

**American Federation of Unions Local 102, a/w National American Federation of Unions, Inc. (Quinco, Inc.) and Evans J. Alleman.** Case 15-CB-1372

September 11, 1973

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On May 16, 1973, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. By letter of June 6, 1973, Respondent filed with the Board purported exceptions to the Administrative Law Judge's Decision and by letter dated June 11, 1973, the Associate Executive Secretary of the Board informed Respondent that additional copies of its exceptions were necessary. On June 15, 1973, counsel for General Counsel filed and served on the parties a motion to reject Respondent's exceptions, contending that the purported exceptions did not comply with Section 102.46 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended. Thereafter on June 27, 1973, Respondent filed such additional copies of its exceptions with the Board as previously requested. Although duly served with General Counsel's motion, Respondent has filed no response thereto.

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

Section 102.46(b) of the Board's current Rules and Regulations establishes the standards for the proper filing of exceptions. These are that:

Each exception (1) shall set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken; (2) shall identify that part of the Administrative Law Judge's Decision to which objection is made; (3) shall designate by precise citation of page the portions of the record relied on; and (4) shall state the grounds for the exceptions and shall include the citation of authorities unless set forth in a supporting brief. Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

Respondent's statement of exceptions constitutes no more than a general assertion that the Administrative Law Judge's Decision is contrary to the law and evidence of the case and thus that his conclusions are erroneous. In its statement, Respondent did not advance any grounds to support its assertions of error,

either by way of citation of authorities, which could have been but were not supplied in any supporting brief, or by citation to designated parts of the record. Nor did Respondent specifically identify the portions of the said Decision which Respondent claimed were erroneous. Since Respondent set forth no legal or factual theory on which it relied in its contention that the Administrative Law Judge had erred in his conclusions and, since Respondent has failed to file a response of any kind to General Counsel's motion to strike the exceptions, we shall grant such motion. Accordingly, we shall reject and strike the above document filed by Respondent.<sup>1</sup> As no exceptions have been filed to the Administrative Law Judge's substantive Findings of Fact and Conclusions of Law, we hereby adopt his findings and conclusions *pro forma*.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Board adopts as its Order the recommended Order of the Administrative Law Judge and orders that Respondent, American Federation of Unions Local 102, a/w National American Federation of Unions, Inc., its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

<sup>1</sup> *Carbona Mining Corporation*, 198 NLRB No. 52, *Hunter Metal Industries, Inc.*, 155 NLRB 430, cf. *Swain Manufacturing Company*, 201 NLRB No. 116

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This case was tried at Baton Rouge, Louisiana, on April 17, 1973, pursuant to a charge filed on January 23, 1973, and a complaint, issued by the Regional Director for Region 15, on March 5, 1973, alleging that American Federation of Unions Local 102, a/w National American Federation of Unions, Inc., herein referred to as the Union or Respondent, engaged in a violation of Section 8(b)(2) and a derivative violation of Section 8(b)(1)(A) of the Act by attempting to cause and causing Quinco, Inc., the Employer herein, to discharge Evans J. Alleman under circumstances violative of Section 8(a)(3) of the Act. Respondent's answer admitted certain allegations of the complaint, but denied the commission of any unfair labor practices. After the close of the hearing, briefs were filed by the General Counsel and the Respondent.

Upon the entire record in this proceeding, including my observation of the witnesses and their demeanor, and upon consideration of the briefs, I make the following:

## FINDINGS OF FACT

## I THE BUSINESS OF THE EMPLOYER

The Employer herein is a Louisiana corporation with a place of business in Baton Rouge, Louisiana, where it is engaged primarily in construction and maintenance operations. During the 12-month period preceding issuance of the complaint, a representative period, the Employer purchased goods and materials shipped directly from points located outside the State of Louisiana of a value in excess of \$50,000.

The complaint alleges, the Respondent conceded at the hearing, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II THE STATUS OF THE RESPONDENT

The complaint alleges, the answer admits, and I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.<sup>1</sup>

## III THE UNFAIR LABOR PRACTICES

## A. Background

At all times material, Quinco, Inc., and Respondent Local 102, were signatory to collective-bargaining agreements, including a contract covering a project known as the Triad job located in Donaldsonville, Louisiana. That agreement contained a union-security provision requiring covered employees to maintain membership in good standing as a condition of employment.

Evans J. Alleman, the Charging Party herein, sometime during the fall of 1971 sought and subsequently obtained membership in Respondent Union. Pursuant to a hiring arrangement between Quinco and the Union, the latter referred Alleman for employment. He was hired by Quinco in March 1972 and assigned, as a millwright, on the Triad project, where he continued to work until his termination on January 19, 1973.

