Walker Towing Corporation *and* Inland Boatmen's Union of Seafarer's International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO. Case 9–CA–5758

May 28, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

On February 25, 1971, Trial Examiner Fannie M. Boyls issued her Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Decision and a supporting brief, and Respondent filed an answering brief.

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

The Board has reviewed the rulings of 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,[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 hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[1] As no exceptions have been filed to the Trial Examiner's findings that relief mate Belcher was a supervisor and was not unlawfully discharged, we adopt them *pro forma*

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

FANNIE M. BOYLS, Trial Examiner: This case, initiated by a charge and amended charge filed on July 20 and September 18, 1970, respectively, and a complaint issued on September 30, 1970, was tried before me at Paducah, Kentucky, on December 15 and 16, 1970. The complaint, as amended at the hearing, alleges that Respondent had engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. Respondent filed an answer in which it denied that it had engaged in any of the unfair labor practices alleged. After the conclusion of the hearing briefs were filed by the General Counsel and Respondent on or about February 1, 1971.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and after due consideration of the briefs, I make the following:

FINDINGS OF FACT

I THE BUSINESS OF RESPONDENT

Respondent, a Kentucky corporation with offices at Paducah, Kentucky, is engaged in the transportation of supplies, materials, and products by inland waterways. During the 12-month period preceding the issuance of the complaint, which is a representative period, Respondent transported goods valued in excess of $50,000 from the Commonwealth of Kentucky directly to customers located outside Kentucky. During the same period, Respondent received revenues in excess of $50,000 from such waterways shipments. On the basis of these admitted facts, I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein

II THE LABOR ORGANIZATIONS INVOLVED

Inland Boatmen's Union of Seafarers' International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO, herein called the Union or the SIU, and National Maritime Union, AFL–CIO, herein called the NMU, are labor organizations within the meaning of Section 2(5) of the Act.[1]

III THE UNFAIR LABOR PRACTICES ALLEGED

A. *Setting and Issues*

In 1970 the SIU was engaged in attempting to organize employees in the Paducah area and Respondent was aware of this fact at least by sometime in June. Respondent's general manager, Billy W. Hendon, reacted by writing a letter to all of Respondent's employees on July 3, telling them, among other things, that they had a right under Federal law to refuse to sign a union card and a right to sign one, but warning them of the possible consequences of signing—such as having to pay dues, initiation fees, assessments, and fines—and telling them about the indictment of two SIU officers on charges of having violated the United States Criminal Code involving corrupt practices. A copy of a newspaper clipping from a Louisville, Kentucky paper about the indictment was attached. On July 20, Hendon sent the employees another letter, telling them that Respondent did not think they needed the SIU and setting forth Hendon's reasons for this view. On September 15, Respondent sent its employees still another letter prepared by Hendon, calling attention to the fact that another union, the NMU, was also trying to organize in the Paducah area and setting forth arguments against its employees joining either the SIU or the NMU. These letters, though making it clear that Respondent was strongly opposed to the organization of its employees by either of these unions, merely set forth views, arguments and opinions of the kind permitted under Section 8(c) of the Act, and I do not understand the General Counsel to contend otherwise.

On June 22, 1970, Respondent discharged a relief mate, Samuel Frank Belcher, who performed supervisory duties for 50 percent of his working time and nonsupervisory deckhand duties for the remaining 50 percent of his working time The General Counsel contends, and Respondent denies, that he was discharged because of Respondent's belief that he was proselytizing on behalf of the NMU. I have not resolved this conflict in the evidence because, for the reasons set forth hereinafter, I have concluded that Belcher was a supervisor

[1] The complaint did not list the full name of the SIU but it was amended at the commencement of the hearing to reflect the full and accurate name as shown above and in the caption of this case

within the meaning of the Act and not entitled to the Act's protection.

Two other employees, Roger D. Gilliland and Jerome T. Needham, were discharged on July 1 and 4 respectively. The General Counsel contends, and Respondent denies, that they were discharged because of activities on behalf of the SIU. As shown below, a preponderance of the evidence adduced does not support the General Counsel's contention.

