Majestic Weaving Co., Inc., of New York [1] ***and*** **Textile Workers Union of America, AFL–CIO *and* Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Party to the Contract.** *Cases Nos. 2–CA–9370 and 2–CA–9370–2. June 29, 1964*

DECISION AND ORDER

On February 18, 1964, Trial Examiner Phil W. Saunders issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in certain alleged unfair labor practices and recommending dismissal of the complaint in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Charging Party filed exceptions to the Decision and supporting briefs. Answering briefs were filed by the Respondent and the Party to the Contract.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

The Board has reviewed the rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this proceeding, and hereby adopts the findings and conclusions of the Trial Examiner only to the extent not modified herein.

1. The Trial Examiner found that the Respondent had not violated Section 8(a)(2) of the Act. As we view the facts of this case, we reach a contrary result. The majority support which Local 815 had on April 26, 1963, when the contract was signed, was an assisted majority. All cards signed up to that time were secured through the efforts of Felter, who during this critical period of initial hiring when the Respondent was starting its operation at this plant admittedly acted in a lead capacity for the general laborers then being hired and had the cooperation of the Respondent in his organizing efforts. Felter was one of the first employees hired by the Respondent and had been a supervisory foreman on the same premises for the previous owner. When Local 815 representatives made their initial visit to the plant and were escorted by the Respondent's labor relations consultant and attorney through the plant, these representatives lost no time in contacting Felter on the job and asked him to solicit memberships for them. Felter's testimony indicates that when he was asked to solicit for Local 815, so shortly after being hired, he had no fear of incurring

[1] The Respondent's name is corrected as requested by the General Counsel at the hearing.

ill feeling on the part of the Respondent by this activity, and that Personnel Manager Thomson thereafter cooperated with him in this solicitation—beginning the latter part of February—by pointing out new employees. Felter testified that Thomson, when he was pointing out new employees, would then either walk away or remain "in the vicinity" in order to point out someone else. Thomson corroborated Felter in general, adding that on occasion he introduced Felter to a new man, although he did not wait to find out the gist of the conversation. However, on cross-examination Thomson admitted that Felter "could have asked him" to point out certain employees so that he might "sign them up." Based upon this solicitation by Felter, in the circumstances of this case, we find that the Respondent rendered unlawful assistance to Local 815 in violation of Section 8(a)(2) of the Act.[2]

In addition, the Respondent in the meantime negotiated with Local 815, despite its minority status, as the exclusive representative of its employees in a production and maintenance unit. As stated by the Supreme Court in the *Bernhard-Altmann* case,[3] Section 9(a) of the Act "guarantees employees freedom of choice and majority rule." The Court also observed that there "could be no clearer abridgment" of the Section 7 rights of employees than impressing upon a nonconsenting majority an agent granted exclusive bargaining status. That is precisely what the Respondent did here, and the fact that it conditioned the actual signing of a contract with Local 815 on the latter achieving a majority at the "conclusion" of negotiations is immaterial. In the *Bernhard-Altmann* case an interim agreement without union-security provisions was the vehicle for prematurely granting a union exclusive bargaining status which was found objectionable by the Board and the courts;[4] in this case contract negotiation following an oral recognition agreement was the method. We see no difference between the two in the effect upon employee rights. Accordingly, we hold that the Respondent's contract negotiation with a nonmajority union constituted unlawful support within the meaning of Section 8(a)(2) of the Act. We also find that the resulting

[2] See *Salmirs Oil Company*, 139 NLRB 25; *Masters-Lake Success, Inc.*, 124 NLRB 580, 593; *Campco Plastics Company, etc.*, 142 NLRB 1272.

[3] See *International Ladies' Garment Workers' Union, AFL–CIO (Bernhard-Altmann Texas Corporation)* v. *N.L.R.B.*, 366 U.S. 731. We hereby overrule our decision in *Julius Resnick, Inc.*, 86 NLRB 38, relied upon by the Trial Examiner, to the extent that it holds that an employer and a union may agree to terms of a contract before the union has organized the employees concerned, so long as the union has majority representation when the contract is executed. We find no merit in the argument of Local 815, Party to the Contract, in its answering brief, that this issue should not be reached because not specifically alleged in the complaint. This additional 8(a)(2) finding is directed to the Respondent, which has made no such contention. Moreover, the issue is strictly a legal conclusion flowing from facts fully litigated at the hearing, was set out in the Trial Examiner's Decision, and the parties have now had an opportunity to litigate it before the Board.

[4] The Board's decision, *Bernhard-Altmann Texas Corporation*, 122 NLRB 1289, enfd. 280 F. 2d 616 (C.A.D.C.), affd. 366 U.S. 731.

contract was an invalid union-security agreement in view of Local 815's assisted majority, and that the execution and maintenance of that contract have interfered with the Section 7 rights of employees in violation of Section 8(a)(1) of the Act.

2. Inasmuch as we have found that the Respondent violated Section 8(a)(2) by assisting Local 815 in obtaining its majority and by negotiating with Local 815 for a contract while it was a minority union, it follows that the resulting contract with Local 815 is not a defense to the Respondent's refusal to recognize and bargain with the Textile Workers as the majority representative of its employees.[5] The request for recognition and bargaining by the Textile Workers was made both orally and in writing on May 28, 1963.[6] On the same date the Textile Workers filed a petition with the Board (Case No. 2–RC–12775) supported by 34 signed cards, which are in evidence here.[7] The unit at that time numbered no more than 45. We find that on and after May 28, 1963, the Textile Workers has been and is the majority representative of the Respondent's employees in the unit found appropriate herein and that the Respondent by failing and refusing to bargain with the Textile Workers as the exclusive representative of its employees in the appropriate unit has violated Section 8(a)(5) of the Act.

Upon the basis of its findings of fact, and upon the entire record in the case, the Board makes the following conclusions of law, its Conclusion No. 3 being in lieu of the Trial Examiner's No. 3:

CONCLUSIONS OF LAW

3. The Respondent has not engaged in unfair labor practices in violation of Section 8(a)(3) of the Act by the discharges of Treacy and Kardel or in violation of Section 8(a)(1) by alleged interrogation of its employees and threats.

4. All production and maintenance workers of the Respondent at its Cornwall, New York, plant, including shipping clerks, and excluding foremen, technicians, head dyers, office employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. On May 28, 1963, and at all times thereafter, the Textile Workers has been the exclusive representative of all the employees in the aforestated appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

[5] See *Continental Distilling Sales Company*, 145 NLRB 820.

[6] A written request for bargaining by the Textile Workers was made again on August 16 1963.

[7] On May 29 and July 1 the Textile Workers filed charges which are the basis of this proceeding, and the representation proceeding was necessarily held in abeyance by reason of the 8(a)(2) and (5) contentions.

