Osborne's testimony. However, we do not believe that this isolated incident is sufficiently serious, standing alone, to warrant a remedial order.

In view of the foregoing, we shall dismiss the entire complaint in this case.

[The Board dismissed the complaint.]

White Consolidated Industries, Inc. *and* United Steelworkers of America, Local 3700, AFL–CIO. *Case No. 13–CA–6099. September 24, 1965*

DECISION AND ORDER

On May 10, 1965, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that 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 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 and later filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Jenkins and Zagoria].

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, the briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its

[1] The principal issue in the case involves the Trial Examiner's recommended dismissal of Section 8(a)(5) violation allegations of the complaint predicated upon a *Fibreboard* theory. *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203. We adopt the Trial Examiner's recommendation upon the grounds that after the Union received notice of Respondent's decision to terminate operations at the Chicago plant—the timeliness and adequacy of which is not before us for consideration as it occurred more than 6 months before the filing of the charge—the Union did not object to Respondent's plans or request bargaining with respect to either the decision or its impending effect upon unit employees, but instead raised issues only as to certain contractual benefits it claimed unit employees to be entitled to upon discharge. *Motoresearch Company and Kems Corporation*, 138 NLRB 1490, 1493

Order the Order recommended by the Trial Examiner and orders that the complaint herein be, and it hereby is, dismissed.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on December 23, 1963, by the above-named labor organization, the General Counsel of the National Labor Relations Board on August 3, 1964, issued his complaint and notice of hearing. A series of orders rescheduling the hearing was thereafter issued. The Respondent filed an answer and amended answers dated August 12 and December 11, 1964, and January 7, 1965. General Counsel issued an amendment to the complaint on January 8, 1965, and another amended answer was filed, dated January 11, 1965. Pursuant to notice a hearing opened on January 20, 1965, in Chicago, Illinois, before Trial Examiner C. W. Whittemore. After calling three witnesses General Counsel decided to, and did, further amend his complaint, adding an alleged violation of another section of the Act. The hearing was thereupon adjourned until February 9, 1965. At the request of the Charging Party the hearing was further adjourned until March 9, 1965. It was resumed on the latter date and closed on March 10, 1965.

At the hearing all parties were represented by counsel, and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. At the request of General Counsel, time for the filing of briefs was extended to April 19, 1965. Comprehensive briefs have been received from General Counsel and the Respondent.

Attached to General Counsel's brief is a motion to correct the record in certain typographical respects. It appears that the brief and its attached appendix were properly served upon the other parties. No objection having been received, said motion is hereby granted and is made a part of the record. It is ordered that the corrections be made in accordance with the motion as granted.

Disposition of the Respondent's motion to dismiss the complaint, as finally amended and upon which ruling was reserved at the conclusion of the hearing, is made by the following findings, conclusions, and recommendations.

Upon the record thus made, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

White Consolidated Industries, Inc., is a Delaware corporation, with plants located in various States of the United States. From 1960 until July 12, 1963, the Respondent maintained a place of business in Chicago, Illinois, herein referred to as the McAlear plant, where it manufactured pipeline strainers and various types of valves. While operating this plant the Respondent annually made, sold, and distributed products valued at more than $50,000 directly to States other than the State of Illinois.

And during the same period it annually purchased and had delivered to the said plant materials valued at more than $50,000 which were transported directly to it from points outside the State of Illinois.

The complaints allege, the answers admit, and it is here found that the Respondent is now and at material times has been engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

United Steelworkers of America, Local 3700, AFL–CIO, is a labor organization within the meaning of the Act, and for a number of years preceding the closing of the Chicago plant was in contractual relationship with the Respondent covering employees at this plant.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Setting and major issues*

The single charge in this case, filed on December 23, 1963, was comprehensive, alleging violation of Section 8(a)(1), (3), and (5) of the Act, claiming that the Respondent had discharged employee members of the Union and moved its McAlear plant to "rid itself" of the Union, and at no time had offered or agreed to bargain with the Union regarding its "decision to move the operations" or "the future rights and employment of its employees." The charge further contends that such action by the Respondent took place during the term of an existing agreement and was in violation of terms of that contract.

The original complaint, however, issued more than 6 months later, alleged violations only of Section 8(a)(5) and (1) of the Act, contending that the Respondent had refused to bargain since July 12, 1963, by "unilaterally" terminating operations at the plant, without affording the Union "adequate notice" of its intent, and refusing to negotiate with the Union such termination and its effects upon employees.