B. *The Discharge of Samuel Frank Belcher*

Respondent contends that it discharged Belcher on June 22, 1970, for two reasons: (1) because of an alleged unauthorized use by Belcher of Respondent's station wagon on Sunday, June 14, 1970, when Belcher came off the *Mr. Charlie Walker* for his 10 days off, and (2) because Captain Crowley, on the *Mr. Charlie Walker*, had notified Acting Personnel Manager Vaughn that he did not want Belcher back on his boat The reason why he did not want Belcher back, according to Crowley, was that he cursed members of the crew and could not get along with them Also, according to Crowley, the regular mate, the pilot, the chief engineer, and the cook had complained to Crowley about his cursing and constant griping. The General Counsel, on the other hand, contends that the real reason for Belcher's discharge was Respondent's belief that he was engaged in activities on behalf of the NMU. Belcher was known to be a member of the NMU at the time he was hired and, according to Belcher, was told by Personnel Manager Maxwell when being hired that Maxwell did not want him to start any union trouble on the boat. (Maxwell denied that he had made any such statement to Belcher.) There is also testimony by Belcher (denied by Captain Crowley) that on one occasion just after members of the crew had asked Belcher about working conditions under NMU contracts, Crowley had called him to the pilothouse and questioned him about the conversation.

I need not and do not decide the credibility issues presented by the conflicting testimony of Belcher and Respondent's witnesses regarding the circumstances under which Belcher was discharged because, for reasons set forth below, I have concluded that even if all of the General Counsel's testimony is credited, Belcher's discharge would not constitute a violation of Section 8(a)(1) or (3) of the Act.

Respondent, while denying that Belcher's union activites or sympathies had anything to do with his discharge, contends that he was a supervisor within the meaning of Section 2(11) of the Act and that his discharge would have been lawful even if it had been motivated by opposition to union activites on the part of Belcher. The General Counsel, while not expressly addressing himself to the issue as to Belcher's supervisory status, appears, in his brief, to take the position that Belcher should not be regarded as a supervisor.

Belcher was employed by Respondent on February 6, 1970, as a relief mate aboard the vessel *Mr. Charlie Walker*. The crew normally worked 20 days, then was off duty for 10 days. The regular mate on the vessel was Buddy Russell. During the 10-day period each month when Russell was off the boat, Belcher performed all the duties of the mate. During the remaining 10 days of Belcher's working time each month he was a deckhand, but was usually on "call watch," performing work which is normally performed by the most experienced deckhands. Belcher was paid $450 a month, which was $40 or $50 a month more than the wages paid the regular deckhands. His salary remained the same whether he was performing relief-mate duties or deckhand duties.

As relief mate, Belcher had four or five deckhands working under him. Acting under the general direction of the captain of the boat, Nathan Crowley, Belcher was responsible for assigning work to the men and seeing that they kept the vessel clean and painted. Also, after being informed by the captain as to where to lay the barges, Belcher was responsible for making the tow, wiring the barges in place, and handling the rigging. In performing these responsibilities he directed the work of the deckhands under him. Belcher had authority to recommend the discharge of these men. On cross-examination by Respondent's counsel, Belcher at one point described how he handled one deckhand who failed to obey his orders. Belcher testified: "I sent him to the captain and told him to tell the captain he wanted his money and told him to get off if he couldn't do what I told him."[2]

Respondent's policy book describes the mate as "the immediate supervisor of the deck crew" and states that he is "directly responsible to the master of the vessel" and that he is "responsible for all the rigging, general cleaning, etc." The General Counsel alleged in the complaint, and Respondent's answer admitted, that Noah Adkins was a mate and a supervisor within the meaning of the Act. Noah Adkins, according to his uncontradicted and credited testimony, was a relief mate on the *Mr. Charlie Walker*. He was hired as a relief mate on June 27, 1970, less than a week after Belcher had been discharged from that position. I am convinced from all the evidence that Belcher should be regarded as a supervisor within the meaning of Section 2(11) of the Act. He had authority, acting in the interest of his employer, to assign work to employees under him, responsibly to direct them in their work and effectively to discipline and recommend the discharge of such employees. The record shows, moreover, that Belcher's exercise of authority was not of a merely routine nature but required the use of independent judgment.

