

whole by payment to each of a sum of money equal to that which he would normally have earned as wages from the date of the discrimination to the date of the closing of the Anderson plant, less net earnings during said period, and in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and with interest on the backpay due in accordance with Board policy set out in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

As to the posting of a notice, the Trial Examiner agrees with General Counsel that the policy set out by the Board in *Darlington Manufacturing Company, et al.*, 139 NLRB 241, be followed. It will therefore be recommended that such notices be published in local newspapers and mailed to the Respondent's former employees.

In view of the serious and extended nature of the Respondent's unfair labor practices it will be recommended that it cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating against employees as to tenure of employment and job assignments and to discourage membership in an activity on behalf of the above-named labor organization, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

Local 369, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO [McCloskey Construction Corp.] and James Lloyd. *Case No. 22-CB-676. June 30, 1964*

DECISION AND ORDER

On May 6, 1964, Trial Examiner Thomas N. Kessel issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting 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 [Members Leedom, Fanning, and Brown].

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 Trial Examiner's Decision, the General Counsel's exceptions and brief, and

the entire record in this case, and hereby adopts the findings, conclusions, and recommendations, with the modifications herein indicated.¹

[The Board dismissed the complaint.]

¹ Although we agree with the Trial Examiner that the complaint herein should be dismissed, we do so on the ground that the General Counsel has not established by a clear preponderance of the evidence on the record as a whole that the Respondent caused the Employer to discharge or lay off the six employees for reasons of membership in foreign locals. In such circumstances, we need not rule on Respondent's motion to have the Board disregard the General Counsel's exceptions in this case.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed October 11, 1963, by James Lloyd, an individual, against Local 369, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-second Region, issued his complaint dated November 27, 1963, alleging that the Union had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. The Union's answer denies the allegation of statutory violation in the complaint. Copies of the complaint, the charge, and a notice of hearing were duly served upon the parties. Pursuant to said notice, a hearing was held before Trial Examiner Thomas N. Kessel at Trenton, New Jersey, on January 27 and 28 and February 11, 1964. The General Counsel and the Union were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. After the close of the hearing the General Counsel and the Union filed briefs which have been duly considered.

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

FINDINGS OF FACT

I. PERTINENT COMMERCE FACTS

McCloskey Construction Corp., herein called McCloskey, is a Delaware corporation engaged in construction work in several States. It is alleged and admitted that in the year preceding issuance of the complaint McCloskey performed construction work valued in excess of \$22,000,000 of which work valued in excess of \$3,000,000 was performed within States other than Pennsylvania where McCloskey maintains its principal office and place of business. I find that McCloskey is an employer engaged in interstate commerce within the meaning of the Act and that the Act's purposes will be effectuated by the Board's assertion of jurisdiction in this case over its operations.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership McCloskey's employees.

III. THE ALLEGED UNFAIR LABOR PRACTICES

McCloskey at times relevant was erecting for the State of New Jersey at its capital city, Trenton, a building known as the Public Works Health and Agricultural Building.¹ The laborers on the job were represented by the Union which has a contract with McCloskey requiring membership in the Union as a condition of continued employment. Newly hired laborers were required to become members following the eighth day of their employment. On October 2, 1963, McCloskey discharged six employees. The complaint alleges that the Union on that day caused or attempted to cause McCloskey to discharge these employees "because of said lack of membership" in the Union and thereby violated the Act. The motivation plainly ascribed

¹ A stipulation from the parties received after the close of the hearing shows that construction of this building was with State and Federal funds provided by the Hill-Burton Act.

by the complaint to the Union for its conduct in causing the foregoing discharges was modified by statements of counsel for the General Counsel at the hearing and in his brief. Thus it is now claimed that the Union sought the discharge of the employees not for their lack of membership in the Union, but because they had been members of sister or "foreign" locals of the Laborers in localities other than Trenton, New Jersey, and had subsequently been admitted to membership or were awaiting admission to membership in the Union by transfer. The Union's primary defense is exclusively factual. It maintains that it had not sought the discharge of the six employees, that it had done nothing to cause this action, and that McCloskey alone for its special reasons decided to get rid of them.