6. By refusing on May 28, 1963, and thereafter to bargain collectively with the Textile Workers as the exclusive representative of its employees in the aforestated appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

7. By the conduct set forth in this Decision the Respondent has rendered unlawful assistance and support to Local 815, International Brotherhood of Teamsters, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (2) of the Act.

8. By executing an invalid union-security agreement with Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and by maintaining said agreement in effect and enforcing it with respect to the employees at the Cornwall plant, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Majestic Weaving Co., Inc., of New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving assistance or support to Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or to any other labor organization, and negotiating for a contract with any labor organization which does not represent a majority of its employees in the appropriate unit.

(b) Recognizing the above-named labor organization as the representative of any of its employees for the purpose of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

(c) Giving any force or effect to the collective-bargaining agreement executed with the above-named labor organization on April 26, 1963, or to any modification, extension, renewal, or supplement thereto, provided, however, that nothing herein shall require the Respondent to vary or abandon any wage, hour, seniority, or other substantive feature of its relations with its employees which has been established in the performance of this agreement, or to prejudice the assertion by employees of any rights they may have thereunder.

(d) Refusing to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, with Textile Workers Union of America, AFL–CIO, as the exclusive representative of its employees in the following appropriate unit:

> All production and maintenance workers of the Respondent at its Cornwall, New York, plant, including shipping clerks, and excluding foremen, technicians, head dyer, office employees, guards, and supervisors as defined in the Act.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right is affected by the provisos in Section 8(a)(3) of the Act.

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

(a) Withdraw and withhold all recognition from Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the collective-bargaining representative of any of its employees for the purpose of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms or conditions of employment, unless and until the Board shall certify said labor organization as such representative.

(b) Upon request, bargain collectively with Textile Workers Union of America, AFL–CIO, as the exclusive representative of the employees in the aforestated appropriate unit, with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Post at its plant in Cornwall, New York, copies of the attached notice marked "Appendix A."[8] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[8] In the event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

(d) Notify the Regional Director for the Second Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS HEREBY ORDERED that the complaint be dismissed, and it is so dismissed, insofar as it alleges that the Respondent engaged in unfair labor practices by discharging William Treacy and Stanley Kardel, and by interrogating and threatening its employees.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL withdraw and withhold all recognition from Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the collective-bargaining representative of any of our employees, unless and until so certified by the National Labor Relations Board.

WE WILL NOT give effect to the collective-bargaining agreement executed by us on April 26, 1963, with the above-named labor organization or to any modification, extension, renewal, or supplement thereto, or to any checkoff in favor of the above-named labor organization.

WE WILL NOT give any assistance or support to the above-named or to any other labor organization, or negotiate for a contract with any labor organization which does not represent a majority of our employees in an appropriate unit.

WE WILL, upon request, bargain collectively with Textile Workers Union of America, AFL–CIO, as the exclusive representative of our employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed statement. The bargaining unit is:

> All production and maintenance workers at our Cornwall, New York, plant, including shipping clerks, and excluding foremen, technicians, head dyer, office employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the above-named or any other labor organizations, to bargain collectively through representa-

tives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right is affected by the provisos in Section 8(a)(3) of the Act.

All our employees are free to become, or remain, or to refrain from becoming or remaining, members of any labor organization.

MAJESTIC WEAVING CO., INC., OF NEW YORK,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Fifth Floor, Squibb Building, 745 Fifth Avenue, New York City, New York, Telephone No. 751–5500, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon charges filed on May 29 and July 1, 1963, by Textile Workers Union of America, AFL–CIO, herein called the Textile Workers, the General Counsel issued a complaint, dated July 31, 1963, and a consolidated amended complaint, dated August 30, 1963, against Majestic Weaving Co., Inc., herein called the Respondent or the Company. The consolidated complaint, as subsequently amended, alleges that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act. In their duly filed answers the Respondent and Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Party to the Contract, and herein called Local 815 or the Union, denied the unfair labor practice allegations.

Pursuant to due notice, a hearing was held before Trial Examiner Phil W. Saunders at Newburgh, New York, at various intervals between October 14 and November 8, 1963.[1] All parties were represented by counsel, appeared at the hearing, and were given full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs.[2]

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent herein, Majestic Weaving Co., Inc., maintains its principal place of business or plant in Cornwall, New York, where it is and has at all times material herein been engaged in the business of screen printing on textiles and other materials.[3] About January 1963, Respondent was organized and capitalized for the an-

[1] All dates are 1963 unless specifically stated otherwise.

[2] On January 20, 1964, briefs were received from the parties, and have been given full considerations in arriving at my conclusions and findings herein.

[3] The Majestic Weaving Corp. of Massachusetts is an erection company that has been in existence since 1917. There has been a joint application for a merger filed by Majestic Weaving Co., Inc., and Majestic Weaving Corp. of Massachusetts. This record shows that the companies are jointly owned, controlled, and have joint labor relations policies, and for all purposes here constitute a single employer within the meaning of the Act.

nual production, sale, and distribution of textile, fabrics, and related products in an amount of $500,000. During the period from its inception the Respondent in the course and conduct of its business, has purchased and caused to be transported and delivered to its place of business in Cornwall, New York, supplies, dyes, fabrics, and other goods and materials valued in excess of $50,000, and of which were transported and delivered to its place of business in interstate commerce directly from States other than New York, and in foreign commerce directly from foreign countries. During the above period the Respondent in its business operations performed services valued in excess of $50,000, and of which were furnished to various enterprises each of which annually produces goods valued in excess of $50,000 which it ships directly out of the State wherein such enterprise is located. I find, therefore, that the Respondent is engaged in "commerce" and in operations "affecting commerce" as those terms are defined in Section 2(6) and (7), respectively, of the National Labor Relations Act, as amended, herein called the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent.

II. THE LABOR ORGANIZATIONS INVOLVED

Textile Workers Union of America, AFL–CIO, herein called the Textile Workers, and Local 815, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 815 or the Union, are each labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The main allegations of the consolidated complaint is that the Respondent violated the Act by interrogating and coercing its employees; assisting and contributing support to Local 815; entering into and enforcing an agreement with Local 815 at a time when it had not been duly designated or selected as the collective-bargaining representative by an uncoerced majority of Respondent's employees covered by said agreement; discharging employees Treacy and Kardel for union and other protected activities; and refusing to recognize and bargain with the Textile Workers, the duly selected bargaining representative of Respondent's employees.

A. *Alleged assistance to Local 815*

The Respondent began operations at its Cornwall plant on or about the beginning of February.[4] On or about February 13, Samuel Sanderman, then business representative, now president, of Local 815, and Herbert Friedman, business agent of Local 815, visited the company plant where they talked with Plant Manager Bob Thomasis. Sanderman introduced himself and told Thomasis that he represented some of his employees. Thomasis replied that he did not wish to discuss union matters with anyone and that the Company had a labor relations consultant (Paul Hardy) who handled such matters. Thomasis then called Hardy who met with Sanderman and Friedman the same afternoon. Sanderman told Hardy that his agents had signed up some of the employees in the plant and that Local 815 desired recognition and would like to negotiate a contract.[5] Hardy then informed Sanderman that the Respondent was starting to rebuild that they only had a dozen employees, that this was not going to be their total work force, but that Hardy had no objections in beginning to negotiate and discuss a proposed contract provided Local 815 could show at the "conclusion" that they represented a majority of the employees. Sanderman so agreed. Shortly thereafter, while being conducted on a tour through the plant, on the same afternoon, Sanderman and Friedman talked to employee Weyant Felter and

[4] When the Company started hiring employees early in February, the employees were told that they would first be employed to take down steel, rip up flooring, pour cement, install machinery, and perform the many other tasks necessary to get the Respondent's plant into operation. Once the plant was operative, employees were to be trained at a number of operations in the finishing as well as the printing end of the operations so that employees could be shifted from job to job and thus avoid the downtime so typical of the textile industry. Consequently, when employees were employed they were hired either as general laborers intended intially to perform demolition and construction, and then to be trained for productive operations, or as craftsmen such as welders, pipefitters, or electricians who could be useful as such, once the Company was in operation as well as when it was being set up. Machinery was installed in March, and some production started in the latter part of April.

[5] At the time Sanderman made these representations, Local 815 did not actually have any cards signed.

convinced him to act as their temporary shop steward and also asked Felter to get other employees to sign application cards in Local 815. Before leaving the plant Sanderman spoke to Hardy and asked him when he would be ready to sit down to begin discussions. In accordance with arrangements the first conference took place about 10 days after their first visit to the plant. At this conference Sanderman, Friedman, and Felter were present for Local 815, and Hardy and Thomasis for the Company. There was a general discussion on various clauses, such as holidays, vacations, and pension and welfare.

The second conference between Local 815 and the Respondent took place about 10 days to 2 weeks later, at which time they began to refine their discussions on such matters as holidays, breaks, vacations, rates of pay, checkoff clauses, and arbitration.

A third conference was held toward the end of March, and a final conference in the first week of April, at which time they finally agreed upon terms, which Hardy was to draft into an agreement. On April 26 a contract was executed. Sanderman signed for the Union, and Robert Thomasis signed for the Company.[6] The contract specifies that the agreement shall become effective on February 14,[7] and shall continue in full force and effect until December 1, 1965. Immediately *before* the signing of the contract on April 26, Local 815's authorization cards were given to Hardy who read the names to Plant Manager Thomasis who in turn verified that the employees named were currently employed by the Respondent. This record shows that as of April 26, 1963, the Company employed 37 employees—26 of whom had signed cards for Local 815 (General Counsel's Exhibit No. 9).[8] Prior to the end of May, when he resigned as acting shop steward, the only person to solicit Local 815 cards at the Company was Weyant Felter. When Felter gave out these cards his method was fairly standard. He gave employees two cards plus the benefits booklet entitled "10 Benefits in One," as well as a copy of the Union's constitution and bylaws. He told the employees that he was trying to obtain cards for Local 815; that he thought the benefits were pretty good; and that the employees should take cards home with them and, if they were interested, sign the cards and return them to him.[9]

This record further reveals that within several days after the contract was signed, Local 815's Representative Friedman went to the plant and met with the Respondent's accountant for the purpose of setting up the dues checkoff system. At this time Friedman may have referred to the contract provision requiring the checked-off dues and fees to be remitted to the Union on or before the 10th of the month. Through some misunderstanding the Company's accountant, by checks dated May 8,[10] remitted to Local 815 payments of money for initiation fees, dues, and welfare and pension contributions. When Sanderman discovered these payments, sometime during the latter part of May, he called the Company and informed its bookkeeper to stop payments and that the moneys paid on May 8 would be refunded, and similarly told her to make no further remittances until he instructed her to do so.[11]

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[6] It should be noted that prior to April 7, the president of Local 815 was Alex Spilberg. On April 7, he was stricken with a heart attack and died. On April 11, Sanderman was elected president of Local 815 and has functioned in that capacity since then. Prior to April 11, 1963, Sanderman was never an official of Local 815. He had been employed by Local 815 for many years as a business agent. The bylaws of Local 815 (Local 815's Exhibit No. 12) provide that only the president or the secretary-treasurer shall have the right to sign collective-bargaining agreements on behalf of the Union.

[7] The retroactive aspects in some of the provisions of the contract back to February 14 are discussed in later portions of this Decision.

[8] The Respondent insisted, at the signing of the contract on April 26, that the agreement would have to be retroactive to February 14. The contention being the seasonal fluctuations in the Respondent's business, and also should a dispute between the parties occur, the Company would be in a better bargaining position in February than at some other date. In February the Respondent had job categories as follows: general worker, pipefitters and boilermen, firemen, welder, and electrician; subsequent categories include screen printers, finishers, mechanics, dye blenders, and inspectors.

[9] At the end of May, Felter resigned and his duties were taken over by Patrick McGuinness, who thereafter distributed Local 815 cards.

[10] General Counsel's Exhibits Nos. 4, 5, and 5a.

[11] It is Local 815's policy, after signing an agreement, not to commence checking off dues or initiation fees until after meeting with the employees involved and giving them a thorough explanation of the contract benefits which they will receive. On or before May 8 there had been no such meeting.

On June 25, and again early in July, Sanderman presided over meetings of the company employees. The contract benefits were explained and at one of the meetings the employees present (approximately 20) agreed to have dues checked off from their salaries retroactive to 30 days after they commenced working for the Company.[12] Initiation fees were also due 30 days after employment. However, as far as I can ascertain initiation fees and dues were first deducted *from employees' salaries* during the payroll periods in late June and early July. Some conflicts in this record resulted as to the exact periods covered by such payments.[13] In the final analysis, however, it is clear to me that no deductions from employees' salaries were made prior to the payroll period ending June 21.

The complaint also sets forth further assistance by the Company to Local 815 by the allegation that the Respondent appointed, nominated, or designated the shop stewards to act for Local 815, and selected or designated the members of a union "committee." This record contains a good deal of testimony relative to this aspect of the case, but the credited testimony reveals the following: In the first week in May, when Local 815's representative, Friedman, was at the plant, Patrick McGuinness inquired about the contract and complained that Friedman sped through the plant without talking to any employees. Friedman told McGuinness that the contract had just been signed and said he would bring a copy with him when he returned to the plant in a couple of weeks. He also suggested that McGuinness get a few of the employees together at which time they could meet at lunchtime for discussions on the contract. On May 22, Friedman returned to the plant, went to the company office, and asked Supervisor Thomson to release McGuinness and the employees he had picked. Thomson then went over to McGuinness about 11:30 a.m. and told him that Friedman wanted to meet with him and the employees McGuinness had picked. McGuinness, who up to this time had done nothing in making such arrangements, then went to several of the other employees and requested that they attend the meeting. McGuinness could not locate Felter so he sent a fellow employee to get him. Before going to the meeting, employee John Leombruno, on his own initiative, invited Stanley Kardel to join the group, but Kardel refused.[14] After some discussion about certain provisions in the contract, Friedman suggested that they go to lunch. When questioned by Leombruno, whether they had to sign out, Friedman told him, "No, it's all right, it's on union business." They ate dinner at the Maplehurst Inn where they discussed the contract further and returned to the plant later in the afternoon. On May 28, Local 815 held a meeting of employees at the Firth Club in Cornwall. Felter announced that he wished to retire as shop steward inasmuch as he had insufficient experience in union affairs. Felter suggested that his job be taken over by Stanley Kardel because Kardel had appeared interested in Local 815 and its contract. Kardel refused the job. Thereafter, one of the employees nominated McGuinness. No one opposed McGuinness, and he then assumed the position of shop steward. (I will set forth and analyze additional factors and ramifications pertaining to the assistance allegations in subsequent sections.)

B. *Organizational activities of Textile Workers*

This record shows that on or about May 21, Louis Popilarski, International representative of the Textile Workers, contacted alleged discriminatee William Treacy at his home. On May 22 a meeting was held at Treacy's home, attended by the two alleged discriminatees, Treacy and Kardel, and employees Cornish, MacMorran, and Specht. Popilarski explained how he intended to organize the plant, and the election procedure of the Board. All of the above-named employees signed membership cards for the Textile Workers, and took blank cards for the purpose of signing up other employees. As a result of their efforts, approximately 34 employees were signed up for the Textile Workers by May 28. Treacy signed up about 12 of these

[12] Sanderman also informed employees that inasmuch as the Company would remit welfare payments to the effective date of the contract—February 14—employees could, if they wished, become members of Local 815 retroactive to that date. All present decided to do so because of greater benefits in hospitalization and surgical care over a longer period of membership. At some date subsequent to July 26 the Company sent a check or checks to the welfare fund paying into the fund retroactive credits for all employees from February 14.

[13] It is admitted (O.R., page 907) that deductions were remitted to Local 815 in July for the months of *April* on.

[14] Those attending the meeting on this occasion were John Leombruno, Lynne Fortney, Sam Russo, Weyant Felter, and Pat McGuinness.

employees, received most of the cards from other members of the committee, and turned them over to Popilarski. The Respondent then received a letter dated May 28 from the Textile Workers claiming to represent a majority of the Respondent's employees, and demanding recognition.[15] The Company admits receiving the demand, and also admits rejecting the demand of the Textile Workers on the basis that the Respondent was already in exclusive contractual agreement with Local 815.

C. *The alleged discriminatory discharges*

1. William Treacy

Treacy was hired by the Respondent on April 8 as a general laborer and worked until May 27, at which time he was discharged. The Respondent contends that Treacy was discharged because of an accumulation of errors, complaints, and mistakes, and because of dissatisfaction with his poor work performance which became steadily worse instead of improving. Plant Manager Thomasis made the decision to discharge him after a consultation with other supervisors.

Treacy was hired as a general laborer, and the jobs he performed included enlarging doorways, knocking down walls, drilling holes in walls, and helping in the installation of machinery. There is testimony in this record by Treacy that 2 weeks before his discharge he was given a job as part-time color mixer by Thomasis, that this was a responsible position, and that he performed this work to the satisfaction of his supervisor, Phil Insignia. Treacy testified that no supervisor had any occasion to ever criticize his work. Treacy also testified that on May 27 he was assigned a job by one of his supervisors which consisted of drilling a hole through a wall for a pipe. Around 4:30 p.m. that day Treacy was on a forklift drilling a hole when Supervisor Thomson approached him and called him down. He then told Treacy that he was sorry, but they had to fire him for poor work. There was no explanation as to what was meant by this. Treacy testified that he picked up his belongings and was walking with Thomson toward the door when he said to Thomson, "John, you know I am not being fired for poor work." Thomson supposedly answered, "I know Bill, it's for your union activities," and that Thomson also stated that he would do everything in his power to get him back.

The testimony I credit in this record from my observations and demeanor of the witnesses, shows that almost from the beginning of Treacy's employment his work caused adverse comment by supervisors. Company memos introduced into this record, and dating from well before any involvement which he may have had with the Textile Workers, detail specific incidents.[16] It is noted again that five of the incidents against Treacy, as set forth below, happened before the Textile Workers had ever made any contact with the employees.

This record, and the credited testimony in it, also shows that the job of color mixer did not require any greater skill or did not carry any greater responsibilities with it. Moreover, Treacy was mixing dyes to be used on odds and ends of material which were used for training purposes and not for public sale. His mistakes, if any, could not mean a commercial loss to the Respondent. For these reasons it appears to me there was no special responsibility attached to it. Furthermore, his performance on this job—satisfactory or unsatisfactory—played no part whatsoever in the decision to discharge him.[17] Thomasis credibly testified that he assigned this job to Treacy because he was not happy in the work he was doing. Likewise I reject Treacy's testimony that Thomson told him he was being fired for union activities. In addi-

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[15] On May 28 the Textile Workers also filed a petition for an election with the Board (General Counsel's Exhibit No. 15) supported by 34 signed cards (Case No. 2–RC–12775). The following unit was set forth:

Including "All production and maintenance workers including shipping clerks," and excluding "Foremen, technicians, head dyer, office help, and all other supervisory employees." There is no argument in this case by any party as to the unit being proper.

[16] Respondent's Exhibit No. 5. One memo dated April 17, 1963, states that Treacy was slow in chopping a hole, and that he was not on the job on one occasion when Thomson was making his rounds. Another memo on April 26 registers a similar complaint. On May 7 he failed to report for work. On May 8 Treacy could not be found on his assigned job. A memo on May 16 shows that Treacy was off his job for over 25 minutes, and was slow on his job. On May 23 there is a complaint by Thomson that his work in enlarging a doorway was extremely slow and a better procedure was suggested. A memo on May 25 again states that Treacy spent a lot of his time away from his assigned job.

[17] It should be noted also that the job of color mixer was only part time, a few hours a day, and remainder of the working day Treacy spent at his regular duties, as aforestated.

tion to the testimony at the hearing, Treacy also wrote a letter to the Board on May 28.[18] In his letter he also claimed that John Thomson, the Company's personnel manager, had told him that poor work was not the cause of his discharge but rather that he had been fired because of his "union activities," and that the Company's personnel director expressly told him so. Not only that, but Treacy also contended that Thomson made this damning statement in a voice loud enough so that at least four fellow employees could hear it. (Local 815's Exhibit No. 5.) Treacy sought to support his testimony by swearing that these witnesses had come to him personally and each swore that he had overheard Thomson tell Treacy that he was fired for "union activities" and not for poor work. However, when questioned under oath at the hearing, the alleged witnesses denied having heard the conversation and denied having told Treacy that they had heard it. Each, therefore, directly accused Treacy of having lied. All signers knew that the letter contained statements upon the strength of which the Board's Regional Office was being asked to act. Furthermore the contention that Thomson, with many years' experience in the personnel field, made such a statement to Treacy at the time of his discharge is on its face incredible. Thomson in his testimony denied making any such statement, and termed such attributed remarks to him as "ridiculous." I agree.

2. Stanley Kardel

Kardel started to work for Respondent as a maintenance worker on February 4 and was employed until June 26 at which time he was discharged.[19] Without question Kardel was opposed to Local 815 and was equally active on behalf of the Textile Workers. On or about June 17 or 18, Kardel learned that the Company was planning to take dues out of the employees pay beginning June 20 and Kardel, on the day before, drew up a petition stating that "the employees whose names appeared therein did not want the Company to deduct dues from their pay, until an NLRB election was held to see if the employees wanted to pay dues to a union that was picked by the employees." [20] Kardel also secured signatures of employees and presented the signed petition to Thomson, personnel manager of the Company, that afternoon. Shortly thereafter, Plant Manager Thomasis called Kardel and asked him about the petition. Kardel then told Thomasis that the employees were dissatisfied with Local 815 and did not want dues taken out.

On or about June 25, Kardel together with Popilarski prepared another petition which read, "We, the undersigned, request that the Company do not take any dues out of our pay until all charges filed against the Company are settled by the National Labor Relations Board. If dues are taken out, we will immediately file suit with the National Labor Relations Board for recovery of any dues deducted." [21] Kardel, who secured many signatures, was the first employee to sign this petition. Employees German and Cornish also helped to obtain other signatures (18 altogether) and Cornish then turned the petition over the Supervisor Thomson, who in turn gave it to Thomasis.[22]

The Company contends that there were three basic reasons for Kardel's discharge. First, complaints about his job performance, second, falsification of his employment application, and third, the Company's belief that he was probably responsible for a fire which took place on the Company's premises. The Respondent argues that all three of these reasons weighed about equally in the Company's decision to discharge him. Bob Thomasis testified that the decision to discharge Kardel was made by him and his father, Fred Thomasis, president of the Company.

The testimony of witnesses I have credited reveals that James Crouse, an employee of an outside company who was supervising Kardel and two or three others in the erection of a dry box, complained to Thomson about Kardel's mechanical

[18] Local 815's Exhibit No. 4. The letter stated that Cornish, Kardel, Specht, and German heard Personnel Director Thomson say Treacy was fired for union activities, and all four signed their names in addition to Treacy's signature on the letter.

[19] Kardel was one of the employees who attended the Textile Workers meeting at the home of William Treacy on May 22, as aforestated. He signed a Textile Workers membership card and, in addition, was active in the organizational campaign of the Textile Workers having personally signed up approximately 14 of Respondent's employees.

[20] General Counsel's Exhibit No. 7.

[21] General Counsel's Exhibit No. 8.

[22] Kardel's first jobs at the plant—like most of the others—involved demolition and alterations of plant facilities (ripping up floor, hauling iron away, and removing ceiling beams). After this he started working on erection of machinery.

ability. Crouse also credibly testified that Kardel spent more time away from the job than the other employees. On one occasion shortly prior to Kardel's discharge, Fred Thomasis, the president of the Company, watched Kardel as he was making an assembly for the takeout end of a dry box. Thomasis watched Kardel for some time while he appeared to be fumbling with the assembly, and saw Kardel make the assembly incorrectly. Thomasis approached Crouse and asked if Kardel had made the assembly correctly. Crouse said it was incorrect and added that he had told Kardel the correct method for making the assembly. Fred Thomasis then reported this incident to Plant Manager Bob Thomasis. Crouse also had requested of Thomson that Kardel be removed from this particular job as he was delaying other employees. There is also credited testimony through Bob Thomasis that on several occasions he had personally observed Kardel in areas away from his work station, that on other occasions he had been slow in completing his jobs, and that as a result he was dissatisfied with Kardel's general work habits.

In the spring or early summer of 1963, a fire broke out in a room at the company plant. Thomasis reported this incident to the police, who then investigated the circumstances and reported it was possible that the fire was intentional. A few weeks later Thomson overheard a conversation between two employees who implicated Kardel in the setting of the fire.

The third factor in the discharge of Kardel was falsification in his employment application blanks.[23] In Kardel's case there is some question whether the word "graduated" on his application blanks referred to his high school or vocation training school. Regardless of which one was intended Kardel did not graduate from either one.[24] Kardel contended and testified that in his original application blank he put the word "no" after graduated, and that the record from the Wyoming Institute is incorrect. I specifically reject this testimony. The Company makes no contention that a high school diploma was a necessary prerequisite for proper performance of Kardel's work. It does contend, however, that this falsification of his application blank casts a good deal of doubt on Kardel's character and his desirability as an employee.[25]

Subsequent to his discharge Kardel requested that Local 815 submit his discharge to arbitration. The arbitration hearings extended over a period of a month and the arbitrator has recently handed down his decision in which he upheld the discharge, finding that the Company had just cause for discharging Kardel.[26] The record herein also contains memos from Thomson dated in May and June relative to complaints he had received on Kardel.

D. *Supervisory status*

The complaint in this proceeding puts at issue the supervisory status of Weyant Felter, John Leombruno, and Patrick McGuinness. This record shows that all three are highly skilled craftsmen and have been employed as such by the Company. Each works with a helper, or helpers, as do other craftsmen similarly employed by the Respondent.[27] None of the three has any control over the people assigned as helpers, and, as a matter of fact, the Company has received complaints from them relative to the frequent shifts in those assigned as helpers. This record is clear, and in my opinion establishes without question, that none of the three in question

[23] I accept the testimony that having been primarily concerned with getting the plant into production, it was not until June that the Company finally got around to checking the application blanks of its employees.

[24] Kardel admitted in his own testimony that he was not a high school graduate, and a letter from the Director of Wyoming Valley Technical Institute, Kingston, Pennsylvania (the correct name of the vocational school generally referred to by Kardel in his application form), shows that he attended this school from March 1 until June 30, 1960, and completed 240 hours of study. See Respondent's Exhibits Nos. 3 and 4.

[25] The Company was equally slow in establishing and perfecting other routine employment procedures. Its job application blank was being revised even at the time of the hearings, while its procedures for obtaining physical examinations of employees were completed only in June. It is also clear in this record that the Company made no special attemp to single out Kardel, and that the Company had made inquiries concerning other employees.

[26] At the hearing the Company was granted permission to submit the award when received into evidence as Respondent's Exhibit No. 6.

