There is no dispute that the Unions are acting jointly in this matter. However, the record shows that Culinary Workers Union, Local 470, one of the Unions so acting, has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act, and does not intend to so comply. Accordingly, for the reasons stated by the Board majority in *Darling and Company*, 116 NLRB 374, which holds that a noncomplying union shall not be the beneficiary of any Board certification, the Employer's petition must be dismissed.

[The Board dismissed the petition.]

MEMBER RODGERS, dissenting:

For the reasons stated in my dissenting opinion in the *Darling* case, 116 NLRB 374, I would not dismiss the instant petition merely because a noncomplying union is here involved. Moreover, as the record shows that the Unions demanded recognition and are striking for recognition, and that, therefore a question concerning representation exists, I would direct an immediate election to resolve the question.

Local 1408, 1408–A and 1597, International Longshoremen's Association, Independent, and Dave Kennedy, their agent (Kaufmann [1] Shipping Company) *and* Limous Turner. *Case No. 12–CB–13. December 3, 1957*

DECISION AND ORDER

On June 28, 1957, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set forth in the Intermediate Report, a copy of which is attached hereto. Thereafter, the Respondents filed their Exceptions to the Intermediate Report and Brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its power in connection with the case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.[2]

[1] We correct the spelling of this name wherever it appears in the Intermediate Report and Appendix thereto.

[2] At the hearing Respondents contended that the complaint should be dismissed because the General Counsel had not sustained his burden of proving all allegations of the complaint, particularly the allegation that the discrimination against Turner was for the reason that he "was not a member of any Respondent Locals in good standing, and for

The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The Trial Examiner found that the Respondents caused Kaufmann Shipping Company to discriminate against Limous Turner in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act. In their exceptions and brief, Respondents urge that the evidence establishes that Turner was never actually hired on January 10 inasmuch as no employment was available, Reddick having already hired a full crew before Kennedy spoke to Reddick about first hiring men with cards; and Turner did not apply for work on January 11. They argue that any discrimination against Turner is not attributable to the Respondents. We disagree. Reddick, the header, a company employee in charge of hiring and firing testified credibly that on January 10 he was told by Kennedy "to work the men with cards as long as they are available" and that "Limous doesn't have none" following which he "replaced" Turner with a card man; and that when Turner came to Reddick for work the following day Reddick said "If he had a card, I would have hired him right on." Thus, it is clear that the Respondents urged and Employer acceded to an arrangement whereby preference in hiring would be given to men having union cards. It is well settled that such an arrangement is violative of the Act.[3] As Turner was denied employment as a result of the arrangement, we find, in agreement with the Trial Examiner, that Respondents caused Kaufmann Shipping Company to discriminate against Turner in violation of Section 8 (a) (3) of the Act and thereby violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act. Accordingly we find Respondents' exceptions without merit and overrule them.

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

I. The Respondents, Local 1408, 1408–A and 1597, International Longshoremen's Association, Independent, their officers, representatives, agents, successors, and assigns, and Respondent Dave Kennedy, shall:

---

reasons other than his failure to tender dues and initiation fees uniformly required by Respondent Locals." The Trial Examiner refused to dismiss the complaint. Like the Trial Examiner, we find that the General Counsel sufficiently set forth violations of the Act in his complaint, even though the complaint also contained surplus allegations, and that the General Counsel sustained his burden of proof without evidence concerning said allegations. See: *Construction and General Laborers Union, Local 320*, 96 NLRB 118, 119. Accordingly, we sustain the Trial Examiner's refusal to dismiss the complaint.

[3] See: *The Great Atlantic and Pacific Tea Company*, 117 NLRB 1542.

a. Jointly and severally cease and desist from:

(1) In any manner causing, or attempting to cause, Kaufmann Shipping Company to discharge employees, or refuse to hire prospective employees, because they are not members of Respondent Unions, or have not obtained clearance, approval, or cards, through or from Respondent Unions and Dave Kennedy their business agent, or either of them, or to discriminate against such employees, or prospective employees, in any other manner in regard to their hire or tenure of employment, or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

(2) In any other manner restraining or coercing employees, or prospective employees, of Kaufmann Shipping Company in the exercise of the rights guaranteed by 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 in Section 8 (a) (3) of the Act.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Notify Kaufmann Shipping Company, in writing, that they have no objection to the hiring and employment of Limous Turner, or any other person, without prior or subsequent clearance, approval, or card, from them or either of them, and mail a copy of such notification to Limous Turner.

(2) Post at Respondent Unions' business office and meeting halls in Jacksonville, Florida, and all other places where notices to members of any of Respondent Unions are customarily posted, copies of the notice[4] attached to the Intermediate Report marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the representative of the Respondent Unions, and by Respondent Kennedy, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to the members are customarily posted. Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(3) Mail to the Regional Director for the Twelfth Region signed copies of the notice attached to the Intermediate Report as Appendix for posting, if Kaufmann Shipping Company is willing, at all of its projects, within the territorial jurisdiction of the Respondent Unions,

[4] This notice is amended by substituting for the words, "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

in places where notices to employees and prospective employees are customarily posted.

