WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent permitted by Section 8(a)(3) of the Act.

EDWARD FIELDS, INCORPORATED,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 745 Fifth Avenue, New York, New York, Telephone No. Plaza 1-5500, if they have any questions concerning this notice or compliance with its provisions.

Corbin-Dykes Electric Company *and* Anthony San Angelo. *Case No. 28-CA-860. April 10, 1963*

DECISION AND ORDER

On December 28, 1962, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint, and recommending dismissal of the complaint in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent filed a brief in support of the Intermediate Report.

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

[The Board dismissed the complaint.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This case was heard at Tucson, Arizona, on October 30, 31, and November 1, 1962, and is based upon a charge filed August 2, 1962, as later amended, by Anthony San Angelo, an individual. The complaint, as amended, issued September 27, 1962, and alleges that Respondent, Corbin-Dykes Electric Company, had engaged in unfair labor practices within the meaning of Section 8(a)(3) and 8(a)(1) of the Act by refusing to hire San Angelo and Harry D. Howe on or about July 27, 1962. Oral argument was waived at the close of the hearing and briefs have been received from the General Counsel and from Respondent. Ruling having been reserved

upon a motion to dismiss by Respondent, it is granted consistent with the findings and conclusions hereinafter made.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Corbin-Dykes Electric Company is an Arizona corporation which maintains its principal office and place of business at Phoenix, Arizona, and a branch office at Tucson, Arizona, where it is engaged in the electrical contracting business. It annually purchases goods and materials valued in excess of $50,000 which are shipped to it directly from points outside the State of Arizona and it annually sells and ships products valued in excess of $50,000 to points outside the State of Arizona During the preceding year, Respondent has performed services valued in excess of $250,000 for the United States Air Force which had a substantial impact on national defense. I find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act and that it would effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local No. 570, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

Respondent is a member of Arizona Chapter, Tucson Division, National Electrical Contractors Association, herein called N.E.C.A., and is bound by an area collective bargaining agreement between that organization and the Union. Their labor relations appear to be amicable, and this case involves only its Tucson branch. The General Counsel alleges that on July 27, 1962, Respondent refused to employ Anthony San Angelo, the Charging Party, and Harry D. Howe, who had been duly referred by the Union through its hiring hall as provided in said contract, because San Angelo and Howe had filed a grievance against Respondent on or about July 2, 1962, for so-called high time or hazardous time pay of time and one-half. This refers to work performed on June 26 and 27, 1962, which, because of its allegedly hazardous nature, carried the premium pay.

Respondent admits that it refused to hire these two men on July 27, but contends that its decision was predicated upon their unsatisfactory work for Respondent on July 14, 1962. It is undisputed that the two men had not worked for Respondent subsequent to June 27 and prior to dispatch by the Union on July 27, other than for 1 day of work on July 14.

The General Counsel does not seriously challenge Respondent's claim that the work of the two men as part of a four-man crew on July 14 was unsatisfactory in that it took far more time than planned by Respondent. Nor does he dispute that this would constitute adequate cause for the refusal of Respondent to employ them again, although he did not litigate whether the crew was at fault. The General Counsel contends, however, that the July 14 incident was not the cause and that the previous grievance for high time or hazardous time pay was the motivating cause for the refusal to hire them. Needless to say, if this contention of the General Counsel were supported by the evidence, his position would have merit, for it is well settled that a valid and existing cause for discharge or refusal to hire does not constitute a defense to an allegation of discrimination if said action is predicated upon another discriminatory reason. See, e.g., *N.L.R.B.* v. *Great Eastern Color Lithographic Corp.*, 309 F. 2d 352 (C.A. 2); *N.L.R.B.* v. *Solo Cup Company*, 237 F. 2d 521 (C.A. 8); and *N.L.R.B.* v. *Wells, Incorporated*, 162 F. 2d 457 (C.A. 9).

