

The Princeton Inn Company d/b/a Princeton Inn and Hotel, Motel, Bar, Restaurant and Cafeteria Employees Union, Local 741, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Case 22-CA-3501

March 17, 1969

DECISION AND ORDER

**BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA**

On December 11, 1968, Trial Examiner A Norman Somers issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed with the Board a copy of his brief to the Trial Examiner.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. 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,¹ conclusions, and recommendations of the Trial Examiner

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, The Princeton Inn Company d/b/a Princeton Inn, Princeton, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order

¹In adopting the Trial Examiner's finding that the Respondent's operations meet the Board's standards for asserting jurisdiction, we note the complaint alleged, and the answer admitted, that less than 75 percent of the Respondent's guests resided at the hotel for "a month or more" during the preceding year. The pleadings thus satisfy the test set forth in *Floridan Hotel of Tampa*, 124 NLRB 261, 264. The Trial Examiner inadvertently described the pleaded period as "3 months or more"

**TRIAL EXAMINER'S DECISION
STATEMENT OF THE CASE**

A NORMAN SOMERS, Trial Examiner. This proceeding was heard in Trenton, New Jersey, on September 25 and

174 NLRB No. 181

26, 1968, on complaint of the General Counsel issued July 25 on charges filed by the Union June 17, 1968, alleging (apart from other conduct claimed to be in violation of Section 8(a)(1)) that Respondent, on April 19, 1968, discharged Alfred Visintini because of his activity in support of the Union, thereby violating Section 8(a)(3) and (1) of the Act. The parties waived oral argument and the General Counsel and Respondent have filed briefs, which have been duly considered. On the whole record and my observation of the witnesses, I make the following

Findings of Fact

I. THE BUSINESS OF THE EMPLOYER; THE LABOR ORGANIZATION INVOLVED

Respondent, The Princeton Inn Company, is a New Jersey corporation which owns and operates in Princeton a hotel called The Princeton Inn. It has a gross annual revenue of at least \$1,000,000 a year, it receives at least \$75,000 worth of foodstuffs and materials from out of the State annually; and the guests that stay 3 months or more comprise less than 75 percent of the patronage. It is not disputed and I find that Respondent is engaged in commerce within the meaning of the Act, and it meets the Board's standards for asserting jurisdiction over hotels *Floridan Hotel of Tampa*, 124 NLRB 261

The Charging Party (the Union) is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A Issue

On April 10, 1968,¹ Alfred Visintini was discharged with a letter saying that the reason for his dismissal was that that morning he used foul and abusive language to a female employee (Marge Kennedy, the switchboard operator), despite repeated warnings to him in the past against it. On April 9, the day before the discharge, Respondent had received a demand for recognition from the Union, which came after a 2 or 3 weeks card-signing campaign, where the proselytizing and the procurement of the cards were almost exclusively the work of Visintini. Respondent claims the dismissal letter told the reason like it was. The General Counsel claims the letter told it like it was not that when Samuel Stewart, vice president and general manager, who discharged Visintini, handed him the dismissal letter, Visintini, protesting that Stewart had not even asked him his side of the story and was not even letting him tell it now, said to Stewart he was discharging him because of the Union, — and that the General Counsel contends, was telling the reason like it was.

This is the point of conflict. Another issue is whether Joseph Pirone, the chef, and Edward Chesnavage, steward of the Inn (both supervisors subordinate to General Manager Stewart), made statements to employees invading their rights under the Act.

B. Background

1. Employment record

Visintini, at the time of his discharge on April 10, had been employed as a cook for nearly 10 years. He began at

¹The year in all instances is 1968, except where otherwise indicated

\$325 a month, and when discharged his wage was \$120 a week. Though Visintini thought of himself as not readily given to anger, his temperament was hardly on the placid side, and he reacted with choler when under pressure or provocation. This was apparently accepted as in the nature of the man Pirone, the chef, who was Visintini's supervisor, testified he was aware of that trait, and while he would from time to time speak to Visintini about it, he had never either orally or in writing warned Visintini against it. Visintini testified that there had been no complaints whatsoever with the sole exception of an occurrence some 2 or 3 months before his discharge with a waitress in which he reacted to her insistence on her filling an order out of regular turn. Pirone, who saw what happened, testified he did not mention it to Visintini, and regarded the matter too trivial to mention it to Manager Stewart. Stewart raised it with Visintini in a conversation between the two concerning which only Visintini testified.²