During the entirety of his employment, Alleman satisfied all financial obligations to the Union, and, except as related below, maintained his membership in good standing. However, in the late summer of 1972, internal union charges were filed against Alleman based upon his alleged misconduct during a union meeting. After due notice, a trial board of Respondent convened on September 6, 1972, to consider the charges. The charges were sustained and Alleman, by the Union's letter of September 29, 1972, was informed to that effect. Thereafter, at a regular membership meeting of the Respondent, in October 1972,<sup>2</sup> the discipline imposed upon Alleman was announced, voted on, and approved by

members in attendance. As a result, Alleman was either expelled or suspended indefinitely from membership in Respondent.<sup>3</sup> Alleman appealed this decision to the International, which, on December 13 considered the issue, but, by letter dated December 21, affirmed the action of the trial board.

On January 19, 1973, shortly before lunch, Alleman was summoned to the office of Quinco's superintendent on the Triad job, a Mr. Shultz, who informed Alleman that he had been instructed to terminate him at the close of the day, because Alleman was no longer a member of the Union. Shultz told Alleman that he hated to do that because Alleman was one of the best men he had. Shultz gave a termination slip to Alleman which stated "No longer a member of union is reason for dismissal." He declined; however, to sign it, instead, directing Alleman to go to the Employer's Baton Rouge office to obtain the necessary signature. That same afternoon, Alleman went to the Quinco office in Baton Rouge and met Jack Erwin, the Employer's general manager, who echoed Shultz both as to Alleman's good employment record and the Company's reluctance to let him go. With that interview, Alleman's employment ceased.

## B. Concluding Findings

Section 8(b)(2) of the Act makes it an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

The sole issue in this case is whether Alleman's discharge was caused by the Union within the meaning of Section 8(b)(2). Thus, the General Counsel alleges no illegality with respect to the internal disciplinary process which culminated in "suspension" of Alleman's union membership, nor is it claimed that imposition of this penalty was unlawful.<sup>4</sup> By way of defense, Respondent does not contend that Alleman's breach of internal union rules rested upon a failure to meet financial obligations to Local 102, nor does it argue that Alleman's alleged misconduct was so egregious as to fit within that narrow category of cases where the Board has permitted union interference with employment.<sup>5</sup> Thus, as stipulated by counsel for the General Counsel and Respondent, during the early stages of the trial, the allegations of the instant complaint turn solely upon the factual

<sup>3</sup> Alleman testified that he was informed that he had been expelled. Respondent's president, Urvin J. Pfister, and its business agent, Herndon B. Wederstrandt, indicated that he was merely suspended. Although I note that no foundation was laid as to whether Wederstrandt or Pfister had direct knowledge of what Alleman was told at the October membership meetings, I deem any apparent conflict arising from this testimony to be immaterial. The fact is that Alleman's membership had ceased, any suspension was of indefinite duration, and he was afforded no basis for expecting any future change in status.

<sup>4</sup> Cf. *NLRB v Industrial Union of Marine & Shipbuilding Workers and its Local 22*, 391 U.S. 418 (1968), *Cannery Workers Union of the Pacific a/w the Seafarers International Union of North America, AFL-CIO (Van Camp Sea Food Co., Inc.)*, 159 NLRB 843.

<sup>5</sup> Cf. *Philadelphia Typographical Union 2 (Triangle Publications)*, 189 NLRB 829.

<sup>1</sup> The complaint alleges, the answer admits, and I find that "Hugh J. Pfister," President of Local 102, and "H.B. Wederstrandt" [sic], Business Agent of that Local, are agents of Respondent. The General Counsel's request that "Moise Meyers," assistant business agent, be deleted from para. 5 of the complaint is hereby granted.

<sup>2</sup> All dates refer to 1972 unless otherwise indicated.

question of whether or not Respondent caused the termination of Alleman.

Resolution of this issue turns on an assessment of conflicting testimony concerning the predischarge communications between the Union and the Company with respect to Alleman. With the exception of a single letter dated October 20, 1972, the record is barren of documented correspondence between them during the period preceding the discharge. That letter was signed by Herndon Wederstrandt, as business agent for Local 102, addressed to Charles Quin, the Respondent's president and owner, and stated that Alleman was "... suspended from the Union as of October 20, 1972." The letter went on to state:

All dues and Assessments effective this date will no [sic] be deducted from his [Alleman's] check any longer. The Union will no longer accept the six percent (6%) benefits.

