of the pictures was Pounds, one of the first drivers sought by the Respondent for reemployment the next season.

I find the record as a whole insufficient to support the complaint allegation that the Respondent illegally discriminated against Wolf in his employment and I shall therefore recommend dismissal of this allegation of the complaint.[6]

C. Procedural disposition of Case No. 18–CA–1159

In the consolidated complaint the allegations relating to 1960 activities of the Respondent's representatives are supported by the charge filed on June 16, 1960, in Case No. 18–CA–1159. Absent that charge, Section 10(b) of the statute would now preclude any unfair labor practice findings based on those events because they occurred more than 6 months before the filing of the second charge—in Case No. 18–CA–1251—on March 31, 1961. Moreover, as appears in the formal exhibits, Case No. 18–CA–1159 was settled by agreement between the Respondent and the General Counsel on October 12, 1960; that settlement was set aside and the charge reopened only because the General Counsel was of the opinion that subsequent conduct of the Respondent constituted further violations of the Act. In these circumstances, and as it now appears that the Respondent did not commit any unfair labor practices within the 6-month period before March 31, 1961, I shall recommend that the settlement agreement in Case No. 18–CA–1159 be reinstated, and that the consolidated complaint be dismissed in its entirety.[7]

RECOMMENDED ORDER

Upon the basis of the foregoing findings and conclusions, it is hereby recommended that the settlement agreement in Case No. 18–CA–1159 be reinstated.

It is hereby further recommended that the complaint in this proceeding be dismissed in its entirety.

[6] Cf. *Inland Seas Boat Co*, 131 NLRB 706.

[7] *Eveready Garage, Inc.*, 126 NLRB 13.

Benjamin Miller and Julius Tarr, Co-Partners trading as Monroe Upholstery Company *and* Textile Workers Union of America, AFL–CIO–CLC. *Case No. 5–CA–1883. March 5, 1962*

DECISION AND ORDER

On September 13, 1961, Trial Examiner Louis Plost 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 and the Charging Party filed exceptions to the Intermediate Report and supporting briefs. The Respondent filed a reply brief.

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

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 Inter-

mediate Report and the entire record in this case, including the exceptions and the briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

[The Board dismissed the complaint.]

[1] The General Counsel and the Charging Party have excepted to the Trial Examiner's finding that Lester Spurley was not a supervisor within the meaning of the Act, and therefore that his statements allegedly made in violation of Section 8(a)(1) were not attributable to the Respondent. Regardless of the Trial Examiner's basis for his finding as to Lester Spurley's status, as the record fails to establish that Spurley possessed any of the statutory indicia of supervisory authority, the exceptions are overruled

INTERMEDIATE REPORT

STATEMENT OF THE CASE

It having been charged, April 6, 1961, by Textile Workers Union of America, AFL–CIO–CLC, herein called the Union, that Benjamin Miller and Julius Tarr, Co-Partners trading as Monroe Upholstery Company, herein called the Respondent, have been engaging in and are engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, 73 Stat. 519, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Regional Director for the Fifth Region on May 18, 1961, issued a complaint and notice of hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, alleging violations of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.[1]

With respect to the unfair labor practices, the complaint alleged:

> On or about February 1, 1961, and on various dates thereafter, Benjamin Miller, part owner; Arthur W. Neumann, Superintendent; and Lester Spurley, Foreman of Respondent, threatened employees with economic reprisals if they became or remained members of the Union, or gave any assistance or support thereto, and promised employees benefits or improvements in their term and condition of employment if they refrained from becoming or remaining members of the Union or giving any assistance or support thereto.

The above conduct allegedly was violative of Section 8(a)(1) of the Act.

The complaint further alleged the following conduct as being in violation of Section 8(a)(3) of the Act, that the Respondent:

> did, on or about April 3, 1961, discharge Robert J. Arnold and has at all times since said date failed and refused to reinstate said employee to his former or substantially equivalent position because of his membership in, assistance to, or activity on behalf of the Union, or because he engaged in concerted activities with other employees of Respondent for the purpose of collective bargaining or other mutual aid or protection.

