

**Local 307, International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America
(Jelco, Inc.) and Loni Rye.** Case 27-CB-1166

September 29, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

On July 28, 1978, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting 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 brief and has decided to affirm the rulings, findings, and conclusions 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 Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: This case was heard before me on March 16, 1978, at Gillette, Wyoming, pursuant to a complaint issued on December 16, 1977, by the Regional Director of the National Labor Relations Board for Region 27. The complaint is based upon a charge filed by Loni Rye, an individual, on November 2, 1977. As amended at the hearing, the complaint alleges that Local 307, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America¹ (herein called Respondent), has engaged in and is engaging in certain violations of Section 8(b)(1)(A) of the National Labor Relations Act.

Issues

The issue in this case is whether or not Respondent breached its duty of fair representation while it was investi-

¹ Respondent's name appears as corrected at the hearing.

gating and processing a grievance filed by Loni Rye, accusing her employer's working foreman, a union member, of having conditioned her continued employment upon giving either him or another management official sexual favors.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The General Counsel filed a brief, and Respondent filed proposed findings and conclusions. Both have been carefully considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Respondent admits that Jelco, Inc. (which has since merged with W. H. Kibbie Company), was at all times material a Utah corporation engaged as a contractor in Gillette, Wyoming in the building and construction industry. During the course and conduct of its operations, the Employer annually purchases and receives goods and materials valued in excess of \$50,000 directly from points and places outside Wyoming. Accordingly, Respondent admits, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all times material it has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Employer was the general contractor in the construction of a large fossil fuel generation plant at Wyodak Station, Wyoming. Its project manager was Rex Radford. Under him was an assistant project manager and four superintendents over specific disciplines. Jerry Bradley was the superintendent over civil crafts, including work normally falling within the jurisdiction of Respondent. Reporting to Bradley was Teamsters Working Foreman Don Hullinger.

Respondent denies that Hullinger, at material times, was a supervisor within the meaning of Section 2(11) of the Act. Radford, however, testified that Hullinger had the authority to use a certain amount of independent judgment. Based on his testimony it appears likely that Hullinger indeed was a supervisor within the meaning of the Act. In this regard, it appears Respondent's bargaining unit members had the principal job of providing transportation and similar support to other construction crafts within the project. Thus, the Teamsters foreman acts as a dispatcher providing these crafts with various driving and transportation services. It is his responsibility to keep up with the demands made by the foremen of those crafts. Moreover, the Teamsters foreman may be called upon to evaluate various priorities and to

make decisions in the face of conflicting demands. His choice of equipment is usually dictated by the need of the craft involved, and he may also choose drivers based upon their abilities. Often, however, these choices are limited because of the various skills of the drivers involved. Moreover, it is his job to make certain that the Employer is following the Teamsters collective-bargaining contract.

Radford, and Bradley as well, testified that the Teamsters foreman does not have the authority or responsibility to hire or fire, but because the foreman is the closest to the work force he is knowledgeable about employees' skills and abilities. Thus, he is one of the persons consulted regarding manpower needs, including both expansions and reductions of the work force. When a layoff is imminent, the Teamsters foreman is often consulted about which employee should be laid off and which employee should be kept. It appears to me, therefore, that the Teamsters foreman both exercises a sufficient amount of independent judgment regarding the assignment of personnel within the project and has the power to recommend effectively the layoff of various employees. Accordingly, I conclude that Hullinger, at material times, was a supervisor within the meaning of Section 2(11) of the Act.

Prior to his becoming the Teamsters foreman, Hullinger was Respondent's job steward. When he became the foreman, he was succeeded as steward by Dave Daniels. It is not clear when that change occurred. Respondent's business agent in charge of the Wyodak Station project was Jesse James, who is officed in Casper. His superior is Secretary-Treasurer Johnny Spears, who is officed at the Union's headquarters in Cheyenne.

B. *Events Leading to the Layoff*

Rye is a young woman apparently in her early twenties, who has lived in Gillette since 1975. She has two children who live with her parents in Kentucky. She obtained employment with Jelco in late May 1977 after having been referred for employment by Respondent through its hiring hall. She had signed its out-of-work list approximately a year beforehand, paid a fee, and waited for referrals. Her employment at Jelco began in May and ended September 21. Her principal job at Jelco was to drive a pickup truck around the project at Hullinger's direction. One of her jobs included the delivery of drinking water to the various crafts. She also transported individuals about the site. There were occasions, however, when she was asked to drive a flatbed truck for the carpenters. On two occasions she made round trips to Hulett, 60 or 70 miles from Gillette, hauling lumber. Despite that assignment, it is clear her principal job was to drive the pickup truck.