A supervisor is not an employee entitled to the protection of the Act and an employer does not violate Section 8(a)(3) of the Act when it discharges him from engaging in union activities. Nor does it violate Section 8(a)(1) of the Act by discharging him, by forbidding him to engage in union activities or by interrogating him regarding conversations about the Union—which is the most that could be found in this case even if all the evidence adduced by the General Counsel should be credited.

In reaching my conclusions herein, I am not unmindful of the Board's decisions in representation cases wherein the question has arisen as to whether persons who act as supervisors during only part of their working time may properly be included in a bargaining unit with rank-and-file employees. In *Great Western Sugar Company*, 137 NLRB 551, the Board included in the bargaining unit "seasonal supervisors" who worked as rank-and-file employees during 8 or 9 months of each year but made it clear that any union selected could represent such seasonal supervisors "only with respect to their rank-and-file duties " In a later representation decision, *Westinghouse Electric Corporation*, 163 NLRB 723, the Board further refined this principle in a situation in which lead engineers who on some of the projects to which they were sent supervised the work of nonengineers. The Board included in a bargaining unit of field engineers those lead engineers who spent as much as 50 percent of their working time (excluding leave or waiting time) performing nonsupervisory duties but again cautioned, as it had done in *Great Western*, that a union could not represent any engineer with respect to his supervisory duties.[3]

---

[2] Later, when being examined by the Union's counsel, Belcher testified inconsistently as follows "I told him if he didn't like working for me, well, go talk to the captain about it I said, 'I couldn't do nothing about it.' . I don't believe I said go get his money " I find Belcher's first testimony set forth in the text more consistent with the exercise of his responsibilities and more credible

[3] Following an election and certification of the Union as bargaining repre- (Cont)

In making its determination in those representation cases, the Board considered "the fact that even with this limited grant of a right of representation to [part-time supervisors], for nonsupervisory work only, there may be problems for both the Employer and the Union based upon fears of 'divided loyalty.' . . . This problem is commonplace whenever an Employer decides to promote a rank-and-file employee to be a supervisor, i e., when there is a shift in employee status, up or down." (*Westinghouse* case, 163 NLRB at 727, n. 26). Similarly, in the *Great Western* case, 137 NLRB at 555, n. 9, the Board recognized that certain problems might arise by reason of inclusion of part-time supervisors in a bargaining unit with non-supervisory employees but stated: "We deem it wiser to treat issues in this area, if, as, and when they arise, at which time our decision respecting the interplay between various policies can be decided on the basis of concrete factual situations and argument relating thereto rather than on the basis of surmise and speculation."

The Board's unit determinations in those and similar representation cases, however, are not, in my view, determinative of the issue here presented. In the first place, it is not at all clear that the Board, if confronted with the problem, would include relief mates like Belcher in the same bargaining unit with the deckhands since, unlike the part-time supervisors in the *Westinghouse* case, the relief mates would be supervising for 50 percent of their working time the same employees with whom they would be grouped for bargaining purposes. In the second place, even if it be assumed that relief mates could appropriately be represented with respect to their nonsupervisory duties by the same union representing the rank-and-file employees as a part of the same unit with the latter, it would appear that under the facts of this case, the interest of the Employer in efficiently running his business, and as an incident thereto demanding the undivided loyalty of relief mates, should be regarded as paramount in importance to the right of the relief mate during 50 percent of his working time to participate actively in promoting the Union's business.

Since Respondent hired Belcher for the express purpose of having him perform supervisory duties for 50 percent of his working time and was willing to and did pay him his supervisor's salary even when he was not performing supervisory duties, it would seem only fair that Respondent should be entitled to insist when it hired him that he refrain, as he testified, from stirring up any union trouble on the boat and that Respondent should have the right to enforce this admonition by later questioning him about his conversations with employees about the Union and even discharging him if it suspected him of proselytizing on behalf of the NMU or any other union. Any attempt to split loyalty obligations, 50 percent of the time to the Employer and 50 percent of the time to the Union, would be unrealistic and unworkable.