B. *Sequence of events*

San Angelo and Howe were laid off on June 27 after working for Respondent as part of a four-man crew on June 26 and 27. Upon their termination, they asked for high-time or hazardous-time pay. Allen Meurer, manager of the Tucson branch, replied that the men would have to file a grievance with the Union. San Angelo then announced that they would do precisely that and Meurer indicated no displeas-

ure over the prospect, stating that the general contractor, Fluor, for whom Respondent was a subcontractor, would then reimburse it for such outlay.[1]

On June 28 San Angelo and Howe appeared at the union office and informed Assistant Business Manager Harold Stewart that they had a grievance in that they had received straight-time rather than high-time pay for work on June 26 and 27. This claim was made pursuant to the contract which set up a grievance procedure wherein grievances are initially adjusted between representatives of the parties and then referred to a joint conference committee consisting of three representatives of the Union and three appointed by N.E.C.A.

Stewart telephoned Meurer at that time and asked why the men had not been paid the premium pay turned in by their foreman; Meurer replied that the Fluor superintendent had disallowed it. Stewart answered that the Union had a contract with Respondent and not with Fluor and that he would proceed to investigate the matter. As Stewart testified, he specified at the beginning of the talk that San Angelo and Howe, *whom he named,* had presented this grievance to him.[2]

On Friday, June 29, Stewart visited and inspected the jobsite and concluded that the work involved did merit high-time pay. On July 2 San Angelo and Howe filled out official grievance forms claiming high-time pay for their work on June 26 and 27 and submitted them to Stewart who then telephoned Meurer on July 2 or 3. Stewart told Meurer that he had visited the jobsite and that the high-time claims of San Angelo and Howe, *whom he named,* were in his opinion meritorious. He also told Meurer that the two men had filed grievances and that he, Stewart, would have to process them.[3] I find, therefore, as contended by the General Counsel, that Meurer was on specific notice as of June 28 that San Angelo and Howe had grieved to the Union over unpaid high-time pay and again, on July 2 or 3, that specific grievances had been filed by them, that the Union believed they had merit, and that the two grievances would be processed.

Respondent's records disclose that it used a four-man crew consisting of complainants San Angelo and Howe, plus two others, Caldwell and Faccio, on July 14 and that the two complainants were paid for 14½ hours of work that day.[4] Respondent contends that the men spent far more time on the job that day than was necessary. Indeed, President John Corbin of Respondent testified that this job, a bid job for a local utility, was the only bid job on which Respondent has ever lost money.

After an entire day on this assignment on July 14, the crew of four returned to the shop at approximately 9 p.m. Meurer questioned them about the length of time spent on the job and tempers were short. Meurer claimed herein that San Angelo threatened to "mop up" the floor or premises with him. His testimony was supported by that of shopman Keith Owen who testified that San Angelo became "obnoxious" and used "strong language." After being led, Owen recalled the "mop up" threat.

While San Angelo admitted losing his temper due to Meurer's alleged provocation, he denied the "mop up" threat. In this respect, he is substantially controverted by fellow crew member Caldwell who testified that Meurer was upset and that he did

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[1] This finding is based upon the credited testimony of San Angelo and Howe. Meurer did not recall such a conversation with the two men, although he did contend that claims for high time pay were common among the employees of Respondent. There is evidence that this was so

[2] Findings as to this telephone conversation are based upon the testimony of Stewart, a clear and forthright witness, whose testimony I credit, as partially supported by that of San Angelo and Howe who were present in his office at the time. Meurer was not specifically questioned as to any talks with *Stewart* but generally denied any knowledge of this grievance prior to August. While admitting knowledge of high-time grievances, he claimed that he knew of them as a general claim by many employees and insisted that he never heard the names of these two employees in connection with the grievance prior to August 25 It may be noted that he certainly heard of them when he was served with the instant charge on or about August 2, 1962

[3] These findings are based upon the credited testimony of Stewart Meurer claimed that he knew of 20 to 40 general grievances on the topic of high time, but not of any as to these specific two employees. The testimony of Meurer, an intelligent witness, discloses semantic quibbling in an effort to avoid recognition by him of a high-time grievance by these two men, as distinguished from other employees, although at one point he was constrained to admit that it did affect these two men. It may be noted that witnesses for the General Counsel similarly endeavored to present testimony in a partisan light, particularly with respect to the crucial conversation on July 27, described below

[4] They also received 4 hours' show-up pay for Monday, July 16, as described below.

hear San Angelo say that he "could" proceed to "mop up" the floor with Meurer. Under the circumstances, Meurer's version is credited over that of San Angelo. As Meurer testified, the crew insisted on being paid or receiving a termination slip which signified that the job was completed.