Several witnesses for the General Counsel testified that the Union's business agent, David Murray, had ordered McCloskey's superintendent, John J. Collins, to get rid of the "out-of-town" employees on the job, meaning thereby, as the General Counsel claims, to discharge those employees who before receiving employment from McCloskey had been members of other locals of the Laborers, and that the Union had designated the particular employees to be discharged. On October 1, 1963, Murray discussed with Collins in the latter's office the layoff that day of two employees (not the six alleged by the complaint to have been discriminatorily laid off on October 2, 1963). According to Collins, when the starting whistle on the job blew at 8 a.m., on October 2, no laborers started working. Murray was present at the time and Collins conferred with him and Hadley Rowe, the laborer foreman, about putting one of the two men laid off the day before back to work. Murray said this would not be necessary as he would himself find another job for the man. At this point a load of wet concrete arrived and Collins obtained Murray's approval for the laborers to spread the concrete. Murray, however, stipulated to Collins that he was not to order any more concrete "until the out-of-town men were removed from the job," and warned that nobody would return to work until these out-of-towners were removed. He thereupon drove away in his automobile. Collins secured Richard Adkins, the Union's steward, and asked who were considered out-of-town men. Adkins claimed ignorance. Collins pointed to a group of laborers and again asked for Adkins' opinion. Adkins indicated one named Tiegle. Collins suggested that all the laborers but Tiegle start working and that Adkins and he should contact Murray to have him identify the out-of-town men on the job. Adkins came to the office and he and Collins through telephone extensions held a three-way conversation with Murray. Collins heard Adkins and Murray specify the six employees named in the complaint to be eliminated as out-of-towners. That evening all six were paid off and discharged by McCloskey. The next morning all the laborers remaining on the job resumed work. Other laborers were hired to replace the six who had been laid off. Some of these six have been reemployed. Collins claimed that not all were recalled because he had to get clearance from the Union for them to work in view of the fact that they had been ordered from the job by the Union. He implied that he was concerned with a work stoppage if they were rehired without such clearance.

The aforementioned Foreman Rowe testified that he had decided on October 1 to lay off two laborers because he was overstuffed. He thereupon informed Steward Adkins and gave him the names of the two laborers he had selected for layoff. About then Murray came to the job and was told by Rowe about the layoffs. Murray first asked that the layoff of one of the men be postponed for a couple of days and Rowe agreed. Then Murray withdrew this request and declared he would find another job for the man. At 4 p.m. Rowe notified the two laborers of their layoffs. Murray appeared and expressed resentment over the action. Rowe left. The next morning Rowe ordered the laborers to start working at 8 o'clock, but they refused and looked to Murray who was present for direction. Subsequently a concrete truck arrived and Collins obtained Murray's consent for the laborers to work with the concrete. Rowe claimed he heard Murray tell Collins "go ahead and get rid of this concrete, and after this I'm going to shut this job down until you get rid of all these out-of-town men." Later that day, Collins told him which employees to lay off and Rowe accordingly gave them their notices.

Charging Party James Lloyd, one of the six laborers laid off on October 2, testified that on that date he heard Murray tell Collins that "all the out-of-towners would have to go."

William Buckhalter, one of the six laborers laid off, testified that he was notified of his layoff on October 2 by Adkins. He claimed that he was informed by Adkins that this action was "orders from the Union." At the time he was a member of the Union. His employment with McCloskey had started on May 14, 1963. Before then he had been a member of Laborers Local 332 of Philadelphia and had transferred his membership to the Union on April 30, 1963, before starting on his job.

He acknowledged he had no trouble accomplishing the transfer. He has lived for years in Williamstown, New Jersey, approximately 50 miles from Trenton. About a month after his layoff, Buckhalter sought reemployment at the McCloskey job and was told by Murray that he had no objection to his employment in Trenton.

William Glover, another of the six laid-off laborers, testified that he was notified by the Union's steward of his layoff. He did not indicate anything else said by the steward at the time. Glover's employment with McCloskey began on May 27, 1963. He was, and still is, a member of Laborers Local 332 of Philadelphia. He was informed by the secretary-treasurer of the Union when he started work that the Union had an agreement with Local 332 whereby each agreed to permit the other's members to work within their respective jurisdictions.

James Lloyd, the aforementioned Charging Party, testified that 2 or 3 weeks after his layoff on October 2 he spoke to Murray about getting back his job and that he was told he could return only if Collins were to get rid of Rowe. Lloyd's employment at the McCloskey job started on August 20, 1963. At the time of his layoff he was a member of the Union having transferred to it from Laborers Local No. 47. The location of the latter local is not shown by the record.