It is accordingly found that Belcher, regardless of whether on any particular day he may have been performing supervisory or nonsupervisory duties, should be treated as a supervisor within the meaning of the Act and that he was not entitled to the protection afforded employees under the Act. It follows that Personnel Manager Maxwell's alleged admonition to Belcher, when hiring him, not to start any union trouble on the boat, even if proven, would not constitute a violation of Section 8(a)(1) of the Act (as alleged in the complaint) and that Respondent's discharge of Belcher, even if proven to be for the reasons alleged in the complaint, was not a violation of Section 8(a)(3) or (1) of the Act. *Royal Fork of Washington, Inc.*, 179 NLRB No. 28; *Sopps' Inc.*, 175 NLRB No. 49; *Texas Gulf Sulphur Co.*, 163 NLRB 88.

C. *The Discharges of Roger D. Gilliland and Jerome T. Needham*

Gilliland and Needham, although subpenaed by the General Counsel, did not appear and testify at the hearing. In seeking to show that their discharges on July 1 and July 4, respectively, were discriminatorily motivated, the General Counsel relies almost exclusively on the testimony of Jack Ray Bartlett, the relief captain on Respondent's boat the *William Pitt* between April 26 and June 29, 1970. Bartlett was himself discharged on or about June 29 for the alleged reason that Respondent had discovered serious discrepancies in his application for employment.

Bartlett gave the following account of his own employment and his discharge, the circumstances of which the General Counsel contends reflect an antiunion motivation in the discharges of Gilliland and Needham. At the time he was hired by Respondent's vice president, Robert Day, Bartlett told Day that he had been raised in the same family with Isah Gibson, the SIU's port agent in Paducah, but he assured Day that he and Gibson did not agree on union matters and that he, Bartlett, was not associated with any union.

On June 29, according to Bartlett, while his boat was tied up at Paducah for repairs, Dub Vaughn, Respondent's acting personnel manager, called Bartlett into his office and asked what was going on, explaining that he had applications from a number of people who had given Bartlett's name as a reference. Bartlett looked at the list and stated that he did know the people; that the only person he had recommended was Jerry Needham who had already been hired by Respondent.[4] Vaughn then asked Bartlett what his union affiliation was and Bartlett replied "none," adding that he had told Vice President Day this at the time he was hired. At about this point, Respondent's general manager, Billy Hendon, walked into the office. Vaughn told Hendon that he had called Bartlett into the office to discuss union activities. During the conversation that followed, Hendon said that he knew some of the employees on the boats who were union organizers but that "the Union would have to wake up early to get ahead of him."[5] Vaughn stated that he knew Frank Belcher (the relief mate who was discharged on June 22) was a union member and that he also knew about Needham and Gilliland. Bartlett assured Hendon and Vaughn that he was "strictly a Walker man" and was not having anything to do with a Union. It was later on the same day that Bartlett was discharged. When Bartlett accused Hendon of discharging him because of union activities, Hendon denied this charge and told Bartlett that he was being discharged because of discrepancies which had been found in his application for employment.[6]

---

sentative in a unit of the field engineers, which included the lead engineers falling within this category, the Employer, seeking to test the validity of the Board's unit determination, refused to bargain with the Union (171 NLRB No 164) The Board found an unlawful refusal to bargain and its decision was subsequently enforced in *Westinghouse Electric Corporation* v *N.L.R.B.*, 424 F 2d 1151 (C A 7)

[4] Needham's application for employment shows that he was indeed recommended by Bartlett and was hired on May 23, 1970

[5] Bartlett testified that he interpreted this remark as meaning that Hendon was going to "weed out" the union organizers, but Hendon did not use the expression "weed out" and I find no basis for inferring that Hendon, if he made the statement, meant to do anything other than what he actually did soon thereafter do, that is, to send letters to the employees containing arguments and opinions against the Union which he expected would be more persuasive than the Union's arguments