Meurer left the room, entered his office and telephoned President Corbin in Phoenix. He reported, as Corbin testified, that the men were demanding their pay and that he had been threatened with a "mop up" treatment if he did not pay them. He informed Corbin that he suspected that the job was incomplete or done incorrectly because of the length of time taken thereon. Corbin instructed Meurer to do nothing about paying or terminating the men until Monday, July 16, and to order them to leave the company premises. He further stated that "I do not want that crew back on our payroll."

Meurer returned to the men and San Angelo proceeded to telephone Assistant Business Agent Stewart of the Union. Meurer participated in the conversation and Stewart instructed the men to leave immediately. On July 15, Meurer investigated the job and concluded that it had been properly completed. He spoke again with Corbin on Monday morning, July 16, was instructed to pay the men, and immediately sent termination slips and checks by messenger to the union hall He testified that he deliberately did not mark on the termination slips that the men were ineligible for rehire, although a box is provided for such a statement, because he was conscious of his feelings of resentment toward the men and preferred not to place a "black mark" on their records. Their pay also included 4 hours' show-up pay for July 16, as required by the contract.

In this respect, it may be noted that the General Counsel contended at one point that Respondent deliberately staged the July 14th incident because of hostility toward the men resulting from the grievances filed earlier that month. This, I believe, is substantially refuted by the conscious failure of Respondent to mark the termination slips so as to reflect their ineligibility for rehire. Had Meurer done so, none of the crew could have been dispatched by the Union on July 27 and Respondent thus could easily have prevented their return to its employ.

There is substantial evidence which discloses that, consistent with instructions from President Corbin, Meurer proceeded in the days that followed to acquaint the Union in positive terms that Respondent did not want this crew back. Thus, Business Manager Horace Bounds of the Union was fully aware of Meurer's displeasure with the crew. He testified that he telephoned Meurer on July 16 concerning the July 14th incident; that Meurer expressed dissatisfaction with the crew because he believed they had loafed on July 14; and that Meurer "may have" told him that he did not want them back again. Bounds further testified that if the crew had loafed on the job they well merited immediate discharge and that, as of July 26, he was well aware that Respondent did not want them back.

Meurer and Corbin uncontrovertedly testified about a telephone conversation between Meurer and Bounds at a time when Corbin was present in Meurer's office. Meurer placed the date as July 21 and Corbin placed it between July 15 and July 21. I find that it took place on or about the later date. According to Meurer, another job was coming up and Corbin suggested that he make the call so as to advise the Union that Respondent would not take back this crew. It appears that this was to be a 1- to 2-day project.

Meurer proceeded to inform Bounds that he needed another crew during the following week. When Bounds referred to the previous crew, Meurer replied that under no circumstances would he take them back. Bounds replied that under the referral procedure, the Union was compelled to refer the men at the top of the list, but that Respondent could reject them; this was entirely consistent with the contract language on this topic which gave Respondent that right

Further evidence of Respondent's uncompromising position is disclosed by Everett Clouse, then dispatcher for the Union, who testified that he was at Meurer's office 3 or 4 days before July 27 and that Meurer proceeded to complain about the performance of the crew on July 14. While there is a conflict as to whether Respondent asked for a three- or four-man crew on July 26, Clouse admitted that Meurer asked for a crew on that date and specifically stated that he did not want the crew that was involved in the July 14 incident.[5]

Meurer further testified that he also informed Bounds on July 26 over the telephone, when discussing a crew for July 27, that he did not want this crew back, again making reference to their performance on July 14. While Bounds did not

[5] Meurer's affidavits to the General Counsel are in evidence and place the incident as taking place on July 21. All parties agree that July 14 is the correct date Moreover, Clouse admitted that he was well aware that Meurer meant these four men

recall this conversation, he was, as noted, well aware on July 26 of Respondent's views on the matter.

To repeat, as Union Dispatcher Everett Clouse testified, Meurer telephoned on July 26 and asked for three men, a lineman, operator, and groundman for July 27. He specifically asked that the July 14 crew not be sent. Clouse replied that he had no choice and that the top men on the dispatch book would be sent out. He then made out referral slips for San Angelo, Howe, and Caldwell

Several hours later, Meurer called back and asked which men had been dispatched, consistent with custom whereby this information is divulged after the assignments have been made. He was given the names of the men and Meurer told Clouse to have San Angelo and Howe report at 7 a.m and Caldwell at 8 a.m. Meurer further stated that Caldwell was a "nice old man" whom he "liked" and "he didn't figure he [Caldwell] had anything to do with what had went on, and he didn't want him standing around an hour waiting for another crew to come out."

