work throughout the plant. Although their duties include maintenance of the Employer's buildings, it appears that their primary function is to maintain all types of machinery, including boilers, refrigeration, ventilation, and air-conditioning equipment. In the course of servicing the equipment, they work with the engineers, learning the "skills of the trade" so that they may, after a minimum period of 2 years, qualify for the city license and serve as engineers.

As the mechanical maintenance men perform the skilled and specialized functions which lead to the position of licensed engineer, and as their interests are substantially linked with those of the engineers, we shall include them in the voting group.[10]

Accordingly, we shall direct an election among all engineers and mechanical maintenance men at the Employer's Detroit, Michigan, plant, excluding all supervisors[11] as defined in the Act. However, we shall make no final determination at this time, but shall first ascertain the desires of these employees as expressed in the election hereinafter directed. If a majority votes for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate bargaining unit.

[Text of Direction of Election omitted from publication in this volume.]

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.

[10] *John Morrell & Co., Inc., supra.* Cf. *The Wooster Rubber Company,* 77 NLRB 1044.

[11] The status of the chief engineer appears questionable from the record. For this reason we shall make no determination with respect to inclusion of the chief engineer in the voting group at this time. If he possesses supervisory powers within the meaning of Section 2 (11) of the Act, he is to be excluded therefrom.

FOLEY'S MILL AND CABINET WORKS *and* LUMBER & SAWMILL WORKERS LOCAL UNION NO. 2409. *Case No. 19–CA–335. July 30, 1951*

Decision and Order

On December 26, 1950, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in certain unfair labor practices, and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Union filed exceptions to the Intermediate Report and a supporting brief. The Respondent filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications:

We agree with the Trial Examiner's conclusion that the preponderance of all the evidence does not support a finding that the Respondent's conduct constituted an unfair labor practice within the meaning of the Act. In reaching this conclusion we regard the following facts as significant:

The Respondent and the Union entered into an authorized union-shop agreement. Upon request by the Union made pursuant to this agreement, Respondent discharged one employee who failed to become a union member. Shortly thereafter the Union requested additional discharges under the agreement. The Respondent spoke to each of the delinquent employees listed in this second demand by the Union and offered them salary advances so that they could pay the required initiation fees and dues, and made one such advance in salary. Each delinquent employee promised to settle with the Union immediately. The Union informed the employees that they would be required to pay dues for periods during which they were not members. The Employees protested. It was not until after the so-called "back dues" dispute was brought to the Respondent's attention by the shop steward that the Respondent questioned the propriety of the Union's demand for the discharge of the delinquent employees and thereafter refused to take further steps to meet the Union's demands for their discharge.

The evidence fails to show that the Respondent's alleged failure to abide by the terms of the contract was aimed in any way at affecting the employees' rights guaranteed by the Act, or at discrediting or undermining the prestige of the contracting Union. On the contrary, the Respondent's cooperative conduct up to the time the "back dues" issue was brought to its attention emphasizes the absence of such a purpose. Under the second proviso of Section 8 (a) (3) of the Act, the Respondent could not comply with the Union's request and retain the benefit of the immunity provided in the first proviso of that section, if it had reason to believe that membership was not available to the employees whose discharge was requested on the same terms and conditions generally applicable to other members.[1] Whether the

[1] Cf. *The Electric Auto-Lite Company*, 92 NLRB 1073, where the Board held that the Employer violated the Act by discharging an employee when the Employer had "reasonable grounds for believing" that the employee's union membership was terminated, as it in fact had been, for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Respondent's position in the "back dues" question was the correct one is not in issue here. Suffice it to say that the Respondent's alleged contractual breach was consistent with its statutory obligation under this section in order to avoid the commission of unfair labor practices, and, so far as the record shows, clearly not in furtherance of any design to interfere with or rid itself of the chosen representative of its employees.[2]

On the basis of the foregoing, and upon the entire record, we find that the Respondent did not engage in any unfair labor practices. Accordingly, we shall dismiss the complaint in its entirety.

