

AMF Voit, Inc., a subsidiary of AMF Incorporated and United Rubber, Cork, Linoleum and Plastic Workers of America, Local Union No. 639, AFL-CIO-CLC. Cases 21-CA-11147, 21-CA-11482, 21-CA-11657, 21-CA-11778-2, and 21-CA-12134

March 26, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS JENKINS
AND WALTHER

On November 7, 1975, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, the Acting General Counsel filed exceptions 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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,¹ findings,² and conclusions³ of the Administrative Law Judge and to adopt his recommended Order.

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

¹ In par. 10 of the section of the Administrative Law Judge's Decision entitled "The June 1972 'walking time' issue," the Administrative Law Judge twice inadvertently used the name "Ramsey" when he clearly meant "Barlow." The name "Ramsey" should be replaced by "Barlow" where it appears in par. 10. In par. 13 of the same section, the Administrative Law Judge inadvertently stated, "Moore then reviewed Moore's entire record" The sentence should read, "Moore then reviewed Love's entire record"

² At the hearing, General Counsel sought to introduce evidence of unfair labor practices engaged in by Respondent which did not involve employee Love. The Administrative Law Judge rejected the General Counsel's offer of evidence on the ground that the evidence was irrelevant. General Counsel has accepted to the Administrative Law Judge's rejection of this evidence.

Upon a close reading of the record, we agree that the evidence of other unfair labor practices was properly excluded on grounds of irrelevancy and find that its exclusion was in any event not prejudicial to the complaining party.

³ In adopting the Decision of the Administrative Law Judge, Chairman Murphy finds it unnecessary to rely on the statements of the Administrative Law Judge in fn. 10 thereof concerning the Board's Decisions in *Electronic Reproduction Service Corporation*; *Madison Square Offset Company, Inc.* and *Xerographic Reproduction Center, Inc.*, 213 NLRB 758 (1974), *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), and other matters cited in that footnote, as the same result would be reached here under any view of those cases.

Member Jenkins in agreeing with the Administrative Law Judge that the complaint herein should be dismissed does not adopt his characterization of the arbitration proceeding or his reliance on *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: This case was heard at Los Angeles, California, on July 23, 24, and 25, 1975. The complaint, as amended, is based on a number of charges filed by United Rubber, Cork, Linoleum and Plastic Workers of America, Local Union No. 639, AFL-CIO-CLC, herein called the Union,¹ and alleges that AMF Voit, Inc., a subsidiary of AMF Incorporated, herein called Respondent, engaged in numerous violations of Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended. One of the allegations of the complaint, as amended, was that Respondent violated Section 8(a)(3) and (1) of the Act by discharging its employee Lee Love because Love engaged in union or other protected concerted activities. On May 27, 1975, the Regional Director for Region 21 approved an informal unilateral settlement agreement, signed by an attorney for Respondent, which resolved all the issues raised in the complaint except for those relating to the discharge of Lee Love.²

ISSUES

Love repeatedly made certain entries on his timecards with regard to his claim that Respondent owed him certain extra pay. Respondent discharged Love in part because he made those entries. The primary issues are:

1. Whether Love was engaging in union or concerted protected activity when he made those entries.
2. Whether an arbitration award which upheld Love's discharge should be honored.

All parties were given full opportunity to participate, to produce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Extensive briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record³ of the case, and from my observation of the witnesses and their demeanor, I make the following:

¹ The chronology of the charges, complaint, and amendments is as follows: the charge and amended charge in Case 21-CA-11147 were filed on July 31, 1972, and January 3, 1974, respectively; the charge in Case 21-CA-11482 was filed on January 9, 1973; the charge in Case 21-CA-11657 was filed on March 21, 1973; the charge and amended charge in Case 21-CA-11778-2 were filed on May 3 and January 3, 1974, respectively; the charge and amended charge in Case 21-CA-12134 were filed on September 17, 1973, and January 3, 1974, respectively; an order consolidating cases, consolidated complaint and notice of hearing issued on January 4, 1974; and an amendment, a second amendment, and a third amendment to the consolidated complaint issued on April 11 and July 3, 1974, and March 24, 1975, respectively.

² The Charging Party did not sign the settlement agreement, and the time to appeal to the General Counsel has passed without an appeal being filed.

