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In the Matter of INLAND LIME AND STONE COMPANY *and* QUARRY  
WORKERS INTERNATIONAL UNION OF NORTH AMERICA, BRANCH No.  
259

*Case No. C-301.—Decided August 18, 1938*

*Stone Quarrying Industry—Discrimination:* discharges; for union membership and activity; charges of, not sustained as to one person—*Remstatement Ordered—Back Pay:* awarded from date of filing of charges to offer of reinstatement—*Complaint Dismissed:* as to charges of espionage.

*Mr. Bernard J. Donoghue*, for the Board.

*Pope & Ballard*, by *Mr. Edward W. Ford* and *Mr. Merrill Shepard*, of Chicago, Ill. and *Hanson & Herbert*, by *Mr. J. Joseph Herbert*, of Manistique, Mich., for the respondent.

*Miss Ida Klaus*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Quarry Workers International Union of North America, Branch No. 259,<sup>1</sup> herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) issued its complaint dated September 16, 1937, against Inland Lime and Stone Company, Manistique, Michigan, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and accompanying notice of hearing were duly served upon the respondent and upon the Union.

The complaint alleged in substance, so far as here material, that the respondent discharged George Drew, D. C. Miller, and Alex Durno, employed at its quarries in Manistique, by reason of their membership in and activities in behalf of the Union, thereby dis-

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<sup>1</sup> Referred to in the charge as Quarry Workers Local 259

criminating in regard to the hire and tenure of these persons and discouraging membership in the Union; that by such discharges the respondent interfered with, restrained, and coerced its employees in the exercise of rights secured them by the Act. The complaint further alleged, in paragraph 7 thereof, that the respondent employed certain individuals to engage in espionage, and to spy upon the organizational activities of its employees. On September 24, 1937, the respondent appeared specially and moved to dismiss the complaint for want of jurisdiction of subject matter on the ground that the respondent was not engaged in interstate commerce. The respondent also filed an answer denying generally the averments of the complaint, and alleging affirmatively that it laid off Drew upon the completion of temporary work for which he was employed; that it discharged D. C. Miller "for carelessness and misconduct . . . and for other good, sufficient, and legitimate reasons connected with his employment," that it discharged Alex Durno "for insubordination, inefficiency, incompetence, carelessness, and other good and sufficient reasons connected with his employment." At the hearing the respondent amended its answer to make the affirmative allegations more specific, and to add as further ground for its discharge of Drew that he was inefficient, insolent, and insubordinate.

Pursuant to notice, a hearing was held at Manistique, Michigan, from September 27 to October 5, 1937, both inclusive, before Charles Bayly, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties. At the close of the Board's case, the respondent moved to dismiss the allegations of the complaint in so far as they charged that the respondent had engaged in espionage. This motion was allowed by the Trial Examiner, and his ruling is hereby affirmed. Accordingly, we will dismiss the allegations of paragraph 7 of the complaint, and so much of paragraphs 8, 9, and 10 thereof as relate to paragraph 7. During the course of the hearing, and at the close, both the respondent and the Board made various motions, among others to amend the complaint and answer, upon all of which motions the Trial Examiner ruled. Other rulings were made by the Trial Examiner on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On November 3, 1937, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of

Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist therefrom, reinstate Drew, Miller, and Durno, with back pay; to their former positions, and take certain other specified affirmative action to effectuate the policies of the Act. Exceptions to the record and the Intermediate Report were thereafter filed by the respondent.