It is undisputed that during late 1977 the construction project was nearing completion and the Employer was in the process of reducing the size of its work force. It appears, at the peak of employment, Respondent employed approximately 21 Teamsters at the site. As of September 21, the date Rye was laid off, there were only six left. In the attachment to General Counsel's Exhibit 4, it appears that during the month of September, for all crafts, 24 employees, including Rye, were laid off in reductions in force. Moreover,

there had been four Teamsters layoffs for reduction in force in June, July, and August.²

Rye was aware of the possibility of being laid off. On a Wednesday afternoon in early August, Hullinger told her a layoff was about to occur, but told her she would not be laid off because employee Krizak had volunteered to take the layoff. Thus, she was aware that layoffs were coming. Later in August she was hospitalized for a week; on the Tuesday after she returned to duty she had another conversation with Hullinger. He advised her of another possible layoff the following Friday and told her it was a tossup between her and Karen (Woodard), another woman in the bargaining unit. However, no layoff occurred that Friday; Woodard was not actually laid off until September 9. Several days before Woodard's layoff Rye had another conversation with Hullinger. During that conversation she says he told her all the other Teamsters did him favors and if she did not do so she would not have a job. He said Karen had offered to go over to her house with him. Nonetheless, it was Woodard, not Rye, who was laid off.

It appears that Woodard had less seniority than Rye, although under article 22 of the collective-bargaining agreement seniority is not a factor with regard to selection of employees for layoff. Article 22 provides, with regard to layoffs, "When it becomes necessary to reduce the work force the employee with less qualification will be laid off first. It shall be the prerogative of the Company to judge qualifications."

One evening after work in mid-September, apparently after Woodard's layoff, Rye was having a cocktail at the Sands Bar in Gillette with a group of Jelco employees, including Richard Nicholas. She says it was common for Jelco employees to go to that bar after work. Hullinger later joined them. Rye appears to have asked him whether or not the next layoff would affect her. He replied, according to her, that if she wished to keep her job she "would have to go to bed with him or a higher-up" in the Company. Rye understood the reference to a higher-up to be Bradley, although Hullinger did not mention Bradley by name.³ According to Rye, Hullinger again referred to the fact that Teamsters did favors for him, such as moving his trailer. She recalls him saying he had no use for Teamsters if they would not do things for him. Rye became upset, and Nicholas and Hullinger then engaged in an argument over the propriety of such a suggestion.

Rye says that on approximately September 15 Hullinger, apparently angry over the Sands incident, told her if she were a man he would have punched her in the nose, but instead he would get Union Steward Daniels to call the Teamsters hall and fix it so she couldn't get another Teamsters job. On the next day, Friday, September 16, she attempted to complain about this to Bradley by telling him she wished to see him at his convenience. However, Bradley did not call her in. Bradley testified he recalls her asking him to see her when he was free, but said she never re-

² On September 20, 21, and 22, respectively, Respondent laid off an Operating Engineer. Thus, two employees were laid off on September 21. Rye and an Operating Engineer.

³ There is no evidence in this record that Bradley was actually involved in, or aware of, Hullinger's advances toward Rye.

turned. He explained that he has an open-door policy and employees are free to use it. In view of that he does not normally call people from work; instead, he figures if they wish to see him badly enough they will come in on their own.

She says she waited for Bradley to call on Monday, and when he didn't, on Tuesday, September 20, she spoke to Steward Dave Daniels. At first she asked Daniels if he intended to call the Teamsters hall in order to blackball her from ever receiving another Teamsters job. When he replied negatively, she told him Hullinger had told her he was going to. Then she said she wanted to talk to Bradley and Assistant Project Manager Morgan because she was tired of being harassed and tormented on the job; she said there was no reason why she should come out to the project and work 8 hours a day and put up with it; she knew her legal rights and had a right to be heard in the office. She admits Daniels told her she could go in any time, that the door was open. She replied that she wanted him to represent her as a steward. She remembers Daniels saying that he would do so as soon as he dropped the load of wet cement he then had in his mixer truck.⁴ Later that day, she says, Daniels returned after having delivered his cement, but did not meet with her to go to Bradley's office.⁵

On Wednesday, September 21, it was raining. Hullinger directed her to stay in the truck, as there was little likelihood of work. She asked Hullinger to send Daniels over to talk to her, but Daniels never came, although she saw him riding around with Hullinger in Hullinger's truck.