³ Errors in the transcript have been noted and corrected.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a corporation engaged in the manufacture and sale of sporting goods and related products. It maintains facilities at 3801 South Harbor Boulevard, Santa Ana, California. Respondent annually sells and ships goods valued in excess of \$50,000 directly to customers located outside of California and annually purchases and receives goods valued in excess of \$50,000 directly from suppliers located outside of California. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Events*

1. Background

Respondent manufactures athletic equipment, including basketballs, at its Santa Ana, California, facility. Lee Love was employed by Respondent from March 1953 to June 28, 1972. During the last 4 years of his employment he worked as a profile mold operator on the third shift from 11 p.m. to 7 a.m. His duties required him to go to a designated area to obtain a rack containing 65 bladders (membranes in the shape of basketballs which were used as forms for making the balls), to bring the bladders to mold machines in which the basketballs were "cured," to operate the machines, and to place the completed basketballs in a bin. Love as well as other employees were paid on a piece-rate for "standard work." "Standard work" was all work which was done under normal operating conditions as computed by use of a number of timemetry criteria. In addition to or as a substitute for the "standard work" piece-work payment, an "off standard" method of payment was used where an employee could not produce his normal work because a mold machine was broken, there was a change in the ingredients used, or for other reasons there was a deviation from the normal routine which caused loss of productive time. If the deviation from the normal routine was 3 percent or less, the "standard work" rather than the "off standard" criteria was used. Where the deviation was more than 3 percent, an average was taken based on the employee's prior "on standard" week's pay and he was paid 92-1/2 percent of his average "on standard" pay for the time when he was "off standard." After each shift, Love and other employees filled out timecards and tally sheets from which their pay could be determined.

For many years Respondent and the Union have been parties to successive collective-bargaining agreements. Those agreements contained a grievance procedure which culminated in binding arbitration. The agreement, at the

time of Love's discharge, was effective by its terms from March 27, 1972, through March 28, 1975. Article XII M of that contract provided:

Each incentive employee shall fill out a time and tally report showing among other things the incentive standard number, the production count, the product, hours worked on incentive standards, hours worked off standard, etc., to the nearest tenth (.10) of an hour, and turned in daily to their Foreman. Any error in the time card will be reported to and corrected by the employee. In the event the employee refuses to change the time card, the supervisor will make the necessary corrections in the presence of the employee. Such actions will be subject to the grievance procedure.

There were a number of discussions between representatives of Respondent and the Union concerning what entries an employee could make on his timecard. That issue was discussed in both the 1969 and 1972 negotiations. In the 1972 negotiations, the Union's International representative, McCarty, contended that the employees were entitled to make timecard entries on disputed matters repeatedly because such entries were needed to preserve the records. Respondent's contention as voiced by its labor relations manager, Bill F. Moore, at the 1972 negotiations, as well as at other negotiations and meetings with Union President Cosby and other union representatives such as McCarty, Seller, and Embry, was as follows: where an employee put down more hours than he worked, or claimed unwarranted downtime on his timecard, the employee was engaging in a falsification of records; when there was dispute, Respondent allowed the claimant to enter his claim on the record and then file a grievance, but the employee was not allowed to continue to put down information that was incorrect or contractually improper; that, when an improper entry was repeatedly made, it was a harassment of the foremen because under the contract the foreman could not change the card without personally notifying the employee, and a foreman with 30 or 40 employees could spend his full day taking the timecards back to the employees; that, when there was a repeated type of timecard problem, it was to be resolved through the grievance procedure and not through daily entries on the timecard; that daily entries on the timecard were not needed to preserve the records because the employees had many other ways of maintaining records and, if the payroll records did not contain enough information, the Company would have no way of contesting the employee's claim;⁴ and that, under the contract, the right of an employee to change an error in the timecard related to a situation where a wrong standard number was used, there was an incorrect time value, or there was a mistake in such a matter as computation.

Love was well aware of the Company's position with regard to entries on timecards. On December 9, 1969 (2-1/2 years before Love's discharge), Love was given a written reprimand as follows:

⁴ Respondent's labor relations manager, Moore, also credibly testified that the addition of "walking time" on the timecards would not help the payroll department in making retroactive payments if it were found that such payments were necessary.