Pursuant to notice, a hearing for the purpose of oral argument on the record and exceptions was held before the Board in Washington, D. C., on March 3, 1938. The respondent was represented by counsel and presented argument. On April 11, 1938, it filed a brief in support of its exceptions. In its argument before the Board, and by its exceptions and brief, the respondent contended and contends, among other things, that it was prejudiced by conduct of counsel for the Board and of the Trial Examiner at hearing, that the respondent thereby was deprived of its right to give testimony, and, in general, was denied due process of law and its right to a fair and impartial hearing. We have examined and reviewed the record of all of the instances at the hearing mentioned by the respondent in support of its contention and find nothing of substance or consequence. We are of the opinion that the respondent was afforded full opportunity to give evidence, that it was not denied due process of law, and that it was accorded a full and fair hearing; that the conduct complained of was not prejudicial to it. The Board also has considered the exceptions to the Intermediate Report, and, in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds no merit in them.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is a Michigan corporation engaged in the business of quarrying, preparing, and selling stone, including limestone, for use in the production and manufacture of steel, cement, glass, and paper, and in highway and marine construction. Its office is located in Manistique, and its quarries and sole place of business in Mackinaw and Schoolcraft Counties, Michigan. It employs approximately 334 persons.

The respondent is a wholly owned subsidiary of Inland Steel Company, a corporation having its principal office in Chicago, Illinois, and functions as an operating unit of the parent company. Advertising statements<sup>2</sup> of Inland Steel Company, hereinafter referred to as Inland, in describing the quality of Inland steel, refer to the iron ore and limestone used in manufacture as "being brought together

<sup>2</sup> Board Exhibit No. 3.

from Inland's own mines and quarries" and as typifying "Inland control of quality and uniformity at every stage of steelmaking." The respondent reports monthly to Inland on operating matters. Financing management of the respondent's business and operations is conducted and directed, in large part, by Inland. The respondent's net surplus is transmitted monthly, by check, to the main office of Inland at Chicago, and the operating deficits are met by Inland. Seventy-five per cent of the respondent's cash receipts are kept on deposit in Chicago. The treasurer of Inland is treasurer of the respondent, and two of Inland's officers are the president and vice president, respectively, of the respondent.

The respondent is one of four large national producers of stone. Its annual output is about 1,500,000 tons, and, during 1936, its sales amounted in the aggregate to about \$1,500,000. All of the respondent's fluxing stone, constituting approximately 70 per cent of its total production, is shipped to steel companies located outside the State of Michigan. In 1937 these purchasers of its stone, apart from Inland, included Bethlehem Steel Corporation in New York and Youngstown Sheet & Tube Company in Indiana and Illinois. One-third to one-half of the remaining 30 per cent of the respondent's output is sold and delivered to purchasers outside the State of Michigan, principally in Wisconsin and Minnesota. The respondent also sells to contractors of the United States Government. Seventy per cent of the respondent's product is produced on special requisition and 80 per cent thereof is shipped on contract to purchasers outside the State of Michigan. A large number of these contracts are negotiated by Inland and executed by the respondent.

Products destined for shipment to purchasers outside the State are loaded on boats at the respondent's docks and on railroad cars running on trackage on the respondent's property and connecting directly with the Minneapolis, St. Paul, and Sault Ste. Marie Railroad, an interstate carrier.

The annual cost of supplies and equipment purchased by the respondent and used at its quarries is approximately \$50,000, of which 40 to 60 per cent is incurred for goods brought in from outside the State of Michigan. The most important of these supplies is blasting powder, and one-half of the amount used, about 200,000 pounds annually, is purchased from, and shipped to the respondent by the DuPont Powder Company, located in New England.

Monthly freight charges paid to the Minneapolis, St. Paul & Sault Ste. Marie Railway Company on shipments to and from the respondent's place of business averaged about \$8,000 as of the date of the hearing, and have reached a maximum of \$15,000.

There is no doubt that the operations of the respondent affect trade, traffic, and commerce among the several States.

## II. THE UNION

Quarry Workers International Union of North America, Branch No. 259, affiliated with the American Federation of Labor, is a labor organization admitting to membership certain classes of employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

*A. Background of the discharges*

Commencing some time in July 1933 and continuing until May 1936 matters relating to the industrial relations of the respondent with its employees were handled through a form of employee representation plan, known as the Industrial Representation Plan. The Plan was both conceived of and brought into operation by the general superintendent of the respondent, one Cayia, who considered it his "big work." Cayia drafted the terms and provisions of the Plan; he had booklets, setting it forth, printed and distributed among all of the employees. About July 1933 the employees were asked by the respondent to signify their approval of the Plan by signing a statement to that effect. Upon a majority of the employees so signing, representatives under the Plan were elected and the Plan went into effect.