Fred Tiegler, also one of the six laid-off laborers, started to work for McCloskey on April 19, 1963. Tiegler is a resident of Philadelphia and was a member of Local 332 when hired by McCloskey. He transferred his membership to the Union on April 16, 1963, and was its member when laid off. Tiegler claimed he went back to the job about three times after his layoff to seek work but was not employed. On one occasion he was told by a person named Henderson, who appears to have replaced Rowe as foreman,² that no help was needed.

Jesse Martin, one of the group of laborers laid off on October 2, had been a member of Laborers Local 456 of Washington, D.C., when he was hired at the McCloskey job in Trenton on April 5, 1963. At the time of his layoff he had not transferred his membership to the Union, but this was accomplished about 2 weeks after the October 2 layoff.

Martin related that he was present at the jobsite on October 2 when the work stoppage occurred and that he had heard Murray tell Rowe he was trying to have him ousted as foreman. He claimed also to have heard Murray tell Collins or Rowe that he wanted "all the out-of-towners off the job." Martin testified that the day following his layoff he went to the union hall and spoke to Murray. The latter refused to speak to Martin, because, as Murray assertedly declared, Martin was one of the out-of-towners on the McCloskey job forcing other members of the Union out of work and requiring others, numbering about 15, to work on different jobs. Martin tried to explain he was a New Jersey resident but Murray was not persuaded because he had an "out-of-town book." Martin acknowledged, however, that at the same time Murray had also informed him that his layoff had been a mistake and that he should go back to the job. A few days later Martin was again told by Murray to go back to the job but advised the latter that he had some personal matters he wished to attend to in Washington, D.C. One of these matters, about which he did not inform Murray, was to obtain a transfer, from his Washington local to the Union. Martin returned a week later and was directed by Murray to see the Union's steward on the job about returning to work. He instructed Martin to contact him if he had any difficulty. Martin went to Collins and was reemployed.

Martin further testified that in January or February 1963 he was present at the union hall and heard Murray tell Rowe that the Union "didn't particularly want to accept out-of-town men in the area because there were local men that was unemployed."

William Fletcher, the last of the group of six employees laid off on October 2, did not testify. The record shows that his employment with McCloskey began on July 3, 1963. At the time of his employment he was a member of Laborers Local 332, and did not during his employment secure a transfer from this local to the Union.

James Lofton, a laborer presently employed by McCloskey, testified concerning Murray's reluctance to permit his transfer of membership to the Union from Local 332 of Philadelphia where Lofton resided. He related that in August 1963 he had sought employment with McCloskey in Trenton and had brought his "traveler's" card and transfer papers from Local 332 to Murray. The latter would not accept them and ordered Lofton from his office threatening to strike him with a club. Lofton first testified that Murray gave no reason for his refusal, but with his memory refreshed Lofton recalled that Murray had predicated his refusal on the ground that he was from out of town. Lofton also recalled that Murray had expressed belief Rowe had sent for him and would not accept his transfer for this

² Rowe was eventually, in December 1963, forced from his position as foreman.

reason. Lofton further testified that he returned to Philadelphia and obtained the help of Local 332's president who spoke to Murray by telephone and asked for an explanation for the refusal to accept the transfer. Murray still would not state his reasons. The president then spoke to the Union's secretary-treasurer, Gonzalez, who directed Lofton to return and promised to accept his transfer. Lofton thereafter was told by Gonzalez that he would have to appear at the union hall each morning before 7 o'clock to obtain work. Lofton protested the hardship of driving to Trenton each day from Philadelphia at the risk of not getting work. He nevertheless paid his dues to the Union. He testified that his employment with McCloskey did not begin until November. The record, however, shows Lofton's date of hire as October 16. Within minutes after he started work Murray directed the steward not to let Lofton stay on the job. Lofton went to Gonzalez who permitted him to return to the job. Apparently he has continued his employment for McCloskey without interruption or interference.

Another General Counsel witness, Mathis Taylor, testified that he had been employed as a laborer by McCloskey in May 1963 and that after working 1 day the Union's steward directed him and another laborer to get off the job. Taylor asked for an explanation and the steward simply told him the Union's business agent had declared they could not work. Taylor's suggestion that he be permitted to join the Union evoked the steward's response that "we got enough men in the hall with paid up books that ain't working."