You are hereby officially reprimanded for violation of Company rule #4, "Insubordination," and Company rule #5, "Falsifying personnel records or Company records including production records" in connection with your time card of December 6th.

Specifically on December 5, 1969, in a meeting with two Union representatives it was explained to you that the half hour off standard you claimed on your time cards for December 4 and 5 would not be allowed, because this work was in your current piece work standard. Upon your refusal to change your time cards, they were changed by the foremen in the presence of yourself and the two union representatives. It was also explained to you that any type protests should be handled through the grievance procedure.

Although you were verbally warned regarding your refusal to correctly complete your time card then on 12/5/69 you repeated this same conduct the following day, 12/6/69.

Therefore you leave us no other alternative but to give you this written reprimand and advise you that any future violation of Company rules, instructions, specifications, and/or standard operating procedures will subject you to further disciplinary action, including suspension and/or discharge.

For many years Respondent has maintained company rules which have been posted in the plant. Under these rules, an employee may be immediately discharged for altering a timecard, insubordination, or falsifying company records including production records. In addition, an employee is subject to disciplinary action which includes discharge where he has had multiple reprimands during a 12-month period.

2. The June 1972 "walking time" issue

James Barlow became foreman of the third-shift mold operation on June 12, 1972. As foreman, he was Love's supervisor.

Before the middle of June 1972, Respondent employed a serviceman who brought materials such as bladders to the designated area where the moldmen were to pick them up. In mid-June, the department the serviceman worked in was shut down and that serviceman was no longer available to move the materials. As a result, the moldmen had to walk to a different area, called the big dip, to pick up their racks of bladders. The timestudy criteria on which Love's "standard work" was computed was based on the assumption that Love would have to walk a minimum of 117 feet and a maximum of 183 feet to obtain the racks of bladders. When the designated area to obtain the bladders was changed, Love was required to walk a minimum of 193 feet and a maximum of 283 feet to obtain the bladders.

Shortly after the change in designated area was made, Love spoke to some of the other moldmen, including Willie Ramsey. They discussed what should be done. Love said that he would seek a way by talking to Wilbert Embry, the Union's vice president and chief steward.

On the night of June 20-21, 1972, Love, Embry, and

some of the other moldmen spoke to Foreman James Barlow. Embry asked Barlow if the moldmen would be allowed to take downtime or extra time because they had to go further to pick up their materials. Barlow replied that he didn't know. Embry said that the moldmen were going to take downtime and they should be paid for it. Barlow said that he didn't know what ground he stood on but that they should go ahead and take it and that he would check with Melville and see if it was proper or not. He told them to put it on their timecards and that if it was not allowable, he would have to have it removed. Embry said that if it was removed, he was going to write a grievance on it.

At the end of that shift, a number of the moldmen claimed extra pay for "walking time." Love wrote on his timecard "walking to the big dip to pick up racks of bladders." He also put down "30 minutes a night" for lost time for going to get the racks. He testified that he made these entries because he felt that was the only way he would be paid for it and that was the only way he could show a receipt or preserve a record of the time he spent walking the extra distance. He also testified that it would not mean anything in the office if he kept a note in a notebook.

The next day, Barlow spoke to General Foreman Charles Melville and explained the problem to him. Melville said that he would check into it and that he would leave a note for Barlow. That night, June 21-22, 1972, Barlow received a note from Melville saying that the time was not allowable because it was within the standard allowance. Barlow then returned the timecards to the employees who had claimed "walking time." He told Love that the walking time was not a proper entry and that it couldn't be used because it was within standard. He asked Love to remove it and Love replied that he would not do so. Barlow then did remove it. He told Love not to put it on the timecard again.⁵ However, at the end of his shift on June 21-22, 1972, Love made the same entry on his timecard.

