

Indianapolis Motor Speedway Corporation d/b/a Indianapolis Motor Speedway Motel and Hotel, Motel, Cafeteria and Restaurant Employees and Bartenders Union, Local No. 58, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO. Case No. 25-CA-1894. November 10, 1964

DECISION AND ORDER

On June 22, 1964, Trial Examiner Stanley L. Ohlbaum issued his Decision 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 attached Trial Examiner's Decision. Thereafter, the General Counsel and the Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs. The Respondent filed a brief in support of the Trial Examiner's Decision.

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 Leedom 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 exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

[The Board dismissed the complaint.]

¹ The Trial Examiner's finding that the Respondent did not violate Section 8(a) (1) and (3) of the Act was based in large measure on the credited testimony of the Respondent's witnesses, which differed in several material respects from that of the General Counsel's witnesses. The General Counsel and the Charging Party except vigorously to the Trial Examiner's credibility findings, contending that the testimony of the Respondent's witnesses, particularly that of Food and Beverage Manager Goodman, is contrary to the "logic of events" and is "internally, substantially and materially self-contradictory." We have examined the record carefully and, although the matter is not free from doubt, we are not convinced that under the applicable standards the Trial Examiner's resolutions of the difficult issues of credibility in this proceeding are clearly erroneous. See *Standard Dry Wall Products*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3). We shall therefore adopt the Trial Examiner's credibility resolutions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before Trial Examiner Stanley N. Ohlbaum in Indianapolis, Indiana, on April 27, 1964,¹ on a complaint

¹ Unless otherwise specified, all dates refer to 1964.

dated March 13 of General Counsel of the National Labor Relations Board, issued through the Regional Director for Region 25, based upon a charge filed February 5 by Hotel, Motel, Cafeteria and Restaurant Employees and Bartenders Union, Local No. 58, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO (herein called the Union), and the answer of Indianapolis Motor Speedway Corporation, doing business as Indianapolis Motor Speedway Motel (herein called the Respondent). The issues litigated were whether Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act as amended (herein called the Act) by: (1) discriminatorily discharging, and failing and refusing to reinstate, its employees William Pierce and Shirley Vaughn for union membership and activity, (2) interrogating its employees concerning their union membership, activities, and desires, and (3) threatening its employees with decrease in pay for union membership, activities, or support. The entire record and also briefs received from counsel subsequent to the hearing have been carefully considered.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

At all material times, Respondent has been and is an Indiana corporation with its principal office and place of business in Speedway,² Indiana, engaged continuously in operating a motel which, during the representative year immediately preceding issuance of the complaint, received gross revenues exceeding \$500,000 from rental of rooms and sale of food and beverages. During the same period, more than 25 percent of Respondent's guests were transients resident at its motel for less than 30 consecutive days; and, also during the same period, Respondent received goods valued at over \$50,000 from other enterprises, shipped to the latter directly in interstate commerce from outside Indiana.

I find that at all material times Respondent has been and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that assertion of jurisdiction in this case is proper.

II. THE LABOR ORGANIZATION INVOLVED

At all material times, the Union has been and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Alleged discriminatory discharge of Pierce and Vaughn*

The complaint alleges and the answer denies that on or about February 5 Respondent discriminatorily discharged, and has since failed and refused to reinstate its employees Pierce and Vaughn, in violation of Section 8(a)(3) and (1), for union membership or for union or organizational activity. The answer asserts that the employees were discharged for nondiscriminatory cause and therefore not entitled to reinstatement.

Since March Respondent has operated a restaurant and motel at its Indianapolis Speedway, where annually on May 30 is run an international automobile race. William Allen Pierce and Shirley Elaine Vaughn were hired as restaurant dishwashers in or around April. Since they worked more or less as a team until they were discharged on February 5, 1964, for the same reason, it is appropriate to consider their cases together.