As Visintini described it, Stewart mentioned the waitress incident casually to him at the end of a conversation concerned with other matters. Visintini explained to Stewart that the waitress had been shouting to have her order filled when there were other orders ahead of hers, and he then slammed a "dupe box" (in which order slips are placed) to call attention to the need for awaiting her turn. The incident involved no use of language. Stewart told Visintini to be "more kind and thoughtful," and the waitress (Marge Welch, as distinguished from Marge Kennedy, the switchboard operator), according to Visintini's undenied testimony, "did apologize later in the day for upsetting me."

2. The union activity

Visintini had been vocal on behalf of the Union for some years. This was particularly so in 1965, the year of the last election preceding the one of 1968 (The 1968 election was held after Visintini's discharge.) In the 1965 election (which the Union lost) General Manager Stewart and Pirone, the chef, importuned Visintini to abandon the Union (Stewart asking that he "stop kicking the ball around"), but Visintini continued his advocacy.

The Union renewed its campaign in March 1968. This took the form of a surge of activity begun by Visintini the latter part of March, in which he handed out leaflets to and solicited nearly all of the 120 employees in the Inn (This included his own kitchen contingent, which consisted of about 32 employees, and the remainder of the employees throughout the Inn, including bellboys, waiters, busboys, maids, etc.) By April 8, when the Union wrote Respondent demanding recognition, Visintini had signed up all but 6 of the 80 signed authorization cards. (After Visintini was discharged on April 10, a representation proceeding ensued in which the Union this time won the election, and this was followed by a contract. The issue

here, as stated, is Respondent's motivation in discharging Visintini on April 10.)

In this activity in 1968, Visintini had sought to keep his activity under cover of management. However, his campaign galvanized the employees into discussion whenever a group of employees met and more particularly in the cafeteria, — a place where Ed Chesnavage, the Inn steward, had his lunch. Eugene Crookston, a room waiter, testified that about 2 days before Visintini was discharged, Chesnavage encountered him at the dormitory (where half the employees had their sleeping quarters) and said, "I hear Al's passing out cards again." Crookston feigned ignorance, and Chesnavage replied, "Are you kidding? Who are you kidding?" Four or five days before his discharge, Pirone, the chef, took him aside and told him to stop his activities on behalf of the Union in the Inn property. The property, in addition to the kitchen and the Inn itself, encompasses also the 2-story dormitory which, as stated, houses about half of the employees.³

Insofar as it bears on Respondent's view regarding the Union, after Visintini's discharge and during the representation proceeding, General Manager Stewart, prior to the election, sent letters to the employees urging them to reject the Union this time as they had done in 1965. Among the advantages the employees presently enjoyed, Stewart's letters to the employees mentioned the free lodging, which referred to the dormitory. Michael Hennessey, a relief cook, testified that shortly before the election Pirone, speaking to a "group of Spanish guys over by the pantry," told them "that if the union got in they would tear down the dormitories." He further testified that about a week after the election, and before negotiations had started, Chesnavage, overhearing Hennessey and another employee saying between themselves that "the union was now in," countered with the statement that "you people [are] in for a surprise because the dormitory is going to be torn down."⁴

C. The Discharge of April 10

1. The argument

The encounter between Visintini and Marge Kennedy occurred at about 6:45 in the morning. Visintini was then in the kitchen preparing breakfast for the people in the Inn, and Marge Kennedy, as she usually did before her

²Chesnavage and Pirone denied the respective testimonies of Crookston and Visintini. Numerous infirmities in the testimony of Chesnavage and Pirone cast the weight in favor of Crookston and Visintini concerning the matter stated in the text above. I have not credited Visintini's further testimony that Pirone in that conversation said that if Visintini campaigned on Inn property "he won't have another chance," whatever that meant. However, Chesnavage and Pirone overplayed their claims of ignorance that union activity was then going on. Also, each claimed he had been as silent about the Union in 1968 as he had concededly been vocal about it in 1965, with no explanation for the difference or that they were under new instructions from Stewart this time.