[6] The Regional Director refused to include Bartlett's name in the complaint and on appeal by the Union to the General Consel, the General Counsel sustained the Regional Director's action on the ground that Bartlett was a supervisor within the meaning of the Act and that his discharge would not be a violation of either Sec 8(a)(3) or (1) of the Act even if motivated by antiunion considerations

Vaughn's version of his conversation with Bartlett on June 29 was that Bartlett walked into Vaughn's office and told him about a house he had just bought in Smithland, near Paducah. During the conversation, according to Vaughn, Bartlett mentioned that he had once been a union organizer but could not make a living at that work and was above to starve to death, so he moved up to Paducah in order to get a job on a boat and make a living for his family. Vaughn testified that no list of applicants was mentioned during the conversation. He further testified that General Manager Hendon was in and out of the office while Bartlett was talking to him and that he believed Hendon was there during the time Bartlett mentioned his former activities as a union organizer. Vaughn conceded that at the time of Bartlett's discharge, Bartlett said something about union activities being the cause of his discharge.

General Manager Hendon testified that he did not recall any conversation with Bartlett on June 29 prior to the discharge interview, that he did not tell Bartlett that the Union would have to get up early to get ahead of him and that he did not hear any conversation between Vaughn and Bartlett in which the names of Belcher, Gilliland, or Needham were mentioned. Hendon further testified that 3 or 4 weeks prior thereto Vice President Day had reported to Hendon that Bartlett had formerly been an SIU organizer but no longer was; that he did not know when discharging Bartlett whether Gilliland or Belcher were union organizers but that Bartlett had reported to him that Needham was a union organizer.[7]

I shall not resolve the difficult credibility issues presented by the conflicts in the testimony described above, for even if all of Bartlett's testimony be credited, I am not convinced that either Needham or Gilliland was discriminatorily discharged.

1. Gilliland's discharge

Gilliland worked as a deckhand on the *Bobby Joe* for about 20 days prior to June 11, 1970, when George Bruce Lewis, captain of the boat, told him that he was being fired from the boat. According to Captain Lewis' undenied and credited testimony, early in June the mate, Bill Lang, Sr., reported that Gilliland was not satisfactorily performing his duties of keeping the bathrooms, pilothouse, and other parts of the boat clean and had "talked back" to the mate. Captain Lewis thereupon talked to Gilliland about the complaint and Gilliland promised to try to do better. On the night of June 10, just before Gilliland was scheduled to take his normal 10-day leave, the mate reported to Lewis that Gilliland "was worse" and "would have to go as far as he was concerned." He also told Lewis that he would not work with Gilliland. On the morning of June 11, Captain Lewis told Gilliland that he did not want Gilliland back on his boat, that Lewis was not reporting this fact to the office and that if Gilliland wished, he could ask the office for an assignment to another boat.[8]

Gilliland did not request an assignment to another boat, as Lewis had suggested but, instead, returned to the *Bobby Joe* during the period when Captain Lewis and the mate, Lang, were on their 10-day leave. Paul Van Meter, who relieved Captain Lewis between June 20 and July 1 while Lewis was on leave, accepted Gilliland back on the boat, apparently without knowing he had been discharged from the boat. When Lewis returned on July 1, he learned from the list of personnel on the boat furnished him enroute to the boat that Gilliland was among those on the boat and he requested that relief be sent for Gilliland. When he saw Gilliland coming from the boat he told Gilliland that he "was done with the Company" because he had returned to the boat when Lewis had told him not do do so. Lewis informed Respondent's personnel manager, Maxwell, of the circumstances under which he had discharged Gilliland and recommended that he not be given work on any other company boat. Thereafter Relief Captain Van Meter told Lewis, when the latter explained why Gilliland was discharged, "You probably made a mistake because he was doing a little better." Lewis replied, "It's done too late now."

According to Captain Lewis, he has never been aware of any union activities on any boat he has been on and he had no knowledge as to whether Gilliland was or was not organizing a union. The record, moreover, does not disclose whether or not Gilliland ever engaged in any union activities. The record affords no basis for inferring that the circumstances concerning Gilliland's discharge were other than those related by Captain Lewis. It is accordingly found that the General Counsel has failed to prove the allegations of the complaint that Gilliland's discharge was discriminatorily motivated and that the allegation must therefore be dismissed.