The original answer merely denied generally all allegations of violations of the Act. The first amended answer, after repeating the general denials, alleged as a "second defense" that the contract in question included provisions for severance pay in the event of permanent closing of the Chicago plant. The second amended answer added an allegation that the Union, in effect, by failing to file a grievance as provided by the same contract, concerning the closing of the plant, had "forfeited" any grievance.

The amendment to the complaint, issued in January 1965, a year and a half after the plant closing, altered the claim of the original complaint by. (1) contending that the refusal to bargain began on July 1, 1963, and (2) adding an allegation that between July 1 and July 12 the Respondent had unlawfully bargained individually with employees concerning the plant closing.

The answer to this amendment repeated in substance the elements of its preceding amended answer.

As previously noted, at the hearing General Counsel again amended his complaint, this time embracing practically all allegations in the charge filed more than a year earlier. In substance, it now claims, in addition to the various 8(a)(5) factors, that the plant was unlawfully closed and the employees discharged "because said employees joined or assisted the Union or engaged in other union activity," in violation of Section 8(a)(3) of the Act.

At the outset I note that the charge was not filed until December 23, 1963. The act prohibits the finding of any unlawful act before June 23, 1963. It is permissible, however, to consider as relevant background events preceding this last-mentioned date which may throw light upon any conduct in issue after that date.

B. *Facts relevant to the decision to close the plant*

The findings made below rest, in the main, upon uncontradicted testimony or documents as to which there is no question.

(1) In 1960 the Respondent purchased a going concern in Chicago known as the McAlear Manufacturing Company, which at the time of purchase was under contract with Local 3700—a contract originally executed, it appears, in 1958. There is no question but that the Respondent, upon acquisition of the operations at McAlear, assumed its responsibilities to the employees and Local 3700 as provided in said contract.

(2) This original contract contained the following provision:

> In the event the company permanently closes down the Chicago plant, and moves a distance of more than 15 miles, or a department or any portion thereof, *resulting in loss of employment* for an employee with three or more years of service, the following severance pay will be paid by the Company:
>
> | | |
> |---|---|
> | Three years and over service | 1 week |
> | Five years and over service | 3 weeks |
> | Ten years and over service | 6 weeks |
> | Fifteen years and over service | 8 weeks |
>
> Any employee who accepts severance pay is no longer to be considered an employee of the Company for any other benefits he may derive as a result of this and any other provisions of this agreement. [Emphasis supplied.]

(3) Succeeding agreements extended the provisions concerning the "closing" and "moving" of the plant and operations. In October 1961, the Respondent and the Local (as well as the parent organization, United Steelworkers of America) executed another agreement extending the 1958 and 1960 contracts to August 15, 1963. The one modification relevant here was a provision to the effect that the "close down" clauses, quoted above, were to be amended, beginning in August 1962, to increase the moving distance from 15 to 20 miles, and to alter somewhat the number of weeks' termination pay for service in the seniority categories of 5 years and more.

(4) The 1961 contract was in effect at the time the plant was actually closed on July 12, 1963.

(5) Top officials of the Respondent made the final decision to close the Chicago plant and move the operations to Pennsylvania on or about June 11, 1963.

(6) That the possibility of such closing and moving had been in the minds of company officials, and, indeed, obviously had been the subject of collective bargain-

ing since 1958, is a fact not only warranted by the testimony but also by the provisions in the 1958 contract and the succeeding extensions.

C. *Conclusions as to the decision to move*

Considerable portions of General Counsel's evidence and brief are devoted to matters which might have been relevant had the Union filed its charge earlier than it did—just before Christmas in 1963.

The evidence establishes beyond doubt that the *decision* to close and move was made some 2 weeks before the beginning of the 6-month period within which any unlawful act, or any failure to act, or any demonstration of any unlawful intent, may be found. It therefore appears unnecessary to burden this Decision with a review in detail such evidence. Equally unnecessary, it seems, is appraisal and analysis of General Counsel's exhaustive quotations from many Board and court cases which might have been applicable under circumstances other than those existing here.

I confess myself to be at a loss to understand how General Counsel—unless he is in possession of an earlier charge than the one in evidence—can seriously urge, as he does in his brief, that evidence warrants the finding of a violation of Section 8(a)(5) and (1) in "mid-May."

In short, I conclude and find that Section 10(b) of the Act, which states in relevant part:

> . . . *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge . . . and the service of a copy thereof upon the person against whom such charge is made . . . .

bars me from holding, as a violation of any section of the Act, any act or failure to act before June 23, 1963.