At 2:10 that afternoon Hullinger and Daniels drove up in Hullinger's truck. Hullinger told her she was being laid off, to obtain her personal belongings, and to follow them to the brass shack. She did so and turned in her brass and her hardhat; Hullinger gave her an envelope with two checks and a pink slip saying she was being laid off for reduction in force. She testified that as Hullinger returned to his truck he and Daniels gave knowing smiles to each other. Daniels said nothing to her, but remained in Hullinger's truck while she checked out.

C. The Conduct of Union Officials

On the following day she telephoned Union Business Agent Jesse James in Casper. She says she told him what had happened, as I have described above. James says she merely demanded union representation, saying Dave Daniels was not acting properly.

According to James, he telephoned Daniels and Hullinger to find out what was occurring. He says it was during his conversation with Hullinger that Hullinger admitted to having made a sexual advance to Rye, but claimed it was a

⁴ She says that during that conversation there was also a discussion of whether or not she had a tape recording of Hullinger's request for sex. She says Daniels told her that if he were Hullinger, he would lay her off and see exactly how far she would go and if she really had a tape, because Daniels did not believe she had one.

⁵ There is some hearsay evidence to the effect that Daniels worked late that evening and did not have the opportunity to return before quitting time. Rye denies that, saying she observed him throwing in his brass at quitting time. The payroll records show Daniels worked 1 hour overtime that day, but it is unclear whether that hour was early in the morning, the lunch hour, or after work.

joke. Upon hearing that, he decided the matter was serious, even though Rye had not clearly articulated her complaint to him. He thereupon called Union Secretary-Treasurer Johnny Spears to tell him of Rye's problem. Spears directed James to arrange a meeting with Jelco management and anyone else who was involved. In the Union's parlance, this meeting was called a "hearing," although in reality it was nothing more than an open investigation. In addition to having called James on September 22, Rye also retained an attorney, Thomas L. Sansonetti, of Gillette.

The "hearing" had been scheduled for 10 a.m. on Tuesday, September 27. Shortly before that hour, union officials Spears and James arrived at Radford's office at the site, and Spears reviewed Jelco's records relating to recent Teamsters layoffs. In addition, he could see on Radford's wall a manpower chart showing the winddown of the construction project. Spears testified his review of the records was simply to see if there was any kind of discrepancy on any other people laid off versus her layoff, but he found none. He concedes, however, that his review of the records was " cursory"; that he didn't sit down and take them one by one. He does say he reviewed the last five or six layoffs and compared them to hers. Moreover, he saw her termination slip as well, noting that it reflected that she had been laid off in a reduction of force.⁶

When Rye arrived, the "hearing" actually began. According to Rye, present for the Employer were Radford, Morgan, and Hullinger. She recalls Bradley did not arrive until 15 minutes after the meeting began. The Union was represented by Spears and James. Also present was a man named Larry Saline, whose position is unclear. Radford recalls that Steward Daniels was also there.

During the hearing Rye told those present her version of what Hullinger had told her at the Sands, but omitted her later claim that Hullinger had engaged in previous harassment. Hullinger denied her version of what had happened at the Sands. During the course of the hearing Radford noted she had been laid off because she was not qualified to drive the Employer's semitrailer truck, and others were. She gave Radford a list of individuals whom she believed would verify her story. The list was in an envelope which was passed both to management and to union officials. None of them would accept her list of witnesses.

Bradley was not asked for his version of what transpired during the hearing⁷ but testified the determination to lay Rye off was solely his decision. He recalled that he consulted with Hullinger and asked about Rye's qualifications. Aside from Hullinger's input, Bradley says he already was aware of her qualifications *vis-a-vis* the other Teamsters. His testimony was:

[T]here's several different vehicles that some people can handle and some can't and it just depends on the person. Mr. Hullinger was my foreman at this time. I conferred with Mr. Hullinger and asked him of her qualifications. Of course, I had been observing the peo-

⁶ Radford testified that the union officials' prehearing investigation was a "summary-type examination." He noted that they were already knowledgeable about the overall circumstances of the job and could see a chart on his wall showing manpower reductions.