⁵ There is sharp conflict in the testimony of Love and Barlow in this regard. Barlow averred that he told Love not to put on the entry again. Love testified that Barlow did not tell him to stop making such entries on the timecard. Barlow's recollection of some of the events was not faultless. He had difficulty in recalling details concerning his statements to employees other than Love who made entries on the timecards. However, basically I was impressed with his candor and credibility. On the other hand, Love convinced me that he was not worthy of credence. Love had a long history of fully documented disciplinary measures against him. When questioned about those matters, he was so evasive and proclaimed such a total lack of memory that little weight can be given to any of his testimony. He testified that he did not remember ever being told not to put entries on his timecard that didn't belong there. The documentary evidence established that he had received a written warning (set forth above) concerning previous entries on his timecards. On another occasion he was given a 3-day disciplinary layoff without pay for misstating the number of balls that he had produced. Love testified that he could not remember receiving any disciplinary action except when he was fired. The record establishes a number of disciplinary actions against him. Love also testified that he did not remember any arbitration proceeding in which he was a grievant except for his firing. The documentary evidence establishes such an arbitration proceeding before his discharge. When pressed on these matters, Love testified that he did not remember anything other than when he was fired.

Joseph F. Gentile was the arbitrator who heard the case arising from the grievance filed on behalf of Love when Love was discharged. Gentile testified that at that arbitration hearing Love said that he wanted to preserve any grievance that he may or may not have had arising out of the walking time and that when they told him to stop doing it, he wasn't going to stop. Gentile also averred that Love testified that he did receive instructions from

Continued

On June 22, 1972, Embry brought a grievance concerning payment for walking time to the moldmen. Love and some of the others signed it. Embry submitted the grievance to Barlow. The grievance was dated June 22 and dated as being received by Foreman Barlow on June 23, 1972. An answer from General Foreman Melville dated June 28, 1972, was picked up by Embry on that day. The grievance was not pursued by the Union and it therefore expired at the end of the time limit. However, another grievance dealing with the subject of standards, which overlapped with the walking time matter, was processed. Eventually that standards grievance resulted in a restudy and a change in the prior standard. Respondent and the Union resolved about 200 standards grievances in 1972.

Love worked on the third shift on June 22-23, 1972. Barlow asked him to change his entry on June 21-22, Love refused and Barlow made the change. For the second time, Barlow told him not to put it on again, and once again Love made the entry at the end of his shift.

Love worked again on the third shift on June 23-24, 1972. June 24 was a Saturday which ended the pay week. Barlow asked Love to change the card for June 22-23, Love refused, and Barlow made the change. During that shift, Barlow told Love that he (Love) should not put the walking time on the timecard and that, if he did, Love's Friday pay would be held up for a week because the timecard would be turned in after Barlow left and there would not be an opportunity to change it. Barlow also told Love that if Love was going to make the entry that he should do it before Barlow left so that Barlow could strike it out and the card would not be held up over the weekend. Later during the shift, Love did make the entry and Barlow struck it out.

Love worked next on the night of June 26-27 and then again on June 27-28, 1972. On both those nights he made the same entries concerning walking time. Ramsey did not speak to Love about those timecards, but instead turned them over to General Foreman Charles Melville. Ramsey told Melville that he had received no cooperation from Love, that it was beyond his control, and that he was turning the matter over to Melville.

On June 28, 1972, Bill M. Moore, Respondent's labor

the Company not to make any entry on his timecard with respect to walking time.

Moldman Willie Ramsey testified that he made an entry for the walking time on his timecard for the first night and that Barlow scratched it out, but did not instruct him to refrain from making that entry again. Ramsey was not certain about the chronology and his testimony was somewhat confused, but he averred that there were two nights when he did not make any entries and either two or three after the first entry where he did make them. He averred that the second time he made the entry Barlow scratched it off and said that he (Barlow) preferred if they did not do it again. He also averred that, in a third conversation after he had made the entry, Barlow told him that he (Ramsey) could be fired for making that entry. It appears that this last conversation took place after Love had been discharged and that on July 3, 1972, Ramsey received a written warning for making the entries. Barlow did not recall the conversations with Ramsey. However, even if Ramsey is fully credited, I do not believe that Barlow's credibility is damaged with regard to his testimony that he told Love not to make the entry.

In sum, I credit Barlow's testimony that he did tell Love not to put the "walking time" on the timecard.

relations manager, received a phone call from Gordon Morrow of his office. Morrow said that plant supervision had approached him concerning a problem they were having with Love regarding repeated incorrect and improper entries on his timecard. Morrow said that supervision wanted to take discharge action because Love refused to comply with their instructions and because of his previous record of the same kind of offenses. Moore told Morrow to follow the normal practice, to suspend the employee, to conduct an investigation meeting, and to try to ascertain what the facts were and what discipline was warranted. The same day, Respondent sent a telegram to Love notifying him that he was suspended from work until further notice "for violation of plant rules #4 insubordination #5, falsifying company records specifically—time cards, and #20 multiple reprimands in a 12-month period."