2. Needham's discharge

Needham worked for Respondent on the *Bobby Joe* from May 23 to June 10, 1970, and then went aboard the *Mr. Charlie Walker* on June 27, where he worked under Relief Mate Noah Adkins and Captain Nathan Crowley until his discharge on July 4.

Needham, though not a paid organizer for the Union, was one of the employees of Respondent who assisted Isah Gibson, the Union's port agent, in signing up members. The record, however, does not show whether he did any organizing aboard any boat on which he worked. Captain Lewis, who was in charge of the *Bobby Joe* when Needham worked on it, and Captain Crowley and Relief Mate Adkins, who supervised Needham on the *Mr. Charlie Walker,* each credibly testified that he knew of no organizing activities aboard his boat. Respondent's general manager, Hendon, on the other hand, testified that he had heard something in May or June about Needham being a union organizer.

The circumstances under which Needham was terminated, as related by Relief Mate Adkins and Captain Crowley, were substantially as follows. Captain Crowley was a stickler for cleanliness on his boats. Just after Needham came aboard the *Mr. Charlie Walker,* Crowley called a meeting of the entire crew and told the men they would have to mop their rooms every day and keep their dirty clothes in lockers furnished for that purpose. Several days thereafter Adkins noticed that Needham's room was not clean and asked Needham when was the last time he had cleaned it. Needham replied, "The last time I cleaned it up." Adkins told Needham he was not asking for a "smart answer" and merely wanted to know when he had cleaned his room last. Needham then said, "It suits me and if you don't like it you can clean it yourself."

Needham went almost immediately to Captain Crowley and asked whether his room was satisfactory, explaining that the mate had "jumped on him" about the room not being clean. Crowley told Needham that he personally had not checked the room but that if the mate had told him to clean the room, he should do so. Later Adkins told Crowley about the conversation he had had with Needham.

On the succeeding days both Adkins and Crowley checked Needham's room as well as other rooms and found Needham's room still dirty. According to Adkins, there were dirty clothes all over Needham's bunk, there was dust on the floor,

[7] Bartlett, on the other hand, testified that he had never spoken to Hendon prior to the time Hendon came into Vaughn's office on June 29

[8] Captain Lewis explained that he felt compassion for Gilliland because the latter had a crippled foot and at that time he preferred to fire him from the boat rather than from the Company

his laboratory sink and mirror were dirty and there was an odor in the room. In these circumstances, according to Crowley, he decided on July 3 to request a replacement for Needham when the boat reached Paducah on July 4. When he telephoned Respondent's offices and asked General Manager Hendon for someone to replace Needham, Hendon inquired as to the reason, explaining that he had heard that Needham was a union organizer and that he did not want any trouble with the Union. He told Crowley that he wanted to make sure that Needham was not being fired for his union activities. When Crowley explained the trouble he was having because of Needham's failure to keep his room clean, Hendon advised him to wait until the boat reached Paducah and that if by that time Needham had cleaned his room, to forget the whole matter.

Captain Crowley followed this advice. Needham had not cleaned his room by the time the boat pulled in at Paducah on July 4. Crowley told him that he was being replaced and would be getting off at Paducah. Needham said, "Okay" and Crowley asked, "You know why, don't you?" Needham replied, "Yes. . . . Because of the run-in with the mate." Crowley said "Yeah" and Needham responded, "Well, that's okay, no sweat . . . Don't want to buck the system."

Under the facts set forth above, there is no basis for concluding that Respondent was motivated by antiunion considerations in terminating Needham. It is accordingly found that the General Counsel has not proven the allegations in the complaint that Respondent violated Section 8(a)(3) or (1) of the Act in discharging Needham.

CONCLUSIONS OF LAW

On the basis of the facts set forth above and the entire record, I find that a preponderance of the evidence does not establish that Respondent violated Section 8(a)(1) or (3) of the Act. There is accordingly issued the following:

RECOMMENDED ORDER

It is hereby ordered that the complaint herein be, and it hereby is, dismissed.