Order

IT IS HEREBY ORDERED, pursuant to Section 10 (c) of the National Labor Relations Act, as amended, that the complaint issued herein against Foley's Mill and Cabinet Works, Helena, Montana, be, and it hereby is, dismissed.

Intermediate Report

STATEMENT OF THE CASE

Upon charges duly filed by Lumber & Sawmill Workers Local Union No. 2409, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued a complaint dated November 1, 1950, against Foley's Mill and Cabinet Works, Helena, Montana, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges and the complaint, together with notice of hearing, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices the complaint alleges, in substance, that the Respondent has permitted employees to remain in its employ more than 30 days without requiring that such employees obtain membership in the Union, as required by a valid collective bargaining agreement between the Respondent and the Union, and that by such conduct the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

Thereafter the Respondent filed its answer, dated November 10, 1950, in which it denied the commission of the alleged unfair labor practices and set out certain affirmative defenses.

Pursuant to notice, a hearing was held in Helena, Montana, on November 16, 1950, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, the Union by an official. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing a motion, made by General Counsel, was granted to strike certain portions of the Respondent's answer. During the hearing

[2] Cf. *Crown Zellerbach Corporation, Stilcoos Division*, 95 NLRB 753.

two petitions to quash subpenas, issued on behalf of the Respondent, were granted. At the conclusion of the hearing ruling was reserved upon a motion by the Respondent to dismiss the complaint. Said motion is disposed of by the findings, conclusions, and recommendations set out below.

Counsel waived the opportunity to argue orally before the Trial Examiner. Each counsel thereafter filed a brief. Following the hearing the Respondent filed with the Trial Examiner a motion to correct the official transcript in certain minor respects, said motion indicating upon its face service upon the other parties. No objections having been received, the said motion is granted, and is hereby made a part of the official record.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Foley's Mill and Cabinet Works, Helena, Montana, is a Montana corporation, engaged in the manufacture of millwork and lumber at its operations in Helena, Montana.

In the course of its business operations the Respondent causes 50 percent of its finished products valued annually at more than $500,000 to be sold, delivered, and transported in interstate commerce through States of the United States other than the State of Montana.

The Respondent concedes the Board's jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

Lumber & Sawmill Workers Local Union No. 2409 is a labor organization admitting to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

Ample evidence, undisputed, supports the main factual allegation of the complaint: that the Respondent did not discharge, as required by a legal union-shop contract, certain employees who had failed to become members of the Union. If such refusal, *per se*, constitutes a violation of the Act, the consequent legal conclusion must follow and an appropriate remedy recommended. The Trial Examiner is not aware, however, that in any Board or court decision the initial premise has been established as a principle. On the contrary, the Board said in *United Packinghouse Workers of America, et al.* (*Wilson & Co., Inc.*) 89 NLRB 310:

> . . . Congress specifically rejected the proposal that contract violations be made unfair labor practices . . . The Senate amendment to the Wagner Act contained a provision making the violation of the terms of a collective bargaining agreement an unfair labor practice. The conference agreement omitted this provision for the reason that "once parties have made a collective bargaining contract the enforcement of the contract should be left to the usual processes of the law and not to the National Labor Relations Board . . ."

It is true that the Board has had occasion to find, in special circumstances, that an employer's refusal to observe the terms of an existing agreement, particularly closed-shop provisions, constituted both interference and a refusal to

bargain. (*Carroll's Transfer Company*, 56 NLRB 940.) In that case the Board appraised the respondents' conduct with respect to the closed-shop provisions in the light of other contemporary conduct on their part, which the Board concluded "manifested their complete lack of good faith in their dealings with the Union. . . ." The Board further said: "By signing a trade agreement an employer does not purchase immunity from the requirements of good faith and honest negotiation which are basic to Section 8 (5) of the Act." The Trial Examiner considers that the Board's reasoning in the last-cited case should be his guide in resolving the problem presented herein.