On the following day, June 29, 1972, a meeting was held in Moore's office. In addition to Moore, Love, Union Vice President Embry, Factory Superintendent Caruso, General Foreman Charles Melville, and Gordon Morrow were present. They discussed the walking-time problem and Love denied having been told not to put the information on his timecard. Embry said that Love had promised him that he would not do those things any more and that he would start obeying the foreman's instructions. Embry told the group that there was a grievance on the matter that would take care of it and that they should let Love come back. Moore said that he did not think he was in a position to make a decision until he talked to Barlow, who was not present at the meeting. After the meeting, Embry spoke to Moore alone and asked that Love be reinstated because of Love's long service. Moore replied that he had not made any decision but that, if what Melville told him were substantiated by Barlow, he probably would have to take discharge action because of Love's long record. Moore also said that, if Barlow did not substantiate the charges, he would not have enough to justify the discharge in an arbitration.⁶

On June 29, 1972, Moore spoke to Barlow. Barlow told him that he had told Love not to enter the information on the timecard. Moore then reviewed Moore's entire record, which included a long list of disciplinary matters, and decided to discharge him. The same day, Moore sent Love a telegram notifying him that he was terminated effective June 28, 1972, due to violation of plant rules 4, 5, and 20 (insubordination, falsifying company records—specifically timecards—and multiple reprimands in a 12-month period).

Subsequently, a grievance was filed relating to Love's discharge. The grievance worked its way up through the grievance procedure which culminated in an arbitration

⁶ These findings are based on the credited testimony of Moore. Love testified that at this meeting he told Respondent that no one told him a grievance had been filed. Embry testified that after the meeting Moore told him that Moore did not feel that Respondent had a strong enough case to fire Love and that he (Moore) didn't want to go through an arbitration, but that they went over his head and there was nothing he could do about it. Embry also denied that Love ever promised him that he (Love) would obey orders of his foreman in the future. Where the testimony of Love and Embry differed from that of Moore, I credit Moore. As stated above, I do not believe that Love was a credible witness. Between Moore and Embry, I believe that Moore had the better memory.

B. Analysis and Conclusions

hearing and an opinion and award of Arbitrator Joseph F. Gentile dated January 22, 1973. The arbitrator found that the discharge was for just cause and denied the grievance. The arbitrator issued a 13-page opinion detailing the reasons for his award.⁷ The arbitrator's award noted that the parties indicated at the threshold of the hearing that the dispute was properly before the arbitrator for resolution. It also noted that the parties were afforded full opportunity to present testimony, introduce evidence, cross-examine witnesses, raise objections, and make arguments. The parties submitted posthearing briefs to the arbitrator and the arbitrator concluded that the grievant was fairly and fully represented by the Union. The arbitrator in his award made findings of fact that are basically consistent with those found above in the instant case. The arbitrator held in part:

The Union's chief argument against the insubordination charge was the inherent right of the Grievant to pursue his contractually protected benefits. There is no question that a Grievant can take appropriate action to insure his contractual rights; however, the vehicle under the applicable Agreement to accomplish this goal is the grievance procedure and not what he did, which amounted to "self-help." Though there may exist a substantive issue as to the IE Standards for "walking to the big dip," the resolution of the issue rests in the grievance procedure.

In denying the grievance, the arbitrator did not rely on Respondent's claim that Love had falsified company records. As to that matter, the arbitrator held:

Timecards are clearly Company records. The gravamen of "falsification" is the implication that the Grievant intended to deceive and mislead. In the instant case the Grievant was "open and notorious" about his actions even to the point of insubordination. The Arbitrator therefore concluded that the requisite intent to support a violation of Rule #5 was not established.

The arbitrator also reviewed the past conduct of Love, holding:

In this case, there were three previous suspensions and numerous verbal and written reprimands. The Grievant's length of service is a forceful mitigating factor; however, the nature of the service leaves much to be desired. The Grievant's attitude on the vacation problem, though no written reprimand was given, is symptomatic of a pattern of continued refusal to follow directions. To reinstate the grievant under the circumstances would add "fuel to the continuing fire."