Adkins maintains a book to record payments from McCloskey as provided by the labor contract with the Union for the employees' welfare fund. All laborers currently employed are listed in the book. Beside each employee's name, with certain exceptions, is a designation entered by Adkins showing his membership in the Union or other local. No designations appear beside the names of five of the six employees herein involved who were laid off on October 2. An entry was made next to Glover's name showing his membership in the Union. No designation appeared for one other employee not involved in the case. Adkins explained that the absence of entries for these employees was due to his failure for 4 or more months to check their books to determine their membership in the Union or other locals. The contract in evidence provides for a 10-cent payment per hour worked by each laborer to the welfare fund. These payments are not dependent upon membership in the Union or any local. Nor is there any provision for separation or administration of the funds depending upon the union affiliation of the employees in whose behalf the payments are made.

A summary of the Union's records reveals that on October 2 there were employed as laborers by McCloskey, in addition to the six laborers herein involved, four others who had acquired membership in the Union by transfer from other locals. All these employees were hired by McCloskey in March or April 1963. As to one, E. W. Holley, the record shows that he had joined his former local in March 1961, but does not indicate the date of his transfer to the Union. With respect to another, W. Jones, the record shows that he had joined his former local in October 1955, but indicates no date when he transferred his membership to the Union. As to another, G. Lee, the record does not show the date when he joined his former local but there is an insertion in the Union's summary indicating a transfer into the Union in October 1959. Concerning the fourth employee, B. Olinsky, the summary in evidence does not state a date when he joined his former local, but contains an entry indicating that he transferred into the Union in May 1962.

The foregoing summary also shows that after the October 2 layoffs of the six employees involved in this case McCloskey hired two laborers who acquired membership in the Union by transfer from other locals. One is the aforementioned Lofton whose date of hire is shown by the record to have been October 16, 1963, and whose transfer from Local 332 to the Union was accomplished on September 3, 1963. Another is T. Matthews who was hired on October 9, 1963, and had transferred from Local 135 to the Union on April 15, 1963. In the same connection there is to be considered the circumstance, already adverted to, with respect to Jesse Martin who was reemployed by McCloskey about 2 weeks after his layoff on October 2, 1963, and who in that intervening period transferred his membership from Local 456 to the Union.

Murray denied ever requesting the layoff or discharge of any laborers on the McCloskey job. He denied that he had requested the termination of the six employees laid off on October 2 and claimed that this was exclusively decided upon and carried out by Collins. The action was brought on, he testified, by his insistence that Rowe be removed from his position as laborer foreman, and Collins' assurance that Murray's objections to Rowe's continuation as foreman would adequately be met by the removal of the six laborers described by Collins as Rowe's "henchmen." Murray testified that his objections to Rowe as foreman had originated

sometime before October 2. He had received complaints that Rowe was unduly harassing the laborers under him, that Rowe was lending them money and collecting unreasonable interest rates, and that Rowe was profiting from a dice game he was running in the shanty reserved for the laborers. Murray claimed to have received complaints about laborers losing their earnings in the game, and, assertedly, was determined to stop this activity. He had pressured Collins before October 2 to get rid of Rowe and had caused a work stoppage in August or September 1963 for this purpose. Collins had then assured him that the conditions about which Murray had complained were not the fault of Rowe but his henchmen. On October 2 Collins informed Murray that the henchmen were responsible and that he would take care of the matter soon. That same day, Collins spoke to him on the telephone and named the six laborers who he said were causing the trouble on the job. He promised to get rid of them immediately. Murray disclaimed knowing any of these persons at the time.

Murray's version of the incident when he chased Lofton from his office was that the latter had brusquely entered and imperiously demanded a transfer card, whereupon Murray resentful of Lofton's manner had engaged in an argument with him. When Lofton reached into his pocket Murray seized a stick, whereupon Lofton ran from the office. Later, according to Murray, when he saw Lofton on the job the latter apologized and shook hands and this closed the matter.

Concerning Lloyd, Murray testified he did not see him after his October 2 layoff until Christmas when Lloyd came to the union office to pay his dues. Murray expressed surprise he had not returned to work and told Lloyd to see Adkins and to inform him he was to find work for him.