The Respondent duly filed an answer on May 25, 1961, in which it denied that it had engaged in any of the alleged unfair labor practices, admitted that it had discharged Robert J. Arnold, but averred that the discharge was made for cause.

Pursuant to notice, a hearing was held before Louis Plost, the duly designated Trial Examiner, on July 10 and 11, 1961, at Baltimore, Maryland. At the hearing all the parties were represented and were afforded full opportunity to be heard on the issues, to argue orally on the record, and to file briefs and/or proposed findings and conclusions. The parties argued orally. A date was fixed for the filing of briefs and/or proposed findings and conclusions, with the Trial Examiner.[2]

Briefs were received from all the parties. On August 11 the General Counsel filed a motion to correct the record in certain particulars. No objections were made. The motion is granted and the corrections included in the exhibits as Trial Examiner's Exhibit No. 1.

Upon the entire record in the case, the Trial Examiner makes the following:

[1] A copy of the charge filed in this matter was served on Respondent on or about April 7, 1961

[2] On August 4 the Chief Trial Examiner's office at the request of the Respondent extended the time to file briefs to August 29, 1961.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleges and the answer admits:

> Benjamin Miller and Julius Tarr, herein jointly called Respondent, are, and have been at all times material herein, co-partners doing business under the trade name and style of Monroe Upholstery Company. Respondent has its principal office and place of business at Baltimore, Maryland, where it is engaged in the manufacture of furniture.
>
> Respondent, in the course and conduct of its business operations during the preceding twelve-month period, a representative period, received shipments at its place of business in Baltimore, Maryland, valued at in excess of $50,000 directly from points located outside the State of Maryland. During the same period, Respondent manufactured, sold and shipped from its place of business in Baltimore, Maryland finished products valued in excess of $50,000 directly to points outside the State of Maryland.

II. THE LABOR ORGANIZATION INVOLVED

Textile Workers Union of America, AFL–CIO–CLC (the Charging Party or the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The complaint alleges conduct violative of Section 8(a)(1) of the Act by Benjamin Miller, part owner; Arthur W. Neumann, superintendent; and Lester Spurley, foreman.

With respect to Lester Spurley, the Board on August 7, 1961, directed an election in connection with Case No. 5–RC–3472 (not published in NLRB volumes), involving the same parties as in the instant proceeding.

The record discloses that on June 2, 1961, a hearing was held in Case No. 5–RC–3472 and that the question of Lester Spurley's supervisory status with the Respondent (who was named as Employer in Case No. 5–RC–3472) was an issue to be decided by the Board.

The Board in its Decision and Direction of Election in Case No. 5–RC–3472 finds that Spurley is a "leadman," a category without supervisory authority.

As the Board's finding fixes Spurley's status with the Respondent the Trial Examiner will not discuss the alleged 8(a)(1) conduct attributed to him for the reason that such conduct, if proven, is not chargeable to the Respondent.

Robert J. Arnold testified that Benjamin Miller, one of the copartners of the Respondent, delivered a talk lasting "about fifteen to twenty five minutes" to "the personnel" of the Respondent's plant at a meeting in the showroom, during working hours, to which the employees had been called by the supervisors, and for which they were paid for the time consumed.

As to when the speech was made, Arnold testified:

> Q. (By Mr. WESCOTT.) And when was that speech?
> A. I can't recall right off-hand when it was.
> Q. Well, was it this year?
> A. I believe it was.

With respect to Miller's remarks, Arnold testified on direct:

> Q. (By Mr. WESCOTT.) Do you recall what he said?
> A. Well, I know he says, those little blue cards are being used against the company to try to get confusion mixed up with people and slow down production and all, so they can get a union in here.
>
> He said something about the crooks out there.
>
> He said leave them alone and don't sign the card and you'll get 49 hours a week here and we'll get more production, but if the union files for election or consistently gets all these cards—well, it will slow down production.
>
> We won't have time to put our efforts to getting new frames out and work and we'll just have a slack off because of this.