The general purpose of the Plan was stated in the booklets, as follows:

A plan of representation is established by the Inland Lime & Stone Company, Manistique, Michigan, and its employees in order to provide effective contact and discussion of matters pertaining to industrial relations. To provide for such contact, a Council representing the workmen will be elected whose duty will be to consider and discuss with the Management all matters pertaining to:

1. Industrial relations.
2. Safety and prevention of accidents.
3. Works practice and methods of economy.

Provision was made under the Plan for an annual election by the employees of employee representatives to a "Workmen's Council." Officers of labor organizations were ineligible to serve as representatives. The respondent furnished the "necessary facilities" for the carrying on of all elections. It was contemplated that the Council would meet once each month with the plant superintendent "for the discussion and adjustment of all matters that would arise." In the event no "satisfactory adjustment" could thus be reached, the matter would be referred to the president of the respondent, for decision. Employees having individual grievances were to submit their com-

plaint first to their foreman and department superintendent, and then to the Council, for consideration. Council meetings were to be held during working hours at a place provided by the respondent, with all expenses incident thereto paid by the respondent. Representatives likewise were paid by the respondent for time spent at meetings, at a rate "commensurate with their average earnings." The Plan, as a whole, was subject to termination either upon a decision of the board of directors of the respondent to that effect or by a majority vote of the representatives.

Pursuant to the Plan, the Council held about 12 meetings, the last in the fall of 1935. Sometime thereafter the Plan became inactive, and apparently was abandoned finally in May 1936 when the term of office of the representatives last elected expired. No formal termination or dissolution ever took place.

In September 1935 the Union began organizational activity among the quarry workers of the respondent. Within a few months, a substantial majority of the employees joined. A local was formed, officers were elected, and a grievance committee set up.

In November representatives of the Union met with Cayia and informed him that a majority of the employees had joined the Union. They asked whether the Union might post notices on the bulletin board at the quarries. They also asked if the respondent would recognize and deal with the Union as the exclusive agent of the employees for purposes of collective bargaining. Cayia refused to allow the use of the board. With respect to according recognition he took the position that the Act required an employer to meet only with such representatives of a majority of its employees as had been designated in an election, and that consequently, under the mandate of the Act thus interpreted by Cayia, the respondent was bound in matters of collective bargaining to deal with the employee representatives elected to its Workmen's Council in the spring of that year. One Miller, president of the Union, who was present, told Cayia that "the Labor Law knocked that company union on the neck" and suggested that the respondent poll its employees on the question of representation by the Union. Cayia then advised the union representatives that the Workmen's Council might conduct such a poll if it so chose but the matter was not for him. The conference then ended.

By December 90 per cent of the employees had become members of the Union. With the assurance that so substantial a number was then on its membership rolls, the Union appointed a committee of three, including one Weaynt, an organizer, to meet with Cayia. A conference between the committee and Cayia was had. The committee informed Cayia of the extent of membership in the Union and requested recognition by the respondent of the Union as the exclusive bargaining agency. Again Cayia purported to find refuge

in the Act, averring that it would be illegal for him to deal with any group other than the elected representatives under the Plan. Weaynent suggested that an application be made to the Board for the conduct of an election under its direction among the respondent's employees to determine the claim and status of the Union as collective bargaining representative. Cayia objected, saying, "I don't want any election of any kind." The committee then departed. With the exception of two attempts by Weaynent himself to persuade Cayia to change his position, no further requests were made by or on behalf of the Union to secure recognition. The rebuffs it received from the respondent at the hands of Cayia, along with the acts of the respondent hereinafter set forth, resulted in a discouragement of membership in the Union and a loss of its strength and prestige.