[27] Felter and Sam Russo are both pipefitters, McGuinness and Joe Thiel are both electricians, and Leombruno and Bryan Ellis are both welders.

hires or fires, promotes or demotes, nor do they make any recommendations concerning these matters. None keeps production records or makes purchases or sales on behalf of the Company. All are hourly paid employees, punch the timeclock, and receive pay for any overtime work performed. They do not direct any part of the work force, and except in the context of the working relationship between a craftsman and his helper, none of the three gives instructions of any sort to other employees. There is no evidence that they assign overtime and they do not give permission to be absent from the plant.

The Company of course does employ supervisory personnel. Thomson, Thomasis, Julian, and others are admitted supervisors. These supervisors are salaried and effectively recommend hiring and discharge as well as promotions. They assign work and overtime, grant permission to leave the plant, keep production records or personnel records, make purchases on behalf of the Company, attend foremen's meetings, interview employees for hire, and assign employees to jobs.

There is some testimony in this record that when the Company first opened its operations, Felter was put in charge of most of the general workers hired by the Respondent during the first few weeks.[28] The credited facts are that on a very few occasions—when Plant Manager Thomasis was late in arriving—he would inform Felter to show two or three of the new employees what jobs were to be done. These appear to be the only incidents wherein Felter exercised any control or direction of other employees, but certainly it in no way establishes that he was a supervisor within the meaning of the Act. Even assuming, *arguendo,* that Felter was acting as a supervisor on these few occasions—the Board has held that to exercise supervisory authority irregularly and sporadically is not alone sufficient to constitute them as supervisors. *V.I.P. Radio, Inc.,* 128 NLRB 113; *Plankinton Packing Company, Division of Swift & Co.,* 116 NLRB 1225, 1231.

In the periods of time material to this proceeding, I find that Felter, Leombruno, and McGuinness were exercising no supervisory functions within the meaning of the Act.

E. *Final conclusions*

The General Counsel contends that the contract between the Company and Local 815 was entered into on February 14. Local 815 contends that the contract was not executed until April 26. In support of this contention, Local 815 points to General Counsel's Exhibit No. 3, signed by Sanderman as president, from which it maintains that since Sanderman did not become president until April 11, as aforestated, he could not have signed the contract before the date. The counterargument to this is that General Counsel's Exhibit No. 2 (also the contract) does not bear the title "President" along with Sanderman's signature and, therefore, argues the General Counsel, it must have been signed by Sanderman before April 11. The General Counsel further contends that by February 14 the Company had 14 employees in the unit, and only 6 of those employees had signed authorization cards for Local 815 by that date. Hence, the necessary majority was lacking. The General Counsel also maintains that aside from actually signing and executing the agreement, Respondent also prematurely recognized Local 815 by negotiating and discussing terms of the agreement at a time when Local 815 lacked a majority status, and prior to a substantial increase in Respondent's personnel. The credited evidence as set forth in a prior section of this Decision will not support the theory and position of the General Counsel. It is clear to me that the contract was not signed or executed until April 26 and done so only after negotiations and revisions by counsel for both sides, and in accordance therewith I so find. Had the contract been signed in February, it could not have been signed by Sanderman inasmuch as the Union's constitution and bylaws permit only the president or secretary-treasurer to sign agreements, and Sanderman did not assume either of these offices until April 11. Furthermore, had the contract been signed in February, it appears likely to me that Local 815 would have insisted upon payment of dues and fees, as well as welfare and pension contributions from the outset, and there was no mention of such payments until the first week in May when Friedman came to the plant to assist the plant bookkeeper in organizing the records.[29] It is also noted that on or about May 22, for the first

[28] Felter was foreman for Firth Carpet Company which was later operated as Monasco and occupied the same building now used by the Company.

[29] General Counsel—in support of the argument that the contract was signed in February—also relied upon a statement allegedly made by Plant Manager Thomasis in March at a meeting of employees generally involving the use of tools. Witnesses attributed, on this occasion, statements to Thomasis that the contract had been signed in February, and that the Company had already begun paying dues or welfare benefits to Local 815. I have rejected this testimony. The credited testimony by Thomasis shows that he merely in-

time, Friedman told McGuinness that the contract had been signed and a few days later brought copies of the agreement to the plant. It seems to me that had the contract been signed in February—Local 815 would not have waited until mid-May to produce a copy of the same.

This record reveals that immediately prior to executing the agreement on April 26, the Company demanded proof of the Union's majority status. At that time, the Company employed 37 employees, 26 of whom had authorized Local 815 to represent them. At the time of the hearing the Company employed approximately 66 employees. Under the rule in *General Extrusion Company, Inc., et al.*, 121 NLRB 1165, a contract signed at a time when an employer had hired at least 30 percent of its ultimate complement, and had employees working within at least 50 percent of the ultimate job categories, is a valid contract for contract-bar purposes. This rule applies also to unfair labor practice cases. On April 26 the Respondent employed at least 30 percent of its complement and had employees working within at least 50 percent of the job category. Inasmuch as Local 815 also clearly represented a majority of such employees, the collective-bargaining agreements between the parties is in all respects valid and lawful.

The General Counsel also argued, as aforestated, that aside from the date of signing the contract the Company prematurely negotiated with Local 815. Assuming that if the Respondent had recognized Local 815 in February as the bargaining representative, or had given retroactive effect to the union-security clause, such acts might well have constituted unfair labor practices. However, the record is completely barren of any evidence that Local 815 was granted exclusive recognition prior to April 26, but the fact that the Company agreed to start negotiating a tentative agreement beforehand is no evidence of such unlawful exclusive recognition.[30] Nor is the fact that Local 815 solicited authorization cards on company time and premises probative proof of unlawful assistance. The Company had no rule whatsoever to prevent such solicitations, and it further appears that when the Textile Workers attempted their organizational campaign in May they too were accorded the same privileges. In support of his contention that the Company unlawfully negotiated with Local 815 before it had a majority—the General Counsel cites *International Ladies' Garment Workers' Union (Bernhard-Altmann Texas Corp.)* v. *N.L.R.B.*, 366 U.S. 731. In this case the employer and the union signed a "memorandum of understanding," and in the memorandum the employer recognized the union as the bargaining agent.[31] In the instant case under consideration we have no signed agreement involved until April 26 when Local 815 had a majority. Sanderman was specifically informed by Respondent's Attorney Hardy in their initial contact that he had no objections in tentative discussions, and then also made it plain to Sanderman that Local 815 would have to show a majority representation before any agreement was signed. Following this discussion Felter then started his organizational efforts for Local 815, as aforestated. As also pointed out herein Felter did not direct or order any employees to sign authorization cards, he did not threaten anyone, he did not promise anything, and no one in management in any way forced employees to designate Local 815 as their bargaining representative. It should further be noted that at this time there was no claim of interest by any rival union, and that it was not until May 21—almost a month after executing the contract with Local 815—did the Textile Workers first make their appearance on the scene. In the final analysis on this phase of the case I am unable to see how the Respondent's mere willingness to discuss tentative contract proposals with Local 815 under these particular circumstances, destroyed any exercise of employees' rights to choose their own bargaining agent, nor am I able to see how the Company thereby unlawfully assisted. Certainly no one responsible to management ever granted any official recognition, as such, until April 26 when Local 815 proved their majority.[32] In essence here the employees had

formed employees at a meeting in April that negotiations were under way, and that some discussion was had on a few subject matters that possibly might be included in such contract. It is clear that Thomasis did not tell employees the contract had been signed, nor did he tell them that the Company had begun welfare or any other type of benefit payments.