The foregoing throws no light whatever on the question of whether Alleman's discharge was pursuant to the Union's request. Other than the perfectly legitimate request for the termination of checkoff, it contains no reference to Alleman's tenure of employment, nor does it specifically refer to the collective-bargaining agreement or the Union-security clause contained therein.

As for oral contacts between the Respondent and the Employer, Charles Quin, Herndon Wederstrandt, Respondent's business agent, and Urvin J. Pfister, Respondent's president, agreed that Respondent did not at any time "demand" or invoke pressure to cause the discharge of Alleman. However, there is a conflict between Quin, on the one hand, and Wederstrandt and Pfister, on the other, as to whether a "request" for the discharge had been made. Wederstrandt and Pfister testified that at no time did Respondent request that Quin take any action against Alleman.

Quin, however, testified that in the period following his receipt of the above-described letter, either Pfister or Wederstrandt, "no less than a half dozen times . . ." requested that Quin honor the working agreement; specifically, the union-security clause, and terminate Alleman. Quin went on to testify that Alleman was an extremely capable craftsman, who Quin "desperately" wished to remain on the Triad job. He explains his delay in effecting the discharge until January 19, 1973, as an attempt to postpone the inevitable and to hold on to Alleman as long as possible. Quin, according to his testimony, did finally elect to discharge Alleman, after the Company received three telephone calls in one day, in which Wederstrandt and Pfister again requested that Quin honor the union-security provision of the contract and terminate Alleman.

I credit Quin over Pfister and Wederstrandt. His testimony was direct and he impressed me with his efforts, from the stand, officiously to assure that certain of his statements were clarified so as to avoid possible improper interpretations, which might have been unfairly prejudicial to the Union.<sup>6</sup> Furthermore, his testimony as to Union requests is

far more consistent with the probabilities than the denials thereof.

In this latter regard I note that there is no dispute as to Alleman's work capabilities, and, indeed Wederstrandt, conceded as to the scarcity of skilled millwrights in the local labor market. Furthermore, all agree that the relationship between Quinco and Respondent has been amicable.

Against this background, it seems highly unlikely that Quin would have acted unilaterally and terminated a good employee, who he made every effort to retain, and who would be difficult to replace, were it not for union requests for the discharge. The testimony of Pfister and Wederstrandt, would have me believe that Quin, out of ignorance of his obligations under the union-security clause, took it upon himself to discharge Alleman, and then, to cover this error, was willing to risk his amicable relationship with Respondent, by giving perjured testimony hostile to the latter's cause.<sup>7</sup> Not only do I deem this as highly improbable, but in addition to my observation of Quin, and my satisfaction that he was a truthful witness, it is my opinion that his account receives further support from the delay of about 3 months between the suspension of Alleman and his final decision to terminate this highly desirable employee. I attribute this delay to Quin's resistance of the Union's requests, until the point in time when they intensified to a degree, which would clearly suggest to Quin that Respondent meant business.<sup>8</sup>

Accordingly, I find that Respondent requested the discharge of Alleman, under the union-security agreement then in effect, for reasons other than his nonpayment of initiation fees or dues. In doing so, Respondent caused<sup>9</sup>

within his authority Wederstrandt was evasive and hardly a forthright witness. His attempt to paint himself as both having no interest in denying Alleman a job and as a man of fairness in dealing with all working men aroused curiosity when considered against his failure to intercede on Alleman's behalf either upon receipt of a copy of the Quinco termination slip or upon his receipt of Quin's letter, dated January 26, 1973, shortly after the discharge, wherein the Company clearly indicated its willingness to reinstatement Alleman.

<sup>7</sup> Had this been the case, I am satisfied that Quin would have taken the obviously safer course of rectifying his error by reinstating Alleman immediately upon service of the unfair labor practice charge. That charge was served on Quinco only a few working days after the discharge and when any back-pay claim would have been minimal. It is noted that on receipt of a copy of the charge, Quin consulted an attorney and sent the Union a letter indicating that it had no objection to continued employment of Alleman. It does not appear that the Union made any reply to that letter.

<sup>8</sup> Also significant is Wederstrandt's inability to explain why a copy of Alleman's termination slip had been sent to him by Quinco in an envelope addressed to him and marked "personal." A highly possible explanation of this could be that Quinco had thereby communicated to Wederstrandt its compliance with Respondent's requests.