(4) Notify the Regional Director for the Twelfth Region in writing, within ten (10) days from the receipt of this Order, what steps they have taken to comply herewith.

II. Respondent Local 1408, 1408–A and 1597, Longshoremen's Association, Independent, shall jointly and severally make whole Limous Turner in the manner set forth in the section of the Intermediate Report entitled "The Remedy," for any loss of pay he may have suffered as the result of the discrimination against him.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge and an amended charge filed by Limous Turner, the General Counsel for the National Labor Relations Board, by the Regional Director for the Twelfth Region, on May 13, 1957, issued a complaint against the above-named Respondents alleging that they had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. In substance, the complaint alleged that on or about January 10–11, 1957, and thereafter, all the Respondents caused Kaufman Shipping Company to discriminatorily discharge Turner and refuse him further employment for the reason that he was not a member in good standing of any of the Respondent Locals, and for reasons other than his failure to tender dues and initiation fees uniformly required by the Respondent Locals. Copies of the charge and amended charge, complaint, and notice of hearing, were duly served upon the parties. The Respondents filed a joint answer in which they denied having committed the alleged unfair labor practices.

Pursuant to notice, a hearing was held in Jacksonville, Florida, on June 4, 1957, before the duly designated Trial Examiner. The General Counsel and Respondents were represented by counsel, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. The General Counsel and Respondents presented brief oral argument and the General Counsel has filed a brief which has been duly considered.

Upon the entire record in the case, and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

J. A. Kaufman, Sr., and J. A. Kaufman, Jr., copartners, are, and at all times material herein have been, a partnership doing business under the trade name and style of Kaufman Shipping Company, hereafter called the Company, maintaining their principal office and place of business at Jacksonville, Florida. At all times material herein, the Company has been engaged in the transportation of goods as stevedoring and shipping agents at said place of business. In the course and conduct of its business operations at Jacksonville, Florida, the Company, during the 12-month period preceding the filing of the complaint herein, performed services valued in excess of $100,000 for customers engaged in the transportation of goods and materials by water from the United States and foreign ports into Jacksonville. The Company is, and at all times material herein has been, engaged in commerce and operations affecting commence within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The Respondent Locals 1408, 1408–A and 1597, International Longshoremen's Association, Independent, are, and at all times material herein have been, labor organizations within the meaning of Section 2 (5) of the Act. Respondent Dave Kennedy is their business agent.

III. THE UNFAIR LABOR PRACTICES

When the Company is in need of stevedores for the following day, it calls "the union hall and tells them how many gangs" are to be employed, and at what hour. In order to fill such a request, the unions maintain an undisclosed number of blackboards in various parts of Jacksonville, on which its business agent posts the names of the "headers" whose crews are to be engaged. The headers so designated are in charge of, and have authority to hire, the members of their gang. Gang members watch these boards and, when the name of their header appears thereon, report at that location. After the gang is hired by the header, its members and the header travel to the docks either by privately owned conveyance or in a company-owned truck.

On the morning of January 10, 1957, Header George Reddick, employed by the Company, and whose name appeared on the board in the vicinity of Florida Avenue and Fifth Street in Jacksonville, selected a crew to unload a cargo of coffee from a ship then located in the Jacksonville harbor. Among the men who appeared at the Florida Avenue location that morning was Turner, the Charging Party herein. Turner, who had worked as a member of Reddick's gang since 1949, was selected by Reddick on the morning in question and the two men traveled to the docks in Turner's truck.

When the two men arrived at the dock, they met Dave Kennedy, business agent for the Respondent Unions, who told Reddick "to hire the men with cards as long as they is (sic) available" and added that Turner did not have such a card. Thereupon Reddick denied employment to Turner and replaced him with "a card man." Turner appeared for work again on January 11, and according to the uncontradicted testimony of Reddick, if Turner would have "had a card, [he] would have hired him right on." Turner has not been employed by Kaufman since January 10.

As indicated above, the complaint alleged that all the Respondents had caused the Company to discharge Turner, and to refuse to employ him, "for the reason that he was not a member of any Respondent Locals in good standing, and for reasons other than his failure to tender dues and initiation fees uniformly required by the Respondent Locals." As an alleged affirmative defense, the answer of all the Respondents affirmatively pleaded that Turner "has never tendered to Respondent Locals, Respondent individual, their agents or employees, the monies uniformly required as initiation fees or dues to join or remain in Respondent Locals."