³Pirone denied Hennessey's testimony regarding his conversation with the "Spanish guys." Chesnavage's version of the dormitory discussion was that Hennessey, in the company of the other employee said, "I see the dormitory is still standing," but that the place of residence of Chesnavage (which is also owned by the Inn) would come down, to which Chesnavage, as he testified, retorted, he "couldn't care less" because he could afford to live outside the Inn while the employees in this conversation could not. That version has a strained quality. However, it does unwittingly indicate that before the election employees were apprehensive about the risk of losing the dormitory if the Union won, and this tends to support Hennessey's testimony regarding Pirone's statement to these "Spanish guys." Hennessey's testimony is credited.

⁴Stewart did not testify in the case. On the second day of the hearing after all parties rested, Respondent's counsel stated Stewart had an incipient heart condition. On the first day, when the General Counsel completed his case-in-chief, Respondent's counsel asked for a recess to the next day because his "principal witness" (Stewart) was ill but he expected to put him on the next day. The next day, after Respondent completed its case and all parties rested, counsel for Respondent mentioned Stewart's illness as the reason for his not appearing or putting him on. The Trial Examiner asked whether Respondent was applying for an adjournment in order to have Stewart testify later. Counsel replied he was not, that he was merely explaining Stewart's absence.

shift started at 7 a.m., went to the kitchen for a glass of "orange juice, coffee, or what have you." Visintini testified the interchange started when Kennedy upbraided him for not having told her he was organizing and denounced him as unfit to "lead" or to "organize." Kennedy testified it started with his accusing her of maligning him to others and her insisting his version of what she said to others was wrong. These two were at opposite ends of the spectrum on union sentiment. Since he knew Marge Kennedy's views, Visintini steered clear of the Union subject with her, and their relationship, as both testified, had been rather amicable. In the 1965 election, Marge Kennedy had been an observer for management. In that election, she was not part of the voting unit. However, as an occupant in the dormitory and as "one of the girls," she urged the female employees to vote against the Union. The Union lost. Visintini indicated in one context, that in 1965 the pro-union group did not have the support of the female employees, but he felt that in this, the 1968 campaign, the female employees were with the Union. As mentioned before, during his 2 or 3 weeks campaign of 1968, Visintini approached just about all the 120 employees. However, he did not approach Marge Kennedy, and this was not because he thought she was ineligible to vote (the matter was still open then and not resolved until sometime after the start of the representation proceeding, which was after Visintini's discharge) but because she had "campaign[ed]" against the Union and he knew her attitude.⁵

On April 9, as earlier stated, Respondent received the Union's letter demanding recognition. That day happened also to be Marge Kennedy's birthday. She testified that at a party the girls gave her that day, they spoke about the revival of the union campaign and, so she testified, this was the first she knew of it. This takes us to the morning of April 10.

As breakfast cook, Visintini's shift started at 6, which was about an hour or more before the chef's starting time. Miss Kennedy's shift, as earlier mentioned, began at 7. At about 6:45, while Visintini was getting the breakfasts ready, Kennedy entered the kitchen to obtain her orange juice and sundries. As mentioned, Visintini testified she upbraided him for not having notified her that he was again organizing, said he was "too sick because [he had] cancer" (he had been hospitalized for it a year or two earlier) and that he was "not fit to be a leader because [he] lost last time." This, Visintini continued, angered him and he asked her to "get the hell out of the kitchen." She retorted that only the chef had the authority to order her out. He replied the chef had put him in charge for the time until his arrival in the morning, she continued the argument even though he had meanwhile left her to obtain some supplies, he called attention to the fact that he had some 70 employees to feed by 7 o'clock and another 180 or 190 guests to feed by 7:30, she continued the discussion and he asked her to leave in words of one syllable including "the" four letter word.

Kennedy testified that she opened with "good morning," and he asked her not to "good morning" him and in profane language, said she had been maligning him to others, that she asked him to tell how, and he replied again with profanity but still with no particulars; she continued to ask what it was she said that maligned him, and he said she was telling others he was not "fit to be a

leader" and to "organize." Kennedy testified that she then told him, "Al, I said that two years ago or three years ago that everytime you opened your mouth you lost a vote for the union," whereupon he retorted with "get the hell out of here you [scatological expression to denote currying favor] you are nothing but management." Present during a good part of the occurrence were Elvin Velez, the pantryman, and Chesnavage, the steward. The versions of all the witnesses — Visintini on the one hand and Kennedy, Velez and Chesnavage on the other — are in accord at least as to this: that during the interchange no one remarked that Visintini was overstepping bounds in the language he was using in the kitchen. Miss Kennedy testified at the hearing that she is "not above listening to cursing or anything else, but I mean the language was really atrocious." Yet her own version indicates that in the encounter in the kitchen she took Visintini's language in stride, expressing no offense about his language but reverting each time to whether she had said behind his back what she would not say to his face. Chesnavage, the only supervisor then on the premises, left the kitchen to go to his own office, while the two were still at it. He did not suggest to Visintini that he was out of bounds because of the language or to Marge Kennedy that this was no place for her to be in with that kind of language used to her. Further, Chesnavage, in testifying concerning the language used by Visintini kept saying to Marge Kennedy "Mind your own business," which rather suggests where the initiative in that interchange and the subject was coming from. But whoever started the subject, it was rather clear that in the interchange between the cook and the switchboard operator, the matter involved the subject and not the nature of the language. After Pirone, the chef, arrived and came down to change clothes, Chesnavage mentioned these two had argued, with no reference to the quality of the language being a factor. And Velez, who was there when it started, testified that he left for his own area (the pantry), because "over in the Princeton Inn [kitchen], I mean it's so much arguing and so much fighting all the time that might just as well walk off." He testified that when he came back they were still arguing "the reasons why he (Visintini) wasn't fit to be or I guess the shop steward in the union." According to Marge Kennedy, it was Velez who finally persuaded her to leave the kitchen.

2 Comments to and by management preceding Stewart's discharge of Visintini

Pirone, the chef, arrived that morning between 7:30 and 7:45. He was still in his car when "a couple of guys" (whom he otherwise did not remember, except that they were not Chesnavage or Velez or any part of his kitchen crew) informed him that there had been "trouble" in the kitchen. When he entered the kitchen, Visintini volunteered to tell him what happened. Pirone testified he cut Visintini short with, "I don't care what you doing (sic) but I don't want no trouble up in the kitchen." As previously stated, when Pirone came to Chesnavage's area to change clothes, Chesnavage told Pirone the two had argued with no indication that the nature of the language entered into it.

At 9:30 Stewart called Pirone. Speaking to him alone, Stewart told Pirone he was informed there had been trouble, and asked Pirone what he knew about it. Pirone, as he testified, told Stewart "I heard that there was some trouble between Al and Marge, and that was all." Stewart told Pirone to come to his office with Visintini when the

⁵Miss Kennedy testified that "Al has never approached me with a card, has never asked me to a meeting. In fact, he kept the meetings, the last time, secret from me because he didn't want me to go to them."

latter completed his work for the day. Pirone did so at 2:30

So far as appears the only one Stewart had spoken to about the matter was Marge Kennedy. She testified that when Stewart came in at 9 she told him what happened and Stewart said, "I will talk to him (Visintini) and I will take care of it" and "Don't worry about it." Other than the inquiry to Pirone, to which Pirone testified as above, Stewart inquired of no one else

3 Stewart's discharge interview with Visintini

As stated, Pirone, as instructed by Stewart that morning, entered Stewart's office with Visintini at about 2:30 that afternoon. Stewart handed Visintini a letter and told him he was dismissed. Visintini asked why and Stewart referred him to the letter. It read:

With this letter you are hereby dismissed from the employ of the Princeton Inn. The reason is specifically the ugly, abusive and foul language you uttered on Wednesday morning in the kitchen of the Princeton Inn to one of the female employees of the Inn

You have been repeatedly and specifically warned to avoid this type of conduct. The abusive language you have used could be tolerated in no type of establishment that had any respect for decency