Respondent's dishwashing operations were organized in two shifts, a day shift from 8 a.m. to 4 p.m. and a night shift from 3 to 11 p.m., each having three dishwashers. The day shift dishwashers were Vaughn, Pierce, and Keller (the last-named since around Labor Day of 1963). Although each of these on occasion assisted elsewhere, apparently Keller did so with greater regularity or frequency than Vaughn and Pierce, leaving the latter in effect to operate as the day dishwashing team. It is established by the testimony of the dishwashers themselves that although repair and maintenance service to the dishwashing equipment was regularly furnished from outside sources, it was part of the dish-

² By stipulation the complaint was amended at the hearing so as to refer to Respondent's location as Speedway instead of Indianapolis.

washers' job to keep the dishwashing equipment (including the machine) clean, as well as to inspect and rewash (by hand, if necessary) any glasses or dishes for any reason inadequately cleaned by the machine. The latter responsibility, according to testimony of the dishwashers, included such tasks as scraping and removing adherent food and other substances before placing dishes and glasses into the machine, presoaking extremely dirty glasses before inserting them into the machine, and rinsing machine-washed dishes and glasses by hand before placing them in racks for dining room use.

The testimony of General Counsel's witnesses (dishwashers Vaughn, Pierce, and Keller) as well as that of Respondent's witnesses, establishes beyond doubt that for a long period prior to their discharge on February 5, 1964, and in fact more or less continuously since the inception of their employment with Respondent in the previous April, discharged dishwashers Vaughn and Pierce had been receiving constant complaints about the dirty condition of glasses and dishes (i.e., adherent remnants of a former meal or meals) being sent out by them to the restaurant. As regards glasses, Vaughn testified the complaints, or some of them, were for what she described as a "little white ring" or "a brown scum"; and, as she further testified, "They had trouble with the glasses there all the time while I was there, the whole time." Pierce testified that "time and time he [Food and Beverage Manager and Restaurant Supervisor James T. Goodman] brought me dirty glasses." Keller also confirmed that there was no doubt that the glasses were dirty, described them as having "brown rings and little grit and sand and stuff in the bottom of them." These were the glasses that were sent out to the restaurant by the dishwashers for the use of guests, and returned to the dishwashers for rewashing. I find that the complaints about dirty glasses continued and probably increased in quantity and tempo in the period of 2 weeks to 1 month preceding the discharge of Vaughn and Pierce.³ I credit the testimony of Motel Manager Cassidy to the effect that in the 2 to 3 week period before the discharge of Vaughn and Pierce he received about a dozen complaints from the motel's most regular customers, which, together with his expressions of displeasure and expectations of curative measures, he transmitted to Restaurant Supervisor Goodman, who in turn passed them on to Pierce and Vaughn.

With the foregoing facts substantially undisputed,⁴ we come to the events of February 4, 1964, immediately preceding the discharge of Vaughn and Pierce, which Respondent asserts precipitated their discharge. On that morning, Motel Manager Cassidy was served a glass of milk in the motel restaurant. After he had drained a portion of it, he observed a brown substance or particles at the bottom of the glass. He set the glass down and called for Goodman, who was not in. He therefore told Goodman's assistant, Kettery, to call this to Goodman's attention as soon as he arrived. When Goodman arrived, Cassidy's milk with its other contents was on Goodman's desk. Accompanied by Kettery, Goodman immediately went to the dishwashing unit, showed the glass to Pierce and Vaughn, and inspected other glasses in the rack ready to be sent to the restaurant, which were also found to be dirty. Goodman reminded Pierce and Vaughn of the previous complaints, not only from the motel manager but also from guests, about dirty glasses, and said he would be back after 2 o'clock to reinspect the glasses and that if they were not satisfactory "then that was it." To the foregoing account, so far not substantially different from that of the dishwashers, Pierce in his testimony added that Goodman asked Kettery to look inside the dishwashing machine and that after he did so Kettery said it "looked like a garbage can." Although the dishwashers did not indicate in their testimony that Goodman warned them of any consequence in the event of continued dirty glasses on reinspection that afternoon, or, indeed, that he said anything at all about a reinspection, I credit the testimony of Goodman in this aspect, not only because of my reactions and preferences based upon testimonial demeanor comparisons, but also because I find it difficult to believe

³ This finding is made upon the basis of Respondent's proof and the testimony of General Counsel's witness Keller. I do not credit the possibly contrary testimony of Vaughn, which was evasive, equivocal, and unsatisfactory, if not internally inconsistent.

