

DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

In the Matter of AGWILINES, INC. and INTERNATIONAL LONGSHORE-
MEN'S ASSOCIATION, LOCAL NO. 1402

Case No. C-103.—Decided July 3, 1936

Water Transportation Industry—Interference, Restraint or Coercion: expressed opposition to labor organization, threats of retaliatory action; espionage; surveillance of, questioning regarding organizational activity or meetings; attempt to bribe union leader; discrediting union organizer—*Discrimination:* demotion; discharge—*Reinstatement Ordered—Back Pay:* awarded—*Unit Appropriate for Collective Bargaining:* eligibility for membership in only organization among employees; community of interest—*Representatives:* proof of choice; membership in union—*Collective Bargaining:* negotiation in good faith; failure or refusal to make counter proposals; meeting with representatives, but with no intention of bargaining in good faith.

Mr. Gerhard P. Van Arkel for the Board.

Mr. K. I. McKay and *Mr. Howard P. MacFarlane*, of Tampa, Fla., for respondent.

Mr. Fred. G. Krivonos, of counsel to the Board.

DECISION

STATEMENT OF CASE

On April 18, 1936, Local No. 1402, and, on April 21, 1936, Local No. 1408, of the International Longshoremen's Association, filed with the Regional Director for the Fifteenth Region, charges that Clyde-Mallory Lines (Agwilines, Inc.), New York City, New York (hereinafter referred to as respondent), had engaged and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935 (hereinafter called the Act). On April 24, 1936, the Board, consolidating the two charges, issued a complaint against respondent, said complaint being signed by the Regional Director for the Fifteenth Region and alleging that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices, the complaint, as amended, alleged in substance:

1. Respondent, by its officers and agents, terminated the employment, at Tampa, Florida, of John LaVell, Guss Harris, Michael Lazarus, McKay McDaniel, Arthur Fisher, Perry Harvey and W. J. Johnson, and terminated the employment, at Jacksonville, Florida, of Willie Owens, George Davis and Noble Wright, all employees of respondent, for the reason that they joined and assisted the International Longshoremens' Association, a labor organization, and, in particular, Local No. 1402 and Local No. 1408, at Tampa and Jacksonville, respectively.

2. At various times since March 26, 1936, respondent, when so requested by Local No. 1402 at Tampa, refused to bargain collectively in good faith with Local No. 1402 as the exclusive representative of the longshoremens employed by respondent, said employees constituting an appropriate bargaining unit.

The answer of respondent admits its corporate organization and that it is engaged in interstate and foreign commerce to the extent that it is engaged in the transportation of freight and passengers by steamship between certain named ports on the East and Gulf Coasts of the United States, but denies that its employment of longshoremens occurs in interstate or foreign commerce; the answer admits the termination of employment of the persons named in the complaint, avers that the employment of said persons was terminated for good cause, and denies the reasons for the termination alleged in the complaint; the answer further denies that respondent has at any time refused to bargain collectively with Local No. 1402.

Pursuant to notice thereof, Charles A. Wood, duly designated by the Board as Trial Examiner, conducted a hearing commencing May 7, 1936 at Tampa, Florida. Respondent appeared by its counsel, Howard P. MacFarlane and K. I. McKay. The Board was represented by its Regional Attorney. Full opportunity to be heard, to cross-examine witnesses and to produce evidence on all the issues was afforded to all parties.

Respondent's written motion to dismiss the complaint, based upon allegations of the unconstitutionality of the Act and upon the allegation of failure of the complaint to allege acts constituting unfair labor practices as defined by the Act, was denied by the Trial Examiner as to the allegations of unconstitutionality, and ruling was reserved as to the allegation of failure to state a case under the Act. Respondent's written motion to strike certain paragraphs of the complaint was denied by the Trial Examiner. During the course of the hearing the Regional Attorney moved to amend the complaint by striking out Clyde-Mallory Lines and substituting therefor, as respondent, Agwilines, Inc.; no objection was made; and this motion was granted by the Trial Examiner, and the amendment allowed.

The Regional Attorney's motion to amend the complaint to conform to the proof, made at the close of the Board's case, was reserved by the Trial Examiner. Upon renewal of respondent's motion to dismiss the complaint, likewise at the close of the Board's case, the Trial Examiner denied the motion without further reservation. During the presentation of respondent's case it was stipulated between counsel that Willie Owens, George Davis and Noble Wright, members of Local No. 1408, should be reinstated upon application by them for reemployment; upon motion thereupon made by the Regional Attorney to dismiss the complaint as to these employees, the Trial Examiner granted the motion. These rulings are affirmed by the Board, and the motion to amend the complaints to conform to proof, reserved by the Trial Examiner, is granted.

On May 28, 1936, acting pursuant to Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board ordered the proceeding to be transferred and continued before it.