[30] *Julius Resnick, Inc.*, 86 NLRB 38.

[31] The union involved in *Bernhard-Altmann* did not have a majority at the time the memorandum was signed, and the Supreme Court held that the employer had therefore recognized a minority union, and the fact that the union subsequently acquired a majority did not satisfy the requirements of the Act. Other authorities cited by the General Counsel can likewise be distinguished on their facts.

[32] The Company did make remittances toward the end of July of welfare and pension payments retroactive to February 14, and because of this the employees voted to become members of the Union retroactive also to February 14 so as to have increased benefits, as aforestated.

a chance beforehand freely to organize their own Union and with which the Company thereafter dealt legally. The retroactive date, welfare payments, and memberships were the results of the bargaining negotiations between the parties and the internal affairs of Local 815, and culminated to a reality after a valid showing of majority on April 26.

One allegation in the complaint, also relative to assistance, states that Felter and McGuinness had solicited employees to sign authorization cards for Local 815. As noted before Felter distributed Local 815 cards during the time when he served as acting shop steward (February to late May), and McGuinness did the same from May to the present. There is absolutely no evidence that Local 815 cards were distributed by anyone else at any time. Since I have found that Felter and McGuinness are not supervisors, as aforestated, it follows that the distribution of Local 815 membership and dues deduction authorization cards by them is not and cannot constitute an unfair labor practice.

It is further alleged that the Company paid dues and initiation fees to Local 815 for its employees without reimbursement from them. The credited testimony, as previously set forth herein, will not support this allegation. General Counsel's Exhibits Nos. 4, 5, and 5a, checks dated May 8, was the erroneous remittance of dues and fees by the Company to Local 815. At the Union's instructions no moneys were ever deducted to cover the checks, and after discovery of this mistake these payments by the Company were subsequently refunded.[33] This record further shows that General Counsel's Exhibit No. 6, dated July 23, covered the dues and fees deducted from employees' salaries commencing on or about the week ending June 21. The above, in my opinion, shows that there is no evidence in support of the allegation that any payments were made without covering deductions from employees' salaries.[34]

Additional assistance allegations of the complaint contain specific references to the appointment or selection of Felter and McGuinness by the Company to serve as shop stewards and committeemen for Local 815. As already pointed out Felter and McGuinness were the only two shop stewards, and neither one is a supervisor. This record further shows that Felter was requested to act as shop steward by Sanderman and Friedman when they met him on their first visit to the plant on or about February 13. At this time they convinced Felter that he should act as the temporary organizer for Local 815, and requested that he endeavor to get other employees to sign cards, as aforestated. The General Counsel introduced testimony through several witnesses to the effect that Felter distributed Local 815 cards in the plant at the direction or with the assistance of Personnel Manager Thomson, and thus inferring that the signing of the cards was a condition of continued employment. The credited evidence shows that in February there were several outside contractors also working in the plant in its rebuilding operations, and as a result Felter merely asked Thomson on a few occasions to identify and to point out the company employees. Thomson also introduced a few of the new employees to Felter[35] but there is no reliable evidence that Thomson ever joined in the conversation with employees while Felter was soliciting for Local 815 or that he was even within hearing distance while such conversations took place. It is further noted that no cards for Local 815 were turned over to Thomson. This record shows that on or about May 28, when Felter resigned, McGuinness was elected in his stead. Once again, there is no evidence that the Company had anything to do with the appointment of either man, or had any say whatsoever in permitting either to function as a shop steward. One was appointed by union representatives, the other was elected at a union meeting. The Company was not responsibe for either serving as a shop steward.

My evaluations of the testimony concerning the appointment by the Company of a committee for Local 815, shows that on the spur of the moment, on May 22, McGuinness picked a number of his friends to meet with Friedman over lunch. There is no credible evidence that this meeting was sponsored by the Company or that those who attended were in any manner selected or appointed by Thomson or by any other company representative.

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[33] Local 815's Exhibits Nos. 1, 2, and 3.

[34] It also appears to me that had any deduction been made from employees' checks prior to June—some objections would have been made by the employees similar to the two petitions which did follow after official notification that henceforth deductions would be made.

[35] It should also be noted that Thomson was only working for the Company on a part-time basis up until the middle of May when he then was employed on a full-time basis.

The remaining allegations of the complaint, relative to assistance, state that on June 17 Thomasis and McGuinness advised employees that the Company had paid money to Local 815 for fees and dues, and that the Company would start deducting money from wages to be paid to Local 815 as initiation fees and dues. There is no evidence that Thomasis ever stated that the Respondent had been paying dues and initiation fees to Local 815 and henceforth would begin deducting them from employees' salaries. On June 19, McGuinness posted a notice on the bulletin board announcing that dues deductions would commence in the near future. By then, McGuinness was the shop steward for Local 815, and under the circumstance set forth herein had every right to make such an announcement. However, it is noted again that McGuinness is not a supervisor and, therefore, whatever he may have said or announced is in no way attributable to the Respondent.

The complaint alleges that the Respondent refused to recognize and bargain with the Textile Workers as the exclusive representative of the Respondent's employees in the unit. It is noted that the refusal to bargain with the Textile Workers was not based upon doubts as to its majority status, and there is no need for any additional discussion on the number or the various other circumstances in the solicitation of authorization cards for the Textile Workers. Nor was the Respondent's refusal based on any desire to destroy whatever majority status the Textile Workers may have had. The reason for the refusal was the fact that the Company had already signed and was bound to enforce a contract with Local 815, which had been duly executed over a month before. This contract conferred exclusive recognition upon Local 815, and effectively prevented the Company from recognizing or bargaining with any other union as the representative of its employees, and I so find. In implementing the binding nature of an established bargaining relationship, the Supreme Court has long since determined that the duty of an employer to bargain with a union is not necessarily extinguished by that union's loss of its factual majority. *Ray Brooks* v. *N.L.R.B.*, 348 U.S. 96. In other words, a union's status as the statutory collective-bargaining representative of employees does not depend on the continued day-by-day existence of its majority status. Otherwise, of course, normal turnover and the usual variations in employee sentiment would prove disruptive of the stable, orderly and peaceful conduct of labor relations. The underlying purpose of the Act requires some measure of permanence between the employer and the bargaining agent, and the Board has devised various "contract-bar" rules, which serve to preclude a redetermination of bargaining representatives for specified periods following a Board certification or the execution of a bargaining agreement. The consolidated complaint in this proceeding also alleged a few incidents of interrogations. It is alleged that in May, Personnel Manager Thomson and Foreman Juliano questioned employees about their membership in Local 815, and that on June 17 Thomasis interrogated employees relative to the preparation and circulation of a petition (General Counsel's Exhibit No. 7). As to the latter Thomasis merely inquired of Kardel as to what the petition was about when it was handed to him. I can find nothing violative of the Act by a plant manager making such a general inquiry under these particular circumstances. As to the former allegation it is noted that the contract between the Company and Local 815 was executed on April 26. It may well be that thereafter Thomson did have some conversations with employees concerning Local 815. This would be only natural in view of the fact that the Company and the Union had entered into a contractual relationship. There is no evidence, however, that on any occasion Thomson in any way made statements or interrogations which violated the Act.[36] Kardel testified that on May 23 (the day after the Textile Workers meeting) Foreman Juliano asked Kardel if he was at this meeting, and then informed Kardel that he knew he was there. Even granting