We realize that you are sick and we have, because of your condition, been tolerant by warning you on the last such occasion which was within the past two months. We cannot, however, permit a repetition of the verbal explosion of this morning, regardless of your physical condition, and hence the need to take this action

Visintini testified he read the letter, and then

I said, don't you want to hear my side of the story? He said, no, I heard enough. I said, you are firing me specifically because I have union activities, taking part in the union. And I said, I believe we are going to win this time. Think whatever you want to think, he said, I'm firing you for using abusive language

Pirone described Stewart as saying "I don't want that kind of language to be used up in the kitchen."⁶

4 The language used in the kitchen

The evidence indicates that arguments in the kitchen were frequent. There is no question but that profanity was commonly used, and though Pirone, the chef, said it only occurs when the kitchen help is joking and never when they are serious, the evidence is to the contrary. The evidence shows that those in the kitchen used profanity between themselves and also to the female employees, and the chef himself, his testimony to the contrary notwithstanding, is no exception

As to whether obscenity is also used, Chesnavage testified that in his 18 years at the Inn, he had heard "on occasion hell or damn" but never before the Visintini-Kennedy argument had he heard the foul language, but, he added, "I'm not always in the kitchen." The waitresses who testified at the hearing indicated that when they were in the kitchen obscenities were uttered but they were not directed against them, as distinguished from the profanity by which they were frequently addressed. Velez, the pantryman, as the final witness in the case, drew a distinction between the utterance of "dirty

language" and its use as "an insult." Referring to the "dirty word," he testified he has heard it used in the kitchen, for "that's a popular word." He continued:

Q And you've heard it used where girls were in there?

A Because . . . well, over there in that place I think women no (sic) more about them things than men does in that place

* * * * *

Q You've heard women using that word in the kitchen, haven't you?

A Yes

D Discussion and Conclusion

The issue is one of motivation. Visintini was active on behalf of the Union, but that does not vouchsafe an employee his right to retain his job where because of his conduct, apart from the Union, the employer genuinely concludes he no longer wants him. On the other hand an employer is not immune in discharging an employee where the conduct is not the real reason for the discharge but is the excuse for discharging an employee because of his union activity.

This states the standard in its stark essence. The real reason in each instance is the conclusion derived from the totality of the facts. Issues concerned with motivation involve us in a complex area where the evidence is seldom direct and where the determination hinges on where the balance of two opposing inferences are to be drawn.⁷

The burden rests on the General Counsel to establish that the inference that union activity was the reason or was a contributory reason preponderates over the opposing inference

Needless to say, there are weaknesses and strengths in the inferences urged by both sides. The Respondent indeed opposed the Union in the sense that it preferred the employees reject the Union. This was so in 1965 and was also such in 1968. However, the invasions of the employees' rights were rather limited ones, and imputable only to the two supervisors. These violations of employees' rights before Visintini's discharge consisted of Pirone's warning to Visintini that he limit his solicitation of the Union outside the Inn's property without distinguishing between working and nonworking areas,⁸ and the interrogation of Chesnavage of Crookston regarding whether Visintini was "at it again" in signing up employees. The invasion of employee rights after the discharge and before the election consisted of the warning by Pirone that if the Union won, the dormitory would be torn down. As a threat of deprivation of the accustomed use of employees' living quarters if they supported the Union, this was an act of interference and restraint in violation of Section 8(a)(1).⁹ Also, taken in connection with Manager Stewart's fervent appeals that they reject

⁷As stated in *NLRB v. L.C. Ferguson*, 257 F.2d 88, 90: "seldom can such intent be established directly and almost always must it be inferred from the total sum of the evidence."

⁸*S & H Grossinger's Inc.*, 156 NLRB 233, 261, enfd. as modified 372 F.2d 26 (C.A. 2), *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, *Walton Manufacturing Company*, 126 NLRB 697-699, enfd. 289 F.2d 26 (C.A. 5)

⁹*Art Metalcraft Plating Co., Inc.*, 133 NLRB 706, enfd. 303 F.2d 476 (C.A. 3), *Orkin Exterminating Company of South Florida, Inc.*, 136 NLRB 399, *Sunbeam Plastics Corporation*, 144 NLRB 1010

⁶Several employees later walked out in protest over the discharge

the Union and the gloating by Chesnavage after the Union won that the employees were "in for a surprise" in that the dormitory will be torn down the conduct indicated an aversion by management to the Union, and in that sense these matters are relevant on the issue of the motivation for the discharge of Visintini.¹⁰ However, they are hardly indicative in themselves of an intention to discharge an employee for supporting a union.

We now turn to the other side of the picture. The motivation for the discharge came solely from Stewart. Regrettably, we do not have his testimony (*supra*, fn 3), and so we can only evaluate his motivation in the light of the evidence without benefit of his own testimony and presence on the stand. In that connection, one considers the reason in his letter in the light of the totality. Stewart in his letter stated that he dismissed Visintini as the culmination of foul and abusive language to female employees, against which Visintini had previously been warned. The evidence refutes the statement there had been such warning. Visintini had not been warned against such language to fellow employees, male or female. Indeed, there had been no complaint against Visintini on that subject. As previously stated, the incident involving waitress Welch 2 months earlier, where he reacted to the pressures exerted by her insistence on his completing her order out of turn concerned no use of language. As stated, it was regarded by his own supervisor, the chef, who observed the incident, as too trivial to mention to Visintini or Stewart, and the waitress later apologized to Visintini for her action.

The matter thus comes down to the encounter with Marge Kennedy the morning of the day he was discharged. Visintini's language included obscenity, and he does not deny it. This raises the question of whether taken in connection with the circumstances as a whole, the occurrence would have impelled Stewart to dismiss an employee of nearly 10 years tenure. It depends on the context. Had the interchange taken place, for example, in the lobby, one need hardly speculate on the spontaneity with which an employer would reasonably be expected to act in such a situation. But the realities being what they are, language is condemned or tolerated depending on the total context and surrounding. Much hinges on the personnel's customary mode of expression in the setting involved and the tolerance with which it is accepted. Illustrative is the profanity (the hells and the damns) alone, which the evidence shows is commonly used in the kitchen with no one taking it amiss. Yet that same language if used in the lobby of an inn or in an office in the presence of clients or patients would hardly be tolerated. As to whether in the kitchen foul language also got into the picture, the waitresses testified that it is used when they are present, and Velez, as the final witness in the case, gave the matter a touch of anticlimax by observing that the bad word is "popular" in the kitchen, and as he put it in his own way, has an even greater vogue among the women. Allowing for a bit of chauvinism on Velez' part, the sense of what he conveyed is that employees male and female vented these expletives in the kitchen.

This pinpoints the dispute to the fact that in this instance the language used was by a man to a woman. If that made the difference, one would have expected that

Chesnavage, the only supervisor present during the interchange, would have interposed to warn the cook against saying any more or to admonish the switchboard operator against listening to any more. He did neither, and he left the two in full flight to their own devices. Further, if Visintini was thought to have overstepped the mores of the kitchen in the language he used, one would have expected Chesnavage to have said something about it to Pirone. Yet all Chesnavage said after Pirone arrived was that the two had had an argument. When Stewart called in Pirone alone after he heard from Marge Kennedy, Pirone likewise told him that while he was not there when it happened, all he knew was that there had been trouble between the two. The very fact that there was no reference to the language would itself have indicated that to those who saw it, the nature of the language was not the matter in dispute but the depth of the disputants' feeling over the subject. This would at least have called for Stewart to delve into what was the nature of the provocation. The times in which Chesnavage in his testimony quoted Visintini as saying to Marge Kennedy, "Mind your own business" would indicate, as previously stated, that the initiative was coming to Kennedy, and at a time when Visintini was preparing breakfast for over 200 people. Miss Kennedy's own description of what happened in itself indicates that this was a personal dispute between them. On that score, Miss Kennedy related that in an argument between them 2 or 3 years earlier, he threatened "to throw me out of the window," but she did not complain because "I had seen Al in temper tantrums before . . . and I just took it with a grain of salt actually, because it was a personal thing really over using a telephone." As to why she should have complained in this instance, the claim that it was his language that made the difference is evaluated against the fact that not only did Chesnavage say nothing about the use of Visintini's language when he saw the argument, but neither did Marge Kennedy. Her account of the dialogue indicates that in its every phase she reverted only to the subject of the dispute with no indication that she was taking offense to the language. She testified that she is not fazed by the use of profanity but that she drew the line at Visintini's other language. Yet, as stated, nothing in the description of the interchange during her testimony indicated that she took offense to his language, as distinguished from the matter to which she constantly reverted — whether she had been maligning him to others as he claimed. Further, during her testimony in which she herself mouthed the specific language of Visintini, she gave the impression of wordly tolerance in which content and substance superseded expression.

As to whether Stewart himself was overcome by the language as his letter indicated, since his own testimony on the point is lacking, we must reasonably evaluate it in the light of how those in authority immediately beneath him took it. As stated, Chesnavage made no point of it when he heard the argument, nor did he do so when he told Pirone about it. Further, since Stewart had already heard from Miss Kennedy when he called in Pirone the first time alone and asked what he knew about it, Pirone's response that there was some "trouble" between the two "and that was all," places Stewart in this dilemma. If Pirone knew no more than that they had been in an argument, his informants could not have thought that the language used entered into the dispute. On the other hand, if Pirone knew of the language and did not mention it to Stewart when asked what he knew, then it indicated to Stewart that his immediate supervisor knew no more

¹⁰Statements or pronouncement made after a discharge are still relevant on the issue of the motive for the discharge. *E G Angwell Curtain Co v N L R B*, 192 F 2d 899, 902 (C A 7), citing *Joy Silk Mills, Inc v N L R B*, 185 F 2d 732, 742 (C A D C)

about the limits of language required in the kitchen than the one for which Stewart was discharging Visintini

The result is that Stewart's statement of the reason for the discharge is vulnerable on both scores, -- the assertion that the language used by Visintini in the kitchen overstepped existing bounds or if it did, that Visintini had been warned against its use in the past. That being so, one must look further into the evidence to account for the reason.

The fact is that the subject of the complaint Marge Kennedy broached to Stewart was a personal one, in which Stewart was hardly without an interest of his own. Its essence concerned the very subject which came to his particular attention the day before when he received from the Union the letter demanding recognition. To be sure, in the election proceeding that followed after Visintini's discharge, the Union won and Respondent negotiated and signed a contract with the Union. However, viewing the situation as of the time the Union made its demands, Stewart wanted the Union defeated as his own letters to the employees during the election made rather explicit. Visintini spearheaded the movement -- a matter which Stewart would assume from Visintini's prominence in the 1965 election and which would naturally have been conveyed to him by Marge Kennedy in her account of the argument she had with Visintini that morning. We may assume that Stewart had not been looking for a reason to discharge Visintini, but the fact is that the interchange furnished an occasion which could plausibly be asserted as the reason for discharging Visintini and at the same time dispose of the Union's pivotal figure and thereby aid Respondent in its objective of seeing the Union defeated now as it had been in the preceding election.

We may assume also that Stewart was not altogether indifferent to offensive language used in the kitchen. However, knowing what he had every reason to know about the employees' use of such language in the kitchen, with the complete tolerance of his subordinate who was in charge of the kitchen, it is difficult to believe that he would have visited the kind of penalty he did upon this employee of nearly a decade of service, unless he was also motivated by its utility in helping achieve a result in a forthcoming election that he preferred.

The doctrine that where union activity is a contributory cause of the discharge, the Act has been violated even if there was also another cause, applies also where the other cause includes the use by the employees of vulgar language. See, e.g., *Thor Power Tool Company*, 148 NLRB 1379, 1387-88, enfd 351 F.2d 584, 587 (C.A. 7), *Samuel B. Gass, et al* 154 NLRB 728, 741, enfd 377 F.2d 438 (C.A. 1).

The conclusion is that but for Visintini's role in the Union, Stewart would not have discharged him, and since this was a contributing cause of the discharge, Respondent thereby violated Section 8(a)(3) and (1) of the Act.¹¹

¹¹The General Counsel relies also on the fact that in Visintini's employment record, the final entry reads as follows: "4-8-68 Term Vol quit."

The General Counsel claims that this entry, to the effect that Visintini's termination was voluntary, undermines the reasons which Respondent has asserted in support of the discharge. The entry indeed has an equivocal character. However, the General Counsel at the hearing made no reference to that entry, and so Respondent ventured no explanation of it, which Respondent might have done if at the hearing the General Counsel had made some point regarding it. I have therefore given no effect to this entry in the evaluation of the evidence.

III. THE REMEDY

The usual cease and desist requirement will issue, here of a broad character, since a discharge for union activity goes to the heart of the Act (*NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 336 (C.A. 4)); as well as the standard remedial requirement for reinstatement of Visintini to his former or substantially equivalent position (*The Chase National Bank, etc.*, 65 NLRB 827, 829), without prejudice to seniority and other rights and privileges, and for making him whole for any losses by reason of the discrimination within the principles enunciated in *F. W. Woolworth Company*, 90 NLRB 289, and *NLRB v. Seven-Up Bottling Company of Miami, Inc.*, 344 U.S. 344, with interest (*Isis Plumbing & Heating Co.*, 138 NLRB 716), and posting of appropriate notices.¹²

Under the foregoing findings of facts and the entire record, I hereby state the following:

CONCLUSIONS OF LAW

1. By discharging Visintini either in whole or in part because of his activity on behalf of the Union, Respondent discouraged membership in or support of the Union, thereby engaging in an unfair labor practice within the meaning of Section 8(a)(3) of the Act.

2. By the above and by interrogation concerning activity in the Union, by forbidding employees to solicit for the Union on employer premises without distinction as to whether it was in or outside the working area involved, and threatening to deprive employees of their customary lodging at employer's premises if they voted in favor of the Union, Respondent interfered with, restrained and coerced employees in the exercise of their rights under the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. Said unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Accordingly, on the foregoing findings of fact and conclusions of law and on the entire record, I recommend, pursuant to Section 10(c) of the Act, that Respondent, The Princeton Inn Company d/b/a Princeton Inn, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against an employee for the purpose, in whole or in contributing part, of discouraging membership in or support of Hotel, Motel, Bar, Restaurant and Cafeteria Employees Union, Local 741, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, or any other labor organization.

(b) Interrogating employees concerning union activity, forbidding employees to solicit for the Union on employer premises without distinction as to whether this is done in or outside the working area, threatening to deprive employees of their accustomed lodging if they designate or retain their designation of the Union as their bargaining representative, or otherwise interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the Act.

¹²The nature of Visintini's illness as shown by the record makes the prospects of his serving in the Armed Forces too remote to need spelling out the rights under the Selective Service Act. Should that contingency nevertheless occur that law would protect him by its very terms.

2 Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer to reinstate Alfred Visintini to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole in the manner described in the Remedy portion of this Decision for any loss of earnings by reason of the discrimination against him

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records, and reports necessary to analyze the amount of backpay due under the terms hereof

(c) Post at its premises copies of the attached notice marked "Appendix"¹³ Copies of such notice, on forms provided by the Regional Director of Region 22, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director of Region 22, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith¹⁴

¹³In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order"

¹⁴In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 22, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in

order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that.

WE WILL NOT discharge or otherwise discriminate against any employee for the purpose, in whole or in contributing part, of discouraging membership in or support of Hotel, Motel, Bar, Restaurant and Cafeteria Employees Union, Local 741, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, or any other labor organization

WE WILL NOT ask employees about their or other employees' activity in support of the Union, forbid them to solicit on behalf of the Union in the employer's premises in places outside the working area, threaten to do away with employees' customary places of lodging in the event that they designate or continue their designation of the Union as their bargaining agent, or otherwise interfere with, restrain or coerce employees in the exercise of the rights guaranteed them under the National Labor Relations Act

WE WILL offer Alfred Visintini his former job back and pay him for wages he lost since his discharge on April 10, 1968, with interest.

THE PRINCETON INN
COMPANY D/B/A
PRINCETON INN
(Employer)

Dated

By

(Representative)

(Title)

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

If employees have any question concerning this notice or compliance with its provisions they may communicate directly with the Board's Regional Office, Federal Building, 16th Floor, 940 Broad Street, Newark, New Jersey 07102, Telephone 201-645-3088.