

per hour.¹ However, the printshop employees, with two exceptions, receive from \$2.50 to \$3.50 per hour. They are not only higher paid than virtually all other nonsupervisory employees, but in addition many of the printshop employees receive higher wage rates than supervisors in other departments.

In these circumstances, we are satisfied that the printshop employees are a functionally distinct departmental group constituting an appropriate bargaining unit.²

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All printshop employees engaged in letterpress presswork on verticals, Kluges, Heidelbergs, horizontals, and platen presses; engaged in typesetting operations, including hand composition, operating Ludlows, and Linotype machines; operating papercutters; and engaged in proofreading;³ but excluding all other employees.

[Text of Direction of Election omitted from publication.]

¹The only exceptions are the cutting department where the wage rate ranges from \$2 to \$2.60 per hour, and the assembly department where the range is \$1.80 to \$2.35 per hour. Four of the five nonsupervisory employees in the cutting department, however, receive \$2.40 per hour, or less.

²*J. L. Hudson Company*, 103 NLRB 1378.

³The Joint Petitioners took no position on the unit placement of the proofreader. Since he does most of his work in the printshop and since he is on the payroll of Cal-Sample Printers, Inc., we shall also include him in the unit.

Local 98D, International Union of Operating Engineers, AFL-CIO (Construction Field Surveys, Inc.) and Marcus B. Dunn.
Case No. 1-CB-956. January 3, 1966

DECISION AND ORDER

On August 17, 1965, Trial Examiner Horace A. Ruckel issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof.

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 Brown 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 and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations only to the extent consistent herewith.

The complaint alleged that the Respondent Union unlawfully caused the Employer to discharge Marcus B. Dunn because of his nonmembership in the Respondent Union. The Employer is engaged in land surveying and similar engineering activities over some 11 miles of highway in Massachusetts. In March 1963, the Employer and the Respondent Union entered into a contract covering the Employer's transitmen and rodmen, and requiring, as a condition of employment, that such employees join the Respondent Union after 31 days of employment. Paul E. McWade, International Representative for Region 1, International Union of Operating Engineers, AFL-CIO, testified that he was one of the "union representatives connected with the consummation of the agreement," that he has "actively been one of their representatives in connection with the operation of the contract in the Boston area," and that "I am an International Representative and any place we have jurisdiction, that is my work." During the spring and summer of 1963, McWade and Kenneth Wright, the president and business manager of the Respondent Union, prepared two notices informing employees of their union obligations and telling them how such obligations might be satisfied, and arranged for copies of these notices to be distributed up and down the highway to the Employer's approximately 140 employees.¹

Dunn was hired as a transitman on March 2, 1964. The Employer's office manager, Shapiro, in accordance with his practice with all new employees, told Dunn at the time he was hired that employees in the unit were represented by "the Union" and that after 31 days they were subject to becoming members; he did not, however, specifically mention the name of the Respondent Union. About May 1, Donnelly, an employee of the Employer and a job steward for Local 4E, International Union of Operating Engineers, AFL-CIO, which represented certain undisclosed classifications of the Employer's employees, gave Dunn the address of Local 4. The next day, Dunn, after telling Parker, the Employer's field supervisor, that he had thought it over and preferred to join the union and stay with the Employer, went to Local 4's office, where a clerk accepted Dunn's application, but refused his offered \$10 payment, saying that "the Union" would con-

¹ The Trial Examiner's finding that these notices were distributed in May 1964, while Dunn was employed by the Employer, is not supported by the record.

tact him. The record shows that Dunn made another trip to that office about 2 weeks later for the purpose of paying his union dues, but there is no evidence as to what took place on that occasion.

By letter dated June 25 McWade demanded that the Employer discharge Dunn because of his failure to pay either his initiation fee or periodic dues, as required by provisions of the collective-bargaining agreement. By letter dated July 1, the Employer communicated this information to Dunn and informed him that he would be terminated on July 3 at the end of the work day. On July 2, Shapiro told Dunn that unless he got squared away with "the Union" within the prescribed period of 7 days after the date of the letter² he would be automatically discharged. Dunn thereupon again went to Local 4's office, but was told by the girl in charge that no one else was there, so Dunn left. On the next day, Friday, July 3, Dunn returned to Local 4's office for the fourth time. He asked to see McWade, who was not there, but he did see Ryan, Local 4's business manager, and showed Ryan the Employer's letter of July 1. Ryan told Dunn that he should get in touch with Kenneth Wright, business manager of the Respondent Union, and gave him Wright's telephone number. On Monday, July 6, Dunn reported for work, and worked from 7 to 8:30 a.m., but was then replaced. Shapiro testified that later in the day on July 6, McWade told Shapiro that he would do his best to get Dunn reinstated at "the meeting which followed the next day"; Shapiro thereupon communicated this information to Dunn, and gave him the telephone number of Local 98 in Springfield. Dunn told Shapiro that he had enough money to pay his initiation fee and back dues, "whatever it was," whereupon Shapiro told him that he could telephone "the Union in Springfield" and find out the amount of his indebtedness, that he should report the following evening at 7:30 at "the Union Hall" with his money, and that he would then be allowed to join "the Union" and return to work. At or about the prescribed time, Dunn went, for the fifth time, to Local 4's meeting place. When he arrived, a meeting of the steering committee of Local 98 was going on, at which Ryan, Local 4's business manager, was present. On this occasion, Dunn finally saw McWade, who told Dunn he was surprised that Dunn, a union man of so many years, had been doing a lot of talking about the Union. Dunn replied that he had been talking "about" not "against," the Union. Neither Dunn's termination nor reinstatement was mentioned.

The Trial Examiner recommended that the complaint be dismissed on the following grounds: (1) Although no one representing the Respondent Union approached Dunn to tell him how much his dues

²The record indicates that the letter referred to was McWade's letter of June 25, demanding Dunn's discharge.

and initiation fees were, or where to go to pay them, Dunn knew these facts as (a) Dunn's employer, the representative of a sister local, and various fellow employees told him what his union obligations were, and (b) in view of the systematic attempts of the Respondent Union to so notify all the Employer's employees by handbills and Dunn's failure to deny knowing the amount of his initiation fees and dues, the handbills did in fact come to Dunn's attention; (2) Dunn at no time had any intention of applying for membership in the Respondent Union, but whether he had or not he did not apply and tender his dues and initiation fees as required by the provisions of the valid union shop contract; (3) because of Dunn's failure to apply, the Respondent Union was not required to inform him what his membership obligations were, but could lawfully demand his discharge by the Employer. We do not agree.

Contrary to the Trial Examiner, the evidence fails to show that Dunn was informed by the Respondent Union, the Employer, or anyone else what his union shop obligations were or the identity of the union to whom he owed such obligations. Thus, the notices to employees on the job were circulated by the Respondent Union before Dunn was employed, and there is no evidence that these notices came to Dunn's attention. Neither the Employer nor his fellow employees told Dunn the name of the Respondent Union, or the amount owed. On the contrary, the record shows that Dunn was apprised, for the first time, of the name of the Respondent Union on July 3, the effective date of his discharge. Nor do we agree that Dunn had no intention of complying with the union-shop provision of the contract. On the contrary, he informed field supervisor Parker that he intended to do so, and made four trips to the office of Local 4 where he applied for membership and unsuccessfully attempted to pay his dues, under the mistaken impression that it was this Union to which his union shop obligation accrued. In these circumstances, it is clear that Dunn's failure to comply was not due to any lack of intention or diligence on his part, but was due to his lack of knowledge.

In *Philadelphia Sheraton Corporation*, 136 NLRB 888, enfd. 320 F. 2d 254 (C.A. 3), the Board found that when a union requires an employee to perfect membership under a lawful union-security agreement, it has a duty to notify the employee, at some point, as to what his membership obligations are, and that to permit a union lawfully to request the discharge of an employee for failure to meet his dues-paying obligations, where the provisions relating to such obligations are not disclosed to the employee, would be "grossly inequitable and contrary to the spirit of the Act." As Dunn was not notified what his obligations were and to whom they were owed, we find that the Respondent Union's demand, communicated by McWade acting as its

agent, that Dunn be discharged caused the Employer to discriminatorily discharge Dunn in violation of Section 8(a) (3), and therefore violated Section 8(b) (2) and 8(b) (1) (A) of the Act.

Accordingly, the Board adopts the Trial Examiner's conclusions of law Nos. 1 and 2, but not No. 3, and hereby makes the following additional:

CONCLUSIONS OF LAW

3. By causing the Employer discriminatorily to discharge Marcus B. Dunn in violation of Section 8(a) (3), the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(b) (2) and (1) (A) of the Act.

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

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action usually ordered in such cases, as provided in the Order below, which action we find necessary to remedy and remove the effects of the unfair labor practices and to effectuate the policies of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local 98D, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Construction Field Surveys, Inc., to discriminate against Marcus B. Dunn or any other of its employees, in violation of Section 8(a) (3) of the Act.

(b) In any like or related manner restraining or coercing employees of Construction Field Surveys, Inc. in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment in accordance with Section 8(a) (3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Notify Construction Field Surveys, Inc., in writing, that it has no objection to the reinstatement of Marcus B. Dunn, and furnish the said employee with a copy of such notification.

(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(c) Make whole Marcus B. Dunn for any loss of pay which he may have suffered as a result of the discrimination against him by payment to him of a sum of money equal to that which he would normally have earned from the date of the discrimination to the date of the Respondent's notice to Construction Field Surveys, Inc., as provided in the foregoing paragraph, less his net earnings during said period (*Crossett Lumber Company*, 8 NLRB 440), said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, together with interest thereon at the rate of 6 percent per annum *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(d) Post at its office at Springfield, Massachusetts, and at all other places where it customarily posts notices to its members copies of the attached notice marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for Region 1, shall, after being signed by a representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where the Respondent customarily posts notices to its members. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Deliver to the Regional Director for Region 1 signed copies of the said notice in sufficient number to be posted by Construction Field Surveys, Inc., the Employer being willing.

(f) Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

³In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX A

NOTICE TO ALL MEMBERS OF LOCAL 98D, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT cause or attempt to cause Construction Field Surveys, Inc., to discriminate against Marcus B. Dunn or any other of its employees in violation of Section 8(a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of Construction Field Surveys, Inc., in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment in accordance with Section 8(a)(3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

WE WILL notify Construction Field Surveys, Inc., in writing, that we have no objection to its reinstatement of Marcus B. Dunn, and we shall furnish the said employee with a copy of such notification.

WE WILL make whole Marcus B. Dunn for any loss of pay he may have suffered by reason of the discrimination against him.

LOCAL 98D, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, Boston Five Cents Savings Bank Building, 24 School Street, Boston, Massachusetts, Telephone No. 223-3300, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case came on to be heard before Trial Examiner Horace A. Ruckel at Springfield, Massachusetts, on October 13, 1964, and February 1, 1965, upon a complaint issued on August 21, 1964, by the Regional Director for Region 1 (Boston, Massachusetts) on August 21, 1964, pursuant to a charge filed on July 8, 1964, by Marcus Dunn, an individual, against Local 98D, International Union of Operating Engineers, AFL-CIO, herein called Respondent. The complaint alleged in substance that from about June 21, 1964, Respondent committed unfair labor practices in violation of Section 8(b)(1)(A) of the National Labor Relations Act, by restraining and coercing employees of Construction Field Surveys, Inc., herein called the Employer or the Company, by compelling the Employer to discriminate in regard to terms or conditions of hire against Dunn because of his nonmembership in Respondent Union. Respondent's answer denied the commission of any unfair labor practices. The charge stated that Dunn had made tender of his membership fee and dues which Respondent refused. This was not alleged in the complaint.