On June 22, 1936 respondent filed a brief; and on June 25, 1936, pursuant to Article II, Section 34 of said Rules and Regulations—Series 1, as amended, oral argument on the record was held before this Board in Washington, D. C. Upon the record made in the proceeding conducted by the Trial Examiner, the stenographic report of the hearing and all the evidence, oral and documentary, offered and received at the hearing, and after consideration of the brief filed by respondent on June 22, 1936 and argument of counsel before this Board on June 25, 1936, the Board makes the following:

FINDINGS OF FACT

I. RESPONDENT AND ITS BUSINESS

1. Respondent, Agwilines, Inc., is a corporation organized under the laws of the State of Maine on April 8, 1907, and has its principal office and place of business at New York City, New York. Agwilines, Inc., New York and Cuba Mail Steamship Company, and Southern Steamship Company are operating divisions of Atlantic Gulf and West Indies Steamship Lines, the parent company. Control of the Atlantic Gulf and West Indies Steamship Lines is vested in the Chase National Bank of New York City as successor-trustee under Atlantic Gulf and West Indies Steamship Lines Collateral Trust Mortgage, dated December 9, 1908; the Chase National Bank holds 147,153 shares of common stock as against 4,847 held by Atlantic Gulf and West Indies Steamship Lines. Board's Exhibit No. 11 discloses that for the calendar year 1934, on the Atlantic and Gulf Coasts of the United States, respondent, Agwilines, Inc., and its

operating division, Clyde-Mallory Lines, represented the largest capital investment of any water carrier. Thus respondent, and its operating division, Clyde-Mallory Lines, had an investment in real property and equipment totalling \$25,711,116 or approximately 20 per cent of the capital investment of all the water carriers operating on the Atlantic and Gulf Coasts.

Under a consolidation agreement dated November 15, 1934, and filed with the Secretary of State for the State of Maine on December 1, 1934, the New York and Porto Rico Steamship Company and Clyde-Mallory Lines took the name of Agwilines, Inc. Clyde-Mallory Lines is merely a division of Agwilines, Inc., and the name Clyde-Mallory Lines is retained merely as a trade name. Clyde-Mallory Lines is engaged in the transportation of freight and passengers by steamship between the ports of Boston, Charleston and Jacksonville; between New York City, Charleston and Jacksonville; between New York City, Jacksonville and Miami; between New York City, Charleston and Galveston; between Miami and Havana, Cuba; between New Orleans, Key West, Miami and Jacksonville, and between New Orleans and Tampa. (Answer, paragraph 1.) Clyde-Mallory Lines is likewise engaged between the ports of New York and Tampa. Passengers and general merchandise are carried southbound from New York; passengers and fruit northbound. Substantially the same kind of traffic is apparently carried on between New Orleans and Tampa. One ship from New Orleans and one from New York regularly arrive at Tampa each Monday, departing the following day. At Tampa the company has a railroad siding which connects with the adjoining property of the Seaboard Air Line. Freight for water shipment from Tampa arrives by rail and truck. Board's Exhibit No. 4, a passenger and freight schedule, discloses that agencies for Clyde-Mallory Lines are maintained in some 25 different cities of the United States, in addition to Havana, Cuba.

The general agent of the Clyde-Mallory Lines division, at Jacksonville, is charged with supervision over the company's interests at Jacksonville, Tampa and "the interior" of Florida, except Miami. Matters of finances, credit and policy are handled exclusively from New York City, the general agent reporting direct to New York as to all matters within his territorial jurisdiction. "Matters of policy," testified the general agent, "always ahead of time are referred to New York, and they are kept closely posted as to what we have in mind doing." This is true also of labor policy.

Respondent's operations occur in the course and current of commerce among the several States and with foreign countries, are an integral part of the operations of the instrumentalities of such commerce, and constitute commerce among the several States and with foreign countries.

II. THE UNFAIR LABOR PRACTICES

A. Interference and discrimination

2. Common labor at the Clyde-Mallory piers of Agwilines, Inc., at Tampa is Negro. It is carried on an hourly payroll. It is paid bi-weekly. The total number of such workers during the winter peak season is 350 to 375. These workers are employed in groups called gangs, of 11 to 22 men. Certain gangs are used in the loading and unloading of ships, the so-called "ship gangs"; other gangs work in and about respondent's warehouses and dock. Gangs that are regularly employed when work is available are termed "regular" gangs, others are "extra". The members of regular gangs are well known to the white foremen and others acting in a supervisory capacity. While the workers so employed tend to group themselves behind one of their number, called a "gang header", who is their leader, this is at sufferance of respondent, and respondent at its pleasure removes headers, replacing them with men of its own choice, or refuses to work the entire gang. "Headers" are men who have leadership ability, are more responsible men, men in whom respondent has come to place confidence and trust. They are workers of relatively long experience. They receive five cents more than the hourly rate paid other common labor. So too, "winchmen", although nominally subordinate to the gang header, nevertheless are deemed by respondent to be in the same responsible and trusted category, and also receive five cents more than do the other common laborers. Of the employees herein alleged to be the subject of discriminatory discharge, four were headers and two were winchmen; as to the other, who claims to have been employed in a comparable capacity, there is a conflict of fact.

