committeeman Avery] here." After that Avery asked if he could speak to her alone, and Saffold stepped out of the office for about 15 or 20 minutes. When he returned he was presented with a grievance. Saffold then asked Avery to sign the disciplinary slip, after which Avery was given his copy. Saffold categorically denied that at any time he had threatened Rollerson with discharge or suspension in the event she filed a grievance against him.

Debbie Manduca corroborated the testimony of Saffold insofar as the numerous counseling sessions were concerned, and the fact that she had talked to Rollerson within 1 day or 2 after she had returned to work on April 11. Her testimony conflicted with Rollerson's in that Manduca was not present at the April 15 final suspension. Manduca further testified that the grievance which Rollerson filed following her "suspension pending final determination" (Resp. Exh. 2), was finally settled between Respondent and the Union by allowing Rollerson to return to work on July 24, provided she agreed to transfer to production. Manduca

also testified that Rollerson never filed a grievance for failure to Saffold to provide her committeeman as requested, nor was such an argument ever made by the Union in the course of resolving her April 15 grievance even though the right to have a committeeman present is set forth in the contract. No grievance was ever filed in regard to a threat made by Saffold to Rollerson relating to the filing of grievances.

**Analysis and Conclusions With Regard to the Charge
Filed by Lynn Rollerson—Case 32-CA-1112**

As indicted earlier herein, the critical issue herein is one of resolving credibility. I resolve that credibility in favor of the testimony of Manduca and Saffold over that of Rollerson and Avery, not only because I feel that the testimonies of Saffold and Manduca were more accurate, detailed, precise, and logical, but also because they are largely supported by written evidence. Saffold was a particularly impressive witness, and his account of the events on April 15 is supported in great detail by the statement of disciplinary action which he completed and gave to Rollerson as well as the committeeman Avery. The exhibit indicates that Rollerson was taken off the line and stopped work at 11:36 that evening. Avery signed the Union's copy at approximately 12:08 a.m., or approximately 32 minutes after Rollerson was relieved from her job. Moreover, Respondent's Exhibits 1 and 4 corroborate Saffold's testimony of his own leniency and consideration in an effort to get Rollerson to perform her work in a satisfactory manner. Additionally, the wording of the grievance which was filed by Rollerson following her suspension on April 15 fails to mention or complain in any way that her foreman had refused her request to have a union representative present. I am of the opinion that Rollerson never asked for her committeeman until she refused to sign her name to the "statement of disciplinary action" and was then asked by Saffold if she would like to see her committeeman. Saffold then requested her committeeman and they were given time to talk and a grievance was filed. The timing as reflected on the "disciplinary action" as well as the grievance is adequate proof that Rollerson had access to her committeeman within a reasonable time after making the request. I find and conclude that Rollerson's testimony was a prevarication built from the whole cloth of her imagination, without any foundation or basis in fact. "In every case, a violation of the Act must be proved by the General Counsel by a preponderance of the evidence," and this has not been done.⁶

B. Louis Segal—Case 32-CA-139

1. Background

It is the General Counsel's theory that Louis Segal was provoked into an act of physical violence against the general foreman, and that the provocation occurred over a period of weeks and stemmed from the Charging Party's protracted concerted activity.

⁶ *Falstaff Brewing Corporation*, 128 NLRB 294, 295, fn. 2 (1960), enfd. as modified 301 F.2d 216 (8th Cir. 1962).

Louis Segal, the Charging Party, was first employed by Respondent on November 7, 1972, as an assembler in the cushion room and, so far as his record reveals, remained continuously employed without serious incident until December 2, 1976, when he was "suspended pending final determination" for assaulting a general foreman. The relevant events concerning Segal's case occurred in 1976, and all dates hereinafter shall refer to 1976 unless otherwise indicated. The suspension was converted to discharge on December 9.

In June Segal was elected as an alternate district committeeman. The regular district committeeman was Michael Turner.⁷ The alternate committeeman serves whenever the regular committeeman is absent or for any reason when the regular district committeeman is not available to handle his own duties.

Segal testified that between June, when Segal was first elected as an alternate committeeman, and October he probably functioned as a committeeman about 40 percent of the time. About late September there was a model change which, according to Segal, generally produces a large number of grievances because of the change in work duties and the complaints by the men of an unreasonable workload. (This type of grievance is referred to as a 78 grievance, because par. 78 of the national agreement deals with production standards.)

On November 8 Turner took a leave of absence, and Segal began functioning regularly as a committeeman in Turner's place.