It is clear, and the respondent does not deny, that the Workmen's Council was a labor organization, within the meaning of the Act. It is equally clear from what has been set forth above, and the record so establishes, that the Council was organized by the respondent; that throughout its existence, both before and after the passage of the Act, its affairs were dominated and interfered with, and financial and other support contributed to it, by the respondent. Had the respondent, by the testimony which it introduced at the hearing, not shown the abandonment of the Plan, the facts would have warranted further proceeding by the Board, and the issuance of an order directing the respondent to cease and desist in extending recognition to the Council as a representative of the employees and to disestablish it as such representative.<sup>3</sup> However, in view of this showing, and nothing to the contrary appearing, we will withhold such further action.

Of relevance here, however, is the determination of the respondent, as revealed in Cayia's treatment of the union representatives, to combat the Union as an agency of the employees for collective bargaining, and to destroy the organization which the Union had succeeded in establishing among the quarry workers for such purpose. At a time when the Union had been designated by an overwhelming majority of the employees as their collective bargaining agent, the respondent, instead of according it the recognition to which it was entitled under the Act, refused to do so on the ground that the designation had not been had by way of an election. Under the circumstances the respondent's pious pronouncements of a duty under the Act to lend an ear only to the collective bargaining requests of the mute representatives elected pursuant to the Plan bear a clear mark of disingenuousness. That Cayia was not misled as to the

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<sup>3</sup> *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board v. American Potash and Chemical Corporation*, 9th Cir., 98 F. (2d) 488, decided June 27, 1938.

mandate of the Act is shown, among other things, by his refusal to have "any election of any kind," when the Union suggested that the Board be invited to conduct one and resolve the issue. Earlier Cayia had suggested that the Council might take the poll. Cayia's advertence to the Council in such connection, as well as his insistence that the Council alone could be recognized as representative of the employees, is significant. Despite the ban placed by the Act on the continuance of such recognition, as Miller pointed out to Cayia, the respondent nevertheless persisted, contrary to the statute, in an attempt to divert the desires of its employees for self-organization into a channel which it dominated.

At the hearing Cayia sought to explain the stand he had taken at the November and December conferences with the Union by stating that he knew that the Council representatives had been elected earlier in the year by a majority of the respondent's employees; that he assumed that inasmuch as the Plan had not been terminated by action of those representatives it was still in effect and the Council's representation of a majority persisted; that he "went merrily along" and when he met with the representatives of the Union "they had nothing to talk about." Cayia did not explain how, in the light of its domination by the respondent, the Council properly could be recognized by the respondent. We are satisfied that the respondent's treatment of the Union, contrary to the provision of the Act, was moved by the respondent's determination to defeat it.

### B. *The discharges*

*George Drew* was employed as a boat millwright at the respondent's docks for about 2½ years. The work is of seasonal character, coinciding in period with the months of the year when the Great Lakes are open to shipping. Between operating seasons Drew engaged in other work for the respondent.

Drew joined the Union in September 1935 and served as financial secretary of the organization. He probably was its most active member. During the months following September he solicited large numbers of his fellow workers to join, and himself succeeded in enlisting as members about 100 of the employees, approximately one-third of the total number on the respondent's pay roll. It is clear that the respondent knew of Drew's union affiliation and activities. Shortly after Drew joined the Union his foreman, one Binder, inquired of Drew how the Union was "getting on," and upon being told "All right," said, "It may be all right and it may not." Drew replied to the effect that he proposed remaining a member of the Union. While at the hearing Binder testified that he did not recall

having discussed the Union with anyone; we are satisfied that his conversation with Drew occurred as stated.