3. "Longshoremen" and "dockworkers", the two groups constituting respondent's common labor, form a generic class, and will hereinafter be referred to simply as longshoremen. Respondent's longshoremen at Tampa receive 35 cents an hour, with a five cent an hour overtime allowance between 7 p. m. and 6 a. m. Peak employment is offered on Monday of each week, at which time the New Orleans ship and one of the ships from New York arrive at Tampa. The longshoremen then work more or less continuously until the ships depart the following day. According to respondent's witnesses, the longshoremen work 15 to 16 hours, sometimes "around the clock", i. e., 24 hours; 36 hours is "unusual". During these working periods, they are permitted time out for lunch, but are "checked off" the payroll for that period. Respondent's general agent explained that the men desire long hours because they may not get any more work the rest of the week. Average weekly pay, so far as payments made by respondent

are concerned, is between eight and nine dollars a week. White foremen are employed as supervisors; and the speed of loading and unloading under their direction is the subject of an efficiency report, based upon the number of tons moved per man per hour, and submitted each month to the New York office. Discipline is maintained by the granting of "cooling off" periods, a euphemism meaning to deprive the employee of his means of livelihood by temporary discharge lasting from one to three weeks.

These hours, wages and working conditions were not considered satisfactory by the longshoremen, dissatisfaction crept in, and, about August or September, 1935, the men began to talk among themselves of the need for a union. About a month later, with the assistance of an organizer named Henderson, organization began. Sometime in December the longshoremen received a charter as Local No. 1402 of the International Longshoremen's Association (hereinafter referred to as the Union). The Union is a labor organization.

4. Respondent's espionage system is of many years' standing and, despite the reticence of witnesses for respondent, apparently efficient. The cost of this service is included in the itemized accounts of the Tampa office approved by the general agent at Jacksonville and forwarded to respondent's auditors at New York.

This espionage system functioned to give respondent detailed reports on the progress of union activity among its employees at Tampa. The substance of the detailed reports submitted to the local agent at Tampa, Gillett, was communicated to the general agent at Jacksonville, Bartlett, who, acting at the request of the New York office, kept that office advised of the progress of union organization. Labor policy, Bartlett explained, is a matter subject to approval by New York.

5. Detailed spy reports were received as to the activities of organizer Henderson. Gillett, the local agent, also questioned his dock superintendent about Henderson. Gillett, too, called in LaVell, a header who was subsequently elected president of the Union, and asked him to find out all he could about Henderson, go to Union meetings, and report to him or to the dock superintendent. Gillett questioned LaVell at this time as to his feelings about a Union, and asked him whether he "would stick with them" (meaning respondent). Gillett admitted that he told LaVell on this occasion, "As long as you keep Mr. Rogers (the dock superintendent) informed about this organizer, you will have a job."

6. About this same time, Gillett conferred with two other local steamship agents, members of the Maritime Association of the Port of Tampa, and together they went to the Chief of Police and asked that he investigate whether or not Henderson was an "accredited

representative." One of the reasons for this visit to the police, Gillett testified, was: "If somebody was going to come in here and call a strike on us, it would pretty seriously disrupt us, and I would like to know it in as far in advance as I could and keep our principals informed." Gillett later explained that Henderson might be a "fake" organizer, preying upon the employees. In light of the first reason given, however, such paternalistic concern is difficult to credit. So also, Gillett's apprehensions with regard to a strike appear fabricated, since cots for strikebreakers were not installed on the docks until nearly four months later. On the other hand, this police interview was had "sometime in October", concurrently with the first efforts of the longshoremen to organize, and points to the conclusion that this visit to the Chief of Police had for its sole purpose the hope that Henderson might be driven from the city, thus crippling and rendering ineffectual the desire of the longshoremen to organize. This conclusion is buttressed by Gillett's confession: "We did not want to get our labor disorganized and upset."

7. Detailed spy reports continued to be submitted to Gillett, regularly on Wednesdays, two or three times a week, or as the spies developed information. Gillett admitted that respondent was interested in such facts "or they would not want the information". He further admitted that he had been instructed to furnish information as to the status of union organization.

The dock superintendent interrogated employees as to their union affiliations. "Serious labor trouble" was apprehended. Gillett and the general agent discussed the Union together, and, because of the possibility that the Union might ask for a change in wages and hours, they considered the Union a threat to company efficiency.

8. The last week of November, a few days before LaVell's discharge, Gillett again interrogated LaVell. Gillett wanted to know whether a strike was planned, and warned that in such an event respondent would hire men to replace the strikers. LaVell was advised by Gillett that the longshoremen did not need a union; and Gillett added, "If you get a union it is just going to cut out a lot of men because we will put more machinery in." At the conclusion of this interview Gillett blandly informed LaVell that the members of the Union were about to elect him president.

