APPENDIX B

NOTICE

TO ALL MEMBERS OF CHEMICAL WORKERS' BASIC UNION, LOCAL NO. 1744 AFFILIATED WITH THE BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA, A.F.L., AND TO ALL EMPLOYEES OF NATIONAL LEAD COMPANY, TITANIUM DIVISION

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT cause or attempt to cause National Lead Company, Titanium Division, its officers, agents, successors, or assigns, to discharge or otherwise discriminate against its employees in regard to their hire or tenure of employment, or any term or condition of employment, to encourage membership in our labor organization in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of National Lead Company, Titantium Division, its successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE WILL make C. C. Wilson and S. J. Carter whole for any loss of pay they may have suffered because of the discrimination against them

CHEMICAL WORKERS' BASIC UNION, LOCAL 1744, Affiliated with the BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, A.F.L., Labor Organization.

Dated ..... By ..... (Representative) ..... (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material

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DAZEY CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, AFL. Case No. 14-CA-884. August 4, 1953

DECISION AND ORDER

On April 23, 1953, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that although the Respondent had violated Section 8 (a) (1) of the Act, the record as a whole does not warrant the issuance of a remedial order. He also found that the Respondent had not engaged in other unfair labor practices, as alleged in the complaint, and recommended that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General

Counsel filed exceptions to the Intermediate Report with a supporting brief.

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 Trial Examiner's findings, conclusions, and recommendations insofar as they are consistent with our decision herein.

The Trial Examiner found, and we agree, that the Donovans acted in derogation of the authority of the exclusive bargaining representative. We further find that the concerted activity for which the Donovans were allegedly discharged was not protected under the Act and provides no basis for an 8 (a) (3) violation of the Act on the part of the Respondent.

The activity of a minority group of employees in an effort to usurp the functions of the duly authorized bargaining agent selected by all the employees has been held not to be protected by the Act.[1] An application of this principle to the instant proceeding demonstrates the validity of the finding and conclusion hereinabove noted with respect to the activity in question. It is apparent from the evidence that the Donovans sought to induce the Respondent to act unilaterally without first consulting the bargaining representative in a matter clearly covered by the existing bargaining agreement;[2] and that the Donovans had refused either to deal with the UE, the bargaining representative, or to utilize the grievance procedure provided in the bargaining agreement.[3] In so doing, particularly where the demand upon the Respondent was accompanied by a strike threat (which was tantamount in its effectiveness to an actual strike), the Donovans were clearly and deliberatively engaged in activity having as its primary objective the forcing of the Respondent to deal independently with them to the detriment of the UE's statutory position as exclusive bargaining representative.[4]

[1] N. L. R. B. v. Draper Corporation, 145 F. 2d 199 (C. A. 4).

[2] Article IV, sec. 16 of the contract with the UE sets up specific classifications and rates for the projectile department including three classifications and rate ranges for the screw machine section. Section 18 deals with employees who are transferred from one classification to another. Section 19 provides that new classifications must be established by negotiation.

[3] It does not appear affirmatively that either step would have been futile or without benefit to the minority group headed by and including the Donovans.

[4] Cf. N. L. R. B. v. Nu-Car Carriers, Inc., 189 F. 2d 756 (C. A. 3) enforcing 88 NLRB 75, where the Board held that the discharge of the spokesman of a minority group which was dissatisfied with certain provisions in the contract dealing with the owner-operator system of truck transportation, constituted a violation of the Act. The Board pointed out that the dissidents attempted to induce their union to change a working condition and that the discharge was an interference with the efforts of the minority group to effectuate such change. That case is clearly distinguishable from the instant case, where as noted above, the minority group made no attempt to utilize the services of the bargaining representative or the grievance procedure provided in the contract.

Furthermore, it is a violation of the essential principle of collective bargaining and an infringement of the Act for an employer to disregard the bargaining representative by negotiating with individual employees.[5] Viewed in the light of this principle, the illegality and resulting unprotected character of the conduct described above is apparent when considered in relation to its effect upon the Respondent who, if it had yielded to the minority's request, would have committed a violation of the Act. Thus, if the Respondent had taken any action on the subject of job classification to the satisfaction of the minority group, the Respondent would have laid itself open to an 8 (a) (5) charge under the Act, which makes it the duty of the Employer to bargain collectively with the chosen representative of his employees. Moreover, if the Respondent had ignored the UE as the employees' exclusive bargaining representative, it would have encouraged the minority group to abandon the UE and would have violated Section 8 (a) (1) of the Act.[6]

The General Counsel contends, however, that the activity in question was protected upon the ground that what the minority group sought was not primarily a change in classification, but an opportunity to utilize such change in order to leave the bargaining unit represented by the UE. This, he urges, is a matter outside the bargaining contract, and under Section 9 (a)[7] of the amended Act, the group had the right to take their grievance directly to the employer.

We find no merit in this contention. Section 9 (a) gives the right to individuals and minority groups to take certain grievances directly to the employer independent of the recognized bargaining representative. However, to invoke the protection of Section 9 (a), such grievance must be outside of and not covered by the collective-bargaining agreement.[8] Furthermore, not only must the grievance sought not be covered by the agreement, but the adjustment sought in such procedure must not be inconsistent with such agreement.[9] In the instant case, as noted above, the minority group sought action on a subject clearly set forth in the contract and subject to negotiation by the parties.[10] It is clear, therefore, that the adjustment sought, namely, an opportunity to abandon the Union could not be effected consistent with the agreement which

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[5] Medo Photo Supply Corporation v. N. L. R B., 321 U S. 678, enforcing 43 NLRB 989

[6] Medo Photo Supply Corporation, supra.

[7] "..any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect" and provided further "that the bargaining representative has been give opportunity to be present at such adjustment."

[8] Douds v. Local 1250, 173 F. 2d 764.

[9] Elliott, et al v. American Mfg. Co. of Texas, 203 F 2d 212 (C. A. 5).

[10] See footnote 2, supra.

provided for the continuous recognition of the Union as the bargaining representative of all the employees in the unit.

Because we have found that the activity described above was, under the circumstances of this case not protected by the Act, we find it unnecessary to consider whether the Donovans were discharged for dual unionism.[11] We agree with the Trial Examiner that, although the Respondent president's statement that he would discharge William Donovan if "he opened his mouth about any other union," constituted a violation of the Act, we do not believe that this isolated statement and the record as a whole, warrants us in issuing a remedial order.[12] We shall, therefore, as recommended by the Trial Examiner, dismiss the complaint in its entirety.[13]

[The Board dismissed the complaint.]

Chairman Farmer and Member Styles took no part in the consideration of the above Decision and Order.

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[11] There is no substantial evidence indicating a discriminatory motive in the discharge of the Donovans. No other unfair labor practices were filed against the Respondent. In addition, knowing the antagonism of the UE to the Donovans, the Respondent nevertheless sought the employment of William Donovan Furthermore, there is no evidence that the Respondent interfered with the activities of the IAM in the plant.

[12] Waffle Corporation of America, 103 NLRB 895.

[13] We agree with the General Counsel that the cases cited by the Trial Examiner in connection with his discussion of the non-strike clause of the contract are not relevant. As there was no actual strike prior to the discharges, we shall not pass upon the question raised by the General Counsel as to whether or not the threat to strike constituted a violationg of the no-strike clause Cf. Pepper & Potter, Inc., 104 NLRB 197.

Intermediate Report

During the term of an employment contract between Dazey Corporation, herein called Respondent, and United Electrical, Radio and Machine Workers of America, Local No 810, herein called UE, a group of employees in the screw machine section of Respondent's projectile department sought to become a craft group and to become severed from the production unit, represented by the UE Ike Donovan, the spokesman for this group and his son, William Donovan, a member of this group, were discharged October 24, 1952, and the principal question in issue herein is whether they were discharged because of Respondent's resentment against this concerted activity (and whether it was concerted activity protected by the National Labor Relations Act, as amended, herein called the Act)

For some years Respondent had recognized UE as the exclusive bargaining agent of its production employees. During the fall of 1951 organizing efforts on behalf of the International Association of Machinists, AFL, herein called IAM, were conducted by the Donovans in an effort to secure separate representation for screw machine operators. These efforts were opposed by the UE which circulated a leaflet referring to the Donovans as "The Screwy Screw Machine Donovan's" and as "Sell out Artists" because of their attempt "to set up a separate unit in the shell department" and warning them to pay their UE fines "or be taught the lesson the hard way. If you don't like it at the Dazey plant, go to an IAM plant, no one will miss you." On November 15, 1951, the IAM filed with the National Labor Relations Board, herein called the Board, a petition for certification of representatives, seeking a unit of screw machine operators in the screw machine section of Respondent's projectile department On December 5, 1951, the IAM requested permission to withdraw its petition

because the contract between Respondent and the UE, expiring in June 1952, was a bar to further proceedings. Permission to withdraw was granted and this case (Case No 14-RC-1663) was closed on December 5, 1951 Efforts on behalf of the IAM were discontinued and there was no activity on its behalf when the current contract between Respondent and the UE was negotiated and executed. This contract, effective from June 1, 1952, to June 30, 1954, recognizes the UE as the exclusive bargaining representative for Respondents' production employees, including employees in the projectile department, and contains, inter alia, union-security and checkoff provisions, a grievance procedure and a clause stating "during the term of this agreement there shall be no lockouts by the Company and no strikes or stoppages of any kind for any reason by the Union or any of its members "