Early in December, about the time that the Union again sought recognition from the respondent, as above-mentioned, after its first unsuccessful meeting with Cayia in November, Drew was transferred from his position as boat millwright to some carpentry work. He was told by the foreman, Binder, that when the new work was completed he, Drew, would be "all through." Two other employees, one Schneider, a mill millwright, and one Jacobs, a worker junior in service to Drew, were assigned Drew's work at boat millwrighting. On December 21 Binder notified Drew that there was no more work for him to do, that Drew's "lay-off" was on "Cayia's orders." No reason was given him therefor. Usually the laying off of employees for slack work is not done by the general superintendent but by the foremen themselves. While the respondent in transferring or laying off employees conforms to a general practice of seniority, no such rule was followed in Drew's case. It also appears, and Binder so testified, that no investigation of the possibility of assigning Drew other work was made. On the last night of Drew's employment with the respondent the night foreman, one Rasmussen, remarked to Drew, "George, you are going to take a long rest."

At the hearing the respondent urged many reasons as the basis of its "lay-off" of Drew, all of which, with one exception, its counsel expressly repudiated during the oral argument before the Board. The contention was made that Drew was inefficient. The record, however, is barren of any showing of incompetency. Drew was considered a good workman. He had been praised by superiors in the presence of his helpers, had been given considerable independence and latitude in the performance of his duties, and had never received any complaints about his work. It also was contended that Drew was insolent and insubordinate. Evidence was introduced by the respondent showing that Drew had complained on several occasions about having to work unusually long hours, and in making such complaints had "gone over the head" of his foreman to the plant superintendent. Other proof was submitted showing that one of the persons whose name Drew had given the respondent as a reference at the time it hired him had stated that Drew was disagreeable and hard to get along with. Such evidence hardly supports the contention of insolence and insubordination. Both the general superintendent and the foreman agreed at the hearing that an employee who worked unduly long hours had a justifiable cause for complaint. The record shows that Drew worked extremely long hours and had carried his grievance to the superintendent only after he had failed to obtain satisfaction from his foreman. Other employees, who made

similar complaint, never were discharged therefor. With regard to the matter of the reference, there is no showing that Drew manifested any of the alleged shortcomings during his service of 2½ years with the respondent, or that he ever had been apprised thereof. We are satisfied that Drew was not inefficient, insolent, or insubordinate. At the oral argument before the Board, counsel for the respondent admitted that Drew's work and conduct had been good.

The remaining explanation advanced by the respondent for the termination of Drew's employment was that Drew had been hired for "temporary work," upon the completion of which he was laid off. Three variations of what it meant by "temporary work" were given by the respondent during the course of the hearing. First, it offered the theory that Drew had been hired to perform certain construction work of temporary duration and was discharged upon its completion. In view of the respondent's admissions that Drew was hired for, and during each operating season regularly performed, work as a boat millwright, this version of what was meant by "temporary work" may be disregarded. Then it contended that Drew had been hired to do boat millwrighting, a job that was to exist for a limited period, and that his services were no longer needed when that job was abolished. This explanation is untenable in view of the undisputed testimony that the job of boat millwright continued after Drew's employment was terminated.

The respondent urged most strongly, however, that Drew enjoyed only a temporary work status because he had been hired, it was alleged, merely to replace Schneider, the millwright above mentioned, who, it was proposed, would be assigned to certain construction work; that in this circumstance, Drew's period of employment was measured by the duration of the construction work in which Schneider would be occupied. The evidence shows that Schneider engaged in directing various construction work from December 1933 until November 1935. Other proof showed that prior to the hiring of Drew in June 1933, Schneider had been engaged in both mill and boat millwrighting, that following Drew's employment as boat millwright, and during the 6 months thereafter until Schneider engaged in construction work, Schneider had worked as mill millwright and performed no boat millwrighting. We are not satisfied that Drew was employed to replace Schneider and that his work was to end upon the completion of Schneider's construction work. At no time during his 2½ years of employment was Drew either expressly or impliedly apprised by the respondent, or otherwise, of the fact that his employment was temporary. Two weeks after his discharge, he was first told that he had had "another man's job." The circumstance of 6 months intervening between Drew's employment in June,

allegedly for the purpose of releasing Schneider for construction work, and Schneider's commencement of such work in December, was not satisfactorily explained by the respondent. Cayia's statement at the hearing that Drew had to be "broken in" impresses us as an afterthought, which, in the absence of explanatory proof, cannot be given credence. We are of the opinion, and find, that Drew was employed on a permanent basis as boat millwright, that the respondent did not hire him on the theory that his position would terminate if and when some years in the future Schneider concluded various construction work to be assigned him sometime in the future.