⁴ To the extent, if any, disputed, the facts are found as aforesaid, based upon the composite credited testimony of all witnesses, taking into account the entire record and my credibility evaluations resulting in part from their observed demeanor.

that with the degree of provocation and pressure upon him on this occasion, Goodman would have treated the situation less lightly than his testimony indicates he did.⁵

According to Goodman's testimony, when he returned for the afternoon reinspection, he found that the glasses in the racks (ready for dining room guests) were still just as dirty and foggy and contained the same type of particles. Since the dishwashers denied that he said he would return, or that he returned or reinspected, his testimony about the condition of the glasses on the alleged afternoon reinspection is uncontroverted. For the same reason as indicated above, I credit Goodman's testimony in this further aspect. Vaughn and Pierce testified that they did not find their timecards in the timecard rack at quitting time that afternoon (as they had also observed earlier in the day, after the milk glass incident), which they interpreted as a discharge signal, but that when this was called to Goodman's attention he told them he would take care of it and to return the following morning. Goodman's explanation for this is that although he had decided to discharge them that day (February 4) because of their unsatisfactory dishwashing, since Motel Manager Cassidy, the only person authorized to sign checks, was not available when the employees were leaving for the day around 4 o'clock, although their terminal paychecks were ready they had not been signed, and it was for this reason that he told them to return the following morning, at which time it is undisputed that he gave them these checks and informed them that they were discharged. I credit this explanation by Goodman, which I regard as not unreasonable.

It is contended on behalf of the discharged employees that they were fired for union membership or organizational activity. It is to be borne in mind in this connection that the discharges occurred on February 5, 1964. Pierce signed up with the Union on the previous May 27 and Vaughn on July 10. Since their union affiliation, as well as that of other employees—some of whom are still working for Respondent—was neither concealed from nor unknown to Respondent, it is difficult to see how their affiliation so long prior to their discharge, particularly with so protracted a history of employer tolerance of repeated instances of poor work performance on their part, may justifiably be considered to be causally related to their discharge. As for organizational action on their part between the dates of their affiliation and the date of their discharge, Vaughn's testimony indicates that although she apparently may have⁶ furnished a union card to an employee early in 1964, according to her own testimony her "organizational activities" or role in the "Union campaign" between the date of her own affiliation in July and her discharge the next February, appear to have been limited to participating in conversation with fellow employees about the Union but not even asking any of them to sign a card since, as she testified, "most of them already had Union cards in." Vaughn conceded that at no time during her employment with Respondent had any supervisor in any way spoken to her on the subject of any union. With regard to the "organizational activities" of Pierce, between the time he signed up with the Union in May and his discharge the following February, the pattern is hardly substantially different.

He, too, participated in discussions with fellow employees about the Union at lunch or in the locker room. According to him, the "Union campaign" was confined to such talk and the passing out of cards in the washroom or locker room and dining room—all a matter of common knowledge around the motel; in Pierce's words, "I just believe that everybody knew that it was going on"—including Goodman, Ketterer, and others, i.e., management as well as employees.⁷ Pierce testified that at no time did any management person ever speak to him, or in his presence to anybody else, in any way against or even

⁵ Asked whether Goodman had ever told him that improvement in the glasses was necessary, Pierce testified: "He didn't, indirectly he didn't say it, but this was the general practice, if you get me." It was apparent from the witness' testimony that in his personal usage and idiom, by "indirectly" he means "directly," as, indeed, was pointed out on the record.