I find that Meurer reported on July 26 that he would not use the July 14 crew because of what took place that date and that he also distinguished Caldwell from the others on the ground that he had not been primarily responsible, in Meurer's opinion, for what had happened on that day. As shown, San Angelo was the chief spokesman in the near fracas on July 14 in Meurer's office [6]

San Angelo and Howe appeared at the plant at 7:07 a.m. on July 27. While the General Counsel would have it that Respondent declined to employ them because of the grievances filed on July 2, a comparison of their testimony with that of Meurer discloses some support for that of Meurer and warrants a different conclusion. Thus, according to Meurer, he told the two men that he would not rehire them because "their production that Saturday [July 14] was so bad." The men then asked if this was a "personal matter" and Meurer replied that it was not and that it was a "company matter. It wasn't a company policy to rehire anyone that didn't do a day's work."

Meurer was questioned herein whether the high-time grievance was mentioned in this conversation. He replied, "This was a second statement which they asked about." He testified that San Angelo asked what would be done about the high-time grievance. Meurer replied that he had discussed this many times with Bounds and that if the men had a grievance they should file it with the grievance committee, as provided in the union contract; this was manifestly a reference to the joint conference committee established by the contract.

The two men then asked Meurer to sign their referral slips, indicating a refusal to hire them. Meurer refused, stating that he had previously informed Bounds that he would not rehire them, as found above, and that he therefore did not feel that it was in order to do so. The two men then left. Meurer later testified that the subject of high time was brought up by the two men only after he had told them that they would not be hired as a matter of company policy because of their failure to do a day's work on July 14

I find that Meurer then telephoned Bounds immediately, announced that he had rejected the two men, and asked for other men. Bounds replied that he would take care of the matter. It is stipulated that employees Faccio and Fischer were dispatched by the Union later that day and that each worked 4 hours on July 27. In this respect, Meurer was in error as he identified those dispatched as Faccio and Peacock. It is clear that Peacock had been previously sent as foreman on July 25 to become acquainted with the project.

San Angelo's version was that when they appeared at the shop on July 27, Meurer first pushed back their referral slips and stated, "I told the hall not to send you. I don't want you." San Angelo asked for the reason and whether this was a personal or a company reason. Meurer replied that it was not a personal reason but rather a company matter. San Angelo persisted and asked that the reason for rejection be placed on his referral slip. Meurer replied, "I don't have to put nothing on

[6] As indicated, Meurer's recollection was at fault here in a number of respects He recalled that he had ordered a crew of four, all of whom were to report at 7 a m. On the other hand, I find that Caldwell did not report until 8 a m.; his timecard, as explained by Meurer, discloses that he worked 8 hours at the jobsite and none in transit from the shop, this refuting Caldwell's testimony that he reported initially to the shop And, replacements sent out on July 27 after the two complainants were rejected, as described below went directly to the jobsite to join Foreman Peacock who was already on duty at the site Support is lent to this facet of Meurer's testimony by the fact that work at the jobsite carries a higher rate of pay than work at the shop It would follow that Caldwell would have been paid at the lower rate had he been so employed, something which was done on other dates and specifically on July 14.

there . . . Because you guys have got a grievance against the Company. I don't want you anyway." San Angelo denied that there was any reference to high time as such, but claimed that there was a reference to "the hazardous grievance" which, as found, is the same thing. He also denied that there was any reference to the alleged failure to do a day's work on July 14.

Howe's testimony followed that of San Angelo, was briefer, and in general agreed with that of San Angelo, *viz,* that they were rejected outright, that San Angelo asked if the reason was personal or company, and that Meurer replied that it was for "company reasons, that we had a grievance against the Company . . . ." Howe claimed that he asked Meurer to place the reason on the referral slip and that Meurer refused, stating "the hall had never done anything for him . . . we could go back to the hall."