<sup>9</sup> Having found that Respondent repeatedly requested Quinco to discharge Alleman under the contractual union security provision, I deem it insignificant that Quinco was not otherwise pressured or threatened to induce such action. Although the Board has held that Section 8(b)(2) does not impute to a labor organization responsibility for the unilateral action of Employers, those cases have been limited to situations where the employer was not bound, either by contract or other arrangement to employ only union members in good standing. See, e.g. *Local 626, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Food Fair Stores, Inc.)*, 142 NLRB 1238; *Local 60, International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO (Gouverneur Iron Works, Inc.)*, 149 NLRB 316; *Teamsters, Chauffeurs Helpers and Taxicab Drivers Local 327 Etc (Breeko Industries)*, 167 NLRB 998. But where, as here, the employer is contractually obligated to employ only those who maintain membership in good standing,

*Continued*

<sup>6</sup> I was not impressed with the demeanor of Pfister and Wederstrandt. The testimony of Pfister was marked by what I consider to be either an evasiveness or a lack of perception as to union matters which would appear to be

Quinco to discriminate against Alleman in violation of Section 8(a)(3) of the Act, and thereby violated Section 8(a)(1)(A) and (2) of the Act. I so find.

#### CONCLUSIONS OF LAW

1. American Federation of Unions Local 102, a/w National American Federation of Unions, Inc., is a labor organization within the meaning of Section 2(5) and 8(b) of the Act.

2. Quinco, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By attempting to cause, and causing the Employer, Quinco, Inc., to discriminate against Evans J. Alleman, an employee thereof, in violation of Section 8(a)(3) of the Act, Respondent American Federation of Unions Local 102, a/w National American Federation of Unions, Inc., has engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

4. The above described unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action, as set forth below, designed to effectuate the policies of the Act.

I have found that Respondent unlawfully sought and obtained the discharge of Evans J. Alleman by Quinco, Inc. Therefor, I shall recommend that Respondent be required to notify said Employer that it has no objection to the continued employment of Alleman, and that Respondent make him whole for any loss of pay he may have suffered by payment to him of a sum of money equal to that which he would have earned as an employee of Quinco between January 19, 1973, and a date 5 days after notification by the Respondent to Quinco, as provided above, less his net earnings during said period. Said payment to be computed on a quarterly basis in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, and with interest as required by *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, I make the following recommended:

#### ORDER <sup>10</sup>

Respondent, American Federation of Unions Local 102, a/w National American Federation of Unions, Inc., its offi-

a mere request by a union which results in discharge, constitutes the causing of discrimination contemplated by Section 8(b)(2) of the Act. See *Operating Engineers, Local 101 (Sub Grade Engineering Co.)*, 93 NLRB 406; *Excel Merchandise Co Inc.*, 116 NLRB 1581; *Milkdrivers and Dairy Employees Union, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Emmadine Farms, Inc.)*, 138 NLRB 1098, 1113, *Local 118, IBT (St Joe Paper Company)*, 135 NLRB 1340, *Millwright Local Union No 1311 of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (American Riggers, Inc.)*, 193 NLRB 995

cers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Quinco, Inc., or any other employer, to discriminate against Evans J. Alleman, or any other employee, for nonmembership in American Federation of Unions Local 102, a/w National American Federation of Unions, Inc., for reasons other than the failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in said Union.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Notify Quinco, Inc., in writing that it has no objection to the employment of Evans J. Alleman, and furnish said employee a copy of said notification.

(b) Make Evans J. Alleman whole for any loss of pay he may have suffered as a result of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Post at its offices and at all other places where it customarily posts notices to its members copies of the attached notice marked "Appendix."<sup>11</sup> Immediately upon receipt of said notice, on forms to be provided by the Regional Director for Region 15, the Respondent shall cause the copies to be signed by one of its authorized representatives and posted, the posted copies to be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>10</sup> In the event no exceptions are filed as provided by Sec 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

<sup>11</sup> In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

#### APPENDIX

##### NOTICE TO MEMBERS

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

WE WILL NOT cause or attempt to cause Quinco, Inc., or any other employer, to discriminate against Evans J. Alleman, or any other employee because not members of the Union for reasons other than their failure to pay

## DECISIONS OF NATIONAL LABOR RELATIONS BOARD

initiation fees or periodic, uniformly required dues.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL notify Quinco, Inc., in writing, that we have no objection to the reinstatement of Evans J. Alleman and we shall furnish said employee a copy of such notification.

WE WILL make whole Evans J. Alleman for any loss of pay he may have suffered by reason of the discrimination against him.

AMERICAN FEDERATION OF  
UNIONS LOCAL 102, a/w NA-  
TIONAL AMERICAN FEDERATION

OF UNIONS, INC  
(Labor Organization)

Dated                      By                      (Representative)                      (Title)

This is an official notice and must not be defaced by anyone.

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. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Plaza Tower, Suite 2700, 1001 Howard Avenue, New Orleans, Louisiana 70113, Telephone 504-527-6361.