⁶ I say "may have" because her own self-serving testimony to this effect was unsupported by testimony of the other alleged employee, whose absence as a witness was unexplained; and because of my reluctance, all things including my observations considered, to accept her testimony in this aspect without corroboration.

⁷ Another General Counsel witness, fellow-employee Knight, a potwasher, also confirmed this, testifying that "There was talk going all over the place about Unions."

about the Union—neither threat, question, nor mention; that there was never any criticism for the handing out of union literature or cards; and that he had never heard of any management person talking against union or organizational activities. Pierce further testified that the only union activity he had ever engaged in, other than himself signing a card the preceding May, was that in January 1964, about a month before his termination, he handed out four or five cards, and that in so doing he did nothing that everybody else was not also doing; that nobody ever complained to him about this; and that he was never told union activity had anything to do with his termination, that Respondent's discharge notification carried no union context or connotation to him, and that he had never raised such a question or made such a suggestion to Respondent.⁸ Pierce confirmed the testimony of Respondent's witnesses that during his employment other dishwashers working there had also been discharged.⁹

Respondent's witnesses testified that Vaughn and Pierce were discharged only because they were unsatisfactory dishwashers who failed to do their dishwashing work properly—specifically because of the filthy glass supplied on February 4 to Motel Manager Cassidy himself and their failure to rectify the situation of other dirty glasses in the rack on that day even after being warned.

It is apparent that, aside from the circumstances of the alleged reinspection of glasses on the afternoon of February 4 and the actual details of the subsequent discharges, there is relatively little inconsistency between the versions of both sides in this case insofar as it relates to Vaughn and Pierce. For reasons already stated, I have adopted Respondent's version of the events of February 4 as the more probable and credible. In this connection, as well as for purposes of other findings herein, it may be appropriate to indicate that I was less favorably impressed with the testimony of the alleged discriminatees¹⁰ than with that of Respondent's witnesses, whom I found without exception to be candid, straightforward, and impressive—even to the extent of making admissions, described below, which would have been more to their advantage to withhold had they been inclined to misstate or equivocate for reasons of self-interest. This is by no means a case in which an antiunion employer, discovering certain employees attempting to unionize his work staff, precipitously fires them for pretextual reasons. There is no credible evidence of union animus by the employer here. The alleged discriminatees had affiliated themselves with the Union—as, apparently, had other employees—7 or 8 months prior to their discharge, overtly, and their subsequent union activity was in one case (Vaughn) for practical purposes nonexistent and in the other (Pierce) minimal. Furthermore, whatever the extent of that "activity" was, it was according to the employees' own testimony not covert in any way, and was openly known to the employer, who in no way objected or indicated opposition thereto. Under the circumstances, the discharges' affiliation with the Union is too remote in point of time, and the extent of their organizational activities too minimal and insubstantial, to justify

⁸ It is undisputed that 4 or 5 days before his discharge, Pierce received a telephone call from an individual whom Pierce identifies as Joe Taylor, from whom he says he had received some union literature. This telephone call was received in Goodman's office, where Pierce spoke to the caller in the presence of Goodman and Ketterly. There is no evidence that either Goodman or Ketterly knew who the caller was, nor that they listened to what Pierce said, nor that union matters were discussed, nor that Pierce said anything to identify the caller or the call was in any way related to a union matter. Indeed, Pierce explicitly testified that he said nothing to identify the conversation with any union matter or union business and that neither Goodman nor Ketterly had any reason to suppose it was.

⁹ The proof is uncontroverted that not only while Vaughn and Pierce were employed by Respondent, but since then, other dishwashers have been discharged for failing to clean eating paraphernalia properly, also, for example, that a day or two after the discharge of Vaughn and Pierce, a cook was discharged by Goodman for "slopping food on a plate."