Larry Campiotti is a general foreman in the truck trim department (department 26). He had served as general foreman for nearly 6 years, and before that was a foreman for approximately 10 years; he was first employed by Respondent in 1958. Campiotti has six foremen that report to him, and he in turn reports to a superintendent. During the period in question Clem Holquin was one of the foremen reporting to Campiotti.

The evidence is overwhelming that Segal filed a great many grievances. (See G.C. Exh. 4(1)-(61).) That he was

⁷ The following background data, taken from a Decision issued by Administrative Law Judge Gordon Myatt on July 20, 1977, (Case 20-CA-12108) provides what is still current and accurate information regarding Respondent's facility and the Union's organizational setup:

The Union is the exclusive bargaining representative for the production and maintenance employees at the Respondent's Fremont plant. The International Union and General Motors Corporation are parties to a master agreement covering production and maintenance units at various plants around the country. In addition, a local agreement is in effect between a Local 1364 and Respondent's Fremont facility.

The production and maintenance unit at the Fremont plant consists of approximately 5,000 employees. The union representatives at the plant are all bargaining-unit employees who have been elected to their respective offices by the members. The chief union representative at the plant is the chairman of the shop committee, which consists of three district shop committeemen and three zone committeemen. Each zone committeeman has jurisdiction over a number of districts which are represented in the first instance by district committeemen stationed in those areas. The Charging Party is an [alternate] district committeeman in the hard trim department, and represents 200-250 employees. All of the union representatives have job classifications, and are required to punch in and out on the time-clock. However, they do not perform production work during their shifts. Rather, their workday is taken up with representational duties on behalf of the employees and the Union. They are paid by Respondent in accordance with the wage rates for their particular job classification.

more aggressive and more difficult to deal with than other committeemen comes through the testimony of various witnesses loud and clear. For example, Campiotti referred to him as "lacking in experience" and as a committeeman that gave wrong advice to people that got them in trouble. The regular committeeman, Turner, spoke of meeting with Campiotti after Segal had served in his stead, and Campiotti would urge Turner to come to work more often because "Segal was a nut; Segal was an asshole; why don't you come in more often so we don't have to deal with Segal." Although Holquin testified that he had been told by the general superintendent not to make any concessions to the Union, Holquin said that Segal was filing so many grievances against him that he felt harassed.⁸ Tony DeJesus, current union local president—who was a district committeeman at the relevant time herein—testified that Campiotti frequently complained to him about Segal, whom he regarded as "a fucking dummy that shouldn't hold no goddamn office."⁹ There is no doubt, and I herewith find and conclude that Segal was regarded by Respondent as an unsatisfactory committeeman, and if given a choice Respondent would have preferred someone else to serve as a committeeman.¹⁰

2. The discharge

Along with all other local union committeemen, Segal went to Detroit at the end of November to be briefed on the tentative national agreement that had just been negotiated. He returned from that visit on December 2 and went to work on his afternoon shift. Segal testified that he toured his work area and noticed a number of operations which he felt had been previously settled or worked out that were not operating in accordance with the settlement agreements.¹¹ Segal said that he then went to Campiotti's office and discussed in some detail several grievances—some concerning the items he felt had been agreed upon but were either not remedied or were unsatisfactory and some on which he was still seeking to reach agreement. According to Segal, Campiotti refused to get involved and referred him to the foreman in charge of the various areas where the grievances arose.¹² Segal responded by saying, [L]ook, I'll do that but

⁸ Holquin was discharged by Respondent in January 1978 for lying. Holquin acknowledged on the stand that he lied to the union representatives on numerous occasions. His testimony was in conflict with that of Tony DeJesus with regard to an assault by Holquin. Holquin cannot be credited.

⁹ However, DeJesus acknowledged on cross-examination that Segal was lacking in experience and did not understand the give-and-take of collective bargaining. Campiotti denied ever making such a statement but did acknowledge telling DeJesus some of Segal's grievances were nutty misinterpretations of the national agreement.

¹⁰ This determination is made without finding it necessary to review all of the tedious and numerous incidents in the record that undeniably lead to this conclusion.

¹¹ I.e., there were only two men on an operation where Segal said that the Company had agreed to have three men; a safety ramp had been built to accommodate a woman worker that was short and had difficulty in performing her duties, but she complained that the ramp was not long enough.

¹² The first step in the grievance procedure involves a meeting between the committeeman and the first-line foreman. There was testimony indicating that the general foreman participates at what is referred to as "a step and a half," although the national agreement (Jt. Exh. 3 at page 26), makes no reference to participation by the general foreman, and I could not find any reference to such a half step in the local agreement (Jt. Exh. 2).

I'm telling you now that I might have to come back if they don't feel—if they are not willing, or don't feel they have the responsibility to resolve some of these problems, then I'm going to have to go back to you, because you're next in line in authority." Segal then departed.

Later in the evening Segal and Campiotti toured some of the so-called problem areas and talked about some of the problems raised by Segal, but nothing was definitively resolved.

According to Segal, as he made his rounds two employees complained to him because Campiotti had telephoned their homes the night before inquiring as to why the men were not at work. According to one complainant, this had gotten him into trouble with his wife at home and created a "hornet's nest."

Segal then found Campiotti in the area of Foreman Van Cook's office. Campiotti was telling Van Cook to get some of the people relieved because Segal wanted to talk to some of them, and "whoever Segal talks to or after Segal's finished talking with them I want to talk with them." Campiotti's version of this brief meeting was not too different. He testified, "I told Van to go ahead and relieve the people for the committeemen, and then I says: 'I'll talk with these turkeys later'; and I was referring to the people I wanted to talk to in that group." Segal then complained, "Why do you call these people turkeys?"

Segal testified that Campiotti's use of the word "turkey" occurred about this time, but it was after he complained to Campiotti about telephoning the employees at their homes, to which Campiotti replied, "I called these turkeys today, I called them yesterday, and I'm going to call them tomorrow." According to Segal, Campiotti got red in the face when the use of the word "turkey" was questioned, and he (Campiotti) said, "Well, it's better to call them mother fuckers or assholes like you" (sic). According to Segal, as Campiotti made this statement he thrust out his left arm "and knocked me off balance. At that point I hit the man." According to Campiotti's testimony, as he was talking to Segal about calling the men at home, he said, "Well, I'm going to continue to do it because I got to get these people to come to work so I can service people, serve these people."¹³ At that point, Campiotti said that he was looking down at the list of names of people who had been out quite a bit and was going to give Segal the names when he heard Segal say, "You've been fucking these people long enough." As he looked up, Segal punched him in the jaw. Segal hit Campiotti several times.

According to Tony Renney, who was doing some assembly work across from Van's office, he saw Campiotti push the committeeman, and then I (Renney) saw the committeeman hitting him. According to Renney, the general foreman was calling for help. He called for Van Cook, the foreman. Renney said that he and an employee named Michael Mayes broke up the fight. "I [Renney] grabbed Louie Segal, you know, because he had the committeeman—he had the

¹³ Part of the difficulty between Segal and the foreman stemmed from the fact that Segal could not get men relieved from their jobs in order to talk to them about their grievances. The relief problem was complicated by the excessive absences, which tended to tie up the trainer and relief men as they filled in for the absentees.

general foreman over the desk, you know, so I grabbed him and I took him outside" (meaning outside the office).

William Powers, a labor relations supervisor, testified that he received word that Campiotti had been beaten up by Segal, and he investigated the incident. He stated that he talked the Campiotti, who told him, "that Mr. Segal had come up to the office, had been discussing something with him, had been discussing specifically the calling at home of other employees and, while engaged in this conversation, he was holding some call slips in his hand, the one hand, and some other papers in another hand, and Mr. Segal had hit him." Following this quick explanation Powers suggested they all adjourn to the production office where it would be quieter. Segal asked for union representation. Powers said that there was some difficulty in getting the particular representation Segal had requested, because a number of the committeemen had not returned to work from their Detroit trip (see *supra*).

According to Powers, while they waited for a committeeman to show up Campiotti indicated that he did not feel well, and he left to go to the medical office. Campiotti returned with an icepack on his jaw and complained of a cut inside his mouth that was bothering him.

Very shortly committeemen Briscoe Allen and Steve Coe appeared, and they talked privately with Segal for 15 or 20 minutes. Following this conference between the committeemen and Segal, Powers sought to obtain Segal's version of the incident. Segal refused to give a statement, and the committeemen refused to aid in the investigation, contending they were too inexperienced to handle it. Powers testified that he explained the importance of getting Segal's version, "and I pointed out to them that any, any mitigation, any provocation would be a factor that I would, you know, take into consideration as we reviewed the case." Finally, Richard Monice, an alternate zone committeeman, appeared on the scene. However, all of the union people continued to refuse to make any kind of statement or answer any questions.