In December 1951 William Donovan voluntarily left Respondent's employ. In March 1952 L. J. Miller, Respondent's plant manager, called upon Ike Donovan, at the latter's home, and asked whether William was interested in returning to Respondent's employ. Within a few days (and on a Wednesday afternoon) William Donovan was interviewed by Arthur R. Brownlie, Sr , Respondent's personnel manager, and told to report to work on the following Monday. On the Friday immediately preceeding the date William was to report to Respondent, William Gundelfinger, president of Respondent, called Ike Donovan to his office and told him he (Gundelfinger) "was afraid for Bill to come back," that the UE "was either going to beat him up or wreck his automobile or something " Ike Donovan thereupon telephoned his son at his then place of employment and advised him to stay there and cancel his plans to return to Respondent's employ, which William Donovan did

On or about July 26, 1952, William Donovan was again interviewed for employment by Personnel Manager Brownlie and arrangements were made for him to begin work with Respondent on July 28, 1952, which he did During this interview Brownlie told William Donovan that in view of the current contract, he "would have to get along with the UE"[1] and William Donovan agreed to do so On or about August 28, 1952, John Farlow, the UE's chief shop steward, and William Donovan had a discussion concerning William Donovan's back dues (dues for the months he was not employed by Respondent) and certain unpaid fines imposed by the UE in 1951. William Donovan refused to pay these but offered to "pay the reinstatement like a new employee would coming in " Farlow then informed William Donovan that he (Farlow) "would get my [William Donovan's] job." A few minutes thereafter Gundelfinger, president of Respondent, asked what the "trouble was" and was informed of the dispute concerning the back dues and fines Gundelfinger remarked that he (Gundelfinger) had promised the UE that if William Donovan opened his mouth about any other union he (Gundelfinger) would fire him.[2] About an hour later Brownlie, Respondent's personnel manager, told William Donovan he would not have to pay the back dues and fines but "would be expected to pay the "initiation fee" or "reinstatement charges." William Donovan thereafter paid the UE initiation fee and current dues [3]

Around September 1952, the employees in the screw machine section of the projectile department became dissatisfied with the UE and thereafter sought ways to get from under its jurisdiction. As previously noted herein, Ike Donovan acted as their spokesman.[4]

During the early part of October 1952, and after talks among the men in the screw machine section, Ike Donovan had prepared a statement reading:

> We, the undersigned, hereby notify the Dazey Corporation that we are severing all relations with United Electrical and Machine Workers Local #810 and demand that no

[1] Brownlie was aware of the UE's resentment of the Donovans' activity on behalf of the IAM.

[2] The evidence concerning Gundelfinger's remarks is conflicting and contradictory Nevertheless, upon the basis of the entire record the undersigned believes and finds the facts to be as stated above. In determining credibility in this proceeding the undersigned has considered inter alia: the demeanor and conduct of witnesses, their candor or lack thereof; their apparent fairness, bias, or prejudice; their interest or lack thereof; the ability to know, comprehend, and understand matters about which they have testified; whether they have been contradicted or otherwise impeached; and consistency and inherent probability of testimony.

[3] His dues were deducted pursuant to the checkoff provisions of the aforementioned contract

[4] This record reflects that Ike Donovan initiated and was responsible for development of a movement to obtain for screw machine operators a skilled craftsman's classification and that throughout the events herein outlined he acted as the spokesman for this movement.

more dues or assessments, etc. be deducted from our checks. This local Union's stand at their Cleveland Convention makes the above action imperative. 10-8-52
Dated

Fourteen of the approximately fifteen employees in this section signed the above statement On or about October 8, 1952, Ike Donovan and Charles Heyl[5] (also a signer) took the statement to Personnel Manager Brownlie's office and told him that the signers of the above statement were satisfied with their relations with Respondent but were not satisfied with their relations with the UE and that the purpose of the statement was "to get out of the UE." Within the next few days Ike Donovan mailed a duplicate of the above statement to the UE and William Donovan and Charles Heyl took another duplicate to the offices of the Labor Board.