¹⁰ I do not necessarily ascribe this to any deliberate intention on the part of these witnesses to misstate or mislead. For example, Vaughn, while freely admitting her employer's continuous complaints about her dishwashing, at the same time insisted that she had never been told that her work was not satisfactory but that, on the contrary, her work had always been praised. While appreciating that perhaps a certain amount of dirty dishes are "par for the course," so to speak, the total picture and circumstances here presented convince me that any reasonable allowance quota was exceeded and Respondent's patience justifiably exhausted.

the conclusion—particularly in view of the entire record, including their admitted shortcomings as dishwashers and the unfortunate specific incident of February 4 involving the motel manager himself—that they were discharged for discriminatory reasons in violation of the Act. Whether or not Respondent expected too much of its dishwashers or whether or not their discharge was warranted for reasons other than those cognizable under the Act (or, indeed, for any reason, so long as not within the Act's proscription) are totally beside the point for purposes of this proceeding. As has been said many times in many ways, it is not a violation of this Act for an employer to fire an employee for any reason whatsoever or for no reason whatsoever, so long as he is not fired for union or organizational activity or otherwise exercising rights which he is guaranteed the freedom of exercising under the Act.¹¹

It is urged on behalf of the discharged employees that discrimination is established by reason of the fact that the third day-shift dishwasher, Keller, was not also discharged. The answers to this are that Keller appears to have had no responsibility for cleaning glasses; and that he had regularly been performing work other than dishwashing for substantial periods of time in an eminently satisfactory manner, and Respondent (particularly Ketter) therefore did not wish to discharge him. It is undisputed that after Vaughn and Pierce were discharged, Keller voluntarily quit, stating, "I came in to get my check . . . I just don't like the way things go around here." A further answer to the implications of this contention is that it is conceded that dishwashers other than Vaughn and Pierce were also discharged, without claim that any of such discharges were union connected; and that other employees, concededly members of the Union, have not been discharged. It appears to be further contended that the dirty glasses in question were "night shift glasses" as distinguished from "day shift glasses." Apart from the fact that this has by no means been established, it is noted that the discharged employees admitted continuous complaints to them about the conditions of the glasses they were sending out to the dining room; that Keller explicitly conceded that the complaints about glasses included "day shift glasses" as well as "night shift glasses"; that since, according to the testimony of Vaughn, the day shift dishwashers washed glasses that had been used at breakfast (which started at 6:30 a.m.), it is obvious that dirty breakfast glasses could have been glasses processed by the day shift (i.e., glasses used after 6:30 a.m. and returned to the day shift dishwashers after 8 a.m. for washing); and that Respondent was entitled in the conduct of its business to take the view that in any event dirty glasses should not have been sent out to the dining room by the dishwashers, regardless of when or by whom the particular glasses were processed. It is additionally urged, on behalf of the dischargees, that they were discharged without notice. Respondent submitted credible testimony to the effect that this was in accordance with its practice in discharges for improper work performance, while conceding that in the case of a cook discharged a few days after these two employees, for "slopping food on a plate," 2 days' notice was given. This, again, is beside the point. Whether or not the failure to give Vaughn and Pierce notice was in accord with its usual practice, it does not in itself establish discriminatory motivation in violation of the Act.¹²

Upon the total record presented, I am convinced that the true and only reason for the discharge of Vaughn and Pierce was that, in culmination of a long history of unremedied, unsatisfactory dishwashing, the "straw that broke the

¹¹ As stated by the Board in an early case: "This Board does not attempt to interpret employers' rules or pass upon their reasonableness. The only issue with which we are concerned is whether Green had been discharged because of his Union activity . . ." *Matter of Montgomery Ward and Co., Inc.*, 4 NLRB 1151, 1166. Cf. also *Sunshine Biscuits, Inc. v. N.L.R.B.*, 274 F. 2d 738, 741-742 (C.A. 7). While there is no necessity for me, for purposes of this proceeding, to go beyond deciding the question of whether the discharges were for discriminatory reasons under the Act, nevertheless if I believe Respondent's explanations for discharging the employees, as I do in this case, this excludes a finding of discriminatory discharge.

¹² It is also contended that the motel is admittedly still receiving some (although less) complaints about the condition of its glasses. But even if the motel glasses are still dirty, this does not establish that Vaughn and Pierce were fired for union activity as charged. It may, for example, simply mean that Respondent has not yet succeeded in finding competent dishwashers.

back of [Respondent's] tolerance and condonation"¹³ was the intolerable incident of February 4 when the motel manager himself drank a glass of milk with filth in it, and the employees' failure even then to clean up the other racked glasses that day, notwithstanding Goodman's warning to them. Whether or not Respondent was justified in discharging these employees for this reason is beside the point, since there is no credible evidence that they were discharged for any other, and a finding that they were discharged for discriminatory reasons violative of the Act would be based on sheer surmise, conjecture, and speculation.¹⁴

I find and conclude that it has not been established by a preponderance of the substantial credible evidence that the discharge of Vaughn or Pierce was for discriminatory reasons in violation of the Act.

B. *Alleged interrogations and economic threats*

The complaint also alleges and the answer denies that, in violation of Section 8(a)(1), on or about January 31 and February 1 Respondent through its Supervisors Goodman and Kettery interrogated employees concerning their union membership, activities, and desires; and that on or about January 31 Respondent through Kettery threatened employees with a pay decrease for joining or supporting the Union or engaging in organizational activities.

The alleged unlawful interrogations are claimed to have been established through the testimony of Respondent's former dishwasher Keller and its employees Knight and Wesley; and the alleged economic threats through the testimony of Keller. Discharged dishwashers Vaughn and Pierce testified that they were at no time in any way questioned or spoken to on the subject of union or organizational activities.

Respondent's former dishwasher Keller, who, it will be recalled, resigned, testified that he signed up with the Union on September 14. He further testified that around the end of January 1964, when he and Kettery were alone in the locker room, Kettery told him that he knew Vaughn and Pierce were passing out union cards and asked Keller if he knew anything about it and whether they had approached him. Keller testified that he said no, although he had originally (about 4 months prior to this) received his union card from Pierce; but that, when asked whether he knew anything about the Union "trying to get in," he said yes. According to Keller, Kettery then remarked that if the Union got in he would be making 80 cents instead of \$1.20 an hour, which prompted Keller to say that he would not work for that. Keller testified that Kettery then told him not to worry and to "leave what was said right here in the locker room." On cross-examination, Keller conceded that far from indicating there would be any retaliation against him for union affiliation, "he [Kettery], to be truthful, he told me my job was safe" and that "you got a job as long you wanted to work here . . . don't worry." Kettery's version of this incident is that one day, probably in January 1964, as he was leaving the restroom he passed Keller and remarked, "Leon, has anyone ever asked you to join the Union," Keller said yes, and Kettery continued on out without saying anything else or even asking him whether he had joined. There is thus raised a pure issue of credibility between Keller and Kettery. I was adversely impressed by Keller as a witness, among other reasons because he appeared to hedge, shift, and equivocate as he testified. On the other hand, I was extremely favorably impressed with the demeanor of Kettery. I accordingly credit Kettery's version of this incident, and find that no economic threat, suggestion, or conversation took place such as narrated by Keller; and I further find that the passing remark which Kettery honestly conceded he made while coming out of the washroom was in no sense coercive or even designed to obtain information relative to

¹³ *Magnolia Petroleum Company v. N.L.R.B.*, 200 F 2d 148, 149 (C.A. 5). (The fact that Respondent did not see fit to discharge Vaughn and Pierce previously for poor work does not mean that when it did its action was discriminatory. "But to Dunson [Employer's personnel manager], already exasperated by the number and perseverance of Hughes' creditors, the final batch of threats of garnishment was enough . . . Proof that a rule is flexible is not tantamount to a showing of discrimination, if there is reason for its strict application. To Dunson's personal knowledge, at least three other employees had been dismissed because of excessive garnishments. Thus Hughes was not alone in feeling the brunt of the company policy." *N.L.R.B. v. Georgia Rug Mill*, 308 F 2d 89, 93 (C.A. 5).)

¹⁴ Cf. *Consolidated Edison Co. of New York, Inc. v. N.L.R.B.*, 305 U.S. 197, 230; *G. H. Hicks and Sons, Incorporated*, 141 NLRB 1272, 1277; *Lo-K Foods, Inc.*, 134 NLRB 956, 957; *Blue Flash Express, Inc.*, 109 NLRB 591, 592.

Keller's union or organizational status, activities, or desires, and that it was isolated and not in violation of Section 8(a) (1) of the Act.¹⁵

Respondent's potwasher, Knight, testified that around June, while he was working on the garbage rack behind the motel, Goodman asked him if he "had heard anything about a Union." When Knight said he had not, Goodman said, "You don't have to tell me who it is" and that he could probably tell Knight, mentioning Josephine Malone, then employed at the motel.¹⁶ Further according to Knight, on another occasion during the summer of 1963, Goodman again, to use Knight's own words, "asked me if I had heard any more or something like that, and I took it he was probably talking about the Union. . . . He didn't say Union or horse race. . . . And what I told him was, I said, 'No.'" Knight testified that the foregoing was the only time or two that the subject of union was in any way broached or even hinted at by any supervisory personnel, even though among the employees "There was talk going all over the place about Unions." Knight further testified that he had signed up with the Union in July or August, but was never asked about it in any way by Goodman or any other supervisor, and that at no time did he hear any threat or suggestion that it would be bad if he or anybody else joined a union. Goodman candidly conceded that he had indeed one day on the garbage dock asked Knight whether he had heard anything about the Union, and that Knight said he had not, and that was the end of the conversation. Goodman added that at this time he was under the impression that Knight had affiliated with the Union because one of the maintenance men had mentioned it to him previously.

Respondent's janitor (in the motel part of its business) Wesley testified that he has never signed up with the Union, and that at sometime before or after—he could not remember which, or how long before or after—Vaughn and Pierce were discharged Goodman remarked to him in the hallway between the motel and the dining room (known as "gasoline alley") in a completely friendly way, "Is it true, I heard that you been approached about a Union," or "Do you know anything about a Union?" Something like that." Wesley testified that since he had not in fact been approached and knew nothing about any union activity, he truthfully told Goodman he knew nothing about it, and that Goodman then said that the motel paid about the same as other motels and that Goodman "was trying to say" that "The Union wouldn't make too much difference, either way, I guess." Wesley told nobody about this conversation. Goodman's account of this encounter is substantially the same.

Although Goodman's version of his remarks to Knight on the garbage rack and to Wesley in "gasoline alley" do not differ significantly from those of the employees, it may be appropriate to mention that I was extremely favorably impressed with the testimonial demeanor of Goodman, whom I found to be candid, straightforward, and convincing in look and manner. After observing him, I was left persuaded that he testified truthfully in all essential respects, including, as already indicated, his testimony with regard to the discharges of Vaughn and Pierce.¹⁷

¹⁵ Cf. *N.L.R.B. v. Kelly & Picerno, Inc.*, 298 F. 2d 895, 898 (C.A. 1); *N.L.R.B. v. England Brothers, Inc.*, 201 F. 2d 395, 397-398 (C.A. 1); *John S. Barnes Corporation v. N.L.R.B.*, 190 F. 2d 127, 130-131 (C.A. 7); *G. H. Hicks and Sons, Incorporated*, 141 NLRB 1272, 1278; *Charlton Press, Inc.*, 129 NLRB 1352, 1357; *The Great Atlantic & Pacific Tea Company, Inc.*, 129 NLRB 757, 760; *Gibbs Automatic Division, Pierce Industries, Inc.*, 129 NLRB 196, 198; *Lenox Plastics of P.R., Inc.*, 128 NLRB 42, 44; *True Temper Corporation*, 127 NLRB 839, 842; *Hot Point Co.*, 120 NLRB 1768, 1772; *Haleyville Textile Company, Inc.*, 118 NLRB 1157, 1158; *Blue Flash Express, Inc.*, 109 NLRB 591, 593, 594, 595; *The Frohman Manufacturing Co., Inc.*, 107 NLRB 1308, 1315.

¹⁶ There is neither evidence nor charge that Malone's termination, which occurred soon after race time (apparently consistent with customary practice of retrenchment at that time, according to this witness' testimony), was causally related to any union activity on her part, nor is there any evidence as to what the reason or circumstances of her termination were.

¹⁷ Much has been made of a statement executed by Goodman several days after the discharges, which is said to be highly inconsistent with his testimony. Other than the perhaps understandable fact that Goodman did not then expressly identify Motel Manager Cassidy as being involved with a dirty glass on February 4 (while stating that some guests were), this statement varies from Goodman's testimony in certain noncritical respects. I have taken these, as well as Goodman's credited explanation of the denied hasty circumstances under which the statement was executed, into consideration, and I am not persuaded to view his credibility as poor or to reject his testimony as totally lacking in veracity, or of the available alternatives to prefer other testimony to his.

In the light of the employees' own testimony and the record as a whole, including the absence of antiunion sentiment by the Employer,¹⁸ it appears to me that the few remarks thus admittedly made by Goodman to Knight and Wesley, considering the casual circumstances under which they were made and the total absence of even a suggestion of coercive atmosphere or design, could hardly be regarded as other than isolated and as in no way calculated to interfere with, restrain, or coerce the employees in the exercise of their Section 7 rights. Innocuous pleantry or dialogue is not *per se* illegal interrogation merely because an organizational subject is referred to; nor is mere use of the word "union" by an employer to an employee freighted with hazard.¹⁹

I accordingly find and conclude that no economic or other threats were made by Respondent as alleged; that, as to the alleged interrogations, the alleged incidents involved (to the extent found) were merely isolated and concoerive in character, in no way interfering with, restraining, or coercing Respondent's employees in the exercise of any of their rights under the Act; and, further that, in any event, even if these incidents were considered to constitute technical, minor infractions, viewing the case as a whole it would not effectuate the policies of the Act or serve any useful purpose to issue a cease-and-desist order herein based thereon.²⁰

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in any of the unfair labor practices alleged in the complaint.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed.

¹⁸ Cf. *N.L.R.B. v. Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2); *N.L.R.B. v. Linda Jo Shoe Company*, 307 F. 2d 355, 357 (C.A. 5).

¹⁹ See cases cited *supra*, footnote 15.

²⁰ Cf. *Pennsylvania Tire and Rubber Co. of Mississippi, Inc.*, 144 NLRB 466; *G. H. Hicks and Sons, Inc.*, 141 NLRB 1272, 1278; and cases cited *supra*, footnote 15.

Irving Air Chute Company, Inc., Marathon Division and Textile Workers Union of America, AFL-CIO and Elected Committee for Employee Representation,¹ Party in Interest. *Cases Nos. 3-CA-2097 and 3-RC-3140. November 12, 1964*

DECISION AND ORDER

On May 18, 1964, Trial Examiner Morton D. Friedman issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that Respondent had not engaged

¹ Even though the Elected Committee for Employee Representation did not formally meet with the Respondent, employees participated in it, elected representatives, and admittedly formed it for the purpose of meeting with Respondent to negotiate concerning rates of pay, seniority rights, and other working conditions. Accordingly, we find that the Elected Committee for Employee Representation is a labor organization within the meaning of Section 2(5) of the Act.