As to Martin, Murray recalled that when the former came to the union office on October 3 he expressed surprise that he was not working. When he was informed Martin had been laid off he told him to go back to the job and to tell Collins to put him to work. Murray claimed he also told Martin that if he were to see the other employees who had been laid off with him he was to tell them the same thing.³ Murray denied Martin's testimony that he had told Rowe the Union did not want out-of-town men employed in its area because local men were unemployed.

Adkins also testified that Rowe had abused the laborers under him and had maintained a gambling and loan shark operation. He related that Murray had sought Rowe's removal as foreman for the foregoing reasons weeks before October 2 and that he had before then called a strike to compel this action. On that occasion Collins had persuaded Murray that Rowe was not to be blamed for the complained-of conditions and that he would straighten out the situation. Conditions, however, did not improve. Adkins maintained that on October 2 he heard Murray tell Collins that Rowe would have to be "busted" from his foreman's post, and Collins had again insisted that the fault was not Rowe's but of his henchmen whom he would eliminate. Later that day, according to Adkins, Collins called and asked him to specify "all the guys that are not in your union." Adkins replied he was confused by the request as all the laborers were in the Union. Then Collins named the six laborers he wanted terminated. He called Murray by telephone and Adkins listened to the conversation in which Collins specified the six laborers whose termination in his opinion "should straighten this job out."

Adkins denied he had told Taylor he would refuse to admit him to membership in the Union. He explained he had no authority to refuse any applicant's admission. All he knows about Taylor is that he worked 1 day and that he failed to return to the job the next day after he had left to attend to some business.

Frank E. Gonzalez, the aforementioned Union's secretary-treasurer, testified that in accordance with the constitutional requirement of the International Laborers Union the Union admits to membership by transfer any member in good standing of another sister local who applies. If a member of another local wishes to retain his membership in that local the Union will still permit him to work in its territorial jurisdiction without a transfer.

Mindful that the General Counsel bears the burden of proving the Union's culpability in this case by the preponderance of the evidence, I am constrained to dismiss the complaint. Had the allegation of unlawful conduct stated in the complaint been unmodified, I could not find a basis for a violation as to three of the six laid-off employees for in fact they were members of the Union on October 2 and the causation of their layoffs for nonmembership has been thoroughly disproved. The fact of membership by three of the six employees laid off further implies that the non-

³ At the hearing the Union declared in the presence of Collins that it has no objection to the employment by McCloskey of the six employees laid off on October 2.

membership of the other three was not a reason for their termination.⁴ It would seem more reasonable that the layoff of the entire group was due to a factor common to all. In agreement with the General Counsel I find such common characteristic. All six laid-off employees were former or present members of sister or foreign locals of the Laborer's Union. However, contrary to the General Counsel, I do not believe this common factor was the impelling reason for the layoff of these employees. Four other employees were not laid off who had transferred from different locals to the Union, and two new employees were hired shortly after the layoffs who transferred their membership from foreign locals to the Union. There is no evidence of protest or opposition by the Union concerning the employment of these persons. Moreover, Jesse Martin was encouraged, as I find, by Business Agent Murray to return to work despite his pending transfer of membership to the Union after his October 2 layoff.

I proceed to factfindings which disclose the true reason for the layoffs. First, I reject the testimony by Murray and Adkins that Collins had suggested the layoffs as a means of correcting the complaints about Rowe and that Collins had selected the six employees laid off as Rowe's henchmen. There is no need to detail the evidence of Rowe's alleged gambling operations and moneylending activities for whether he engaged in this conduct or not or whether the Union's agent was concerned about them are not decisive considerations. Assuming that Murray and Adkins were seriously disturbed about Rowe's abuses to the point where they led employee work stoppages to force his removal, I cannot understand how they could possibly have accepted Collins' proposal to lay off unknown henchmen as a means of eliminating these conditions. If, as they testified, Collins had made this proposal to them, a likely response would have been a call for an explanation as to how the layoff of the henchmen would end Rowe's harassment of employees, his dice games and loan sharking. I am convinced they demanded no such explanation because the proposition was never put to them by Collins. I credit his denial that he had ever made it.

I am convinced, in accord with Collins', Rowe's, Lloyd's, and Martin's testimony, that on October 2 Murray had demanded the layoff of out-of-town employees and that, as related by Collins, Murray had later that day specified the names of the six out-of-towners he wanted terminated. The crucial question remains what was meant by the phrase "out-of-town employees."