However, on cross-examination Arnold quite obviously found it difficult to stick to his story. For example, he then testified:

Q. (By Mr. BLUM.) Now, he said if you don't sign the card you will get 49 hours of work?

A. I wouldn't—I wouldn't recall exactly that, but that was the effect of it.

* * * * * * *

Q. Well, as a matter of fact, didn't he say you have been getting 49 hours of work?

A. Yes, he did say that.

Q. That's right, and didn't he say in the course of that speech that the union can only cause confusion because he is not required by law to give them what they ask for and they would call you out on strike?

A. He—I believe he did state that.

Arnold further testified:

Q. (By Mr. BLUM.) Do you recall whether or not he said that if organizing and union campaigns continue in the plant—and I'm talking about not the previous campaigns, but campaigns going on now, that the employees would slow down in production and injure the amount of work that he could give to the employees under those conditions.

A. Well, he said if it continue, he couldn't continue to give 49 hours a week. He'd have to cut down the work week.

Q. That is, if he were unable to get orders, is that right?

A. That's right.

Arnold closed his testimony as to Miller's speech with the following:

Q. Did he say this is a free country and you could join the union or not join the union as you see fit?

A. He said it's up to you. You could join or not.

On being asked by the Trial Examiner to recapitulate his testimony with respect to Miller's speech, the witness testified:

The WITNESS: He brought out that the little blue cards were the thing that people shouldn't sign.

They shouldn't send them in.

They would only cause confusion in the plant—that they were getting 49 hours a week.

He said those crooks outside, all they are after is your money and if you continue to send the cards in—he said, we'll have to devote our time and efforts to fighting the union back out and that it, the time and effort they would take would cause a slowdown in new numbers.

He closed with the following:

The WITNESS: He said, it's a free country.

You could do as you chose, but his wishes were you would leave the union alone.

Miller was not called to testify. The record discloses that Miller had been discharged from the hospital a few days before the hearing.

With respect to alleged independent 8(a)(1) conduct on the part of Superintendent Arthur W. Neumann, Arnold testified that "in October I think"[3] he was "laid off over night." He testified:

Q. (By Mr. WESTCOTT.) And what were you told when you were laid off?

A. To come back the next day, that there was an ad in the paper I could answer and go to work, that it was only a formality to lay me off.

Q. Any one else laid off?

A. Well, they said they were going to lay off other people that had been there and was active in Union affairs.

On cross-examination Arnold expanded his testimony to involve Neumann. According to Arnold, at the time he was told he was to be laid off he spoke to Neumann over the telephone, Neumann being at the warehouse while he was in Neumann's office, and was told that he should come in the next morning and he would be rehired. He testified:

Q. (By Mr. BLUM.) I noticed you answered Mr. Westcott's question you were told at that time that they wanted to lay off other people active in union

[3] The correct date is October 24, 1960.

affairs and that's why you were being laid off but you weren't pressed on who told you that.
Who told you that?
A. Mr. Neumann.
Q. He told you he wanted to get rid of union people?
A. He said it was a formality to get rid of George Harmon.
Q. A formality to get rid of George Harmon.
A.Correct.

The record discloses that a former attempt was made to organize the Respondent's employees which resulted in an election lost by the Union on February 17, 1960. Arnold testified that he was not active for the Union during this effort because: "I just didn't like the methods the other guy was carrying on in there so I just didn't want to say anything about it," and that during the Union's organizational effort in 1960 he voluntarily informed the Respondent that he was not in favor of the Union, but was "loyal" to the Company.
Arnold further testified on cross-examination:

Q. (By Mr. BLUM.) And he told you over the telephone?
A. That is right.
Q. The only reason you were being laid off was because he wanted to get at the others?
A. I wouldn't say he said he wanted to get to the others.
He said it is a formality.
He said you can answer the ad in the paper.
He said it was only a formality to get rid of George Harmon.