9. On December 1 a Union meeting was held, presided over by organizer Henderson, and an election to fill the office of president took place. LaVell and Harris, both of whom were subsequently discharged, were candidates for that office. LaVell was elected. Election of other officers did not take place until the following Sunday, December 8.

10. On the day following the December 1 elections, LaVell was discharged for inefficiency and slack work. LaVell's inefficiency, according to respondent's witnesses, began as early as 1934. According to LaVell, no complaints were made about his work until October, 1935—or about the time union organization began. The local agent, Gillett, admitted that he had had no complaints about LaVell's work until about October, 1935. In any event, LaVell had never before been discharged, apparently not even for a "cooling off" period. An incident arose between LaVell and his white foreman shortly before his discharge, LaVell at the time complaining that the foreman was "riding" him, and the foreman accusing LaVell of slack work. As a result of this incident LaVell was warned that he would have a two-week further trial. Respondent's witnesses date this incident as about a fortnight prior to LaVell's discharge on December 2, 1935. LaVell, on the other hand, dates it as about one month prior to his discharge; this would fix the time of the incident as two or three days after LaVell joined the Union on Hallowe'en night, and a few days after Gillett had interrogated him in reference to spying upon Henderson, the Union organizer.

LaVell first worked at Clyde-Mallory Lines ten years before. In 1930, he returned there in the capacity of "hold man." In 1931, he was promoted to header and remained header until his discharge for inefficiency the day following the Union election of December 1, 1935. LaVell applied for reemployment on the two succeeding Mondays and was refused. Subsequently, the watchmen ordered him to keep off company property.

11. Harris was discharged on December 2 for failure to report for duty. About November 19, Harris and his gang had been "checked off" at 6 p. m. and ordered to report again for work at 1 a. m. the following morning. In that interval, Harris testified, he was informed by telegraph that his mother's funeral would take place at Daytona, Florida, the next day. There is a conflict of fact, which we need not resolve, as to whether Harris promptly informed his white foreman that he would be absent. According to respondent's witnesses Harris did not do so, and his absence caused a two-hour delay of departure of the ship on which his gang had been working. He was not immediately discharged for absence from duty; but was requested to produce the telegram in substantiation of his story. This he failed to do. According to Harris, the telegram had been lost. He testified, however, that funeral arrangements had been made through a local undertaker at Tampa who could have verified his excuse; that he had offered to submit to the dock superintendent other proof of his story, but that the dock superintendent had not appeared interested.

Harris was employed at Clyde-Mallory Lines in 1923 and worked there until 1928. He returned to work in 1933 in the capacity of winchman, and in June, 1934, was promoted to header of No. 6 gang. Harris joined the Union about the last of October. He had been nominated for president of the Union, but failed of election on December 1, when election to that office was held. The following day, December 2, he was discharged. Thereafter, Harris did not apply personally to any white supervisor for employment, as claimed to be necessary by respondent, but made himself available for employment by returning frequently to respondent's docks. He was not reemployed.

12. Lazarus was discharged on December 9, 1935, for insubordination and impudence. His foreman, a witness for respondent, testified that the insubordination took the form of misdirecting freight. As to the particular "impudence" complained of, the record is exceedingly vague. According to respondent's witnesses, Lazarus had had for several years a reputation for impudence; that impudence is a grievous offence; that it leads to immediate and permanent severance of employment. The inconsistencies in this testimony of respondent's witnesses are clear even without noting the fact that, although in 1934 Lazarus' employment was reduced from four days a week to two for the reason that he was "smart", he never appears to have been discharged.

Lazarus commenced work with respondent in 1923. He left that employment in 1924 to work in a restaurant located on respondent's property. In 1929 he returned to respondent's employ, and from 1929 until his discharge he was engaged on the docks separating freight. Lazarus was apparently in charge of a gang of 16 men. Thus, as stated by his foreman, a witness for respondent, he was "kind of at the head of that gang". Lazarus joined the Union about November 4, 1935. At the general election of officers on December 8, he was elected secretary. The following day he was discharged. Lazarus applied for work every Monday morning for about two months; and at one time was ordered by the watchman to keep off company property. He was never rehired.

13. McDaniel (erroneously referred to in the complaint as McDonald) was discharged on December 30, 1935, for substituting without permission a new man in the gang of which he was header. There is a conflict of fact as to whether headers of regular gangs may substitute new men without permission, and whether McDaniel had previously been warned not to make substitution. The facts found in foregoing and subsequent findings of fact make it unnecessary to resolve this conflict. It should be noted here, however, that the new man whom McDaniel substituted was retained in respondent's employ, though McDaniel was discharged.