In the instant case the real question appears to be: Did the Respondent, by refusing to discharge employees, interfere with rights guaranteed by Section 7 of the Act?[1] General Counsel would have the question answered in the affirmative, and in part argues:

> The majority of these employees have evidenced their desire that membership in the Union be made a condition of employment, and that the right to refrain from such activity should not exist at this operation. A small dissident minority disagrees. This Respondent thereupon takes active steps to aid this minority, thus thwarting the expressed will of the majority of its employees.

B. *Relevant facts and evidence*

Since 1946 the Union has been the collective bargaining representative of the Respondent's production employees. Labor agreements between the two parties have been made and renewed during that period. The record in this case reveals no history of unfair labor practices on the part of the Employer, either as to recognizing or as to bargaining with the Union. The latest contract, presently in effect, was signed in October 1949. It contains a "union security" clause which, in substance, provides that the Employer shall "release from its employ any person who fails to become a member" of the Union after 30 days employment and/or fails to "maintain membership in the Union by tendering the initiation fee and periodic dues uniformly required as a condition of acquiring and/or retaining membership." Negotiations leading to the "union security" provisions were authorized by a majority vote of the employees in a bargaining unit. The Regional Director certified the results in June 1948, in Case No. 19–UA–426. Among its various defenses, argued in its brief, the Respondent concedes that it "does not wish to question the legality" of the relevant clause. It is found, then, that the "union security" clause of the contract in question is in conformance with the relevant provision of Section 8 (a) (3) of the Act.[2]

---

[1] Section 7 reads: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities *except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)*."

[2] The provision reads: *"Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in Section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in Section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement. . . ."

On May 3, 1950, the Union first invoked, by a demand in writing as the same contract clause required, the union-security provision of the agreement. The demand referred to the governing article therein and said:

> You have now in your emply (sic) three employes (sic) who have been in your employ considerably longer than this period [30 days] without joining the Union. Therefore we are asking you to dismiss these employees at once. The following are the employees to whom we refer:
>
> Ray Nieman
> James Eyestad[3]
> Lyle Benson

Although the letter of May 3 was the first formal demand made upon the Employer, calling for performance of the contract provision, management had previously been informed of the identity of certain delinquent employees and of the Union's intention to invoke the contract. In February, Fred McCoskery, chief of the shop stewards, gave Mill Superintendent John Stanich a list of employees who had not joined and asked him, according to McCoskery's undisputed testimony, "to contact these men and inform them they must become members in good standing with the union." Whatever action, if any, Stanich took in response to the oral request is not revealed by the record and was not made known to McCoskery.

In the latter part of March McCoskery went to the head of the Company, Michael F. Foley, and in the presence of Stanich, made a similar request as to certain delinquent employees. On this occasion Foley instructed Stanich to discharge one of the delinquents.[4] What action either Foley or Stanich took, if any, except as to the one individual, is not established in the record.

The Respondent did not comply with the demand of the Union in its May 3 letter, nor was any reply made in writing. Instead, both Foley and Stanich interviewed the three employees named. According to Foley's credible testimony on the point, he "asked them if the stuff put on this letter was correct, and they said no . . . some of them was paying on their initiation fee, and some of them would pay the full initiation fee, if I remember right, within two days, because they had a pay day coming up then." Stanich testified, without contradiction, that he "contacted" the men and "told them they should pay their dues or get squared up with the union if they were to stay in the employment." After talking with the three individuals Foley went to McCoskery, asked him "what the deal was," told him "the boys" had said they were paying or would pay, soon, and asked if that was "all right." According to Foley's undisputed testimony on the point, McCoskery replied only to the effect that "if that wasn't what they were going to do he wanted some help, wanted me to put some pressure on them, and that was all he said as to that time." Foley also said that after his conversation with the steward he "assumed that everything was taken care of then." In any event, McCoskery took no further action until May 29.