⁷ There is no issue in the present case concerning the procedural regularity of the arbitration. The General Counsel admitted on the record that he was not contending there was any procedural irregularity or lack of due process involved in the arbitration and that the General Counsel's contention was limited to the allegation that the award was not consistent with the Act.

⁸ Love's prior history shows that he was fully aware of the availability of the grievance procedure. He had been on that route before and had followed it through to arbitration. The General Counsel does not contend that

Love repeatedly made entries on his timecards and tally sheets which indicated that he was due a half hour per day's pay for "walking time." The first entry he made of that nature was with the permission of his foreman. However, all the subsequent entries were in direct violation of his foreman's instructions. Love knew that Respondent's consistently applied policy forbade the repeated entries of disputed matters on the timecards. In December 1969, Love had been faced with an almost identical problem. The company records indicate that he was given a formal written reprimand because he repeated his claim for a half hour's downtime on his timecard after he had been warned the preceding day that such entries were not to be made and that any protest should be handled through the grievance procedure.⁸

The critical question is whether Love's actions in repeatedly entering the "walking time" on his timecards was an activity protected by the Act. If such actions were protected, then the fact that Love had been warned not to engage in them would be immaterial. In like manner, if such actions were protected, the fact that Respondent may have had other reasons to discharge him and that Love had been disciplined on many previous occasions for violating company policies would also be immaterial. If a motivating reason for discharge is unlawful, then the discharge violates the Act no matter what other reasons for discharge are present. *N.L.R.B. v. Whittin Machine Works*, 204 F.2d 883 (C.A. 1, 1953).⁹ There is no issue of pretext in this case. All parties agree that Love's entries on the timecard precipitated the discharge.

An employee engages in activity that is protected by the Act when he seeks to enforce a contractual right or utilizes a grievance procedure set forth in the contract. Such actions are extensions of the concerted activity giving rise to the contract itself. *Cray-Burke Company*, 208 NLRB 708 (1974); *Roadway Express, Inc.*, 217 NLRB No. 49 (1975); *Bunney Bros. Construction Company*, 139 NLRB 1516 (1975); *Trumbull Asphalt Co., Inc.*, 220 NLRB No. 120 (1975). It follows that actions which are intertwined with that procedure and are necessary for the effective use of the grievance procedure are also protected under the Act. However, all actions are not protected merely because they

any grievance in which Love was involved (other than his discharge) was handled in other than a fair and lawful manner. The parties stipulated that none of the matters resolved in the settlement agreement related directly to Love. The General Counsel was permitted to adduce any evidence he saw fit relating to grievances involving Love, but other than the one involving Love's discharge, no such evidence was offered. As established by Love's prior experience as well as his experiences relating to the matters raised in the instant case, Love did have access to the established grievance machinery. This is not a situation where employees must "speak for themselves as best they can" because of the absence of an established grievance procedure. Cf. *Trumbull Asphalt Co., Inc.*, 220 NLRB No. 120 (1975).

⁹ For this reason, I have considered the prior disciplinary action against Love only for two very limited purposes. The first was to set a background against which the credibility of certain remarks of Love in the instant case could be evaluated. The second was to determine whether Love knew of Respondent's policies concerning entries on timecards and knew of and had access to the grievance machinery.

tangentially affect some aspect of the grievance procedure.

Love engaged in protected activity when he claimed downtime under his interpretation of the contract. He also engaged in protected activity when he participated in the filing of the grievance relating to the "walking time." However, there is no contention that Love was discharged either for making the claim or for filing the grievance. The discharge was keyed to Love's repeated entries on the timecard which Love claimed to be necessary to "preserve the record," and because in his view his own notes would "not mean anything in the office." The timecards that Love kept entering his "walking time" on were company records. A company ordinarily has the right to maintain, and have its employees maintain, its own records in the manner that it sees fit. Circumstances may arise where a company's insistence that its records be maintained in a particular way unduly interfere with an employee's right to process a grievance. I do not believe, however, that this is the situation in the instant case. Love was claiming that he should be paid extra pay because he had to walk further than had been anticipated in the "work standard." His insistence on placing the one half hour per day "walking time" on his timecard would not help him in establishing whether his claim had merit. The entry was simply a statement of his claim. He continued making that claim on the timecard even after that claim was properly presented in the form of a grievance. There was nothing to prevent Love from making his own notes concerning the extra distance he had to walk or the amount of time he estimated that he lost. He could attempt to establish his claim through his own records. He had no right under the Act to insist that entries, which the Company felt did not properly belong there, be made on the company records. I do not believe that Love's actions in this regard were so necessary and directly related to his processing of his claim or grievance as to be protected under the Act. Neither were those actions protected under the terms of the contract. The contract did provide that employees had the right to correct errors on their timecards. However, Love did not correct errors. He made initial entries to support a disputed claim. The Company has consistently taken the position that the contract language did not give the right to an employee to make such entries and that interpretation of the contract appears reasonable. Whether or not the arbitrator who dismissed the grievance relating to Love's discharge had or did not have authority to interpret the Act, he did have special competence in interpreting the meaning of the contract terms. His award indicated, in effect, that Love did not have a contractual right to make those entries.