McDaniel was first employed by respondent in 1922, and worked there ten years. From 1927 to 1932, he was header of a gang. In the summer of 1932 he was discharged for having been seen near a forbidden cafe. About November 1, 1935, he returned to respondent's employ as header of No. 8 gang. About Hallowe'en, October 31, 1935, he joined the Union. In the Union he first acted as "inner guard" and subsequently as "door man". During December he collected Union dues on respondent's docks. After his discharge, on December 30, 1935, McDaniel applied for work by presenting himself at the place where the workmen habitually congregate when work is available; but he was not reemployed.

14. Harvey, a winchman, was discharged on February 14, 1936, because of an accident resulting in damage to the ship on which he was working. On the night before his discharge Harvey was engaged at work on deck with two other members of the gang to which he belonged, a "hatchtender", and a winchman named W. J. Johnson, when the hook appended to the hoisting cable of the winch which he was operating in conjunction with Johnson caught in the ship's steering rod which runs in a slot longitudinally along the side of the ship. As a result, the rod was bent. Although the two winchmen, Harvey and Johnson, and the hatchtender were all three nominally to blame for the accident, and the direct cause of the accident was Johnson and not Harvey, the hatchtender was not discharged. Harvey and Johnson, however, were discharged, the header of their gang informing them that he had "orders" to lay them off.

Harvey was first employed by respondent in 1926. About 1930 he was promoted to winchman and remained in that capacity until his discharge. He joined the Union on Hallowe'en, 1935, and, on December 8, 1935, was elected vice-president. As previously noted, Harvey was discharged on February 14. Despite personal application on two occasions to the dock superintendent himself, one such application apparently being made about two months after discharge, Harvey was not rehired until the Board's hearing, at which time, the record reveals, Harvey and Johnson both returned to work, apparently as a result of an understanding reached between the parties.

15. Johnson, the winchman who worked with Harvey, joined the Union in October, 1935, and at the Union meeting on December 8 was elected treasurer. Johnson was first employed by respondent about 1927 and continued in employment until his discharge on February 14, 1936. Thereafter he applied several times to this gang-header for reemployment, but was informed by his gang-header that he had instructions not to work him. Johnson, who returned to work during the course of the hearing as did Harvey, was not put back at his former job, but demoted to "stowing", as an ordinary member of the gang.

16. Fisher was discharged on February 24, 1936, for absence from duty. Ordered to report at 7 a. m. on Wednesday, February 19, Fisher overslept and did not report until the ship on which he worked again docked on Monday of the following week. Upon reporting for work that day, the white foreman told Fisher that he had orders not to reemploy him.

Fisher was first employed by Clyde-Mallory Lines in 1923, and continued in employment until his discharge. For approximately the last three months of his 13 years' employment with respondent he was employed as a header. Fisher joined the Union about the middle of December, 1935, and was active in advising men to join and in speaking at Union meetings. Fisher testified that following his discharge, he did not reapply for his job, and explained that when the white foreman stated that he had "orders" not to give him work he simply saw no use to apply.

17. (a) The seven men who were discharged were men who had risen to responsible positions, and apparently were men in whom respondent placed confidence and trust. All these men, except perhaps for McDaniel whose prior ten-year period of employment was terminated in 1932, had been regularly employed when work was available over a relatively long term of years. If one accepts the fact that there was reason for discharge in each case, nevertheless, the duration of discharge is inconsistent with the normal "cooling off" period and gives weight to the conclusion that the discharges of these men were not routine disciplinary discharges, as contended by counsel for respondent in respect to six of the seven men upon argument on the record at Washington, but were in pursuance of an ulterior and controlling motive. Contrasting these discharges with the 14 other discharges which have taken place since December 1, 1935 (but not made the subject of complaint to the Board); we find that none of the other 14 men was a header; although three were winchmen, two were reemployed within three weeks after their discharge, and one, discharged two or three weeks prior to the hearing in this case, has not yet applied; two men were discharged for stealing, and did not reapply; the remaining nine, with the exception of one tractor driver, for whom there was no place, were all reemployed within the normal "cooling off" period, i. e., two or three weeks. Thus it will be seen that instead of supporting the contention of respondent that the men named in the complaint were discharged for cause in the normal course of disciplinary action, the record serves to accentuate the fact that respondent did not accord these cases routine disciplinary action. The case of Lazarus, which, according to respondent's witnesses and counsel's argument before this Board, required more than routine disciplinary action, needs no comment here. (See, in particular; Finding No. 12, *supra*; Find-

ing No. 17 (b) and (c), *infra*; and, in general, Findings Nos. 2-9, *supra*).