On the latter date McCoskery sent the following written demand to Foley:

> Please releave (sic) from your employ, for reasons set forth in artical (sic) Eleven (XI) of our current working agreement, the following employees:
>
> Dean Eyestead — James Eyestead
> Ralph Talbot — Ray Neiman
> Lyle Benson
>
> This becomes effective upon receipt of this notice.

[3] Spelled "Eyestead," and "Eystad," also, in the record.

[4] "A Mr. LaPier," according to McCoskery's testimony. Whether or not LaPier actually was discharged is not established.

Foley received this letter on May 30, and, according to his credible testimony on the point, proceeded to talk with four of the five individuals above named, Talbot, the fifth, being "out on a drunk and didn't come back for about a month afterwards." Foley then went to McCoskery again, and reported that each of the employees had said they either had paid in full or would pay. According to Foley's testimony, corroborated in part by McCoskery, the chief steward then said that the "chief argument" didn't seem to be on initiation fees but on "retroactive dues" and explained that the Union believed the delinquent employees should pay dues from the end of the 30-day period. Foley challenged McCoskery's interpretation of the Union's right to such dues, pointing out that he, himself, had been in the "labor movement" for 22 years, and knew "the laws pretty well." [5] An argument ensued, McCoskery claiming that he had a right to collect the back dues. The testimony of both Foley and McCoskery is confused as to the precise status of the discussion at the close of this meeting.[6]

On June 2, Foley wrote to McCoskery as follows, in part:

> We wish to acknowledge receipt of your letter of May 29th in which you demand the discharge of five members whose names appear below:
>
> | | |
> |---|---|
> | Dean Eystad | Lyle Benson |
> | James Eystad | Ray Neiman |
> | Ralph Talbot | |
>
> I wish to inform you that I refuse to comply with your request—on the grounds that it is one of the most assinine requests that I have ever been asked to comply with.
>
> * * * * * * *
>
> I personally contacted the above-named employees some weeks ago and they informed me that they have already paid their initiation fees and one month's dues, which your Local or International Local requires. This itself eliminates our Companuy from being held liable under Chapter XI.
>
> I have been informed by yourself, as well as the boys whom you insist upon having discharged, that you demand retroactive dues from these five employees, who do not, or had not at that time, belonged to your Union.
>
> I am going to answer you again, as I did then. As Michael F. Foley, a member for twenty-two years of Local Union #153, Carpenters & Joiners of America, located at Helena, Montana, I say you can not assess non-members retroactive dues. In fact, I would be very willing to challenge

[5] Foley said that he was a member of, at the time of the hearing, had been since 1928, and had held offices in, Local 153, United Brotherhood of Carpenters and Joiners of America, with which the Union in this case is also affiliated.

[6] Foley testified that at this meeting McCloskery told him that he "didn't like these fellows personally and was going to see to it that they were, got fired," and that he refused to "fire a man on those grounds." Upon this claim of Foley the Respondent bases one of its affirmative defenses—to the effect that it had reason to believe that membership in the Union was being denied the individuals on grounds other than nonpayment of dues. The Trial Examiner finds no merit in the defense and does not credit Foley's testimony on this point. In his letter to the Union, a day or two after the above conversation, and quoted hereinafter, Foley made no mention of any such statement by McCoskery. Had the steward in fact given his personal dislikes as a reason for demanding the discharge, and Foley in fact refused on such grounds, it is reasonable to believe that in his written reply on June 2 he would have referred to it. Furthermore, credible evidence, including the testimony of Foley and Stanich, shows that both the stewards and management had tried, and continued to try, to make all the individuals involved pay their dues and initiation fees and thus become members. Nor does the Trial Examiner accept as credible Foley's affirmative answer to the following leading question by his own counsel as to the above conference: "Did Mr. McCoskery indicate to you that he was going to go into the matter further and then contact you at a later date if these men did not comply with the payment of the initiation fees and dues?" Had the interview ended on this note, there would have been no valid reason for Foley's written refusal to discharge, sent to the Union on June 2.

any Law Court in the United States on this issue. I feel just as confident now as I did in the past that Mr. Hutchison, President of the Carpenters International of Indianapolis, Indiana, will uphold me on my remarks.