In *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955), the Board dismissed a complaint that alleged that an employer unlawfully refused to reinstate certain strikers. The dismissal was based on a finding that a prior arbitration award should be honored. The Board held:

... the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act. In these circumstances we believe that the desirable objective of encouraging the voluntary settlement of labor disputes

will best be served by our recognition of the arbitrators' award.

In the instant case, the arbitration proceedings were fair and regular and all parties had agreed to be bound. The General Counsel's sole contention in urging a finding that the arbitration award is not binding is that the award was not consistent with the Act. This contention would have merit only if Love's activities in repeatedly making the "walking time" entries on his timecard were protected by the Act. For the reasons set forth in detail above, I find that Love's activities in that regard were not so protected. It follows, and I find, that the arbitration award was not "clearly repugnant to the purposes and policies of the Act."¹⁰

In sum, I find that the arbitration award has fully and fairly disposed of the issues raised by Love's discharge in conformity with the criteria set forth in the Board's *Spielberg* doctrine, and I shall recommend that the complaint be dismissed in its entirety.¹¹

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

¹⁰ In cases of this nature the issue of "just cause" for discharge cannot be separated artificially from the issue of "unlawful discharge." The Board law, as it has currently evolved, is set forth in *Electronic Reproduction Service Corp.*, 213 NLRB 758 (1974), in which the Board held:

... such an artificial separation of the issues seems likely to lead, as it did herein, to piecemeal litigation in which a party may well prefer to have "two bites of the apple," trying part of the discharge case before the arbitrator but holding back evidence material to its claim so as to be able to pursue the matter in yet another proceeding before this Board.

The Board went on to hold that it would give full effect to arbitration awards dealing with discharge except when unusual circumstances were present which would demonstrate that there was a bona fide reason other than a mere desire on the part of one party to try the same set of facts before two forums, which caused a failure to introduce evidence relating to the unlawful discharge in the arbitration proceeding. There is no indication that there was any failure to introduce relevant evidence in the arbitration hearing and in any event there are no such unusual circumstances present in the instant case.

The Board has also held that it will not withhold action on a case in deference to the availability of a full grievance procedure under the doctrine set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971), where the allegations of the complaint, if proved, would strike "at the foundation of that grievance and arbitration mechanism." *Joseph T. Ryerson & Sons, Inc.*, 199 NLRB 461 (1972). Such a situation would arise where the complaint alleges such matters as discrimination against a union official for engaging in grievance handling. See also *Morrison-Knudsen Company, Inc.*, 213 NLRB 280 (1974); and *The Anthony Company, d/b/a El Dorado Club*, 220 NLRB No. 152 (1975). In the instant case we are concerned with the question of deferral to an existing arbitration award and not to future arbitration under a grievance procedure. Moreover, Love's actions in entering the "walking time" on his timecards were only peripherally related to the grievance process and Respondent's proscription of such actions did not amount to an attack on the foundation of the grievance and arbitration mechanism.

¹¹ In order to evaluate the General Counsel's contention that the award was repugnant to the Act, it has been necessary to make findings with regard to whether or not Love's activities with regard to his "walking time" entries were protected under the Act. As I have found that those activities were not so protected, I would recommend the dismissal of the complaint on the merits of the case even in the absence of the arbitration award.

3. Respondent has not violated the Act as alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER ¹²

The complaint is dismissed in its entirety.

¹² 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.