Segal's foreman, Clifford Inman, was called, and based on the recommendation of Powers, Segal was "suspended pending final determination" of penalty. Powers said that in an assault case the penalty is discharge, unequivocally. (See Resp. Exh. 9 for copy of suspension and Resp. Exh. 10 for the discharge notice.) Between December 2 and 9 representatives from the labor relations office sought to interview anyone in the area of Van Cook's office who might have seen or heard the fracas. Respondent was unable to find any witnesses that contradicted Campiotti's version of the facts. (Although Renney gave a slightly different version at trial, he acknowledged that he refused to give any information to the labor relations section investigators.) Powers testified that after completing his investigation he discussed the matter with Segal's superintendent, Don Smith, and his recommendation of discharge was followed. Powers identified Respondent Exhibit 11 as a grievance filed by the Union on behalf of Segal. The grievance was settled prior to arbitration by the Union withdrawing the grievance.

Dr. Hunter Smith, Respondent's industrial physician, identified Campiotti's medical history concerning this incident (Resp. Exh. 6), and related that Campiotti had suffered pain and swelling on the left side of jaw, abrasions of

the left wrist, contused left ribs, and hematoma left side of parietal bone.

3. The 8(a)(1) allegations

There are two rather separate and distinct aspects of Case 1112. The complaint alleges (par. VI (a) and (b)) that Foreman Clem Holquin "harassed an employee by hiding his grievance book" and "threatened an employee with job loss" in violation of Section 8(a)(1) of the Act. The second aspect concerns the motive for the discharge of Louis Segal.

Holquin testified to having taken the logbook¹⁴ belonging to Segal and hiding it in his locker. Later Holquin threw the logbook away. This incident occurred, according to Holquin, after Segal started serving regularly as a committeeman because Segal was not assigned to Holquin's section, and Holquin felt that the logbook should be maintained in the office of the foreman under whom Segal was assigned. The idea of moving the logbook was Holquin's (*not Campiotti's*), and Holquin never told Campiotti what he had done with the book. Holquin also testified that he had physically threatened an employee and told him he was going to fire him after the employee had filed a grievance against Holquin.¹⁵ On another occasion Holquin testified that he threatened Anthony Juarez with physical violence for failing "to insert a rubber seal in the door." According to Holquin, when he advised Campiotti of what he had done Campiotti made no comment.

Campiotti denied ever suggesting or encouraging Holquin to threaten employees. Campiotti testified that Holquin was a good foreman, but that he had "people problems." Respondent supported Campiotti's testimony by offering Respondent Exhibit 8—a performance appraisal of Holquin by Campiotti covering the year 1976—which shows that Campiotti rated Holquin well below standard in "ability to work with others."¹⁶

Analysis and Disposition of the 8(a)(1) Allegations

While Holquin must be regarded as an intelligent, convincing witness, he cannot be credited. He admittedly was discharged by Respondent for lying; it is logical that because he was discharged his testimony would be unfavorable toward Respondent whenever possible. Moreover, his testimony is in direct conflict with Tony DeJesus, the current president of the Union, as well as that of Campiotti. But even if his testimony were to be believed his conduct

¹⁴ The logbook is a record of calls normally maintained in the office of the foreman under whom the committeeman's job assignment would normally fall. The foreman records calls or requests by employees to see their committeeman on the log. The committeeman then checks the log to ascertain the names of employees who have problems they wish to discuss.

¹⁵ The employee, however, was not particularly intimidated because, according to Holquin, the employee immediately found his committeeman and filed another grievance concerning Holquin's threat.

¹⁶ The General Counsel sought to show that Holquin's attitude toward people stemmed from Campiotti by offering the 1977 appraisal form for Holquin that was done by General Foreman Floyd Conners, Jr. (G.C. Exh. 5). However, even the 1977 otherwise very favorable appraisal form states, "some labor relations training would increase Supervisor Holquin's effectiveness." In my opinion, G.C. Exh. 5 tends to support Campiotti's testimony and the accuracy of his 1976 appraisal of Holquin. Holquin did not have a good working relationship with the committeemen.

toward Segal, as well as other committeemen, *cannot be attributed to Campiotti*. Holquin testified that it was Kjensrud, then the superintendent, who told him "that Department 26 was the shits. . . . That the employees had taken over the department, that they were doing what they damned well pleased, and that the supervisor wasn't able to make [sic] them under control. . . . He [Kjensrud] told me to go down there and straighten the department, fire who I had to fire, and get it turned around" Holquin also testified that Kjensrud, in the presence of Campiotti, reprimanded him and warned him that "if I [Holquin] failed to cooperate with the Union I would be subject to removal from supervision."