I advise you to proceed with more caution in the future.

Because addressed to the union hall, Foley's letter did not reach McCoskery until the latter part of June. Not having heard from Foley, by letter, McCoskery on June 5 sent the following wire to Robert Weller, business representative of the Montana district counsel:

UNABLE TO GET RESULTS IN REGARDS TO RELEASE OF NON-UNION EMPLOYEES COMPANY REFUSES TO COOPERATE STOP TAKE OVER

On June 29 Weller wrote to Foley, in part, as follows:

We have your letter of June 2nd, addressed to Mr. F. S. McCoskery. Your letter was addressed to the Labor Temple instead of to Mr. McCoskery's home address and for that reason, there was a considerable delay in his receiving it.

* * * * * * *

It was under the above-quoted provisions of the contract that Local 2409 in its letter of May 29th requested the discharge of the five employees with whom your reply on June 2nd deals.

. . . there is one very important point in which you seem to have been misinformed.

Your letter states "I personally contacted the above-mentioned employees some weeks ago and they informed me that they have already paid their initiation fees and one months' dues," etc. "This in itself eliminates our Company from being held liable under Chapter XI."

For your information, at the time of your letter, Dean Eystad, according to Local Union records, had made no payment of any kind. Neither had Ralph Talbot. James Eystad, although he should have been a member of Local 2409 in October 1949, made a payment of $10.00 in March and a payment of $17.50 the latter part of May 1950. He made no payment on dues during the period of October to March or during the month of April. Lyle Benson made a payment of $15.00 May 5th, which did not complete his initiation fee or pay any dues. Ray Neiman made a payment of $10.00 in November 1949, and a payment of $15.00 in May 1950. Although this completed the initiation fee which was due and payable in November, he paid no dues in the interim nor for the month of May.

This was the status of the five employees at the date of your letter, June 2nd, and in the absence of any information to the contrary from the Local's Financial Secretary, we presume there has been no change since that time.

As you are no doubt aware, the standard initiation fee of Local 2409 is $25.00 and is "uniformly required as a condition of acquiring" membership. In addition, monthly dues of $2.25 each month are "uniformly required as a condition of acquiring and/or retaining membership" as provided by the contract.

As you probably also know, the Local Union would be entirely correct under its By-Laws in declaring forfeited any sums paid on initiation fees, thirty days after payment, if membership is not completed within that time.

The fact that the Local Union extended to these employees an opportunity to complete their initiation fee by periodic payments, does not waive the Local's right to expect the applicants to keep up their dues while completing

their initiation fee. Also, at any time during the period, the Local had a perfect right under its By-Laws and under the contract, to declare the payments forfeited and expect the applicants to pay a new initiation fee in full plus monthly dues involved.

Inasmuch as the Local did not declare the amounts forfeited and has offered to credit the applicants with the amounts they paid, it would seem to us that the Local leaned over backward to extend to the applicants more consideration than they were, or are, entitled to under the General Constitution you refer to in your letter.

* * * * * * *

On July 6 Foley answered Weller's letter as follows:

This will acknowledge yours of June 29th, which, I am forced to say, is in itself a masterpiece and I still maintain you are crazy as hell.

Since I don't have time to write, I will just refer you to your Constitution & Laws of United Brotherhood of Carpenters and Joiners of America—in effect January 1, 1947. On page 35 please read Section 43. Does Section 43 in your General Constitution give you the right to collect retroactive dues from non-members?

Your reference to Dean Eystad, Lyle Benson, and Fred Talbot—For your information, at the time I was contacted, those boys were not in our employ thirty days.

The reference you make to Jim Eystad and Ray Nieman, I would be ashamed to put on paper, but if you expect to have me go out and canvas and make members out of guys like this who your Union Members don't see fit to contact from October 1949, until March and May 1950, you have another think coming.

Please bear in mind that I am trying as best I know how to run the Foley Millwork Company and not your Union.

Foley's claim of knowledge as to union matters is in marked contrast to his apparent lack of knowledge as to his own payroll. Information provided by the Respondent at the hearing establishes that Dean Eystad was hired February 1, Lyle Benson on March 7, and Fred Talbot on April 25. As the above-quoted correspondence shows, Foley was first formally notified as to Benson on May 3 and as to Dean Eystad and Ralph Talbot on May 29. Thus, in each case, the employee had been on the Respondent's payroll more than the required 30 days before notification of delinquency was given to the Employer.

Foley's letter, above quoted, so far as the record shows, ended the exchange of correspondence on the subject. As a witness, Foley admitted that he discharged none of the five men as a result of the union demand.

Before the hearing in this case, however, all five individuals had quit their employment with the Respondent: James Eystad and Benson on June 2; Talbot on May 29;[7] Nieman on August 18, and Dean Eystad on August 21.

Of relevance also in determining the real motive of the Respondent's refusal to discharge the individuals are remarks made by Foreman Peck to the employees. According to McCoskery's credible and undisputed testimony, he was told by Peck in June "that it was not possible to collect back dues without the men first being initiated into the local." Also undisputed is Weller's credible testimony that on June 1 and 2 Peck admitted to him that he had advised some

[7] Foley testified that Talbot was not reemployed when he returned from his extended absence which began May 29.

employees that they did not have to pay the "remainder of their initiation fee and dues" and had told some "shop steward" that he had no authority to collect dues because not bonded. Weller, according to his testimony, cautioned Peck for giving such advice, pointing out that Peck was "no longer a member of the union or the financial secretary of the union." Also undisputed is the testimony of steward Clifford French that: (1) In February Peck said, in the presence of several employees, "What's that man doing collecting dues, he's not a bonded member of the union, he has no right whatever to handle union funds," and (2) that in March, Peck told employee Dean Eystad "he did not have to pay back dues, he (Peck) felt it was impossible for the union to collect them."

On June 12 Weller filed with the Board the original charge against the Respondent, citing as an alleged unfair labor practice the refusal to discharge "non-members" of the Union.

C. *Conclusions*

From appraisal of all the evidence the Trial Examiner is unable to conclude that a preponderance of it supports the allegation of the complaint that the Respondent's conduct constitutes an unfair labor practice within the meaning of the Act.

The remarks made by Foreman Peck, accurate or ill-advised, were no more that expressions of opinion protected by the Act. He made no promises of benefit if the employees followed it, and no threats of reprisal if they did not.

Whether or not Foley's position on back dues is tenable in the light of the Union's constitution and bylaws, is not a matter for the Trial Examiner's determination. Yet the evidence establishes that it was on this point that he took his stand throughout the controversy,—and that the matter of back dues was first raised by the union steward in discussion with Foley. The evidence falls short of supporting the claim of General Counsel that the Respondent's conduct aided a "dissident minority" in *refraining from becoming members.*

Assuming, *arguendo*, that Foley's failure to discharge upon demand actually breached the contract, in the opinion of the Trial Examiner the evidence does not support the allegation that his conduct, either by design or effect, interfered with, restrained, or coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

Therefore the Trial Examiner will recommend that the complaint be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

Conclusions of Law

1. Lumber & Sawmill Workers Local Union No. 2409, is a labor organization within the meaning of Section 2 (5) of the Act.
2. Foley's Mill and Cabinet Works is engaged in commerce, within the meaning of Section 2 (6) of the Act.
3. Foley's Mill and Cabinet Works has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the Trial Examiner recommends that the complaint be dismissed in its entirety.