It is the contention of the Respondents, by reason of the portion of the pleadings just quoted and because they were denied an opportunity at the hearing to prove that no tender of initiation fees or dues was ever made by Turner, that the General Counsel and Turner are "without remedy" and that the complaint should be dismissed. The contention is without merit. It is well established that a labor organization may validly cause an employer to discharge an employee, or to refuse a prospective employee employment, because of nonmembership in the union *only* if the dismissal or refusal is authorized by an applicable union-security agreement, valid under Section 8 (a) (3) of the Act, making membership in the labor organization a condition of employment. *Radio Officers' Union etc.* v. *N. L. R. B.*, 347 U. S. 17. The burden of justifying the discharge, or refusal to employ, pursuant to a lawful application of such a valid union-security agreement is upon the Respondents. *Construction and General Laborers Union, Local 320, et al.*, 96 NLRB 118, 119. None of the Respondents presented evidence of such an agreement, and none of them rely upon such an agreement to justify the discharge of Turner, or the refusal to further employ him. Indeed, it was specifically admitted at the hearing that no such union-security agreement existed. In that state of the record, the allegation of the complaint that Turner was discriminated against "for reasons other than his failure to tender dues and initiation fees uniformly required by the Respondent Locals" is mere surplusage, and the pleaded affirmative defense is no defense.

Here the General Counsel has established by a preponderance of the evidence that the Respondents caused the Company to deny Turner employment on January 10, 1957, and thereafter, because he was not a member of Respondent Unions in good standing and did not have "a card" therein. As a result, the Company, although not named as a Respondent, discriminated with respect to Turner's tenure of employment within the meaning of Section 8 (a) (3) of the Act. I find, therefore, that Respondents, by causing the Company to engage in this discrimination, have themselves engaged in conduct violative of Section 8 (b) (2) of the Act. I further conclude that by the foregoing conduct Respondents have restrained and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, and have thereby violated Section 8 (b) (1) (A) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents, set forth in section III, above, occurring in connection with the operations of the Company, described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent Unions caused the Company to discriminate against Turner with respect to his tenure of employment by the Company on and after January 10, 1957, it is recommended that Respondent Unions make him whole for any loss of pay suffered by him as a result of their unlawful conduct, by payment to him of a sum of money equal to the amount he normally would have earned as wages from January 10, 1957, absent Respondents unfair labor practices as heretofore found. Liability for back pay shall terminate against Respondent Unions 5 days after the date upon which it causes notice to be served upon the Company that it has no objection to the employment of Turner by the Company. In computing the amount of back pay, the customary formula of the Board set forth in *F. W. Woolworth Company*, 90 NLRB 289, shall be followed.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Local 1408, 1408–A and 1597, International Longshoremen's Association, Independent, are labor organizations within the meaning of Section 2 (5) of the Act, and Dave Kennedy is their agent.
2. Kaufman Shipping Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
3. By causing Kaufman Shipping Company to discriminate against Limous Turner in violation of Section 8 (a) (3) of the Act, the above-named locals, and Dave Kennedy, their agent, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.
4. By coercing and restraining employees of Kaufman Shipping Company in the exercise of rights guaranteed by the Act, Respondent Unions, and Dave Kennedy, their agent, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 1408, 1408–A, AND 1597, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT

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 in any manner cause or attempt to cause Kaufman Shipping Company to discharge employees or refuse to hire prospective employees because they are not members of the undersigned labor organizations, or any of them, or have not obtained clearance, approval, or cards, from us, or either of us, or to discriminate against such employees or prospective employees in any other manner in regard to their hire or tenure of employment, or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees or prospective employees of Kaufman Shipping Company 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 in Section 8 (a) (3) of the Act.

WE WILL notify Kaufman Shipping Company, in writing, and will furnish copies of such notification to Limous Turner, that we have no objection to the

hiring and employment of Limous Turner and any other person by said Kaufman Company, without prior or subsequent clearance, approval, or cards from us or either of us.

The undersigned labor organization will make Limous Turner whole for any loss of pay he may have suffered as a result of the discrimination against him.

LOCAL 1408, 1408–A, AND 1597, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

_____
(DAVE KENNEDY)

Dated_____ By_____
(Representative) (Title)

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

Lindmart Jewelry Mfg. Co.[1] *and* Watch & Jewelry Workers Union Local 147, RWDSU, AFL–CIO and Workers of The Lindmart Jewelry Company, Petitioners *and* Production Workers Union Local 48, U. I. U. *Cases Nos. 2–RC–9149 and 2–RD–368. December 3, 1957*

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed, a consolidated hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins].

Upon the entire record in this case, the Board finds:

1. The employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations named below claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.[2]

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

---

[1] As amended at the hearing.

[2] The Petitioners in Case No. 2–RD–368, employees of the Employer, assert that the Union, the currently recognized bargaining representatives of the employees designated in the petition, is no longer the bargaining representative as defined in the Act.

The Union contends that its current contract is a bar to the petitions. However, that contract, in addition to permissible union-security provisions, includes a further provision