In the light of the foregoing facts and the record we are convinced that the respondent removed Drew from his regular duties as boat millwright and terminated his employment shortly thereafter, because of his union leadership and organizational activities, and that it did so for the purpose of discouraging membership in the Union. Drew's efforts had contributed substantially to the highly successful growth of the Union among the quarry workers in the months immediately preceding his "lay-off." As already noted, by November the respondent through Cayia had determined upon denying the Union recognition. In this it remained obdurate, and its resolution to undermine the Union was no less certain when in December the Union returned as representative of the vast majority of the employees. We are satisfied that discrimination was utilized by the respondent in Drew's case as a challenge to the demand of the Union for recognition. The multiple reasons advanced by the respondent for its treatment of Drew were not causes of the termination of his employment but attempted justification.

The respondent urged in addition that it had merely laid off Drew, not discharged him. That Drew was in fact discharged, as Rasmussen's remark confirms, we entertain no doubt.

We find that the respondent has discriminated in regard to the tenure of employment of George Drew, thereby discouraging membership in the Union; that by said acts the respondent has interfered with, restrained, and coerced its employees in rights guaranteed them by Section 7 of the Act.

*Alex Durno* was discharged by the respondent on September 4, 1936. He had been in its employ for over 3 years. In the months preceding his dismissal Durno worked on the respondent's dredging boat at Manistique.

Durno joined the Union in September 1935 and was a strong organization member. When the Union, in the spring of 1936, called a meeting of the employees to consider the advisability of a strike because of the respondent's conduct toward the Union, Durno undertook to and did go among the men and persuaded them to attend.

The record shows that at that time, and in the months which followed, the hostile attitude and acts of the respondent toward the Union occasioned great fear in those who had joined respecting the security of their jobs and resulted in a sharp decline in membership and attendance at meetings. There is no question that the respondent knew of Durno's union affiliation. Cayia, himself, on several occasions spoke with Durno about the Union. A few months before the discharge, Rasmussen, the night foreman, told one William Durno, Durno's brother, that if Durno "wasn't a little more quiet on the Union question he would be let out." William Durno so testified at the hearing on subpoena of the Board and was an extremely reluctant witness. The respondent did not call Rasmussen or any other witness to testify with regard to this conversation.

At its last meeting in August of 1936, a few days before Durno's discharge, the Union nominated Durno as its president, in an attempt to bolster its falling membership, and arranged to elect and install him at the following meeting. He was the only candidate for the office. Plans were also made for participation of the Union in the Labor Day parade to be held in Manistique on September 7. Both of these acts were publicized by the Union. The marked decline in union membership and in attendance at meetings, which the Union hoped Durno's election would remedy, was explained by many witnesses as resulting from fear of tenure of employment instilled by the respondent's conduct toward the Union.

At the Labor Day parade, after the supervening discharge of Durno, only one of the quarry workers marched under the Inland banner, prepared by the Union for the respondent's employees. Many of them testified that they were afraid to walk behind that banner. Durno was in fact never installed as president, for, according to the testimony, his discharge dealt a fatal blow at attempts to revive the Union.