On examination by the Union's attorney, Arnold testified with respect to the above testimony:

Q. (By Miss LEVY.) Did he say anything about George Harmon at that time?
A. It was just a mere formality——
TRIAL EXAMINER: That wasn't the question.
The question was, did he say anything about George Harmon.
A. No, he didn't say anything about George Harmon.

The Trial Examiner then questioned Arnold, wishing in all fairness to extend to him a final opportunity to untangle himself. Arnold testified:

TRIAL EXAMINER: Did he say why it was necessary to lay you off?
The WITNESS: Yes.
TRIAL EXAMINER: Why? What did he say?
The WITNESS: He wanted to get rid of George Harmon.
TRIAL EXAMINER: Did he say that?
The WITNESS: Not over the telephone. Once he——
Q. (By Miss LEVY.) How do you know that?
A. *He said that before.*
He and Spurley together.
TRIAL EXAMINER: *He said that to you?*
The WITNESS: *Yes.* [Emphasis supplied.]

Arnold then testified:

Mr. BLUM: What do you mean when "they wanted to get rid of George Harmon?"
TRIAL EXAMINER: Let's let him answer.
The WITNESS: George Harmon was the "king pin" of the union.
He wore signs and everything—anybody would know.
TRIAL EXAMINER: I see, and that's what you thought?
The WITNESS: What I thought?
That's what I knew.
TRIAL EXAMINER: You thought that was the obvious reason for his being laid off?
The WITNESS: Yes, sir.
TRIAL EXAMINER: Because the year before that he had worn signs in the plant and been active in the union?
The WITNESS: Yes.
TRIAL EXAMINER: All right.

On recross-examination by the Respondent, Arnold testified that he was told the layoffs were made to get rid of Harmon both "in the mill" and also that "It also took place on the telephone, I'm pretty sure."

The witness again confused his testimony as follows:

TRIAL EXAMINER: Mr. Arnold, didn't I ask you the same question?
The WITNESS: Well, I——
TRIAL EXAMINER: Specifically ask you whether or not you were told over the telephone or you were told some other place and you testified that you were not told over the telephone?
You remember that?
The WITNESS: I might have said that, yes—but I do know it was on the telephone.
You have to think about it.
TRIAL EXAMINER: Then what you told me before, you want to change that now?
The WITNESS: I don't want to change it now.
TRIAL EXAMINER: I got to have one story or the other.
The WITNESS: It was said on the telephone.

Superintendent Arthur W. Neumann testified that 22 employees were laid off at the time Arnold received the "over night" layoff; that all were made in accordance with seniority; he admitted that he instructed Arnold to apply the next morning answering an advertisement the Respondent had placed for a "blender"; the advertisement being for one employee; that he promised the job to Arnold if he applied. Neumann testified:

Q. Did you at that time say it was a mere formality in his being laid off because you were attempting to get at George Harmon?
A. I told him it was a mere formality to put him back to work because we already had his records.
Q. So your answer to my question is you did not make that statement?
A. That's true.

Arnold admitted that he did not inform the Union of the alleged statement he attributed to Neumann.

The Trial Examiner credits Neumann.

On the entire record, and his observation of Arnold, the Trial Examiner does not credit his testimony with respect to the alleged 8(a)(1) conduct Arnold attributes to Miller and Neumann and will recommend that the complaint be dismissed insofar as it alleges independent 8(a)(1) violations.

The Testimony of Oliver H. Beckner

The General Counsel called but one witness other than Arnold, a part of whose testimony has been discussed herein.

Oliver H. Beckner was called by the General Counsel, apparently not in corroboration of Arnold but to adduce testimony with respect to allegedly illegal conduct by Superintendent Neumann.

During Beckner's cross-examination it developed that on April 17, 1961, he executed an affidavit before a Board agent detailing alleged violative conduct by Neumann; however, in answer to questions by the Respondent's attorney, Beckner further testified that "on the day after Memorial Day" (1961) he voluntarily told Superintendent Neumann of the statement he had given to the Board's agent and stated that the statement was false. Beckner testified:

Q. (By Mr. BLUM.) You swore to a Labor Board Examiner, some time ago about the statements you made on the witness stand today?
A. Yes, sir.
Q. Now, after you swore to the Labor Board, did you make any other sworn statements to the contrary?
A. Yes, sir. I did.

* * * * * * *

Q. You told, under oath before a Notary Public, the sworn statement you gave to the Labor Board was not true, didn't you?
A. Yes, sir, but it was true.

At the instant proceeding Beckner maintained that the statement he gave Neumann was false, but that the original statement to the Board's agent was true.

Under the circumstances, including his observation of the witness, the Trial Examiner will not attempt to decide which of the contrary statements made by Beckner is correct, and will make no findings on any testimony given by Beckner.

B. *The alleged discriminatory discharge of Robert J. Arnold*

Arnold testified that after he was rehired on October 24, 1960, as herein found, he was given work as a "blender" which work he described:

> Q. (By Mr. WESCOTT.) Would you explain what that job was?
> A. Well, it was to blend in the French Provincial.
> See, the one side was light and the other heavy, and you'd have to blend them in to get them all even just like this is. [Indicating table.]
> TRIAL EXAMINER: You did that with paint?
> The WITNESS: Yes, sir.

He further testified that the operation was thereafter changed, the moulding being attached unpainted. Arnold worked at this new method from December 1, 1960, until March 28, 1961, at which time he was transferred to the upholstery line. He testified:

> Q. (By Mr. WESCOTT.) What were you told when you were moved to the upholstery department?
> A. Well, I was told—Mr. Neumann came back and told me he was going to let John Young take my place for a while and then try it out that they were getting behind or something, on the frames and he was going to start having the moulding put on and shipped over to the warehouse and that way when they needed it, they'd just pull it out of the warehouse and just put it in the spray department.

He remained in the upholstery department for 4 days and was discharged on April 3, 1961. Arnold further testified:

> Q. (By Mr. WESCOTT.) Well, what happened on the day you were discharged?
> A. Well, Mr. Neumann told me he would take me back in the mill to see if Spurley had anything for me to do.
> Spurley said he didn't have anything to do so they put me outside cleaning up an alley sweeping it.
> Q. And what happened?
> A. After that?
> Q. After that.
> A. Well, that evening at 4:30, Mr. Spurley came back and told me Mr. Neumann wanted to see me in the office.

Arnold did not talk to Neumann in the latter's office but "some fella in the office" gave him his final check.

According to Arnold he participated in the Union's 1961 organizational drive, testifying:

> Q. (By Mr. WESCOTT.) And what was your part in the campaign? What did you do?
> A. Well, I talked to some people about it and tried to get people sign up for it.
> Q. Did you get any people to sign cards?
> A. Yes, I did.
> Q. About how many people would you say you got to sign cards?
> A. Ten—fifteen.
> Q. Did you talk to many people in the plant?
> A. Yes, I did.
> Q. About how many people would you say you talked to?
> A. I couldn't say for sure. Quite a few.

Superintendent Neumann's testimony corroborated Arnold's account of the various transfers during his employment by the Respondent, as found herein, but he denied telling Arnold, at the time of Arnold's "over night" layoff, that the employees were being laid off "as a formality" to effect the discharge of George Harmon.[4]

Superintendent Neumann further testified that a number of complaints were received regarding the matching of the moulding, which Arnold alone attached to the furniture while on his first job, his "overnight" layoff, but that these complaints did not enter into Arnold's discharge; that the method of attaching moulding was changed and that after the changed operation Arnold not only attached the moulding, but matched the pieces for fit; that complaints were made by the Respondent's

[4] Harmon is now deceased.