(b) No individual efficiency or performance records were brought forward by respondent; and apparently no such records are kept. But respondent introduced general, not personal, efficiency reports showing drastic decreases in efficiency in the handling of freight at Tampa during November and December, 1935, and January, February and March, 1936. There is no reason whatever to question this evidence, and it is supported by LaVell who admitted that the employees, in order to better their economic position, had discussed slowing up work. Respondent's purpose in offering this evidence apparently was to show that the employees discharged since December 1, 1935, and particularly those named in the complaint, were responsible for this decreased efficiency. Thus Gillett placed the blame on these particular employees and further testified that after the discharges efficiency increased. Gillett's testimony, however, is in effect contradicted by that of the general agent who ascribed the decrease in efficiency not to individual members but to all the Union members as a group. This contradiction would suffice to reject this evidence as support for respondent's contention that these employees were discharged because, among other reasons stated, they were personally inefficient. On the other hand, the testimony of Gillett and the general agent in this respect may be reconciled and the conclusion reached that the employees named in the complaint, being officers or otherwise active in the Union, were individually deemed responsible by respondent for the decrease in efficiency caused by the Union as a whole, and were discharged for the salutary effect their discharges would have in increasing the efficiency of the longshoremen as a group. Four of the men discharged were officers of the Union—LaVell, Harvey, Johnson and Lazarus; McDaniel was a petty officer and active in collecting Union dues; Harris had been nominated for president of the Union but failed of election the day prior to his discharge; and Fisher, although not an officer, apparently had been an active member. The finding of fact made in paragraph 7 above, in conjunction with the facts here set out, materially reinforces the conclusion that the discharges complained of were in furtherance of respondent's scheme to cripple and destroy the Union.

(c) In the early stages this scheme lacked subtlety. The crudeness of its execution is epitomized in the discharges of three men on the day following Union elections. About December 16, however, respondent took steps to pursue, with more finesse, its campaign against the Union. Thus, upon the publication in a local newspaper on December 16 of the names of the employees who had been elected officers of Local No. 1402, Bartlett, general agent, instructed that all the white foremen be called together and informed by Gillett,

the local agent, that no man should be discharged without good cause, and that thereafter written reports should be submitted by the foremen giving the reasons for discharge.

Gillett admitted that he had been familiar with the provisions of the National Labor Relations Act for several months; that he had received no complaints that discharges were not for good cause; and that he had no reason to apprehend that discharges might be made without good cause. Gillett was able to give no convincing reason as to why a special meeting to caution foremen should have been called at this time, except that Bartlett had so instructed him. Bartlett testified that it had occurred to him as early as October that he might have to discharge Union men; that he apprehended complaints that discharges were discriminatory and for this reason called the special meeting. As to why the meeting was called at this particular time, Bartlett stated that he had had no previous knowledge of the formation of a union. This, however, is patent prevarication, the character of which is little mitigated by this witness' subsequent attempt at explanation. The conclusion is fully warranted by the record that the special meeting of foremen herein discussed had for one of its purposes the temporary halting of discharges of active Union members until "cause" fortuitously appeared. It was thus that respondent bided its time.

(d) Upon the basis of all the foregoing findings of fact, we find that the seven employees named in the complaint were discharged and discriminated against in regard to hire and tenure of employment for the purpose of discouraging membership in the Union. We further find that by the discharges of the said employees respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We deem it advisable to state, in reference to the above conclusion of fact, that it is not the purpose of the Act, or the intent of the Board in the administration of the Act, to curtail the normal right of an employer to discipline his employees. There is a duty, however, as the Board sees it, to thrust subterfuge aside. Cause for discharge is a valid answer to the charge of discrimination when, judged by all the facts in the record, it is an honest answer. When cause, so judged, is found wanting, it may well be discrimination within the meaning of the law. To hold otherwise would be to put a premium in the palm of speciousness.

B. Collective bargaining

18. The International Longshoremen's Association claims "jurisdiction" over all men who work in and about the docks without distinction as to whether they are "longshoremen", i. e., working in

and out of the ship, or whether they are "dockworkers", i. e., arranging freight, among other things, after it has been moved out of the holds by the longshoremen. While in some ports the International Longshoremen's Association charters separate locals for longshoremen, dockworkers and other groups, in other ports the local embraces all "longshore" workers. Local No. 1402 at Tampa was an example of the latter. So far as a finding in the matter of an appropriate unit is concerned, the distinction is unimportant and fictitious. Respondent's longshoremen and dockworkers at Tampa are paid the same hourly wage, obtained from the same labor reservoir, at times are used interchangeably by respondent, i. e., are longshoremen today and dockworkers tomorrow, are members of the same Local, and are otherwise homogeneous. We find, therefore, that all the common labor employed by respondent, longshoremen and dockworkers, constitutes a unit appropriate for the purposes of collective bargaining.

19. Respondent's local officials do not question that the Union represents a majority of its common labor; indeed its witnesses expressed the belief that practically all this labor has Union membership. Testimony by the secretary of Local No. 1402 likewise supports the conclusion that the Union, so far as respondent's workers are concerned, is practically 100 per cent organized. We find, therefore, that the Union does represent a majority of the employees in the appropriate unit above described, and we further find, in view of this unquestioned majority, that the Union was entitled to bargain collectively with respondent as the exclusive representative of all respondent's longshoremen.

20. About March 26, 1936, acting at the request of the Union and organizer Henderson, Holt Ross, special representative of the International Longshoremen's Association, came to Tampa to enter into collective bargaining negotiations with representatives of Tampa shipping interests. Soon after his arrival a Union meeting was held and a resolution adopted designating Ross and the officers of Local No. 1402 representatives for purposes of collective bargaining. Uncertain whether the employers preferred to enter into an agreement covering the whole port, or to enter into individual company agreements, the Union, on March 26, sent a notice to all steamship agents and stevedore companies in Tampa, advising them of the designation of collective bargaining representatives by the Union, and requesting that negotiations be opened.

21. Pursuant to this notice, the Maritime Association of the Port of Tampa, an association of shipping interests, appointed a subcommittee of five to meet with the representatives of the Union. The first conference was held April 2, 1936, at which time Ross

read a prepared statement requesting an eight-hour day and 15 cents per hour wage increase. This prepared statement further explained that hourly wage rates for coastwise longshore work "for ports in the South and to the West of Tampa is therefore slightly in excess of 70 cents per hour". The conference lasted from 15 to 20 minutes, and concluded with the assurance of the subcommittee that the Union demands would be taken back to and considered by the Association members, and that an answer would be given promptly.

22. The next day, April 3, a second conference was held. The subcommittee explained that the demands had been discussed with the Association members following the conference with the Union representatives the day before, and that the Association members had decided that the demands of the Union could not be met. It was explained to the Union representatives that the competitive position of the port of Tampa was such that any increase in operating costs would result in a loss of traffic. At the request of the Union representatives, the subcommittee then retired while the former considered a modification of their demands. Upon reconvening, the Union representatives asked whether the subcommittee had authority to make any counter-proposals. Upon being informed that it did not have such authority the Union representatives proposed that no written agreement be entered into but that the companies announce a five cent per hour wage increase, preference for Union labor, recognition of the Union, and a provision whereby if better rates were obtained in other ports the "contract" might be reopened. The subcommittee again expressed its readiness to take these modified demands back to the Association for consideration. Thereafter Ross, having requested the Association subcommittee to notify him of the answer to the modified proposals, left Tampa on other business.

On April 7 the subcommittee sent a telegram to Ross advising him that the "employers' committee" had arranged a meeting for noon of the following day.

23. Ross was absent, however, when on April 8 the subcommittee again met with the Union representatives. As at the two previous conferences, the subcommittee informed the Union representatives that the Association could not accept any of the Union's proposals. The Union representatives thereupon further modified their original proposals to ask simply for "preference" and "recognition". The spokesman for the subcommittee advised them, however, that preference and recognition was a matter which would have to be taken up with each company individually.

Before the conclusion of this conference, which, incidentally, ended the efforts of the Union to bargain collectively, one of the

members of the Association's subcommittee advised the representatives of Local No. 1402 to let the Union alone, that they did not need the Union and could get along without it. This bald attempt to interfere with, restrain and coerce even the representatives of the Union needs no comment.

24. Gillett was a member of the subcommittee and attended each conference. Bartlett, general agent, was present at the two private meetings of the Association at which the Union demands were discussed, but was not a member of the subcommittee which actually met with the Union representatives. The record leaves no doubt that both Bartlett and Gillett ratified, tacitly at least, the action taken by the Association and its subcommittee. Each expressed himself as in accord with what was done and said at these conferences—the conferences with the Union representatives and the conferences of the Association.

Neither Gillett nor Bartlett had any authority from their superiors to enter into any agreement with the Union representatives. Nor were they in a position to be bound by any action agreed upon by the Association. It was explained by these witnesses that the making of any agreement was a matter of management policy for respondent at New York to decide. Likewise, the spokesman for the subcommittee admitted that he too was without authority to enter into an agreement for any of the lines which he represented. Thus the implication is plain that no amount of consideration of the proposals by the Maritime Association at Tampa could have resulted in any agreement. So far as respondent is concerned, although it was kept informed of the progress of negotiations by its local officials, it nevertheless gave no instructions whatever. The general agent admitted that he had not asked his home office for authority to make any agreement, or to make any offer that might be used as a basis for an agreement; nor did he, acting on his own authority, make any proposals or counter-proposals to the Union representatives. Gillett testified substantially to the same effect. These admissions lead us to conclude that the Association acted merely as a blind to give pretense of bona fide negotiations.

25. Respondent attempted to evade the allegation of bad faith by testimony about the competitive position of the port of Tampa, and how that position would be imperiled were there changes made in the wages or hours of its longshoremen. We are frankly of the opinion, however, that this explanation was availed of, at the hearing and at the "collective bargaining" conferences, not because it was meritorious *per se*, but because it served as a solemn toga to cloak respondent's unwillingness to enter into genuine negotiations.