As already stated, Durno was discharged on September 4. When he arrived at work that day he found the dredging boat tied up at the dock and was told by the foreman, Binder, to see Cayia. This Durno did, attended by Binder. Cayia read to Durno a tabulation of various alleged faults it was claimed the respondent found with Durno and his work. It was charged that Durno carelessly had broken a "spud,"<sup>4</sup> that on one occasion he had taken the dredging boat in too early, that on another he had taken it in too late causing a boat to delay in docking, that he had read a newspaper twice while on duty. With the exception of the incident with regard to taking the dredge in too early and one instance of reading a newspaper, all the asserted offenses had occurred at least 2 months before the dis-

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<sup>4</sup> A "spud" is a type of anchor

charge. Cayia referred to an interoffice communication written by himself dated August 5 referring to these various matters and recommending Durno's displacement. Durno denied that he had been at blame. He explained the incidents, showing among other things, that the spud had been broken without anyone's fault during a severe lake storm. Cayia then abandoned further discussion of these matters. Binder, however, stated that Durno was discharged and left. Cayia then said that he had no objection to Durno's reemployment provided the foreman, Binder, did not oppose it. Upon being asked some minutes later by Durno, Binder stated that he had no objection if Durno were placed elsewhere at the plant. Durno, during his employment with the respondent, had been assigned various jobs. In the days immediately thereafter Durno made several inquiries about the reemployment Cayia had promised but was unsuccessful in getting work. On September 11 another foreman told Durno that Binder objected to his being employed, that there was "nothing doing."

The respondent contended that it discharged Durno for inefficiency, insubordination, incompetence, carelessness, disobedience, quarrelsomeness, inattention to duty, misconduct, and failure to cooperate in the performance of duties. There is a total failure of any proof of inefficiency. The record shows that Durno's work was satisfactory. With respect to the remaining contentions, these rested in the circumstance that Durno had complained about his working conditions and low wages, that he had broken the spud and engaged in the other acts discussed in the September 4 conversation with Cayia. While Durno had made complaint about working conditions and wages, it also appears that the respondent increased his pay in consequence. Upon a careful consideration of the above-mentioned facts, and the record, we do not feel that the reasons advanced by the respondent, or any of them, in fact induced Durno's discharge. Some relate to patently frivolous matters; others seek to lay blame where none existed; most occurred months before the discharge. The respondent's superintendent, himself, was satisfied, after reviewing the reasons here urged by the respondent, that Durno properly merited employment. The record does not support the respondent's asserted multiple causes of Durno's loss of employment.

We are convinced that Durno, like Drew, was discharged by the respondent's asserted multiple causes of Drew's loss of employment. courage membership in the Union. That the respondent had considered discharging Durno if the occasion required is shown by Rasmussen's advice that if Durno "wasn't a little more quiet on the Union question he would be let out." It chose September 4, 1936, as the day for his discharge in order to prevent the Union from regaining prestige at that time through Durno's leadership

as president, and through the participation of the respondent's employees in the Labor Day parade. That the respondent succeeded in its purpose is evident from the statement of numerous witnesses that the discharge of Durno so intimidated the respondent's employees as to inhibit them from participating in the Labor Day festivities and from the fact that the Union was never revived after September 4, 1936.

We find that the respondent has discriminated in regard to the tenure of employment of Alex Durno, thereby discouraging membership in the Union; that by said acts the respondent has interfered with, restrained, and coerced its employees in rights guaranteed them by Section 7 of the Act.

Since his discharge, Durno has earned, as wages, \$165.

*D. C. Miller* was discharged by the respondent earlier in the year, on February 13, 1936. He had been president of the Union since September 1935, was active in its organizational work, and had participated in the union conferences with Cayia, above mentioned.

Miller operated one of the large electric shovel machines owned by the respondent. On January 6, 1936, while engaged with an assistant at work, he rested the bucket of the shovel on an overhanging rock bank, preparatory to making certain repairs. The bank collapsed and Miller was injured; his helper was not. Miller was taken to a hospital with a fractured rib, from which he did not recover until February 13. The respondent then discharged him. Several hours after the accident Cayia visited Miller to inquire about the accident. According to Cayia's testimony Miller at that time said, "It was just dumb carelessness. There is no excuse for it." At the hearing Miller testified, "I was always talking safety first. That was one time I slipped." It appears from the record that the placing of the shovel upon the bank violated a safety rule of the respondent. Miller testified that his action probably had been contrary to an unwritten safety rule.