I find and conclude that Holquin's testimony cannot be relied upon, but even more importantly, his conduct—regardless of its merit in finding an 8(a)(1) violation—cannot be attributed to Campiotti in support of the General Counsel's theory that the Charging Party was provoked into attacking Campiotti.

There is a more important basis, however, for dismissing the alleged 8(a)(1) violation as contained in this complaint. A settlement agreement was reached between Respondent and the General Counsel in June 1978, covering several individual Charging Party cases. This settlement agreement not only included backpay for several named individuals but also the posting of a lengthy and comprehensive 8(a)(1) notice by Respondent.

A companion complaint to those included in the settlement agreement, Case 32-CA-608, went to trial in May and June 1978, and Administrative Law Judge Jerrold Shapiro's Decision was issued on October 5, 1978. No exceptions were filed, and the Board issued its Order on December 4, 1978. The charge in that case was filed on March 27, 1977, and the complaint included, *inter alia*, the following allegation: "On or about March 23, 1977, Respondent, by Clem Holquin, at its Fremont, California facility, physically prevented and interfered with a shop committeeman in his handling and/or processing of an employee's grievance." Judge Shapiro found in his Decision that:

Foreman Holquin viewed the local union and its representatives with hostility and was antagonistic toward the contractual grievance procedure. Holquin threatened employee Valdez with discharge and physical abuse because he filed a grievance against Holquin with a local union committeeman and, in the presence of Valdez and the committeeman, threw Valdez' grievance papers into a trash can. In addition, Holquin ordered the president of the local union to stay out of Holquin's department and, when a local union committeeman advised him that he was violating the collective-bargaining agreement, Holquin, in the presence of an employee, stated in substance that the local union was only interested in the employees' money and not in representing them. Also, Holquin attempted to obstruct employee Johnson from filing a grievance by threatening her with discipline. In short, the undisputed evidence reveals that Holquin was extremely hostile toward the local union and its representatives in their role as the employees' collective-bargaining representative.

The 8(a)(1) allegations contained in the instant case occurred well within the 10(b) period from the date the charge was filed in Case 608.¹⁷ Moreover, based upon the factual conclusions as taken from Judge Shapiro's Decision and quoted above, it would appear that some of the testimony elicited in the case heard by him was duplicated in the instant case, i.e., Holquin's testimony concerning the Valdez threat.

The 8(a)(1) allegations relating to Holquin's conduct in the instant case are not only stale but could have and should have been fully litigated in Case 32-CA-608. Furthermore, as is readily revealed by a reading of the notice that was posted following the settlement agreement between Respondent and the General Counsel, the type of conduct complained of herein was clearly remedied in the settlement notice that was posted by Respondent. Additionally, Clem Holquin was discharged by Respondent in January 1978, and nothing would be gained by posting a notice concerning possible misconduct by an ex-employee that occurred 3 years previously. It is clear that General Counsel could have litigated all of the questionable misconduct of Foreman Clem Holquin in Case 32-CA-608; General Counsel did in fact obtain the remedy in the settlement agreements of Case 32-CA-420, *et al.*, which he now seeks in this case. Accordingly, I shall recommend that the allegations of conduct violative of Section 8(a)(1) of the Act be dismissed.¹⁸

Analysis and Conclusions With Regard to Discharge of Lewis Segal

The Act provides an adequate and total remedy for all of the conduct which General Counsel contends was sufficient provocation to justify Segal's assault on Campiotti. (See "Appendix B" attached hereto, which contains the relevant portions of the settlements notice posted by Respondent in order to remedy exactly the same kind of conduct about which Segal complained herein. The settlement notice was to remedy events which were occurring to other committeemen in the same general time frame.) A fundamental principle of the Act is to establish a set of rules and an arena within which the industrial relations principle may function in a civilized manner. There is no place within rational industrial relations or within the law that permits the resolution of differences by fighting. The Act was never intended to foster anarchy. Other committeemen who had similar problems to those complained of by Segal found solutions by functioning within the system and not resorting to physical violence. I find and conclude that Segal was the aggressor in an unprovoked physical assault on Larry Campiotti that resulted in Campiotti suffering considerable pain and discomfort.¹⁹ The discharge of Segal was not discriminator-

¹⁷ The relevant portion of Sec. 10(b) of the Act reads as follows: "Provided, that no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made"

¹⁸ *Marland One-Way Clutch Co., Inc.*, 200 NLRB 316, 320 (1972), and cases cited therein.