[36] Kardel, Cornish, Treacy, and several other witnesses for the General Counsel attributed statements to Thomasis, Thomson, and Felter, at the times they were hired, to the effect that the plant would definitely be a union shop, that employees would have to join the Union, and that unless the cards for the Union were signed employees could not work at the plant. The credited testimony shows that Thomson merely told Treacy that the Company was working on a contract and that Thomasis, after having conducted a survey of the Cornwall area before selecting a site, informed applicants that it was quite probable a union would organize the plant. Thomasis explained that from past history in the textile field the Company felt that some union would organize the plant and he then deemed it fair to state this expectation to new employees. I can find nothing violative of the Act in such explanations or predictions of some possible future event. Felter's methods of solicitations for Local 815 have been set forth in a prior section of this Decision and, under all the circumstances outlined herein, I find them proper and without any violative conduct.

that Juliano made such an injuiry—it should be noted that only one employee was so questioned, and a sporadic and isolated single and minor incident under these circumstances should not be considered to be violative of Section 8(a)(1) of the Act, and in accordance therewith I so find.

As I have found, this record demonstrates ample justification for the Respondent's contention that Treacy was discharged for cause. In the first place company records, dating from well before any connection which he may have had with the Textile Workers, detail specific incidents wherein supervisors were dissatisfied with the work being performed by Treacy. The credited testimony in this aspect of the case also shows that jobs upon which he worked took too long to complete, that when a method for speeding up the work was suggested Treacy ignored it, and that he frequently wandered away from the work he was assigned to do. Moreover, evidence that the Company had any knowledge of his prounion or antiunion sentiments or activities is also lacking. The only evidence which might support the General Counsel's allegations is Treacy's own testimony about his conversation with Thomson on the day of his discharge. I have specifically rejected this testimony, as aforementioned.[37]

This record shows that Kardel was discharged for an accumulation of justifiable reasons and I have so found. In my rejection of Kardel's testimony I have also considered the following inconsistent statements he gave. Kardel's claim to have been the sole author of the second petition of June 25 contrasted with his subsequent admission that he had very little to do with its preparation; his contention that Leombruno only played and McGuinness never got his hands dirty contrasted with his later statement that both performed the most highly skilled operations of their respective crafts; his contention that all statements on his original job application blank were true, in spite of clear evidence to the contrary from the Wyoming Valley Technical Institute; his insistence upon a spurious distinction between "supervisors" and "foremen," a distinction which even he did not later respect; his contention that "one month ago" means any time within the past 2 to 6 weeks; and his contention that he could not recall whether he started working under Tony Juliano in March, April, May, or June, contrasted with his utter certainty that Bryan Ellis had signed an authorization card in the lunchroom at 10 a.m. on May 23.

In connection with the letter which was sent to the Board relative to Treacy and which document Kardel also signed, as aforestated, Kardel admitted that he had lied when he signed the letter, but then attempted to excuse himself on the grounds that he was not under oath at the time. In view of such testimony it becomes impossible for me to accept Kardel's testimony that he was never criticized for his work, and on similar grounds I have rejected his testimony that there was no falsification of his employment application. It is noted here also that the testimony given by Crouse confirms and substantiates the complaints about Kardel's work.[38]

While the circumstances herein might raise a suspicion that the discharge was discriminatory, it is well-established law by both the courts and the Board, that mere suspicion or surmise cannot be considered as evidence to support a finding of unfair labor practice.

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[37] It is pointed out again that Treacy's testimony, attributing to Thomson the statement that he was fired for union activities, was not even supported at this hearing by those employees who had previously signed their signatures to a letter initially verifying Treacy's version, and as detailed in an earlier section herein. Under these circumstances, I find it most difficult to credit such witnesses when they themselves admit lying in prior communications or contacts with the Board.

[38] As noted herein an arbitrator also found that the Company discharged Kardel for just cause (Respondent's Exhibit No. 6). In the arbitration proceeding the arbitrator had before him essentially the same basic facts and the same legal issue which were before me. The arbitration proceedings appear fair and regular in all respects and with only one complaint (Kardel complained because his attorney at the arbitration hearing was the same lawyer who was representing Local 815 in the unfair labor practice hearing and therefore could not represent him fairly). However, there appears to be no contention that Kardel was prevented from presenting any testimony, or in any manner hampered in the full presentation of all available evidence, by virtue of the attorney's dual obligations. [Henry I. Hamburger represented Kardel in the arbitration case as counsel for Local 815, and appeared before me representing Local 815 in this proceeding. Subsequent to my hearing, and before filing of briefs, Lester Yudenfriend was substituted for Hamburger.] Implicit also in Kardel's demand for arbitration in the agreement, at least indirectly, to be bound by the result, and there is no argument that Kardel ever questioned the arbitrator's authority to render an award. However, the findings I have made herein relative to Kardel are based on the testimony given before me, and I have noted the arbitration determination as only consistent with mine.

In view of my findings that the Respondent did not engage in any violative interrogations; did not render illegal assistance to Local 815; did not unlawfully refuse to bargain with the Textile Workers; and did not discriminatorily discharge Treacy and Kardel, it is believed that the complaint should be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Unions are labor organizations within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in unfair labor practices as alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that the complaint herein be dismissed in its entirety.

Security Plating Company, Inc. *and* Local 67, Metal Polishers, Buffers, Platers & Helpers International Union, AFL-CIO.

Case No. 21-CA-5484. June 29, 1964

DECISION AND ORDER

On March 31, 1964, Trial Examiner Wallace E. Royster issued his Decision in the above-entitled case, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Decision. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the Respondent and the General Counsel filed exceptions to the Decision, supporting briefs, and answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order the Recommendations of the Trial Examiner and orders that Respondent Security Plating Company, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommendations.