

Seasonaire, Inc. and Israel Piatek. Case 29-CA-2024

## TRIAL EXAMINER'S DECISION

March 29, 1971

## DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND  
KENNEDY

On December 11, 1970, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the alleged unfair labor practices 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 with supporting brief and the Respondent filed a brief in opposition to General Counsel's exceptions.

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 rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,<sup>1</sup> conclusions,<sup>2</sup> 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 complaint herein be, and it hereby is, dismissed in its entirety.

<sup>1</sup> We note and correct the following minor errors in that section of Trial Examiner's Decision entitled "Credibility" which in no way affect the result in this case

In the second paragraph, the reference to Goldberg should read Piatek, in the third paragraph, the third sentence should begin "When Pastel told", in the seventh paragraph, the fifth sentence should begin "I also credit Pastel's"

<sup>2</sup> These findings and conclusions are based, in part, upon the Trial Examiner's credibility findings, as to which the General Counsel excepts. It is the Board's established policy, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd 188 F.2d 362 (C.A. 3)

## STATEMENT OF THE CASE

THOMAS A. RICCI, Trial Examiner: A hearing in the above-entitled proceeding was held before the duly designated Trial Examiner on October 20 and 21, 1970, at Brooklyn, New York City, on complaint of the General Counsel against Seasonaire, Inc., herein called the Respondent or the Company. The sole issue of the case is whether the Charging Party, Israel Piatek, was discharged in violation of Section 8(a)(3) of the Statute. Briefs were filed after the close of the hearing by the General Counsel and the Respondent.

Upon the entire record, and from my observation of the witnesses, I make the following:<sup>1</sup>

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

The Respondent is engaged in the manufacture, sale, and distribution of ladies' garments and related products, and maintains an office and place of business in Brooklyn, New York. The Respondent is a member, for purposes of collective bargaining, of National Skirt and Sportswear Association, Inc., which exists for the purpose, *inter alia*, of bargaining with labor organizations on behalf of its members. During the past year, a representative period, the members of the Association purchased and caused to be transported and delivered to their places of business, cloth and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered to their places of business in interstate commerce directly from States of the United States other than the State in which they are located. During the same period the members of the Association manufactured, sold, and distributed at their places of business products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from their places of business in interstate commerce. I find that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to exercise jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

I find that Amalgamated Ladies' Garment Cutters' Union, Local 10, International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICE

## The Issue of the Case

The complaint raises a single issue: Does the evidence

<sup>1</sup> A motion of the General Counsel to correct the transcript is hereby granted

prove affirmatively that the Respondent discharged Israel Piatek, a cutter employed 9 months, for a reason proscribed by the Act? Before a violation of Section 8(a)(3) can be said to have occurred it must be proved that the employer discharged the employee "to encourage or discourage membership in a labor organization." The Board has also held it is a violation of Section 8(a)(1) if a man is discharged for engaging in "concerted" activities. The complaint as phrased is ambiguous in its allegation as to exactly what conduct it was by Piatek that the Respondent is said to have resented and to have intended to curb by the discharge. It reads only that the man's activity was "protected," that it was "concerted," and that it was "in connection with the Union." Although a complex story came to light from the testimony, the General Counsel stated a somewhat ambiguous position as to what the factual contention is, and generally reiterated the conclusionary language of the complaint.

The Respondent denies any illegal motive in the discharge. In defense it asserts the real reason was that there was not enough work to keep Piatek on, and as his status had been at all times that of a "temporary" cutter, there was nothing improper in his release at that moment.

#### Chronology

There are certain basic facts that are clear and not really disputed. Piatek was hired to be a cutter in the Respondent's Brooklyn, New York, cutting department, where during the period involved four or five other cutters worked regularly; Goldberg, long a member of the Union himself, is the foreman, with power to hire and discharge. All the cutters are members of the Union, and the shop is covered by a collective-bargaining agreement that was received in evidence. Piatek started during the workweek ending June 13, 1969.

Goldberg discharged Piatek early in the morning of Wednesday, March 4, 1970. Both men agreed at the hearing that it all started with the foreman finding fault with the cutter for the quality of his work, complaining that he was not cutting the correct amount of certain trimmings for the garments. Their stories as to how the resultant heated dialogue continued then differs. According to Goldberg, Piatek retorted it was the customers who were wrong in complaining and accused Goldberg of not knowing his own business, and then, with Goldberg pressing his criticism, Piatek spoke to him in very foul language. At that point the foreman fired the man for being insubordinate and personally offensive. As he told the story, Piatek started by telling Goldberg "You don't know what you are talking about. You have got a jumble of figures in here. Nobody in his right mind would understand these figures." Then a scuffle took place, and one word led to another and I wound up telling him 'You are running a scab shop.' That is all." At the hearing Piatek denied using any offensive language and Goldberg testified the cutter never mentioned "scab shop" or any nonunion condition of the shop.

From the factory Piatek went to the union hall to complain to Business Agent Pastel of his discharge. And again there is sharp conflict in testimony between Piatek and the business agent as to what was said. The cutter testified that when he said he had been released Pastel

asked why, and he answered it was because he, Piatek, had accused Goldberg of "running a scab shop." At this point, still according to Piatek, the business agent picked up the telephone and told Goldberg he could not lay off the cutter because the man had worked 9 months. After listening to the foreman Pastel turned to Piatek and told him he was temporary and could be released.

In contrast to this, Pastel's testimony is that when he asked why Piatek had been laid off, the cutter "told me that he was told there was no more work in the shop," and he responded that as the man had accepted temporary arrangement there was nothing the Union could do for him. It was here, according to Pastel, that Piatek started a "harangue" about a nonunion man working in the shop.

In any event, in consequence, late that day Pastel telephoned Goldberg and called for a shop meeting; all the cutters, together with Goldberg, came to the union hall and conferred with Pastel and Klein, another union official. Here the business agent and Klein gave voice to Piatek's report that a nonunion man was working at the cutting tables and they charged all the cutters, foreman and rank-and-file, with violating union rules by working with the man and not reporting the contract violation to their Union. As to this meeting, too, Piatek's testimony departs from that of the other witnesses. He said three different nonunion conditions were aired, all reported by him. (1) Battey, not a cutter at all, was working as a cutter; (2) Diamonte, a cutter, was not himself punching his timecard; and (3) four "boys," really bundle helpers, were doing cutters' work at the tables although not union members and not cutters themselves. Piatek added that he "accused" the business agent of never visiting the shop during the 9 months he had worked there. The business agent recalled only that the question of Battey, the nonunion man working, was discussed, and that Goldberg admitted he had done wrong in using the man. Goldberg recalled there had been mention of Diamonte not signing his card, but that when he and Diamonte denied the assertion, that matter was dropped. As to the "four boys" there is only the statement of Goldberg that "its possible" the matter was mentioned, but no charges were filed on that subject.

In the course of the discussion there was also talk of Piatek's discharge, Goldberg explaining he had fired the man for using offensive language and insubordination. Goldberg added the business agent then said he had a right to do this. The matter of the nonunion man working ended with the business agent deciding to file internal union charges against the entire cutting group and Goldberg filing a charge against his fellow member Piatek for speaking disrespectfully to him. In the end, at the close of the meeting, both Klein and Pastel requested that Goldberg nevertheless take Piatek back to work, and the foreman agreed to do so.

On Friday, March 6, Piatek was back at work. That same day Pastel, in his capacity as union officer, filed the internal charges against the cutters, including Goldberg, in general language for conduct detrimental to the Union and unbecoming good members. Also that day Goldberg, as a union member, filed a charge against Piatek for speaking disrespectfully to him.

A hearing before the Union's full execution board on

both these charges took place on March 12. All the cutting room men were present. Here too the testimony conflicts as to what was said, but there was received in evidence the minutes of the meeting as kept by Klein, the secretary of the executive board. Two charges were heard, that by Board Agent Pastel against all the cutters and Goldberg's against Piatek.

Accused of having improperly permitted Battey, the unskilled nonunion man, to cut cloth at the tables, all the cutters, as well as Goldberg, admitted their error. This according to Klein, Pastel, and Goldberg, Piatek insisted at the hearing he did not confess guilt. Piatek also testified there was talk of Diamonte, the shop chairman, not punching his own timecard as required. Goldberg said there was no talk about Diamonte's card that night, and no other witness spoke of it; the minutes of the meeting are entirely silent on that subject. Piatek also said that there was considerable discussion about Pastel's failure to inspect the Respondent's plant during the entire 9 months he worked there. As he told it Pastel's competence was a major issue that night. He detailed how the business agent defended himself by protesting no one had reported the nonunion man to him, and that then "I informed Mr. Pastel in front of these 40 members [the members of the executive board] that the reason I didn't inform him was that I didn't trust him." Both Pastel and Klein recalled nothing about the business agent not visiting the shop. Goldberg testified Pastel had visited the shop during that period, and added that after the executive board meeting there was an announcement by Dolgen, the Union general manager, that another business agent, Liebgott, of Brooklyn, would take the place of Pastel, who was really a Manhattan man.

The board decision on the charge against all the cutters was to fine Diamonte \$25 and only to "instruct" the rest not to do this again.

The charge against Piatek was considered next. Again Goldberg accused him of speaking offensively and again Piatek denied it. Three of the regular cutters—Torres, Rivadullo, and Rodriguez—were asked what they had heard and all three corroborated Goldberg. The executive board then lectured both Goldberg and Piatek to behave "with dignity" as good union members and dismissed the charge.

Piatek worked from the 6th to the 27th, when Goldberg again discharged him. Both testified that the foreman's stated reason then was that there was not enough work to keep the cutter. Goldberg testified he asked Piatek for his telephone number, so as to be able to call him if the occasion arose, only to have the cutter respond he would himself call up to inquire. Piatek denied being asked for his number, but in the end did admit telling the foreman it was not possible to reach him by phone. It is this discharge that is now said to have been an unfair labor practice.

#### Credibility

Piatek was the only witness called by the General Counsel and at virtually every significant point his testimony conflicted with that of the other witnesses. In part because of his demeanor—he was clearly an angry man, emotionally volatile, and personally antagonistic to all other persons involved in the events, in part because of

inherent inconsistencies in his story, and in part because of an implausibility in much of what he said, I am unable to credit him. He was twice discharged, with certain circumstances in each instance indicating at least *prima facie* justifiable reason. But instead of addressing himself to the merits of the issues, he turned the questions into unrelated matters, both when the things happened and during the hearing. When Foreman Goldberg first criticized him on March 4 for errors in his work, as Piatek admitted Goldberg did do, he answered—if he is to be believed—that Goldberg was running a scab shop. The one idea simply had nothing to do with the other. When later in the day Pastel asked him why he had been released, again, still according to the cutter, he said it was because he had thrown this nonunion business into Goldberg's face. But Pastel said Piatek gave the reason as insufficient work, and only first spoke of the nonunion Battey after the business agent had called him temporary and told him the Union could not help him. But if Piatek had any rational basis for protecting his job, apart from inflammatory irrelevancies, it should have been his permanent status, upon which he eventually based his charge before the Labor Board. As he would have it, it was Pastel who first spoke of the 9 months' tenure. Why should he bring up this matter? More likely, were it true the cutter started by reporting he had been fired for attempting to prevent contract violations in the shop, the business agent would immediately have charged Goldberg with the clearest illegal discharge. Instead, as Piatek himself testified, the business agent called Goldberg only to say he could not lay off the man because he had been "there 9 months."

Tracing the truth a bit at a time, there is the matter of the foul language. Piatek admitted "a scuffle took place, one word led to another," and denied any bad language. A week later the three cutters, perfectly good union members themselves, openly contradicted Goldberg. It was not necessary for these three gentlemen to repeat their story before me at the hearing; it is enough Piatek himself admitted they gave such "testimony" at the executive board meeting. I find, if only on the basis of the open statements of these three cutters, that Piatek did speak very offensively to the foreman and was insubordinate that day.