The testimony of the two complainants was supported by that of Bounds who testified that the men reported back to him at the hall and stated that they had been rejected because they had filed a grievance. He claimed that he immediately telephoned Meurer in the presence of the men. Bounds allegedly stated to Meurer that the men claimed that they had been rejected because of the grievance they had filed and that he "wanted to verify this." Meurer allegedly replied that this was so. He did not get into the nature of the grievance.

It is interesting to recall at this point, as set forth above, that Bounds was well aware as far back as July 16 that San Angelo and Howe would be rejected by Respondent because of the July 14 incident which was unrelated to the grievance filed on July 2.

Meurer also testified that he did not learn until after July 30 that Faccio and Caldwell had commenced work for Respondent; this was because they had reported directly to the jobsite, a substantial distance out in the country. He discussed the matter with President Corbin and advised that they be retained because of the critical nature of the work. This explanation is faulted in part by the fact that Caldwell did work on July 27, although on the other hand, as found, Caldwell's work was performed at the jobsite. In addition, Meurer's testimony is uncontroverted that men will report to work in the field and that he hears nothing about it for several days unless a full crew has not reported.

It may be noted that on August 29, the joint conference committee did decide that high time of approximately $20 was due San Angelo and Howe and this was paid by Respondent.

C. *Conclusions*

I credit Meurer as to the conversation at the plant on July 27, and specifically that he expressly denied the men work because of their poor performance on July 14, consistent with his instructions to the Union not to dispatch them. I further find that after this decision was announced, San Angelo for the first time raised the subject of the grievance and the men were told to proceed through channels therewith.

Actually, San Angelo's version gives partial support to the testimony of Meurer for he also predicated Meurer's refusal to hire the men on company policy and on Respondent's request that the Union not dispatch the July 14 crew. Only after San Angelo persisted in having a written reason placed on his referral slip did Meurer then *allegedly refuse to put down a reason because of the pending grievance.* Stated otherwise, San Angelo's testimony is equally consistent with a refusal by Respondent to hire the men for a valid cause which was then followed by a perhaps petty refusal to write down the reason because of the pending grievance.

To sum up, it has been found that Respondent was on notice on June 28 and again on July 2 that these two complainants had filed grievances for high time. And although the complainants had not worked for Respondent since June 27, they were hired on July 14, even though Respondent was entirely free to reject them, pursuant to the contract, were there any animosity toward the men because of the grievances. Again, on July 16, all Meurer had to do was indicate on their termination slips that they were ineligible for rehire and the men would not have been referred again to Respondent for employment.

To the contrary, Meurer expressly avoided this avenue of approach. He fully acquainted the Union with his concededly nondiscriminatory reason for not wanting the men returned to the employ of Respondent, but the Union, consistent with its internal policy, was constrained to dispatch the men on July 27.

While, as indicated, Respondent's case is less than ironclad, I believe that the evidence does not preponderate in favor of the position of the General Counsel herein. Against what appears to be an otherwise amicable background of employer-union relations, in its most favorable posture to the General Counsel as I view the credible evidence, reference was made by the two men on July 27 to the grievance

only after they had been refused employment for a nondiscriminatory cause which the Union was well aware of. This does not rise to the stature of a mixed-motive discharge which is stressed herein by the General Counsel. In view of all the foregoing considerations, it is accordingly recommended that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The operations of Respondent, Corbin-Dykes Electric Company, affect commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Brotherhood of Electrical Workers, Local No. 570, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(3) and 8(a)(1) of the Act.

RECOMMENDATIONS

In view of the foregoing findings of fact and conclusions of law, it is recommended that the complaint be dismissed in its entirety.

Frick Company *and* Plumbers and Steamfitters Local No. 52, AFL-CIO. *Case No. 15-CA-2077. April 10, 1963*

DECISION AND ORDER

On December 19, 1962, Trial Examiner Sidney Sherman issued his Intermediate Report in the above-entitled proceeding, finding that 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. The General Counsel later filed a supplemental brief. Respondent thereupon filed a reply brief to the supplemental brief.

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 [Chairman McCulloch and Members Rodgers and Leedom].

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

[The Board dismissed the complaint.]

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[1] In view of our dismissal of the complaint herein, we find it unnecessary to consider, and do not adopt, either footnote 12 of the Intermediate Report, or the finding that if the Union had been the statutory representative of the employees when the oral contract was made, Respondent's subsequent conduct would have violated Section 8(d).