On or about October 10, 1952, Ike Donovan was called to President Gundelfinger's office, and in the presence of Plant Manager Miller, Personnel Manager Brownlie, UE Chief Shop Steward Farlow, and others, told (by Gundelfinger) that Respondent was bound to abide by the contract between Respondent and the UE and that the employees must continue to pay dues to the UE. It was suggested that those signers of the statement quoted above who had been employed by Respondent more than a year sign a new dues deduction authorization,[6] and a statement for their signatures was prepared. The statement, signed at that time, reads as follows:

We, the undersigned, under date of October 8, 1952, along with 15 other persons signed a petition asking the Dazey Corporation not to deduct dues for Local 810.

We wish to rescind this order at the moment as we are taking the matter up with our union direct and will advise you later as to our decision.

s/ Ike Donovan

s/ Gregoria E Carmona

s/ Charles Heyl

s/ Emil Gumper

October 10, 1952

Thereafter, Ike Donovan sought advice from an attorney (not in any manner associated with Respondent) as to how these employees could get out from under the jurisdiction of the UE and was advised that possibly such could be accomplished if the screw machine employees were classified as skilled craftsmen, a classification other than the one then in effect.

On or about October 14, 1952, Ike Donovan told Plant Manager Miller that he (Ike Donovan) had been told that if the screw machine employees were reclassified as skilled craftsmen they could get out of the UE and asked Miller to help get reclassifications. Miller stated he didn't think screw machine employees were skilled craftsmen and that he didn't see how they could be classified as such Nevertheless, Miller called a machinist (Johnson) nearby and the three of them (Ike Donovan, Miller, and Johnson) discussed the qualifications of skilled craftsmen.

On or about October 16, 1952, the UE distributed an article attacking "that certain group employed on screw machines" and the "leader of the click" (Ike Donovan) for "their Union busting tactics," for trying "to disrupt and divide UE membership employed by the Dazey Corporation" and for seeking representation by the IAM. This leaflet came to the attention of Personnel Manager Brownlie

On or about October 16, 1952, Plant Manager Miller indicated to Ike Donovan or Charles Heyl that he (Miller) would contact some of the other companies in the area and see how they classified their screw machine operators and would advise the employees the results of the survey

[5] Heyl, a UE steward for this secton, was one of those seeking a way to get out of the UE.

[6] It was stated that those with less than a year's service did not need to sign a new authorization since they had signed one with in the year.

About a week before October 24, 1952, Ike Donovan and screw machine operator Gerald Schutz indicated to Personnel Manager Brownlie that employees in the screw machine section were dissatisfied with their classification and with their failure to receive certain pay raises negotiated concurrently with the contract but subject to approval by the Wage Stabilization Board Schutz stated he was contemplating leaving Respondent's employ unless something was done about these matters. Brownlie indicated the pay matter was pending before the Wage Stabilization Board and would be forthcoming as soon as that Board approved the increases Brownlie further indicated that Plant Manager Miller was making a survey of how other concerns classified their screw machine operators and that the employees could expect, within a week, a definite statement from Respondent concerning their request for reclassification as skilled craftsmen.[7]

During the morning of October 24, 1952, William Donovan and 3 to 6 other screw machine operators,[8] on different occasions, requested to be paid early that day and to be excused for the rest of the day It was unusual for such a large number of operators to make such a request Foreman Virgil Rutter reported the situation to Plant Manager Miller and to Personnel Manager Brownlie and was told the checks would not be ready until about 2:30 After receipt of the above information from Rutter and after the conversation with Heyl, hereinafter noted, wherein Heyl indicated the men were contemplating a "walk out" or "strike," Miller telephone President Gundelfinger and told him "that something would have to be done to prevent production from stopping "

At about 10:30 a m on Friday, October 24, 1952, Ike Donovan, in the presence of William Donovan, stated to Charles Heyl, UE steward for the screw machine section but one of those seeking reclassification, that the men in the screw machine section were "much dissatisfied" and were talking about "knocking off" that day unless they got answers as to when they could expect pay raises and whether they would be reclassified as skilled craftsmen Ike Donovan indicated something would have to be done about the situation immediately Heyl told Plant Manager Miller what Ike Donovan had said, including the statement that "that day was the deadline" for Respondent's answer to the requests for reclassification. Miller and Heyl then telephoned other concerns and inquired as to how those concerns classified screw machine operators. Those concerns reported they did not classify them as skilled craftsmen. Heyl reported this information to Ike Donovan and "the boys in the screw machine" section and Ike Donovan expressed disappointment and stated he knew there were other concerns that classify screw machine operators different from the classification existing at Respondents' plant