customers regarding the matching of the pieces, which mistakes, according to Neumann, could only be attributed to Arnold; and that because of these errors by Arnold considerable furniture was returned by customers. Neumann testified:

TRIAL EXAMINER: Well now, if the pieces didn't come together, did he build—he didn't build all the three pieces did he?
The WITNESS: No, sir, he matched them up.
TRIAL EXAMINER: You mean he set one piece against the other to see if it came together when he made it?
The WITNESS: That is correct.
TRIAL EXAMINER: That is the part that was wrong?
The WITNESS: That is one of the parts that was wrong.
Q. (By Mr. BLUM.) Plus the moulding?
A. That is right.
Q. Plus the attachment of the moulding?
A. Yes.

Neumann testified that he discussed the complaints with Arnold, that:

A. I told him he had to spend a little more time on each piece to do it properly.
That the cost was getting so out of hand that it was just an abnormal situation.
Q. You remember when this was—the relationship at the time of his discharge you had these conversations with him?
A. Two to three months prior to his discharge.

Also, that during all this period he continued to get complaints regarding defective furniture caused by Arnold's work. He further testified:

TRIAL EXAMINER: You mean to say these complaints kept up for three months from the time you first talked to him to the time you discharged him?
The WITNESS: That's what I mean to say.

That he finally transferred Arnold to the upholstery department, from which Arnold was discharged April 3, 1961, 4 days after his transfer into it.

Neumann testified that he was made aware of the fact that "a large amount of furniture" was being returned by a customer and that he "was able to trace who was responsible for the bad workmanship" which caused the return. He testified:

I knew it was coming back for at least two weeks before.
I don't know the exact date, but I caught it on the telephone.
Q. And when it came back what did you do?
A. When it came back I stood there and looked at it for a while because it was almost unbelievable.
Q. What was unbelievable?
A. Such a large amount of furniture would be returned by a customer.
Q. Who was responsible for the damage resulting in the return of this?
A. According to the record, Robert Arnold was responsible.

The furniture, a complete truckload, arrived April 4, *the day after Arnold was discharged.*

Neumann testified that Arnold was discharged on the basis of this returned furniture *but admitted that he did not know what was wrong with it until it arrived.* Neumann testified:

Q. (By Mr. WESCOTT.) I said when did you know that this furniture was being returned?
A. Possibly a week before it got there.
Q. And what were you told when it was—who told you it was being returned?
A. Mr. Tarr.
Q. What did he say was wrong with it?
A. He said it wasn't made properly.
Q. Wasn't made properly?
You didn't know exactly what was wrong with it then?
A. No, I did not.

Neumann testified that he transferred Arnold to the upholstery department 4 days before his discharge and *after* he knew that defective furniture, the defects attributed to Arnold, was being returned, because: "I expected an up-turn in business and I wanted to save him for a cabinet maker set up man"; that he discharged him the day before the defective furniture arrived and he first saw it because Arnold "didn't fit upholstery" but he maintained at the same time that the discharge was not for this but because of the defective furniture. He testified:

TRIAL EXAMINER: You didn't discharge him because of the upholstery?
The WITNESS: He was discharged because of the furniture.
TRIAL EXAMINER: And you hadn't seen the furniture before you discharged him?
The WITNESS: Knew what was wrong with it, yes sir.
TRIAL EXAMINER: You hadn't seen it yet?
The WITNESS: No, sir.

Gerald Gordon, the Respondent's manager testified:

Q. (By Mr. BLUM.) Now, can you estimate what is the estimate of the total amount to the company on the defective furniture attributable to Arnold?
A. Unmeasurable amount due to the fact good will cannot be brought.
Q. Forget the good will. I'm talking about dollars and cents.
A. I would estimate over ten thousand dollars.

In support of this rather startling statement Gordon, testifying from the Respondent's records, stated that its largest customer returned from its store in New York to the Respondent's plant three shipments of defective furniture. One of the returned shipments was received by the Respondent on March 25, 1961, consisting of nine pieces; one on March 31, 1961, consisting of three pieces; and one on April 14, 1961, consisting of "a truck load."