⁷ If Bradley was late, as Rye says, he may not have been able to testify about the hearing to a satisfactory degree.

ple as we were reducing down. I was pretty well aware of their qualifications. At this time Mrs. Rye wouldn't be able to fit into the program as we were reducing. The semi had to be driven and we were cutting down on mixer drivers also and there was times mixer drivers had to fill in. Her only qualifications were really the stake [flatbed] truck and the pick-up truck.

As the "hearing" concluded, both Spears and James decided the evidence they had heard was insufficient to justify accusing the Employer of a contract violation. It was clear to them that Rye had been selected for layoff by Bradley, not by Hullinger, and Bradley had made the selection because she was the least skilled of the remaining Teamsters. Thus, they told Rye that in their opinion her complaint had no merit.

Also during the meeting she told the group that she wanted to file a complaint against Hullinger and Daniels. That, of course, entailed internal union charges. Spears told her she was free to make such charges but they would be heard by the Union's executive board. Since he was a member of that board he explained he would not interview the witnesses on her list because to do so might bias him. That, he testified, was the reason he refused to accept her list of witnesses.⁸

At the end of the meeting, Rye asked Spears and James to meet with attorney Sansonetti at 2 p.m. in his office. They did so and again explained their reasons for not proceeding. Both recall that during the meeting, the attorney asked whether if any union fines were levied against either Hullinger or Daniels, the money would go to Rye. They replied it would not; the proceeds of any fines would go to the Union. They also discussed in some detail the question of whether or not the Employer had violated the collective-bargaining agreement in its layoff of Rye. The meeting ended after about an hour, as Spears promised to send the attorney a copy of the Union's constitution and bylaws. During the course of the meeting he had shown Sansonetti the collective-bargaining agreement.

On October 5, Jelco discharged Hullinger, giving as the reason for his discharge "unauthorized & false statements concerning employment policies & practices of Jelco, Inc., to Loni Rye on 9/1/77."

On October 13, Rye filed a written grievance against Jelco regarding her discharge. In this particular grievance she changed her approach slightly, complaining that "Jelco didn't bother to find out what was happening on the job, and evidently didn't care to find out at the time." Her principal complaint was that Bradley had refused to talk to her on September 16.

All of this had been previously discussed at the hearing and by a letter dated October 18. Spears replied he had found Jelco had laid her off in accordance with the layoff procedures of the contract and not because of the "other subjects" she was referring to. He therefore denied her grievance.

⁸ Radford testified that he refused to accept her witness list as well, principally because he said he knew other Teamsters were about to be laid off and he did not want any of them to claim that the reason they were laid off was because their names appeared on Rye's list. He had spoken earlier with her attorney about the possibility of litigation and was cautiously defensive at that point.

In addition, although not articulated in the letter, Spears gave as another reason the fact that her October 13 grievance was untimely. He observed that article 16 of the collective-bargaining contract, "Grievance Procedures," contains a 10-day time limitation. However, his letter did not advert to that limitation, and his testimony on the point is merely an explanation to the effect that even if her October 13 grievance had merit, it could not have been processed because it was too late. Unsaid, of course, is the fact that insofar as Spears was concerned, the matter had been fully investigated on September 27 and, as her October 13 letter added nothing new, there was no point in proceeding further.

IV. ANALYSIS AND CONCLUSIONS

The General Counsel's theory of violation is twofold. First, he argues that Respondent failed to investigate the Charging Party's version of the events leading to her layoff and unquestioningly accepted the Employer's reasons for the layoff. That, according to the General Counsel, constitutes arbitrary and perfunctory handling of Rye's complaint. Second, the General Counsel contends that even if Respondent did investigate her complaint, it nonetheless failed to act as her advocate at the September 27 hearing by saying her grievance had no validity. Connected to these theories is the General Counsel's argument that the reason Respondent failed to properly process Rye's complaint was because her accusation was directed at Hullinger, who was a long-time union member and believed to be a crony of Daniels and Spears.

I will assume, for argument's sake, though I would find the evidence to be insufficient, that Hullinger was a crony of Daniels and Spears.⁹ Nonetheless, I am unable to find that Respondent's treatment of Rye in any way breached its duty to represent her fairly.

The General Counsel contends Daniels, in his apparent refusal of September 20 to accompany Rye to Bradley's office, evidenced that Respondent, as an institution, did not wish to represent her interests. Although the evidence is not clear regarding what Daniels did or didn't do, I shall accept Rye's testimony on the point. In doing so, I find that Daniels and Hullinger were indeed cronies and Hullinger somehow influenced Daniels to refrain from representing Rye. Having found that such was the case, nevertheless it does not follow that the Union did not properly represent Rye.