D. *Findings and conclusions concerning later events*

As noted above, top management at the home office of the Company in Ohio made its final decision to move on June 11, 1963. According to the credible testimony of Thomas Ritter, a vice president and divisional general manager for the Respondent, the next 2 or 3 days after the final decision were occupied in "assessing all the things that had to be done to make this a good, orderly move" and on Saturday, June 15, he called Walter Blass, superintendent of the Chicago plant, informed him of the decision, and told him to pass the information along to the union committee.

Credible evidence establishes that Blass carried out such instructions the next working day, Monday, June 17. He called into the office William Semkiw, president of Local 3700, one Katurba, the shop's chief steward, and another individual, apparently a member of the shop committee. Upon receiving the information as to the closing and move, according to the union president's account, all he did was to remark that he wanted to call Union Representative Gatewood "to see that all the employees got what they are entitled to." Blass asked the union president to go around the plant and see if the employees would help in the "packing and moving." Semkiw thereafter reported back that all but one of the employees were willing to remain and help.

It is undisputed that Union President Semkiw made no request of Blass, on June 17 or thereafter, for any negotiating meeting concerning the move, the transfer of employees, or any other matter.

It would appear well, at this point, to dispose again of General Counsel's allegation to the effect that the Respondent violated the Act by failing to give the Union "adequate" notice of its intent to close and move. As noted above the "notice of intent" was given to the union president on June 17, 1963—still outside the 6-month period. Whether "adequate notice" was given or not may be worth academic discussion, but in my opinion it could not, under the Act, lead to a conclusion of a violation.[1]

According to Gatewood's testimony, in substance corroborated by the superintendent, he called Blass on June 27—the first event to fall within the permissible 10(b) period. He asked Blass, he said, about "the seniority rights of the employees, about

[1] I cannot agree with General Counsel's urging, in his brief, that it would be more "plausible" to infer that Semkiw was not notified of the closing by Blass until June 27, the date when Gatewood claims he finally called Ritter. General Counsel contends, in effect, that Gatewood reasonably would not have waited 10 days before calling Ritter. The short answer to this is that it is hardly reasonable for a business agent to wait 6 months before having his counsel file charges, but documentary evidence shows that he did. The finding of June 17 as the date of notification rests upon more credible testimony as well as the probabilities inherent in the circumstances as to which there is no question.

the severance pay, vacation pay, and also about negotiating." Blass told him he had no authority to discuss such matters, and referred him to Ritter, providing him with the latter's telephone number.

Gatewood called Ritter the same day, in Conneaut, Ohio, and, according to his testimony, "spoke to Mr. Ritter about the plant closing, about negotiating a closeout, about the seniority rights of the employees, vacation pay, and a number of other things" which he could not recall. Ritter confirmed, in essence, the subjects claimed by Gatewood except that of "negotiating a closeout," and flatly denied that the union representative requested "to discuss this." I must credit Ritter, and not Gatewood. Had Ritter refused, or evaded, an actual request to "negotiate a closeout," it is reasonable to believe that Gatewood would thereafter have made some issue of the fact. Yet on cross-examination Gatewood admitted that after June 27 he made no effort to "contact" the Company concerning the "closing down of the plant" by telephone or otherwise. And Gatewood also admitted that later correspondence he had with the Respondent, following the actual move, related only to vacation pay. Documents in evidence, submitted by General Counsel himself, confirm Gatewood's admissions. These are letters dated July 18 and August 26 (the latter, of course, being after the contract had expired).

The first credible evidence of actual request by the Union to negotiate concerning the possible transfer of employees to the Pennsylvania plant appears in a clearly self-serving letter dated December 23, 1963—the same day the charge was filed—from counsel for the Union to counsel for the Respondent. The letter merely recites claims made in the charge itself.

While there is evidence that a dispute continued, after the plant closing, concerning the matter of vacation pay accrued under the contract, which expired August 15, that dispute is not involved in this case.

According to the credible testimony of Ritter during cross-examination, he told Gatewood, following the argument concerning vacation pay, that either he or other responsible officials of the Company would be at the Chicago plant between that day, June 27, and the actual closing of the plant, and if "anybody wishes to discuss anything with them at that time, they will be available for the purpose."

It is undisputed that neither the union president, who remained working, nor Gatewood, asked either Ritter or Johnson, who were in Chicago several days in that period, to discuss any matter concerning the closing or possible transfer of employees.