I have already found that the Union was not concerned with the elimination of employees who had present or past affiliations with other locals. For this reason, and because "out-of-town" does not convey such implication, I am satisfied that the phrase had a different meaning. On its face it connotes persons who lived outside Trenton. However, as it cannot be determined from this record where all the laid-off employees resided on October 2 there is added uncertainty as to the meaning of the phrase. Martin lived in Trenton, Buckhalter lived about 50 miles away, Tiegler lived in Philadelphia, and the place of residence of the other three is undisclosed. One fact, however, is certain. All six, regardless of residence on October 2, had as members of other locals resided outside the Trenton area before receiving employment from McCloskey. I believe that what Murray had in mind when he referred to out-of-towners was those who had come from these other areas to Trenton and who were depriving union members who may have been local residents from jobs with McCloskey in Trenton. I am led to this belief by Martin's credited testimony⁵ that Murray had said to him after the layoff that he was an out-of-towner who had forced union members out of jobs, and that Martin had heard Murray tell Rowe months before that he did not want out-of-towners employed by him because there were local men unemployed.

I also believe that Murray associated these out-of-towners with Rowe whose removal as foreman Murray had tried to accomplish weeks before October 2. Rowe had come from Philadelphia and so had Buckhalter, Glover, Tiegler, and Fletcher. Lloyd had worked under Rowe on five other McCloskey jobs. The fact that Martin had come to Trenton from Washington, D.C., and appears to have had no connection with Rowe may explain why Murray told him his layoff had been a mistake. My opinion that Murray was opposed to the employment of laborers whom he associated with Rowe is strengthened by Lofton's credited testimony that when Murray refused to accept his transfer from Local 332 he indicated it was because Rowe had sent for him.

⁴ I perceive nothing in the failure by Adkins to note in his welfare book the membership in the Union of five of the six laid-off employees which requires a different conclusion.

⁵ In crediting Martin I have been influenced by his reluctance to cooperate with the General Counsel by testifying willingly and forthrightly about circumstances which appeared to disfavor the Union.

In sum, I conclude that Murray was concerned about the deprivation by the out-of-towners of jobs in Trenton for other laborers who had local residences and was particularly aroused over this circumstance by the fact that these out-of-towners were somehow connected with Rowe whom he disliked. His demand for the removal of these persons was prompted by his resentment over the layoff by Rowe of two local employees on October 1. I find that when Murray for these reasons called the work stoppage of October 2 he did cause or attempted to cause a layoff or discharge of the six employees named in the complaint. I do not, however, find that any of the reasons which impelled his action were proscribed by the Act. Unlike the precedents relied upon by the General Counsel,⁶ this case does not involve the causation of employee terminations for reasons pertaining to union membership or for any other reason which, had an employer been motivated thereby to discharge employees, would have resulted in conduct violative of Section 8(a)(3) of the Act. The Union's purpose in demanding the removal of the out-of-towners is more akin to the reason asserted by the unions in those cases where with statutory impunity they insisted on preferment in employment of persons with local residences.⁷

CONCLUSIONS OF LAW

1. McCloskey Construction Corp. is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 369, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) and 1(A) of the Act have not been sustained.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed in its entirety.

⁶ *Animated Displays Company*, 137 NLRB 999; *Ace Electric Co.*, 135 NLRB 498.

⁷ *Bricklayers, Masons and Plasterers' International Union, etc. (Plaza Builders, Incorporated)*, 134 NLRB 751; *Bricklayers, Masons and Plasters' International Union, Local No. 2 (Wilputte Coke Oven Division, Allied Chemical Corporation)*, 135 NLRB 323.

Teamsters Local Union No. 5, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind. and Hart-McCowan Foundation Co., Inc. *Case No. 15-CD-39. June 30, 1964*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, following a charge filed on December 9, 1963, by Hart-McCowan Foundation Co., Inc., herein called Hart-McCowan or the Employer, alleging that Teamsters Local Union No. 5, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind., herein called Teamsters or Respondent, had violated Section 8(b)(4)(D) of the Act. A duly scheduled hearing was held before Hearing Officer Fred A. Lewis on March 10, 1964. All parties appearing were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings made at the hearing are free from prejudi-