At the hearing on October 13, 1964, upon the conclusion of the General Counsel's case, I dismissed the complaint on motion by Respondent on the ground that a *prima facie* case had not been presented. The Board on November 23, 1964, by its

associate executive secretary, issued an order remanding the proceeding to the Regional Director for further hearing in the light of the Board's decision in the *Philadelphia Sheraton Corporation* case.¹ I conducted this hearing at Boston, Massachusetts, on February 1, 1965.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Construction Field Surveys, Inc., is a Massachusetts corporation with its principal office and place of business in Boston, where it is engaged in the furnishing of land surveying and engineering services to the Massachusetts Turnpike Authority, an instrumentality of the Commonwealth of Massachusetts. It performs services for which it receives more than \$50,000 annually from the Massachusetts Turnpike Authority which in turn is engaged in the construction of an extension of the Massachusetts Turnpike, a link in commerce between the several States.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is a labor organization admitting employees of the Company to membership.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The discharge of Marcus Dunn*

The Company and Respondent Union in March 1963, entered into a contract covering transitmen and rodmen in its employ, and containing a union shop provision requiring, as a condition of continued employment, that employees join the Union after 31 days of employment. The validity of this provision is conceded.

The Company hired Dunn as a transitman on March 2, 1964. Gale Shapiro, the Company's office manager in charge of personnel, testified that upon hiring him he told him, as he did all new employees covered by the contract, that the Company had a union-shop contract with the Union and that he would have to join the Union after 31 days to hold his job. Harry Parker, the Company's field supervisor to whom newly employed transitmen including Dunn were sent for assignment of duties, testified, like Shapiro, that he told such employees that they would have to join the Union at the termination of the 31-day grace period if they wished to continue on the job.

Respondent's operations are spread out over 11 miles of highway, with no general gathering place where the Union might make contact with the employees. Moreover, the contract does not provide that the Company notify the Union of the names of new employees, nor is this done in practice, with occasional exceptions. To overcome these impediments to personal contacts with the employees Kenneth Wright, president and business manager of the Union, in May 1964 prepared about 500 copies of the following letter for distribution among the Company's employees:

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL UNION NO. 98
AFL-CIO

Room 31, 26 Willow Street
Springfield 3, Massachusetts
Tel. REpublic 4-3053

NOTICE

To all Employees on Massachusetts Turnpike who are employed as Field Survey Engineers in the classification of "Chief of Party," "Transit Man," or "Rodman":

Your initiation fee and first months dues are due and payable to the Operating Engineers Local No. 98-D at Springfield, Mass.

The amount due is forty dollars (\$40.00) and must be paid in no less than the following amounts:

May 7, 1963	\$20.00
May 14, 1963	10.00
May 21, 1963	10.00

This may be mailed direct to this office or paid to International Representative Paul McWade or Business Agent James Mullen.

¹ 136 NLRB 888.

Copies of this letter were given to Paul McWade, international representative, and McWade gave them to the two or three stewards on the job who distributed them among the approximately 140 employees up and down the highway. Shortly afterward, McWade himself prepared and had distributed by the same method copies of the following notice:

N O T I C E
T O
ALL EMPLOYEES OF CONSTRUCTION FIELD SURVEYS, INC.
(FORMERLY NEW ENGLAND SURVEY SERVICE, INC.)

PLEASE READ CAREFULLY

Your Employer has a contract with Local #98, I.U.O.E. which provides that all Employees covered by the Contract shall become and remain Members of the Union 31 days after the 11th day of March, 1963, or 31 days after your employment date, whichever applies.

In May a circular letter was passed out instructing you how to make your payments to the Union. If you have not taken advantage of the arrangements provided for in the letter, the total amount is now overdue and must be paid in full by June 20th without fail—to the following extent—\$40.00 Initiation Fee which includes the first month's dues of \$4.00 and \$4.00 per month for each month thereafter in which you have worked under the Contract.

As per the Contract, and in fairness to the dues paying Union Members, all Employees who do not comply with the above instructions shall have their names submitted to the Company for discharge.

Brothers James McGowan and John Holad have been appointed as Shop Stewards to cover the Turnpike Job. You may make your payments to them or mail them directly to Local #98, 26 Willow Street, Springfield, Massachusetts.

* * * * *

Union Meetings are held the fourth (4th) Thursday of each month at the VFW Hall, Boylston St., Brookline. Matters affecting your job and plans to do something about the sub-standard wages and benefits, which exist for Field Engineers because of a lack of determination and unity, will be discussed at these Meetings. *George won't be there to do it for you.* If you want it done *you* be there, or please don't complain about what the Union hasn't done or can't do.

Dunn admitted while testifying that he knew that he had an obligation to join the Union, derived from conversations with fellow employees as well as with his employer. Nevertheless, in his 126 days of employment from March 2, through July 6, 1964, he admittedly did not sign an application for membership or approach any representative of the Union to seek membership, or to inquire about the Union. On June 25, after being employed a little less than 4 months, a union representative notified the Company by letter that Dunn and seven other employees had failed to pay either their initiation fee or dues and requested their discharge in accordance with the terms of the contract. On July 1, the Company communicated this information to Dunn by letter, and on July 2, Shapiro spoke to Dunn personally and told him that unless he got squared away with the Union within the prescribed period of 7 days after the date of the letter he would be "automatically" discharged.

On July 6, Dunn, not having made any contact with the Union, was replaced on the job by another employee. Later the same day Shapiro talked with McWade on the telephone and asked if it was possible to get Dunn "straightened out," and McWade said that it was and that Dunn should get in touch with the Union. He gave Shapiro Local 98's telephone number and office address. Shapiro conveyed this information to Dunn that evening and told him that he was supposed to go to the union hall the following day and pay his dues, and that he would be put back to work immediately. He asked Dunn if he had enough money to cover his dues and Dunn, according to his own testimony, said that he had enough to pay whatever they were.

The record further shows that previous to this, on Friday, July 3, Dunn came to the office of Walter Ryan, business manager of Local No. 4, International Union of Operating Engineers, which represented certain classifications of employees of the Company, and showed him the Company's letter of July 1. Ryan told him that he should get in touch with Kenneth Wright, business manager of Local 98D, at once, and gave Dunn Wright's telephone number. In spite of Ryan's good offices and of the Company's prodding, Dunn made no effort to get in touch with Wright, or any other representative of the Union, and for reasons which he did not explain, instead of going to the office of Respondent Union as arranged by Shapiro, he went with a

friend to the place of meeting of Local 4. Fortuitously, McWade, International representative, was present. Dunn testified that he saw McWade but admitted that even then he did not speak to him about his dues, or about joining the Union, or what he had to do to be put back to work. Asked why he did not seize this opportunity to speak to McWade he testified that he "did not have an opportunity." I do not find this credible.

Conclusions

Prior to his discharge, Dunn knew not only that he was obligated to join the Union after 31 days of employment, but he knew where the Union's office was located and to whom he was to pay his initiation fee and dues. He did not deny knowing the amount of his initiation fees and dues. In the absence of such a denial, and in view of the systematic attempts of the Union to notify all the Company's employees by handbills, up and down the highway, of the exact amount of these obligations and where, when, and in what manner they could be discharged, I find that Dunn did in fact have this knowledge.

The General Counsel's whole contention with regard to the issue in this case is epitomized in the following question put to Dunn, and his answers:

Q. [By Mr. McIVERNY.] During your time of employment with Construction Field Surveys and prior to the time you were notified of your discharge, did anyone from Local 98 or 98D approach you or tell you how much the dues were?

A. No.

Q. During the same period did anyone from Local 98 or 98D approach you and tell you where to go to pay the dues?

A. No.

Q. In this same period did anyone from Local 98 or 98D approach you and tell you how much the initiation fees were?

A. No.

Q. Or where to go to pay these fees?

A. No.

All this is literally true. No one representing the Union approached Dunn to tell him how much the dues or initiation fees were, or where to go to pay them. Only Dunn's employer and the representative of a sister local did so. The distribution of the two circulars in May, which I have concluded did come to Dunn's attention, and which did convey this information, falls short of "approaching" and "telling." For that matter, no one representing the Union approached Dunn and told him that he was obligated to join the Union after 31 days, only his employer, the representative of a sister local, and various fellow employees who themselves had joined the Union.

It is by directing attention to these naked, isolated, facts that the General Counsel seeks to invoke the applicability of the Board's decision in the *Philadelphia Sheraton* case. There, the Board held with respect to the employees whose discharge had been demanded by the bargaining representative for failure to tender their dues and initiation fees, that the union had a duty to notify the employees as to what their dues-paying obligations were. The Union had the names and addresses of each employee. Each employee applied for membership in the Union and paid initiation and certain reinstatement fees. In each case the Union accepted the application. Each employee came to the Union for educational and training meetings and each voluntarily made a tender of dues prior to his discharge. The Union, although the dues had been tendered, forced the discharge of the employees.

The factual situation is quite different here. Dunn did not at any time approach the Union, or any representative, to obtain an application for membership, to make application for membership, to tender his initiation fee or dues, to inquire what they were, or for any purpose whatever. The obligations of the Union which the Board speaks of in the *Philadelphia Sheraton* case were all obligations arising, like most obligations, out of the relationship of the parties. The relationship there was one between the Union and employees who were applicants for membership, if not full pledged members. They had made a tenure of their dues and done all that they could to comply with the union shop provision of the contract.

No such relationship existed here. There was no nexus between Dunn and the Union, because Dunn had not done what he was required to do before any relationship could arise, namely apply for membership. *Philadelphia Sheraton* is no authority for what the General Counsel seems to contend here, that a union is obligated to seek out all new employees to ascertain if they intend to apply for membership within 30 days after employment. On the contrary, I believe the first move is with the employee. If he does not apply, or seek to apply, for membership as the contract here provides that he do within 31 days after employment, he is eligible for discharge if it is demanded by the Union. It is only when he does apply that any question of

dues or initiation fee arises. The Union then, as the Board held in *Philadelphia Sheraton*, is bound to inform him fully as to his membership obligations. The failure of an employee to apply for membership may simply mean that he is not interested in working for more than 31 days; or having had a free ride for that period, he may believe he will thereafter be overlooked if he does not file an application, and ride free for a longer period. Dunn did so for nearly 3 months after the initial escape period.²

This was the posture of this matter when I granted Respondent's motion to dismiss for lack of a *prima facie* case at the end of the General Counsel's case. Dunn, it was apparent, had never approached the Union. On remand, Respondent adduced the evidence related above as to the circularization of the Company's employees along the 11-mile worksite. Though not in my opinion required as a defense against a charge of violation of the Act, in view of Dunn's failure to approach the Union, it nevertheless did undertake to inform every eligible employee of his obligations under the contract, specifically the amount of the dues, the manner in which they might be paid, and the proper time and place of payment. In the absence of any comprehensive list of employees and their residence, I know of no more reasonable or effective way of conveying this information.

In my opinion Dunn did not want to join the Union, and played hide-and-seek with it, much easier to do here than in a factory or in the Philadelphia Sheraton hotel. Even on the last day of his employment, when he has been advised by his employer that arrangements have been made with McWade, the Union's International representative, to have him reinstated in his job if he will go to the Union's hall the following night, he nevertheless deliberately stays away. Even when on the same night he by chance encounters McWade in another place, he conspicuously avoids asking him what arrangements he has made for him with Local 98D, and what his financial obligations are to that organization.

I conclude and find that Dunn at no time had any real intention of applying for membership in the Union. Whether he had or not he did not apply and tender his membership dues and initiation fees as required by the provisions of a valid union shop contract. By reason of this failure Respondent Union could lawfully request his discharge by the Company.

CONCLUSIONS OF LAW

1. Respondent Local 98D, International Union of Operating Engineers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Construction Field Surveys, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondent Union has not engaged in any unfair labor practices in violation of Section 8(b)(1)(A) of the Act.

RECOMMENDED ORDER

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

² Dunn testified that as late as May 1, 2 months after his employment, he was not certain whether he would stay in the community and on his job, and a day or so later asked Shapiro if the Company was going to send him back to a project he had formerly worked on. Shapiro told him he could go back to the other project but if he stayed with the Company he would have to join the Union. The following day he informed Parker that he had intended to stay with the Company and join the Union.

Clifton Precision Products Division, Litton Precision Products, Inc. and Local 137, International Union of Electrical, Radio & Machine Workers, AFL-CIO. Case No. 4-CA-3431. January 4, 1966

DECISION AND ORDER

On September 9, 1965, Trial Examiner Sidney J. Barban issued his Decision in the above-entitled proceeding, finding that the Respondent
156 NLRB No. 59.