Turning briefly to the allegation of "individual bargaining." There is testimony from Superintendent Blass that shortly before the "last day of the move," which would have been July 12, he did speak to some "six or eight men" concerning the possibility of their coming to the new plant in Pennsylvania "temporarily to work." Since such suggestions were made long after the announcement to the union president of the decision to move, and the Union had made no request to bargain concerning transfers, I cannot consider such "individual bargaining," if the term really applies, as violative of the Act.

There is also in the record testimony from one Liotta, a foreman at the Chicago plant, to the effect that he was in Cleveland in early June, while the move to Pennsylvania was being considered by top management, and that he returned to Chicago about June 14—after the decision to move had been made. His testimony confirms that of the superintendent to the effect that a few employees were called in regarding possible work in Pennsylvania, but does not fix any specific date. If the conversations occurred before June 23 then, as with other matters, they fall outside the Act's 10(b) period.

In short, I find no credible evidence in the record to support the "individual bargaining" allegation.

Turning finally to the latest allegation of the complaint, added more than a year and a half after the material events and more than a year after the one charge was filed which contained the same allegation. In the first place, it appears reasonable to suspect that General Counsel made appropriate investigation of the charge's contention that the employment terminations were unlawful and for the purpose of discouraging union membership, and that he found no merit in such claim, since the original complaint, issued in August 1964, failed to include this allegation.

In the second place, there is not an iota of evidence in the record supporting even a strained inference that the Respondent at any time had exhibited any hostility toward the Charging Union or any other labor organization. On the contrary, it is undisputed that the Respondent has labor agreements with the Steelworkers at another of its plants in Pennsylvania, and contracts with various labor organizations at its other plants.

The credible evidence establishes that the only reason for the closing of the plant was economic in nature, and that the termination of employment was pursuant to

an agreement, to which the Union had been a party since 1958. It is conceded that payment to employees, upon closing, was made in accordance with the contract.

In quick summary of this issue, I conclude and find that the allegation of a violation of Section 8(a)(3) is not sustained by the preponderance of credible evidence in the record.

E. *Final conclusions*

I am of the opinion, upon review of the record and the briefs, and conclude that the evidence fails to sustain the several allegations of the complaint as finally amended.

Having reached this conclusion from the facts found, I do not reach certain points raised by the Respondent's counsel in his well-prepared brief—especially the contention that upon acceptance of termination pay the employer-employee relationship ceased.

But since the Board, in its wisdom, not infrequently decides to reverse me on my interpretation of facts, and in the event it does so here, it is suggested consideration be given to counsel's urging that the long passage of time since July 1963 is a factor warranting more than casual notice.[2] Counsel cites *Bonwell* v. *Humble Oil & Refining Company,* 201 F. Supp. 516, 524 (W.D. La.), affd. 300 F. 2d 150, cert. denied 371 U.S. 816, where the court declared:

> But one cannot stand by silently and allow himself to be damaged when by his acts or words he could prevent the damage.

IV. THE REMEDY

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

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and upon the entire record in the case, I conclude that the complaint's allegations of violations of Section 8(a)(1), (3), and (5) of the Act by the Respondent are not sustained by a preponderance of evidence.

RECOMMENDED ORDER

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

[2] Precedent for such consideration, and the Board's eventual agreement with the Trial Examiner that a complaint should be dismissed upon such grounds, is recorded in *Northern Stevedoring & Handling Corp., et al.,* 143 NLRB 8, 11.

Bay Counties District Council of Carpenters, AFL–CIO, and Its Agent C. R. Bartalini; Carpenters Union Local No. 162, AFL–CIO, and Its Agent E. W. Honerlah; Carpenters Union Local No. 828, United Brotherhood of Carpenters & Joiners of America, AFL–CIO; and Carpenters Union Local No. 1408, AFL–CIO, and Its Agent Jack Weare [Wilber F. Disney, d/b/a Disney Roofing & Material Co.] *and* Jones and Jones, Inc.

Bay Counties District Council of Carpenters, AFL–CIO; Carpenters Union Local No. 162, AFL–CIO; Carpenters Union Local No. 828, United Brotherhood of Carpenters and Joiners of America, AFL–CIO; and Carpenters Union Local No. 1408, AFL–CIO *and* Jones and Jones, Inc; and Interstate Employers Inc. *Cases Nos. 20–CC–378 and 20–CP–121. September 27, 1965*

DECISION AND ORDER

On April 6, 1965, Trial Examiner Maurice M. Miller issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices,