

Furthermore, while this incident can be construed as restraint and coercion of Sims, it does not come within the purview of Section 8(b)(1)(A). There is no evidence that the incident restrained or coerced "employees in the exercise of the rights guaranteed in section 7" of the Act.

#### Conclusions

The picketing began on November 22, 1960, and was continuing at the close of the hearing on April 5, 1961. During this period of over 4 months the isolated and negligible incidents complained of, and found to be violations, occurred in the periods from November 16 to 30, 1960, and January 17 to 19, 1961. The record contains no allegations or evidence of other unlawful activity by Respondent.

Conduct of a much graver nature, than any here involved, has been found by the Board not to deprive strikers of the protections of the Act. *Stewart Hog Ring Company, Inc.*, 131 NLRB 310.

"Basic to the right guaranteed to employees in Section 7 [of the Wagner Act which has not been amended] to form, join or assist labor organizations, is the right to engage in concerted activities to persuade other employees to join for their mutual aid and protection . . . the Taft-Hartley Act [amending the Wagner Act] added another right of employees also guaranteed protection, namely, the right to refrain from joining a union [Section 8(b)(1)(A)] . . . . Thus tensions exist between the two rights of employees protected by Section 7—their right to form, join or assist labor organizations, and their right to refrain from doing so. Thus tension is necessarily quite real when a union employs economic weapons to organize employees who do not want to join the union." *Curtis* case 362 U.S. 274, at pages 279–280.<sup>18</sup> Therefore, it follows that conduct of a nature and degree which does not deprive strikers of their rights to protections of the Act when Section 8(a)(1) is at issue should not be held to be illegal when Section 8(b)(1)(A) is at issue. Otherwise, the rights guaranteed by Section 7 of the Act would be disparately protected and enforced; a result which the *Curtis* case, by dicta, holds untenable.<sup>19</sup>

While some of the incidents set forth, above, have been found to be violations in a semantical sense, I find that they are too insignificant to warrant a cease-and-desist order; and no useful purpose would be served by the issuance of such an order in this case. *International Ladies Garment Workers Union, AFL-CIO (Twin-Kee Manufacturing Co., Inc.)*, 130 NLRB 614.<sup>20</sup>

[Recommendations omitted from publication.]

<sup>18</sup> The *Curtis* case sets forth the legislative history of Section 8(b)(1)(A) and compels "caution against finding in the nonspecific, indeed vague, words 'restrain and coerce' "

<sup>19</sup> See the *Curtis* case, 362 U.S. 274, for legislative history, congressional intent, and scope of Section 8(b)(1)(A).

<sup>20</sup> The conclusion would be the same even if General Counsel had proven every incident that he proffered.

**Lou Taylor, Inc. and Seymour Soskel.** *Case No. 12-CA-1940.*  
*December 1, 1961*

#### DECISION AND ORDER

On September 12, 1961, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief, and the Respondent filed a brief in support of the Intermediate Report.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner made 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 this case, and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

<sup>1</sup> Pursuant to Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Panning, and Brown]

<sup>2</sup> We find no merit in the General Counsel's contention that the Trial Examiner's credibility rulings are erroneous and should be overruled. As the clear preponderance of all the relevant evidence does not demonstrate that the credibility findings are incorrect, we hereby adopt them. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3).

## INTERMEDIATE REPORT

### STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136; 73 Stat. 519), was heard in Miami Beach, Florida, on July 25 and 26, 1961, pursuant to due notice. The second amended complaint, issued on July 18, 1961, by the General Counsel and based on a charge duly filed and served, alleged in substance that Respondent had engaged in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act, by discharging Seymour Soskel on March 24, 1961, because of his membership in and/or activities on behalf of International Leather Goods, Plastics and Novelty Workers' Union, AFL-CIO, and its affiliated Local Union No. 92 (herein called the Union), and/or because he exercised his rights guaranteed by Section 7 of the Act. Respondent answered on July 24, denying the unfair labor practices.

The sole issue on the merits of the case as the evidence was developed was whether Soskel was discharged because he posted on the bulletin board a notice to the employees concerning his election as steward or shop chairman of the Union or whether he was discharged, pursuant to an earlier decision, because of incompetence and the slowness of business.

Upon the entire record in the case,<sup>1</sup> and from my observation of the witnesses, I make the following:

### FINDINGS OF FACT

#### I. RESPONDENT'S BUSINESS; THE LABOR ORGANIZATION INVOLVED

I find on facts alleged in the complaint and admitted by answer that Respondent, a Florida corporation, engaged at Hialeah in the manufacture, sale, and distribution of ladies' handbags and related products, is engaged in interstate commerce within the meaning of the Act (by reason of direct inflow from extrastate points of materials valued in excess of \$50,000 annually and direct shipments to extrastate points of manufactured products valued in excess of \$50,000 annually), and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE UNFAIR LABOR PRACTICES

##### A. Background

Though Respondent was a new organization and was operating a new business, it was one in which its officials (Lou Taylor, president; Sam Edelson, vice president; Harry Brown, plant manager; Sam Rudenstein, foreman; and Meyer Lemo, shipping manager) were fully experienced through prior association with Eli Rosenberg Originals and other manufacturers in the same business. So, too, were Respondent's officers fully acquainted with International and local representatives of the Union and fully aware of the Union's efforts toward organizing the entire industry in the Miami area. Indeed, it was the Respondent's recognition of the Union and bargaining with

<sup>1</sup> The General Counsel's motion to correct the transcript is hereby granted, absent objection

it to a collective-bargaining agreement; without benefit of majority representation among Respondent's employees, which led to the issuance by the General Counsel of a complaint against both Respondent and the Union in Cases Nos. 12-CA-1964 and 12-CB-531, which were originally consolidated with the present complaint, but which were settled on July 18, 1961, and severed from this proceeding.

It is also pertinent to note that the relations between union and company representatives were on a personal and friendly basis.

### B. *The discharge*

Though the evidence is in conflict on minor points, the facts of most significance to Soskel's discharge are not greatly in dispute.

Soskel was hired as shipping clerk on November 29, 1960, and made a good impression at first because of his background, his education (partly in business administration and labor relations), and his apparent ability. Early in January 1961, Angelo Lapadula (Angel) was hired to assist, under Soskel's direction. Around February 3, Taylor hired Meyer Lemo and informed Soskel that Lemo was being placed in charge of the department, that Taylor had known Lemo at Rosenberg's, and that Lemo knew how Taylor wanted the department run. Taylor added that there was enough work for three men.

What Taylor did not tell Soskel, however, was that he and Edelson had already decided to discharge Soskel because of incompetence in the performance of his duties. In fact, Edelson had directed the issuance of a severance check on February 3, but upon learning that Soskel had just assumed the support of additional dependents, had decided to retain Soskel and directed the voiding of the check.<sup>2</sup>

On February 22, company and union representatives completed their negotiation of a contract, which by its terms was to become effective on May 29. Peter G. Sosa, International representative of the Union, suggested at the time that if the Company had anyone in its employ who was unsatisfactory and whom it wanted to get rid of, it inform him so that the Union "could cope with the problem." Sosa testified that Brown expressed satisfaction with the crew.<sup>3</sup> Taylor suggested that Vivian Lloyd (whom Taylor had also known at Rosenberg's) be elected shop chairlady at the meeting of employees which the Union was calling for February 24 for the purpose of ratifying the contract, but Sosa stated that that would be up to those who attended the meeting.

Soskel was elected shop chairman at the meeting, Al Betancourt elected assistant shop chairman, and a shop committee was chosen. Sosa testified that when he informed Respondent of the results on February 27, Taylor (or Edelson) stated that Soskel's election would "create a problem"<sup>4</sup> as the Company intended to discharge Soskel because he was not capable of doing his work properly. Upon Sosa's remonstrance that the Company should have informed him before the election, Taylor explained that the Company had not considered the matter important and that it had kept Soskel on only because he had assumed additional family burdens and needed the income.

Sosa argued further that it would make for bad relations with the employees to discharge the shop chairman and suggested both the possibility of arbitration (a questionable alternative since the contract was not to take effect until May 29) and that the matter be brought up before the newly elected committee. Taylor rejected the latter suggestion with some comment that he did not want a revolution. There the matter stood, without Respondent indicating when it proposed to terminate Soskel, though it was agreed that the Company would try to work out the problem.

<sup>2</sup> The General Counsel's attack on the bona fides of Respondent's evidence to the foregoing effect is based on the merest suspicion. Not only was the testimony of Edelson, Taylor, and Alice Linder (the bookkeeper) mutually corroborative, but documentary evidence in the form of the voided check and Soskel's new withholding exemption certificate lent further confirmation. Linder's disposition to exaggerate the extent of Soskel's errors was offset by Soskel's own attempts to minimize them and to cast the blame on others. In any event, it is not essential to determine the exact extent of Soskel's errors; what is material is that Linder repeatedly complained to Edelson about them and that Respondent acted upon her complaints at a time when there was no hint of union or concerted activities.

<sup>3</sup> Though Soskel testified that Taylor made a similar statement on February 27 during a meeting with employee committee members, that was after Taylor had informed Sosa privately that it intended to discharge Soskel because of incompetence. See next paragraph, *infra*.

<sup>4</sup> Though Sosa testified on rebuttal that Taylor said there would be "some trouble," Taylor denied using that language. I accept Sosa's original version, with which Taylor's testimony was in substantial accord.

Though Sosa informed Betancourt, the assistant shop chairman, of Respondent's intention to discharge Soskel and of its reason's Soskel himself was left in the dark. No reference was made to Soskel's status in the meeting with the employee committee which followed immediately. After negotiating for the inclusion of a 10-minute break period, pursuant to the conditional ratification of the contract at the employee meeting on February 24, the committee signed the contract as previously negotiated by Sosa.

By Soskel's admission, nothing of consequence happened thereafter until March 22. Though Soskel spent some time on February 27 copying payroll data from the timecards and though he informed Foreman Rudenstein, on the latter's inquiry, that he was engaged in "Union business," Respondent expressed no objection to Soskel's activity.

Soskel testified that on March 22, after obtaining permission from Brown, he posted on the bulletin board a notice to the employees, composed in Spanish, in which (in profuse language) he thanked the employees for electing him as their "delegate," promised to represent them impartially to the best of his ability, and suggested that they bring to him (for discussion with the employee committee and with management) any complaints concerning wages, working conditions, relations with foremen, etc. The notice concluded with the fervent hope that "with your faith and trust, with the help of God and with the cooperation of management, we can make of Lou Taylor, Inc, a company of more profits, and a happy and richer organized group of employees."

Either on that day or the next, Taylor saw the notice and had one of the employees to translate it for him. Though saying nothing, Taylor indicated disapproval. He also informed Soskel loudly, that he should not post anything of that kind without Taylor's permission. When Soskel explained that Brown had given permission, Taylor nevertheless remarked that he did not want employees standing around looking at the union notice.

On March 23, having received word to call the Company, Sosa went there and talked with Taylor, Edelson, and Brown. Though Taylor admitted that Brown had given permission, he complained that Soskel's posting of the notice was creating a problem as it was done without Sosa's knowledge. Sosa agreed that Soskel was "stupid" or "an idiot" not to have checked first with him. Taylor again informed Sosa that the Company was going to fire Soskel because he was not capable of doing his work, but made a further comment that Castro had freed the Cubans in Cuba and that Soskel was trying to liberate them in the United States.<sup>5</sup> Sosa renewed the arguments he had made on February 27 and either in that or some other conversation stated that if the Company wanted to let Soskel go, "you let him go, but I won't."

At quitting time on Friday, the 24th, Brown notified Soskel he was being discharged because things were slow, and paid him off. Soskel got in touch with Sosa and they returned to the plant on Monday to see Taylor, but were referred instead to Brown.

Soskel testified that Sosa asked Brown whether Soskel was discharged because of the notice and whether the discharge was permanent or temporary. Brown replied that the discharge was permanent and that it was not because of the notice. Sosa asked why Soskel was discharged out of seniority and Brown stated that Lemo had been hired to replace Soskel and stated again (as he had on Friday) that Soskel was terminated because work was slow. Soskel complained that his notice had been taken down and Brown stated that it had been posted long enough. Soskel admitted that he did not question Brown's statement that Lemo had been hired to replace him (presumably because Taylor had told him on February 3 that Lemo was taking over the shipping department which Soskel formerly directed).

Sosa denied, as did Brown, his alleged inquiry whether the notice had anything to do with the discharge, but when called on rebuttal, he corroborated Soskel's testimony, over Brown's denials, concerning the removal of the notice from the board. Although I credit Soskel's version of the interview with Brown, I do not credit his testimony elsewhere that the notice was removed before his discharge on Friday. Brown's testimony that it remained until after Soskel's discharge was corroborated by Daniel Mursuli, a witness for the General Counsel, who testified that the notice was on the board for about a week. Brown also testified that, while he and Sosa were out of Soskel's presence, Sosa expressed relief that Brown had

<sup>5</sup> I credit Sosa's testimony as summarized above over Taylor's less credible version, particularly since Respondent offered no corroboration through Edelson or Brown.

not given him away by mentioning Sosa's prior knowledge of the Company's intention to discharge Soskel. I credit that testimony over Sosa's denials.

Disposing finally of the notice, Brown testified that he directed Foreman Rudenstein to remove it because there was no point in it being posted after Soskel's discharge. Taylor denied that he discussed the notice with anyone after Sosa's visit on the 23d, and there was no evidence that he had any hand in directing its removal from the board.

We revert briefly to Respondent's evidence concerning the steps which led to Soskel's discharge. Taylor testified (and was corroborated by Lemo) that he checked with Lemo from time to time prior to March 20, and that Lemo suggested on each occasion that Soskel was needed for a while longer. Taylor and Edelson testified that finally on March 20, they discussed again the Soskel question and decided, because business was slackening off, to discharge Soskel as of the end of the week. Again, as on February 3, no notice was given to Soskel that he was to be released, but it was not company policy to give notice of discharge. The handling of the discharge was left in Edelson's hands, and he and Taylor did not discuss the matter again.

On Friday, Edelson directed Brown to deliver Soskel's severance check and to inform him he was not needed further. Though Edelson denied that he instructed Brown to inform Soskel that he was being let go because business was slow, Brown testified that was the reason which he gave Soskel.

Respondent's evidence showed that, as normal in the industry, its peak season lasted until shortly before Easter, when both its sales and its payments for overtime work declined sharply, as shown by the following tabulations for various weeks in March and April:

	Weekly sales	Overtime payments
Week ending--		
March 3.....	\$18,023	\$1,040
March 10.....	23,018	1,121
March 17.....	25,179	1,009
March 24.....	20,018	76
March 31.....	11,933	76
April 7.....		\$107

### Concluding Findings

Despite the fact that Sosa's testimony squared with Respondent's evidence that the Union was fully informed on February 27 of Respondent's intention to discharge Soskel, of its reasons for doing so, and of its reasons for keeping him on temporarily, the further Sosa-Soskel testimony concerning Respondent's reaction to the posting of the notice, if considered alone and without explanation on Respondent's part, would support the inference that Respondent acted when it did because of Soskel's notice thanking the employees for electing him shop chairman and soliciting the submission of grievances.<sup>7</sup> The entire circumstances, however, concerning the relations between Union and Company would preclude a finding that the discharge was made to discourage membership in the Union, as alleged in the complaint. Indeed, the General Counsel's theory that Respondent was acting "through the convenient device of an unlawfully assisted union" to suppress employee rights is incompatible with any view that Respondent intended *discouragement* of the Union.

<sup>6</sup> The evidence did not include overtime payments for the week ending March 24, nor sales subsequent to March 31. No overtime payments were made after April 7.

<sup>7</sup> Though Soskel testified he posted the notice in part because the contract provisions were not "up to par," the notice contained no such suggestion, and there was no evidence that Soskel had spoken out against the contract either in the February 24 meeting of employees or in the committee meeting with management on February 27. Indeed, there was no substantial evidence of conduct which would support the General Counsel's theory that Soskel had made himself such a thorn in the flesh that Respondent discharged him to "suppress employee rights by eliminating an effective spokesman for the employees."

At best then, standing alone, the General Counsel's evidence would make out a *prima facie* case that the discharge, made because of Soskel's engagement in protected concerted activities, was violative, not of Section 8(a)(3), but of Section 8(a)(1), because it was reasonably calculated to interfere with, restrain, and coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

Respondent's evidence overcame that *prima facie* showing, establishing by a clear preponderance that it discharged Soskel, pursuant to a decision long since arrived at, because of his incompetence, and at a time when the anticipated seasonal slack had materialized. As found above (footnote 2), not only were the General Counsel's attacks on the bona fides of Respondent's evidence based only on suspicion, but Sosa's testimony itself went far to underwrite the genuineness of Respondent's claims.

When Respondent's evidence was concluded, only the timing of the discharge and Taylor's remark about Soskel freeing the Cubans remained as suspicious circumstances suggestive of unlawful intent. But aside from the fact that suspicion is not proof and that the General Counsel must prevail by a preponderance of the evidence on the record as a whole, Respondent's evidence largely refuted the suspicious force of those circumstances. Thus Respondent's officers had decided on March 20 that the time had come to separate Soskel. Though Sosa was called in after Soskel posted his notice, Sosa was again informed that Soskel was to be discharged, and for the same reasons which Sosa had known of since February 27.

I therefore conclude and find that the General Counsel failed to establish by a preponderance of the entire evidence that Respondent's discharge of Soskel was an unfair labor practice under either Section 8(a)(1) or (3).

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

#### CONCLUSION OF LAW

Respondent has not engaged in unfair labor practices as alleged in the complaint.

[Recommendations omitted from publication.]

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**Teamsters, Chauffeurs, Warehousemen & Helpers, Local 901,  
IBTCW & H of America and Editorial "El Imparcial," Inc.**  
*Case No. 24-CC-67. December 1, 1961*

#### DECISION AND ORDER

On March 22, 1961, Trial Examiner A. Norman Somers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in and was not engaging in certain other unfair labor practices and recommended that those allegations of the complaint be dismissed. Thereafter the General Counsel and the Respondent filed exceptions to the Intermediate Report and briefs in support thereof.

The Board has reviewed the rulings of the Trial Examiner made 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