After she was laid off, she telephoned James in Casper, who, despite Rye's claim that he made a false start on her complaint, began a telephone investigation which caused him to believe there might be merit to her claim that Hullinger was making sexual demands on her as a condition for remaining employed. He consulted with Spears in Cheyenne, who instructed him to arrange a "hearing" to investigate her claim. This, it should be observed, was all arranged without Rye even having filed a formal, written grievance. On September 27, James reviewed the previous layoffs, even though admittedly in a cursory fashion. Not much else was needed, because he was well aware that Respondent

⁹ E.g., Rye's testimony that in late October she saw Hullinger having a drink at the Sands with Spears and James. Such an observation is not enough to establish cronyism.

was winding down its project and was also aware that the contract permitted the Employer to select employees for layoff based upon their qualifications and the Employer's needs. He could see on Radford's wall the declining manpower. Certainly James, who policed the Employer's contract, was well aware that Rye's principal experience was as the pickup truck driver.

During the course of the investigative hearing Radford stated Rye had been laid off because she was not qualified to drive the semitrailer truck. Rye never claimed to be able to drive that vehicle, and it appears a reasonable inference for the union officials to have drawn that the remaining Teamsters had that skill.¹⁰

Both James and Spears testified it was not until they had heard her evidence, as well as the versions of Radford, Bradley, and Hullinger, that they concluded her grievance was not sustainable. They never disagreed with her that Hullinger had made the advances that she accused him of. Their analysis simply was that even if Hullinger had made the advances and had made the statements, the decision to lay her off had been Bradley's, not Hullinger's,¹¹ and thus they could not prove that Hullinger's motive to punish Rye was the reason she was selected for layoff. Moreover, Spears' refusal to interview witnesses proffered by her was understandable. First, he did not want to be in the position of being both investigator and judge in the internal union charges which Rye was threatening to bring against Hullinger and Daniels. Moreover, he believed Rye's statement that Hullinger had improperly harassed her, but was satisfied it had nothing to do with Bradley's decision to lay her off. In that circumstance, interviewing her witnesses would have accomplished nothing. The same can be said for his October 18 response to her October 13 written grievance. It was apparent that she had no new evidence to present, and the Union's decision thus remained the same.¹² Having examined the facts from the Union's viewpoint, I cannot conclude that either Spears or James engaged in any conduct which improperly deprived Rye of fair representation. Assuming Daniels did so,¹³ his action was totally negated by Spears' and James' proper conduct. Certainly they engaged in nothing that can be characterized as arbitrary, discriminatory, or bad-faith conduct. *Ford Motor Co. v. Huffman*, 345 U.S. 330; *Vaca v. Sipes*, 386 U.S. 171, 191 (1970); *Miranda Fuel Co.*, 140 NLRB 181 (1962), enforcement denied

326 F.2d 172 (C.A. 2, 1963). Indeed, in *Huffman*, at 338, the Court said, "A wide range of reasonableness must be allowed to a statutory representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." I believe the evidence shows here that Spears and James acted reasonably and well within the *Huffman* framework.

Moreover, the General Counsel's argument that Respondent did not properly act as an advocate for Rye is misplaced. I have analyzed the cases cited by the General Counsel.¹⁴

First, the "hearing" called by the Union which was prompted by Rye's complaint against Hullinger was only investigative. She had made allegations against Hullinger, believing he had somehow influenced Bradley. The Union undertook to hear her version as completely as she could give it and also listen to Radford, Bradley, and Hullinger. At no time until those individuals had told their stories did any responsible union official offer an evaluation of her case. Indeed, Spears testified that one of the purposes of the meeting was to determine if Rye had been laid off on a pretext. He was unable to conclude she had been. In any event, Respondent was under no duty during the course of an investigation to act as her advocate. That duty arises when and if a grievance complaint has merit. See *Associated Transport, supra*. There the Board said "In our view, once Respondent undertook to represent Aaron Kesner's grievance to the joint grievance board, it became obligated to represent him fully and fairly. This obligation included the duty to act as advocate for the grievant, which here Heim clearly did not do." That sentence clearly implies that the duty of advocacy arises at the formal grievance level, not at the investigative level. Accord: *Service Employees International Union, Local No. 579 (Convacare of Decatur d/b/a Beverly Manor Convalescent Center, et al.)* 229 NLRB 692 (1977), 2, where the Board said, "[W]e do not adopt any implications that, in the informal, investigative, or bargaining stage of a grievance, a collective-bargaining representative's duty to an employee it represents is analogous to that owed by an attorney to a client. The nature of the relation between a labor organization and an individual employee is more nearly that of a legislator to a constituent."¹⁵