While Miller and Heyl were contacting other concerns, as noted above, Brownlie, on a routine trip through the plant, stopped at Miller's office. Shortly thereafter and before noon on that day Ike Donovan, in the presence of other screw machine operators, including his son William, indicated to Brownlie that the men would "have to have an answer" to their requests for reclassification that day,[9] that the men "wanted to leave" and he (Ike Donovan) could not hold them any longer At this time William Donovan indicated the men wanted a "journeyman's card " Brownlie told the group that the Company's hands were tied and the only way to get reclassification was through the U.E.[10] This discussion ended abruptly when Brownlie was called to answer the telephone Immediately after this meeting Brownlie reported, via telephone, to President Gundelfinger that there "was something brewing in the projectile department," that there was a "lot of unrest out there" and that the men were threatening to strike

Upon receipt of the reports from Miller and Brownlie, Gundelfinger arranged for a conference with the UE shop committee and Miller and Brownlie. At this conference, which began about 1 p. m. that day, Gundelfinger asked Miller and Brownlie to repeat what they had said to him (Gundelfinger) and they stated there was a lot of unrest in the screw machine section, that a lot of the employees had asked for the afternoon off with no apparent reason, that there were threats of a walk out and that they "were very much apprehensive about the department" and didn't know what was going to happen. Gundelfinger asked Heyl whether

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[7] Brownlie denied that he promised to "let them know in a week." In the light of the entire record it appears probable that Brownlie did make some such commitment and his denial is not credited by the undersigned.

[8] There were from 8 to 10 operators on this shift.

[9] The employees wanted a written statement from Respondent

[10] The current contract provides: "new or omitted classifications and rates shall be established by negotiation and agreement between the Company and the Union [the UE]"

there was a "lot of unrest and disturbance" and upon receiving an affirmative reply and a statement that the men were "going to walk out" asked who was causing the "disturbance and unrest." Heyl named Ike and William Donovan as the leaders Gundelfinger then told Brownlie that he was to "fire" the Donovans and remarked that he was not going to let a few people "stand in the way" of Respondent "completing their contract with the government." [11]

At about 1:45 p. m on October 24, 1952, Ike and William Donovan were called to Brownlie's office and discharged. William Donovan asked the reason for the discharges and Brownlie said for "agitation" and causing a disturbance or disruption in the screw machine section. When pressed for a more specific reason, Brownlie said for "union activity."[12] William Donovan requested a written statement giving the reason for the discharges and Brownlie agreed to prepare such while they (the Donovans) were checking out their tools Later that day (about 3 p.m.) Brownlie offered the Donovans letters stating:

> We are terminating your employment with this Company as of today for good and sufficient cause. We are sorry we found it necessary to take this step

William Donovan protested that the letters did not reflect what he anticipated they would reflect, because of the earlier conference, i. e., because the letters did not say they were discharged for "union activities." Brownlie refused to give them any other letters and walked away.

At all times material herein the IAM has been the recognized bargaining representative for employees in Respondent's toolroom and the record reflects that Respondent was not opposed to the IAM and did not attempt to restrain activities on its behalf except as outlined in this report.

Conclusions

It is apparent from the facts outlined above that the employees in question, acting in concert with a view toward eliminating their recognized bargaining representative, sought from Respondent a statement (in writing) that they were skilled craftsmen [13] and threatened to cease work unless Respondent met their demand There is no doubt that Respondent was aware of these concerted activities, the purpose thereof, and that the Donovans (especially Ike Donovan) were considered the leaders of this activity It is also clear that the Donovans were discharged for this conduct

While it is per se a violation of the Act for an employer to discharge employees for engaging in concerted activity protected by the Act, not all concerted activity may be engaged in with impunity To be afforded the shelter of the Act the conduct must fall within the protection of Section 7 of the Act,[14] and be what is generally referred to as "protected concerted activity." The question herein is a narrow one, namely, did the aforementioned conduct of the discharged employees fall within the protection of the Act? If it did, the discharges on

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[11] Respondent, a Missouri corporation having its principal office and place of business in St. Louis, Missouri, engages in the manufacture and sale of household appliances, and in addition, at all times material herein, produced "vital defense material for use by the United States Armed Forces." The Board's jurisdiction is not contested.