At the hearing before the Trial Examiner much was said as to the effect of an increase in cost of operation on respondent's competitive position; and the same point was argued by respondent's counsel before this Board. But in the record nothing appears as to the point at which higher operating costs would necessitate a change in freight rates. Prior to an increase in freight rates, competition would not be affected. Furthermore, so far as concerns the Union's proposals at the April 8 conference—merely for recognition and preference, without change in hours, without increase in wages, without written agreement—respondent's witnesses were silent. There is no conclusion to be reached from the above facts except that respondent's collective bargaining negotiations were sham. From beginning to end of this record of conferences there is no evidence to give even colorable standing to respondent's contention that it bargained collectively with the representatives of its employees.

26. We find, upon the basis of all the foregoing findings of fact, that respondent has refused to bargain collectively with the representatives of its employees, and that by its conduct in this respect, respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

III. RESPONDENT'S CONDUCT IN RELATION TO INTERSTATE COMMERCE

27. The labor relations of respondent have been peaceful since 1925 in which year a strike took place which lasted 24 hours, involved two ships, and delayed sailings. Respondent's witnesses testified that during the period of this strike the ships were neither loaded nor unloaded. The cause of the strike was a demand for an increase in wages. Board Exhibit No. 9, prepared by the Bureau of Labor Statistics of the Department of Labor at Washington, reveals that during 1934, in the water transportation industry, 1,069,642 man-days were lost because of strikes and lockouts; and that 229,552 man-days were lost in the period from January to July, 1935. This exhibit discloses that the major issues of these strikes were wages and hours and organization of the union, including recognition of the union by the employer. In the Gulf ports during the period October, 1935 to May, 1936, according to Ross, special representative of the International Longshoremen's Association, approximately 2,000 ships were tied up because of strikes. The substantial burden on interstate commerce resulting from disputes over issues identical with the issues in this case is thus apparent.

Respondent admitted in its answer that it is engaged in interstate commerce. Gillett and the dock superintendent admitted that longshoremen are a vital part of the traffic movement, and that a

strike means the cessation of that movement. It is thus clear that respondent's longshoremen are a vital part of this interstate commerce movement, that they are in a strategic position completely to halt that movement, and that, on occasion, they have effectively done so.

28. We find that respondent's conduct as set forth in all the foregoing findings of fact burdens and obstructs commerce among the several States and with foreign countries and the free flow of such commerce, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce among the several States and with foreign countries.

CONCLUSIONS OF LAW

1. Local No. 1402 of the International Longshoremen's Association is a labor organization, within the meaning of Section 2, subdivision (5), of the Act.

2. Respondent, by its discharge of John LaVell, Guss Harris, Michael Lazarus, McKay McDaniel, Arthur Fisher, Perry Harvey and W. J. Johnson, because they joined and assisted a labor organization, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in a labor organization, and by reason of such discrimination, has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3), of the Act.

3. The longshoremen and dockworkers employed by respondent constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

4. By virtue of Section 9(a) of the Act, Local No. 1402, having been designated by substantially all the employees in a unit appropriate for the purposes of collective bargaining, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

5. Respondent has refused to bargain collectively with Local No. 1402 as the representative of its longshoremen, and by reason of such refusal has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5), of the Act.

6. By the acts set forth in conclusions 2 and 5 above, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1), of the Act.

7. The unfair labor practices in which respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7), of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c), of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Agwilines, Inc., and its officers and agents, shall:

1. Cease and desist from in any manner discriminating against any of its employees in regard to hire and tenure of employment or any term or condition of employment for joining or assisting Local No. 1402 or any other labor organization of its employees;

2. Cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act;

3. Cease and desist from refusing to bargain collectively with Local No. 1402 as the exclusive representative of the longshoremen employed by it in respect to rates of pay, wages, hours of employment and other conditions of employment.

4. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to John LaVell, Guss Harris, Michael Lazarus, McKay, McDaniel, Arthur Fisher, Perry Harvey and W. J. Johnson immediate and full reinstatement, to their former positions, without prejudice to any rights and privileges previously enjoyed by them;

(b) Make whole each of the employees named in paragraph 4(a), above for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned in respondent's employ from the date of his discharge to the date of the offer of reinstatement, computed at the rate, normal and overtime, for the same number of hours, normal and overtime, equal to the average amount earned by those employees of respondent doing similar work in similar positions since his discharge;

(c) Upon request, bargain collectively with Local No. 1402 as the exclusive representative of the longshoremen employed by it in respect to rates of pay, wages, hours of employment and other conditions of employment;

(d) Post notices immediately to its employees in conspicuous type and in conspicuous places, including a conspicuous place "on the bricks" where the employees congregate for work, stating (1) that respondent will cease and desist in the manner aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.