¹⁰ Rye testified at one point that during the "hearing" the union officials simply asked Radford if Jelco had breached the contract in discharging her. I regard that testimony as a consolidation of what transpired there, stated in conclusional terms. It should not be taken literally, as the General Counsel asserts. She had difficulty elsewhere in describing events and resorted to conclusions. This is a similar episode.

In any event, it would make little sense for James and Spears to have driven 130 and 245 miles from their respective offices simply to have asked a conclusional question of that nature, knowing it would have been promptly denied.

¹¹ It is not clear whether they were aware that Bradley had consulted with Hullinger before deciding to lay Rye off.

¹² The recent discharge of Hullinger for having harassed Rye changed nothing insofar as the Union's analysis was concerned. Indeed, it must have buttressed Spears' view that Hullinger had indeed engaged in the conduct Rye had accused him of. Nonetheless, that fact did not negate his belief that Bradley, not Hullinger, had made the decision and it was based upon Rye's lack of qualifications to drive the semi.

¹³ Respondent only admitted that Daniels was its steward; it did not admit he was its agent. Moreover, the scope of the steward's authority to act on behalf of Respondent is not clear on this record.

¹⁴ *Truck Drivers, Oil Drivers and Filling Station and Platform Workers Local 705 (Associated Transport, Inc.)*, 209 NLRB 292 (1972), off. sub nom. *Kesner v. N.L.R.B.*, 532 F.2d 1169 (C.A. 7, 1976), cert. denied 429 U.S. 983, 1022; *P.P.G. Industries, Inc.*, 229 NLRB 713 (1977), enforcement denied 579 F.2d 1057 (C.A. 7, 1978); *P & L Cedar Products*, 224 NLRB 224 (1976), and *E. L. Mustee & Sons, Inc.*, 215 NLRB 203 (1975).

¹⁵ See the Seventh Circuit's decision in *N.L.R.B. v. P.P.G. Industries, Incorporated* 579 F.2d 1057, 1059 (C.A. 7, 1978), where the court said:

A second reason given by the Board for concluding that the Union violated its duty of fair representation was that the Union conceded to the employer that the Ponkows' claims were invalid during several prearbitration communications. While a union has a wide discretion in deciding whether to take a grievance to arbitration, *Vaca v. Sipes*, 386 U.S. 171, 191 . . . (1967); *Ford Motor Co. v. Huffman, supra*, once the claim is taken to arbitration, the union must advocate the employee's position. *Kesner v. N.L.R.B.*, 532 F.2d 1169, 1174-75 (7th Cir.), cert. denied, 429 U.S. 983, 1022 . . . (1976). We are not prepared to extend *Kesner* to require that union representatives adopt an adversary stance with the employer from the moment a claim is made by an employee. Such a rule would severely curtail the leeway given a union in representing all of its members and would inevitably lead to a breakdown in informal resolution of disputes. See *Vaca v. Sipes, supra*, 386 U.S. at

Accordingly, I do not find that Respondent had any duty to advocate Rye's case during the September 27 "hearing." The purpose of that hearing was simply to find the facts, and Respondent did so. It later made a decision based upon the facts as it knew them, but that decision can hardly be said to have been in any way arbitrary, discriminatory, or in bad faith.

Accordingly, I conclude that Respondent did not violate Section 8(b)(1)(A) when it refused to further process Rye's complaint that the Employer had laid her off for failing to grant sexual favors to its foreman, and I shall recommend that the complaint be dismissed.

Upon the foregoing findings of fact, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Jelco, Inc., was at all times material an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Local 307, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in any violation of Section 8(b)(1)(A) of the Act.

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

ORDER¹⁶

The complaint is dismissed in its entirety.

¹⁹ . . . Thus, we find that the Board's conclusion that the Union violated §8(b)(1)(A) by failing to take the employees' grievance to arbitration is not supported by substantial evidence on the record as a whole.

¹⁶ 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.