A few days after the accident, Cayia also visited Miller's assistant, the only eyewitness to the accident, and asked for his account of the occurrence. When the assistant had completed his statement, Cayia asked him whether he was secretary of the Union. The assistant replied that he had decided to resign on the day of the accident. Cayia was the first person to whom this information was given.

At the hearing evidence offered by the respondent narrowed the reasons which it argued had motivated the discharge of Miller to three: inefficiency, roughness on machines, and carelessness. In addition to proof concerning the accident, a comparison of the efficiency of the shovel operators was attempted. The record also shows some damage to machinery committed by Miller in the fall of 1937 and in October 1935.

We do not find it necessary to consider whether any or all of the reasons advanced by the respondent in explanation of Miller's dismissal are supported by the record, for the evidence as a whole fails to establish that Miller's organizational membership and activities were a cause of his discharge. While the questioning by Cayia of Miller's assistant regarding the assistant's office in the Union arouses some suspicion concerning the respondent's motive, the matter is too speculative. Accordingly, we do not find that the respondent discriminated in regard to the tenure of employment of D. C. Miller. The allegations of the complaint in so far as they relate to D. C. Miller will be dismissed.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above with respect to George Drew and Alex Durno, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

Having found that the respondent discriminated in regard to the tenure of employment of George Drew and Alex Durno, we will order the respondent to offer each of said persons full reinstatement to his former position, and to make each whole for any loss in pay he may have suffered by reason of such discrimination, subject only to one qualification. The record shows that the Union first filed its charges herein on July 22, 1937, 19 months after Drew's discharge and about 11 months after Durno's. The respondent argues in its brief that in view of this circumstance back pay in any event should not be directed as is our usual practice for the period commencing with the date of discharge. We find merit in the respondent's contention and accordingly will order the respondent to make whole each of these men for any loss of pay he may have suffered during the period from July 22, 1937, until the date of the offer of reinstatement by payment to him of a sum equal to the amount which he normally would have earned as wages during said period at the rate he was paid at the time of his discharge, less his net earnings<sup>5</sup> during said period. We will further order the respondent to cease

<sup>5</sup> By "net earnings" is meant earnings less expenses such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers, Local 2590*, 8 N. L. R. B. 440.

and desist from its unfair labor practices and to take certain affirmative action which we deem necessary to effectuate the purposes and policy of the Act.

Upon the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. Quarry Workers International Union of North America, Branch No. 259, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the tenure of employment of George Drew and Alex Durno, and thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act, in respect to D. C. Miller.

#### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Inland Lume and Stone Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner discouraging membership in Quarry Workers International Union of North America, Branch No. 259, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to George Drew immediate and full reinstatement to the position which he formerly held with the respondent in or about December 1935, prior to his transfer from boat millwrighting to carpentry work, without prejudice to his seniority and other rights and privileges:

(b) Offer to Alex Durno immediate and full reinstatement to his former position, without prejudice to his seniority and other rights and privileges;

(c) Make whole the said George Drew and Alex Durno for any loss of pay they have suffered after July 22, 1937, by reason of the respondent's discrimination in regard to their tenure of employment by payment to each of them of a sum of money equal to that which he normally would have earned as wages during the period from said July 22, 1937, to the date of the offer of reinstatement, less his net earnings during that period;

(d) Post immediately, and keep posted for a period of at least thirty (30) consecutive days from the date of posting, notices to its employees in conspicuous places at its quarries and plant stating that the respondent will cease and desist in the manner set forth in paragraph 1 of this order;

(e) Notify the Regional Director for the Twelfth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

And it is further ordered that the allegations of the complaint with respect to D. C. Miller, and the allegations of paragraph 7 of the complaint and so much of paragraphs 8, 9, and 10 thereof as relate to paragraph 7, be, and the same hereby are, dismissed.