[12] There is a dispute as to whether Brownlie use the phrase "union activity" and on the basis of the entire record the undersigned finds he did. However, it appears from the record herein that this phrase had reference to the activities herein above outlined and not to activities on behalf of any particular labor organization, more particularly not to activities on behalf of the IAM.

[13] In the light of the facts noted above, the undersigned cannot conclude that these employees were indifferent as to the wording of the statement, i. e., as to whether the statement said they were or were not skilled craftsmen, and believes and finds that at the time of the threat to strike they sought a statement that they were skilled craftsmen

[14] Section 7 of the Act states: "Employees shall have the right to self-organization, 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) "

account thereof are clearly violative of the Act If it did not, the discharges were justified[15] and furnish no basis for a finding of unfair labor practice.

In effect the screw machine operators, a minority group within the unit of production employees, were seeking to reclaim part of the duties delegated to the exclusive bargaining representative and were about to resort to strike action to accomplish this purpose. In view of the provisions of the contract, had they engaged in a strike their conduct would not have been protected. See N. L. R. B v Rockaway News Supply Co., Inc , 345 U.S. 71, and N. L. R. B, v. Draper Corporation, 145 F 2d 199 (C. A. 4).[16]

While this record reflects an intention by the screw machine operators not to seek to bargain through the IAM until the end of the contract term, such was not communicated clearly to Respondent Furthermore, as indicated above, their relations with Respondent were indicative of a purpose to terminate immediately the authority of the bargaining representative to act on their behalf and indicative of a purpose to act in derogation of the rights of the exclusive bargaining representative and compel Respondent to capitulate to the demands of the screw machine operators, as such In addition, they had expressed to Respondent unequivocal threats[17] to cease work concertedly (not to work in accordance with their contract) [18]

Under all the circumstances of this particular case the undersigned deems the action of the screw machine operators as destructive of the stable collective bargaining and industrial peace, which the Act seeks to achieve (in contravention of the basic policies of the Act to encourage employment contracts binding on employers and their employees) and the undersigned is of the opinion that the aforesaid activities are not the sort of concerted activities which Congress intended this Board to protect. Accordingly, the undersigned recommends that the allegations of the complaint with respect to the discharges of the Donovan's be dismissed

The remarks of President Gundelfinger on or about August 28, 1952, that he had promised the UE he would fire William Donovan if he (William Donovan) opened his mouth about any other Union violated Section 8 (a) (1) of the Act However, upon consideration of the entire record, especially Respondent's amicable relations with the IAM and the absence of other evidence indicative of a predilection to commit other unfair labor practices in the future, it is believed that this incident is not sufficient to warrant issuance of a remedial order. See Waffle Corporation of America 103 NLRB 895.

[Recommendations omitted from publication.]

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[15] The wisdom of such action is not before the undersinged.

[16] In National Electric Products, 80 NLRB 995, the Board majority held:

> The right to strike, although protected by th Act, may be waived by the employees in an agreement concluded through the collective bargaining process. . . . As we have heretofore emphasized, "no-strike" clauses . . . are designed to forestall the use of even permissive economic weapons and to substitute settlement by collective bargaining, and tend to realize the purposes of the Act by encouraging the practice and procedure of collective bargaining rather than resort to industrial warfare.

In Scullin Steel Company, 65 NLRB 1294, and Joseph Dyson & Sons, Inc., 72 NLRB 446, both cited with approval in Mastro Plastics Corps, 103 NLRB 511, the Board held that economic strikes in violation of no-strike clauses are not protected activity. In both the Scullin and Dyson cases, the Board noted the absence of any prior breach of contract or unfair labor practices on the part of the employer. In the Mastro Plastics case the Board held that a strike in protest against unfair labor practices apart from the terms, meaning an application of the contract and in no manner an attempt to circumvent the arbitration provisions of the agreement or an effort to alter other provisions and guarantees was not a breach of the contract and was not unprotected activity.

[17] Under all the facts in this case the threat to strike cannot be considered a tactical maneuver lacking actual, or apparent, intent to effect a strike. Whether such a maneuver is a repudiation of a contract and outside the protection of the Act need not be, and is not, answered herein

[18] An effective discharge for repudiation by employees of their agreement may be made without violating the Act. See N L R.B. v. Rockaway News Supply Co., supra, and N. L R. B. v. Sands Mfg. Co., 306 U. S. 332.