¹⁹ While the Board is in no way bound by the grievance settlement between the parties when the Act has been violated, nevertheless, it is noteworthy that the Union was not sufficiently impressed with Segal's story to take

ily motivated but, to the contrary, was fully justified and warranted under the circumstances. Moreover, even if one were to give some credence to the illegal conduct of Foreman Clem Holquin, on the basis of this record, Holquin's illegal conduct cannot be attributed to Campiotti, the general foreman who suffered the attack.

There is an additional reason for recommending dismissal of the Segal discharge aspect of this complaint. The evidence is undisputed that Respondent's labor relations representative made every reasonable effort to fully investigate all of the circumstances surrounding the fight between Segal and Campiotti that occurred on the evening of April 15. Segal and the union representatives—as many as three at one time—refused to make any statement as to the cause or circumstances of events which precipitated the fight. Nor was it possible to obtain any information from any of Segal's fellow employees who may have seen what occurred on the evening of April 15. Under such circumstances where Respondent has made a reasonable and diligent effort to gather all of the available facts and where those facts point to an unprovoked assault on the part of a rank-and-file employee of his general foreman, primarily because the union representatives and the employee participant have elected to remain silent and totally uncooperative, it can hardly be said that the motive was for discriminatory reasons. Here the Company acted in good faith, based on all the available evidence.

I have examined a number of the cases cited by the General Counsel and have found them to be inapposite. For example, in *Fox & Jacobs, Inc.*, 221 NLRB 1159 (1975), there was no fight involved, and the two employees who were ordered to be reinstated were found to have been discharged for purely pretextual reasons. In *J. H. Patterson Company*, 217 NLRB 1030 (1975), a fight was involved and the employee involved was reinstated, but it was based on the fact that the Administrative Law Judge found and concluded that the employee involved was not the aggressor but was merely involved in defending himself, and that the employer had seized on the incident as a pretext for discharge. General Counsel's citation of *Joseph T. Ryerson & Sons, Inc.*, 199 NLRB 461 (1972), as supportive of the proposition that hostile treatment toward a union committeeman is violative of the Act is accurate and well established Board law. But it is the very reason that Segal was wrong in his physical assault of a supervisor—he had a remedy available to him under the Act and there was no excuse for his conduct.

The Act was not designed to protect those who viciously attack their supervisors. The fact that the attacker is an active union adherent or union official, and/or whether an employer wished to be rid of him does not alter the law. As I have found earlier herein, clearly as a committeeman Segal was *persona non grata* with Respondent. But, as the Board said in *P. G. Berland Paint City, Inc.*, 199 NLRB 927, 927-928 (1972):

the controversy or grievance to arbitration. Segal's grievance was withdrawn prior to the final step.

On the record it is fair to assume that the Respondent entertained a desire to get rid of Robbins, whose union activities it resented, and was pleased to have an opportunity present itself for doing so. But that alone is not enough to establish that the discharge was in violation of Section 8(a)(3). The mere fact that an employer may want to part company with an employee whose union activities have made him *persona non grata* does not *per se* establish that a subsequent discharge of that employee must be unlawfully discriminatory. If the employee himself obliges his employer by providing a valid independent reason for discharge—i.e., by engaging in conduct for which he would have been discharged anyway—his discharge cannot properly be labeled a pretext and ruled unlawful.

Save where the reason itself is unlawful, it is not for the Board to substitute its judgment for that of management as to what constitutes proper cause for discharge. Unless the ground advanced is inherently implausible, is unsupported by credible evidence, or is proved by the record to have been used disparately on the basis of unlawful considerations, its rejection by the Board is unwarranted.

In the instant case the ground advanced for Segal's discharge was certainly not inherently implausible, nor is it unsupported by the credible evidence. Nor does the record indicate that Segal's discharge was disparate or discriminatory. There is no evidence similar conduct has ever been condoned by Respondent.

I shall recommend dismissal of the complaint in its entirety.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The General Counsel has failed to prove by a preponderance of the evidence that Respondent has violated the Act as alleged in either of the two companion cases—32-CA-139 and/or 32-CA-1112.

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

ORDER²⁰

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

²⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.