Next comes the matter of the executive board meeting itself. Piatek's total testimony respecting that evening, added to his story of some earlier events, reflects a deep-seated personal animosity towards Business Agent Pastel that remains unexplained on this record, but which nevertheless serves to further weaken his credibility generally. When Piatek told him on March 4 that he was a temporary man and could not look to the Union for help, Piatek went to the manager, Dolgen, to say "he has got a racket man as a business agent." Dolgen's answer was, as Piatek himself said: "How dare you speak that way about my business agents." Piatek continued his attack upon Pastel later in the day, at the shop meeting "whom I complained that did not show up at my place for ten months there that I was there." As Piatek told it, at the executive board meeting much of the talk was about Pastel's failure adequately to police the shop, whether or not he should be permitted to continue as business agent there, and, he tried to make it appear, about who was really

to blame for the nonunion conditions in the cutting room. But all this had nothing to do with either of his discharges. It all appears as an attempt by Piatek, from first to last, to change the subject, to shift the burden of the entire case from the issue of his conduct to the competence and behavior of the business agent. The charges were explicit enough: Had the cutters been delinquent in not reporting conditions, and had Piatek misbehaved towards Goldberg? Diamonte was the most skilled man in the shop, only he and Goldberg do the marking, the most difficult part of the work. Goldberg said Diamonte is guaranteed a bonus every 3 months for this reason. Diamonte's punch card shows he is consistently paid exactly 9 hours overtime weekly, strong indication the punching of his card is mechanical, probably done perfunctorily by somebody else. But the Union knew this, no charge in that respect was made, and there is no proof the system of overpayment to him had changed at all. Nevertheless Piatek blandly stated at the hearing that Diamonte was fined \$25 by the executive board for not punching his timecard in violation of state law. No one else recalled such a thing, the charges in evidence do not speak about it, and the minutes of the meeting say nothing on the subject at all. All the indications are that each one of the cutters admitted that with knowledge of the nonunion man working they had been remiss in not reporting the fact to the Union. Alone among the cutters Piatek said at the hearing he did not admit any guilt. In the teeth of this denial he admitted knowing all about it during the many weeks it had been going on.

The union contract in effect throughout Piatek's employment provides that a cutter who has worked for 2 weeks acquires permanent status as a regular workman. It also provides that work must always be shared equally among all permanent employees in the shop, and that when there is not enough for all none may be released but instead all must share the brunt of reduced work equally.

Piatek started by testifying that when he was first hired Goldberg told him he "had only couple of days work for me." Two weeks later he asked could he bring his own scissors and the foreman said he could. Piatek contended at the hearing this meant, in keeping with a practice in the trade, that he acquired permanent status. Goldberg testified he needed two cutters at that time, in part because there was more work than usual and in part because a regular man—Wilamsky—had left on vacation. He continued that between the two cutters he hired, Rodriguez and Piatek, the latter was the less capable and therefore he decided to arrange for a "temporary" status for him. Both Goldberg and Pastel, the business agent, explained at the hearing that there has long been a practice in the industry for union cutters to be hired, in certain situations, as temporary people for indefinite periods. The rationale given is that in order not to prejudice the fixed rights of regular, permanent cutters to share the work, seasonal or other unusual increases in work volume are performed by such temporary people, who can be released when in the judgment of the employer he thinks fit. As a safeguard against abuse of the privilege, and as protection of the rights of permanent people, the employer is required, soon after the initial

hiring, to advise his employer association in writing of his intention to mark the man "temporary," the association must then advise the Union, and the Union finally states its agreement.<sup>2</sup> Goldberg and Pastel testified that this is the arrangement that was made with respect to Piatek. Goldberg said that he initially obtained Piatek as a requested referral from Pastel, but that when he realized the man was not well qualified, he tried to obtain a replacement but Pastel had none. He then had Seasonaire request its Association to clear Piatek through the Union as a temporary man. Pastel corroborated this testimony and to prove the point there was received in evidence a letter dated June 13, 1969, from the Respondent to the National Skirt and Sportswear Association informing it that Piatek was temporary, and a letter dated June 16, 1969, from the Association to the Union stating the same fact. Pastel then testified he telephoned Piatek, read the Association's letter to him, and the man agreed to the temporary status. It will be noted that Goldberg was then free, under the contract terms, to release him as a probationary if he had not been willing to stay as a temporary man. Piatek denied having heard from Pastel at all.

That in fact there is such a practice in the industry is established beyond question by other testimony from Piatek plus another exhibit. He said his last job before joining the Respondent was for a company called Wippette, that he worked there 3 months, and that his status there was "temporary." When he was released from that job he was told the reason was because there was not enough work for him. He left, he said, without complaint. Piatek could not do otherwise, for on April 1, 1969, at just about the time he started with Wippette, the Association advised the Union, as another letter exhibit proves, that he was in fact a "temporary" man.

Fair appraisal of the ultimate allegation of the complaint, that Piatek was discharged on March 27 because of some "protected" activity, and not because of lack of work, requires first an evaluation of the affirmative defense. There is a practice in this industry, in this area, of hiring temporary cutters despite the literal wording of the Union contract. This is how Piatek worked for 3 months before joining the Respondent, this is what the letters to and from the Association in June 1969 showed, and this is the testimony of Goldberg and Pastel. No reason appears for discrediting them. I also credit Piatek's testimony that he cleared the temporary status with Piatek by telephone. Piatek had done nothing to offend him up to that point. Perhaps the cutter's distaste for the business agent grew from a retroactive resentment over Pastel having agreed with the Company's request originally, when it later developed the benefit first enjoyed could turn into a dangerous status later. I am satisfied Piatek knew all along he had no permanent status. His testimony would have been more credible had he protested his right to work on March 4, when he found himself in violent dispute with Goldberg. Instead, he injected an entirely extraneous element, the Company's use of nonunion men at the cutting tables. Had he really believed himself entitled to work

<sup>2</sup> The Respondent Company bargains with the Union through the Association

under the union contract, it would have been more a logical argument to make.

With this, the affirmative defense that he was properly released on March 27 because there was not enough work assumes added persuasion. Throughout the 9 months Piatek worked, there was a regular pattern of overtime performed by all the cutters, a consistent average of about 9 or 10 hours each week. Clearly the work was distributed in keeping with the basic system. The company payroll records show that for the complete 6-week period starting with the week ending March 13 and continuing through the week ending April 17 no overtime work was performed by any cutter except Diamonte. And this is perfectly plausible in the light of Diamont's special position. Piatek was released in the very period when the work was slow, and Goldberg's testimony that this is the time of year when seasonal lows normally occur is thus born out by his records of earlier years. And, of course, it was also precisely the occasion when "temporary" men may be released pursuant to the established practice.

#### Analysis and Conclusions

A reason for the discharge Goldberg had to have. In resisting the Respondent's contention that it was for lack of work, the General Counsel must advance some other motivation, an intent to discriminate against Piatek because of something he had done of disadvantage to the Respondent, and, of course, that something must be the kind of activity that is protected by the Statute. And it certainly is possible that notwithstanding a valid reason for discharge, an employer may dismiss a man for a prohibited one.

Much was made on the record of the fact Piatek was in sharp conflict with the Business Agent Pastel; as already stated Piatek made every effort, both at the hearing and, according to him, at the shop committee and the executive board meetings to portray Pastel as a delinquent union agent, indeed as responsible for the nonunion working conditions in the shop. Seasonaire had moved its cutting department from Manhattan to Brooklyn, and Pastel, the Manhattan business agent, remained nominally responsible for that company. It may well be, what with many vagaries in the testimony, that he really did not go to the Brooklyn location for a year. The shop was reassigned to the Brooklyn business agent, Liebgott. Piatek slanted his story to the idea the change reflected upon Pastel, proved somehow he was no good. What relevance this entire business of personal animosity between these two men, or even the business agent's neglect, if neglectful he was, bears to the question of Goldberg's attitude towards the cutter is not clear at all.

The unspoken innuendo here is that Pastel was out to get Piatek in retaliation and that Goldberg dismissed the man to please Pastel. Innuendo aside, there is no evidence that Pastel desired Piatek's discharge or gave any hint of such desire to the Respondent. On the contrary, even after the cutter had put Pastel on the spot by reporting the antiunion conditions, the business agent on his own took the initiative

to have him restored to work. It was in consequence of his good offices that Piatek was rehired on March 6.

More significant, when it was all over Piatek filed a formal charge against the Union, alleging that it unlawfully refused to process his grievance on the discharge. The fact is Piatek never did file any grievance with his union; investigation by the Regional Office produced no evidence supporting that charge and it was dismissed. And as to the Union having caused the discharge, there is neither charge nor complaint.

If some of the facts of this case be taken out of context, a certain picture would emerge. For a number of weeks the Respondent had been using a nonunion cutter, Battey, for work for which he was paid less than union scale; in any event, he had no union book and for some reason or other the arrangement served the Respondent's convenience. The overt explanation at the hearing is that the Company wished to help the man learn a trade because of his need and his good will. It is probably true there was a technical impropriety in someone else punching Diamonte's card, the extra bonus man. But, while this practice too may have stopped, the Company is still paying him a bonus and no complaint by anyone has been made about it.

There is no question Battey, the nonunion man, had been working contrary to union rules and Goldberg was aware of the contract violation while this was going on. I am satisfied Piatek brought up the entire subject only after being fired on March 4 and realizing his temporary status, accepted by the Union, left him no other course of action. This was his way of combating the discharge and enhancing his chances of returning to work. It was nevertheless Piatek who brought these matters to the Union's attention, and, whatever else may have happened, in the end the Respondent had to discontinue these practices. Had Piatek not brought up the subject, Goldberg could well have continued as in the past. Moreover, after the shop committee meeting, but before the final discharge on March 27, Goldberg tried to obtain a union book for Battey but the Union refused to issue one. Did he later discharge the man because he turned to his union to enforce contract provisions against the employer? If this is a proper finding, it could prove an unfair labor practice by the Company.<sup>3</sup>

This theory is at best a circumstantial case, and like all such cases carries weaknesses and supporting aspects. The discharge came after the man's conduct. The first weakness is that there is no evidence of union animus, no indication that Goldberg felt hostile towards the Union, nothing, in fact, that he resented the union attitude of anyone, employee or union representative. The inference of illegal motivation would have to arise purely from the sequence of events. *Post hoc, propter hoc*. By the end of the shop committee meeting late on the afternoon of March 4, Goldberg knew that the beans had been spilled, he had confessed the error of his ways, and there was no longer any question that the past practices were going to cease. He had already told Pastel he would cut it out, and he certainly knew it was Piatek's doing that had brought him to this pass. Notwithstanding, when it was all over and settled he agreed to rehire Piatek simply because Pastel asked him to do so. Goldberg did not have to take him back. Pastel had

<sup>3</sup> Cf. *Bunney Bros.*, 139 NLRB 1516

already said the man was temporary, and besides, he had used foul language to him and been insubordinate. But if, with good reason to make the first discharge stick, Goldberg were willing nevertheless to take him back, can it be found he harbored a hidden rancor and gave it vent 3 weeks later?

Every case must be evaluated on the totality of the evidence. Against the foregoing picture—the strongest possible view that can be taken in support of the complaint—must be weighed the very persuasive facts tending to prove the affirmative defense of a discharge for cause. Piatek was a temporary employee, he was subject to discharge when the work might decline, it in fact did fall off substantially at the very time he was dismissed. The test of whether an unfair labor practice has been committed

depends upon whether the General Counsel has proved his case by a preponderance of the substantial evidence on the record as a whole. I find the evidence insufficient to prove that Piatek was unlawfully discharged. I shall therefore recommend dismissal of the complaint.

#### CONCLUSION OF LAW

The Respondent has not engaged in the unfair labor practice alleged in the complaint.

#### RECOMMENDED ORDER

The complaint herein should be, and it is hereby dismissed.