The ticket for the March 31 return *is the only one which states the nature of the defects causing the return.* The return ticket reads "frame broken, finish to be checked, upholstery to be checked."

With respect to this shipment Gordon testified:

Q. (By Mr. WESCOTT.) You would say that Mr. Arnold was responsible for the frame being broken?

* * * * * * *

A. It's possible the frame was broken in transit.
TRIAL EXAMINER: The frame was broken how?
The WITNESS: It's possible the frame was broken in transit while being returned.

As to the "truck load" returned on April 4 the Respondent's records showed *one* three-piece suite originally shipped by the Respondent to the customer December 29, 1960, *all the others* were originally shipped to the customer prior to December 1, 1960.

According to the Respondent, Arnold was put on the moulding and inspecting work December 1, 1960. He therefore cannot possibly be responsible for more than the nine pieces returned on March 24, which the record shows were shipped from the plant January 30, 1961, and the three pieces in the "truck load" return, which were originally shipped out December 29, 1960. All other returned items referred to by Gordon were shipped originally before Arnold was in any way connected with the defective manufacture or original shipment.

Conclusion

The testimony of Superintendent Neumann and Manager Gordon with respect to the reasons for Arnold's discharge is far from convincing.

The Trial Examiner cannot accept as probative Superintendent Neumann's testimony that Arnold was discharged only because he was responsible for the shipment of a great deal of defective furniture to important customers, the defects being the result of Arnold's work and careless inspection. Any reliance on Neumann's testimony with respect to the reasons assigned for Arnold's discharge is completely shattered by the testimony of Manager Gordon who sought to corroborate Neumann from the Respondent's records.

On the other hand, *Arnold's* testimony did not have the ring of truth and generally was so self-contradictory that any reliance on it unless well supported is impossible. Arnold's testimony is wholly uncorroborated.

One fact is clear from both the testimony of Arnold, the only witness for the General Counsel, and the two witnesses for the Respondent, namely, the Respondent had no knowledge of Arnold's alleged union activities; in fact, it had every reason to believe that Arnold was antiunion. It seems strange that if Arnold was really the union "hotshot" the General Counsel pictures him, no corroborating testimony regarding at least his union membership was offered by the General Counsel.

On the entire record, the evidence considered as a whole, and his observation of the witnesses, which in this case is most material, the Trial Examiner honestly wishes it were possible to recommend the Scotch verdict of "Not Proven" and let the parties gather what comfort they may therefrom.

Concluding Finding

On the entire record, the Trial Examiner finds that the evidence does not sustain the allegations of the complaint and will recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Respondent, Benjamin Miller and Julius Tarr, Co-partners trading as Monroe Upholstery Company, is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) of the Act.
2. The Union, Textile Workers Union of America, AFL–CIO–CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act as alleged in the complaint.

RECOMMENDATIONS

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

Kalamazoo Paper Box Corporation *and* Chauffeurs, Teamsters and Helpers Local Union No. 7, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., Petitioner. *Case No. 7–RC–4831. March 6, 1962*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Iris H. Meyer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization named above claims to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons hereinafter indicated.

The Petitioner seeks to sever from the existing production and maintenance unit, currently represented by the Intervenor,[1] a unit of truckdrivers at the Employer's Kalamazoo, Michigan, operation. Alternatively, Petitioner is willing to represent a unit combining truckdrivers and shipping department employees, or any driver's unit found appropriate by the Board. The Employer and Intervenor

[1] International Brotherhood of Pulp, Sulphite and Paper Mill Workers, Local 518, AFL–CIO, herein called the Intervenor, in agreement with the Employer, urges its current contract as a bar to this proceeding. Petitioner claims that its petition was timely filed with respect thereto, and that, in any event, the contract is not a bar on other grounds. In view of our determination of the unit issue herein, we find it unnecessary to rule on these contentions.