

Western Renaissance Corporation d/b/a Detroit Plaza Hotel, n/k/a Westin Hotel and Erwin Trager and Kim Pope and Ernestine Olszewski
Local 24, Hotel, Motel, Restaurant Employees, Cooks, and Bartenders International Union, AFL-CIO and Erwin Trager and Kim Pope and Ernestine Olszewski. Cases 7-CA-17967, 7-CA-18500, 7-CA-18758, 7-CB-4803, 7-CB-5004, and 7-CB-5022

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 13 August 1982 Administrative Law Judge Donald R. Holley issued the attached Decision in this proceeding. Thereafter, Respondent Employer filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent Western Renaissance Corporation d/b/a Detroit Plaza Hotel, n/k/a Westin Hotel, Detroit, Michigan, its officers, agents, successors, and assigns, and Respondent Local 24, Hotel, Motel, Restaurant Employees, Cooks, and Bartenders International Union, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached Appendix A is substituted for that of the Administrative Law Judge.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In agreeing that Respondent Employer violated the Act herein, Member Hunter notes that the Administrative Law Judge found that discriminatee Trager was disparately treated by Respondent Employer for coming onto Respondent Employer's premises to pick up his paycheck on his day off. Since Trager was unlawfully suspended, it follows, as found by the Administrative Law Judge, that Respondent Employer's attempt to evict Trager from otherwise lawfully observing the ballot count and its discharging him for allegedly assaulting a guard during the eviction also violated the Act.

APPENDIX A

NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD
 An Agency of the United States Government

WE WILL NOT prevent employees from participating fully in last offer elections by refusing to permit them to observe the tally of ballots at the conclusion of such elections.

WE WILL NOT suspend or discharge employees because they oppose contract offers the hotel makes to their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Erwin Trager immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of pay or other benefits suffered by reason of our discrimination against him, with interest.

WE WILL expunge and physically remove from our records and files any reference concerning the suspension of Erwin Trager on 30 April 1980.

WESTERN RENAISSANCE CORPORATION
 D/B/A DETROIT PLAZA HOTEL,
 N/K/A WESTIN HOTEL

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: This case results from the consolidation of six complaints, i.e., three naming Western Renaissance Corporation, d/b/a Detroit Plaza Hotel, n/k/a Westin Hotel (herein called Respondent Employer or the Detroit Plaza),¹ as the Respondent and three naming Local 24, Hotel, Motel, Restaurant Employees, Cooks, and Bartenders International Union, AFL-CIO (herein called Respondent Union or Local 24), as the Respondent. The six complaints were issued after investigation of charges filed by three separate individuals. Thus, upon charges filed in Cases 7-CA-17967 and 7-CB-4803 by Erwin Trager (herein called Trager), the Regional Director for Region 7 issued complaints on August 14, 1980,² and July 7, re-

¹ The name of Respondent Employer was amended at the hearing.

² All dates herein are 1980 unless otherwise indicated.

spectively. The complaint in Case 7-CA-17967 alleges, *inter alia*, that Respondent Employer violated Section 8(a)(1) and (3) of the National Labor Relations Act (herein called the Act) by: threatening to fire Trager because he engaged in protected concerted activity; interfering with Trager's right to witness the count of ballots after a last offer election; and suspending and subsequently terminating Trager because he engaged in protected concerted activities. The complaint in Case 7-CB-4803 alleges, *inter alia*, that Respondent Union violated Section 8(b)(1)(A) of the Act by: attempting to prevent Trager from distributing literature opposing a union dues increase; assaulting the employee in the union hall; and threatening that it would not represent dissident members because they opposed a dues increase.

After issuing the above-described complaints, the Regional Director, upon charges filed by Kim Pope³ (herein called Pope), issued complaints in Cases 7-CA-18500 and 7-CB-5004 on June 29, 1981. Such complaints alleged, *inter alia*, that the Detroit Plaza violated Section 8(a)(1) and (3) of the Act by suspending Pope on November 5, 1980, and by discharging her on November 8, 1980, and that Local 24 violated Section 8(b)(1)(A) of the Act by refusing to fairly represent Pope since November 6, 1980, because she actively supported an anti-Local 24 group called Committee for a Democratic Union.

The two remaining complaints were issued in February 1981, upon charges filed by Ernestine Olszewski (herein called Olszewski). The complaint in Case 7-CA-18758 alleges, in substance, that the Detroit Plaza violated Section 8(a)(1) and (3) of the Act by polling steady banquet employees to ascertain whether they wished extra steady servers to work reception functions, and by entering an agreement with Local 24 to alter the method of assigning banquet employees to reception functions, thus depriving extra steady banquet employees from participation in gratuities derived from reception functions. The complaint in Case 7-CB-5022 alleges, in substance, that Local 24 violated Section 8(b)(1)(A) and (2) by: threatening reprisal against extra steady banquet employees because they complained the Union failed to represent them; polling steady banquet employees to determine whether they desired to deprive extra steady banquet employees of reception gratuities; and by insisting since August 1, 1980, that the Detroit Plaza follow a method for assigning banquet employees to reception functions that was designed to deprive extra steady banquet employees of gratuities derived from receptions.

The case was heard in Detroit, Michigan, on December 14, 15, 16, and 17, 1981, and on February 2, 3, and 5, 1982. Subsequent to the close of the hearing, counsel for Respondent Employer and counsel for Respondent Union filed briefs which have been carefully considered. Upon the entire record, including my observation of the demeanor of witnesses when they gave testimony, I make the following:

³ At the time of the hearing, Pope was married to Erwin Trager.

FINDINGS OF FACT

I. JURISDICTION

Respondent Employer, a Michigan corporation, is engaged in the operation of a hotel at the Renaissance Center in Detroit, Michigan. During calendar year 1980, its gross revenues from the operation of the hotel exceeded \$500,000 and during the same period it purchased goods, materials, and supplies valued in excess of \$10,000 from suppliers located outside the State of Michigan. It is admitted, and I find, that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. Background

The Detroit Plaza is a large hotel located in the Renaissance Center in Detroit, Michigan. It employs some 1,400 employees. A segment of its employees are represented by Respondent Union.

During the period when the events at issue here occurred, the hotel's employees were controlled by, *inter alia*: David Ling, hotel director; Hud Hinton, food and beverage director; Lynn Kirsch, personnel director; Michael Abela, assistant personnel director; Jeff Humes, assistant manager; and Catherine Chipukites, manager of the Inner Circle (since October 1980).⁴

The record reveals that Local 24 is a large union which represents hotel employees, including those employed by the Detroit Plaza. During the period involved herein, Respondent Union was operated and controlled by, *inter alia*: Herbert Triplett, secretary-treasurer; George Greenwell, administrative assistant to secretary-treasurer; Daniel Spinks, business agent for Detroit Plaza; Dennis Tapp, business agent; Peg A. Lukacs, business agent; Roosevelt Luster, business agent until July 1980; Diana Jo Jacobs, organizer; Helen Maxey, steward and member of arbitration panel; Virginia Washington, steward; and Ellen Crawford, steward.⁵

In March 1979, a number of Respondent Employer's employees became dissatisfied with the representation provided them by Local 24. Consequently, they formed an organization named the Committee for a Democratic Union (herein called CDU). Erwin Trager was chosen as CDU's chairperson; Twila Harrington, a banquet captain at the Detroit Plaza, was chosen as assistant chairperson; and Kim Pope (Trager) was elected secretary-treasurer.

⁴ Respondent Employer admits, and I find, that the named individuals are supervisors within the meaning of Sec. 2(11) of the Act.

⁵ It is admitted, and I find, that the named individuals, excepting Washington, were, at all times material, agents of Respondent who acted in its behalf within the meaning of Sec. 2(13) of the Act.

After CDU was formed in early 1979, the group voiced its dissatisfaction with the representation provided by Local 24 and its dissatisfaction with the pay and benefits received by Detroit Plaza employees by distributing numerous items of literature and conducting meetings which employees were urged to attend. Most of the literature which was distributed was given to employees on Respondent Employer's premises. A favorite spot for such distribution was Mums, a cafeteria on Respondent Employer's premises which was reserved for employees of the hotel, including members of management. To show the extent of CDU's literature distribution activities, the General Counsel placed copies of the literature distributed during 1979 and 1980 in the record as General Counsel's Exhibits 3-9, 11-15, and 18.⁶ It is undisputed that both Respondent Employer and Respondent Union officials obtained copies of most of the documents distributed by CDU, and both Respondents were shown to be aware of the fact that Trager, Pope, and Harrington were active participants in CDU.

2. The December 3 and 4, 1979, dues increase balloting

The record reveals that, sometime during November 1979, Local 24 advised its members that balloting would be conducted at the union hall from 9 a.m. to 9 p.m. on December 3 and 4 to determine whether they approved an increase of monthly union dues from \$7 to \$9. When the CDU group learned that Local 24 was attempting to increase the dues, it invited represented Detroit Plaza employees to attend a CDU meeting to discuss the matter. Such a meeting was held and CDU decided to oppose the proposal that the dues be increased. Thereafter, Trager prepared a leaflet opposing the dues increase in which he stated his view of the proposal by commenting, *inter alia*:⁷

When interviewed, Erwin Trager, Chairman for the Committee for a Democratic Union said: This is a bunch of shit. It seems that the Local can recognize the problems inflation imposes on its own organization, but they don't recognize that effect on its own membership. The Ponchartrain's CDU contract proves this. Again at the Ponchartrain, Local 24 members are getting a .25 cent an hour increase at the end of the year. This amounts to a 5% increase when inflation is running away at 10-14% a year. We at C.D.U. feel that until Local 24 starts bargaining for a Cost of Living Allowance that they should not get a raise in dues.

* * * * *

We feel that it is imperative that every member of our Local goes down to the Union Hall at 100

Selden and vote a resounding "NO." Let's get more from Local 24.

After the above-described leaflet had been prepared, both Trager and Pope distributed copies of the document at the Detroit Plaza. Pope, who was in layoff status at the time, testified that while she was handing out copies of the literature to Respondent Employer's employees on the service level of the hotel on December 3, 1979, David Ling, manager of the hotel, observed her and asked that they accompany him to Personnel Manager Kirch's office. After Kirsch ascertained that Pope was in layoff status, she advised her she should not be in the hotel while laid off and informed her she could get in trouble for passing out literature in the hotel.

On December 3, Trager arrived at the union hall at approximately 9 or 9:15 a.m. He went inside and voted in the so-called meeting room where representatives of the Michigan Employment Relations Commission (herein called MERC) were supervising the balloting.⁸ After he voted he attempted to distribute copies of his "vote no" literature inside the hall, but went outside when it was agreed that Respondent Union's representatives would distribute their literature outside also.⁹ At approximately 10:30 a.m., Trager reentered the building to get warm. Herbert Triplett approached him and informed him that he would have to leave the building. Trager replied he was just getting warm and did not intend to pass literature inside the building. Triplett observed that he was carrying a valise filled with literature and again told him he would have to go outside. Trager responded that he considered his valise to be his file and, if he had to take it outside, Triplett should remove all "vote yes" literature from his files also. When Triplett insisted that he leave, Trager reentered the balloting area and sought to discuss the matter with Phillips, the MERC representative in charge. Triplett followed Trager to the meeting room and again insisted that Trager leave the area, stating that Trager was a bad union member; a refugee from California. At that point, Trager and Triplett both left the voting area and proceeded to the vestibule which led to the front door of the hall. Upon reaching that area, Trager informed Triplett that he intended to remain there and distribute literature since he was a union member and his dues helped pay for the maintenance of the building. Triplett replied that he was to leave the building. Trager then stated he was not going to leave and asked Triplett what he was going to do about it. Trager claims that Triplett then: raised his arms like a football player, attempted to push him out the door, stepped aside, and hit him in the back of the head as he fell to the floor. Triplett claims that Trager: spit in his face; charged him; that they both went through the door; that he turned to go back in and Trager grabbed him by

⁶ See diagram of the union hall placed in the record as Resp. U. Exh. 1.

⁶ The early literature explained the reason for CDU's existence (to improve communications between the Union and Detroit Plaza employees); later literature opposed a union dues increase; and the 1980 literature opposed ratification of last contract offers made by Respondent Employer. Generally speaking, the literature was critical of Local 24.

⁷ See G.C. Exh. 9.

⁹ While Trager claims that Local 24's secretary-treasurer, Herbert Triplett, told him he had to go outside, Respondent Union President Hairston testified that he, rather than Triplett, told Trager he would have to leave after he voted. Trager exhibited some confusion as to the sequence of events on December 3, and I credit Hairston.

the neck; and they both went down.¹⁰ When the security guard who was stationed in the adjoining corridor observed the altercation, he stepped between Trager and Triplett. Trager then picked up his literature off the floor and went to an office in the building and called the police. The police later investigated the incident but made no arrests.

In addition to claiming that Triplett sought to interfere with their right to distribute CDU material inside the hall on December 3, Trager and Pope both indicated during their testimony that their efforts to pass literature on the outside were impeded. Thus, Trager testified without contradiction that on three to four occasions union steward Virginia Washington, who was admittedly instructed to distribute "vote yes" literature outside by Business Agent Spinks, took literature from the hands of members who had accepted Trager's literature. Similarly, Pope testified that during the afternoon of December 3, while she was passing out "vote no" literature in front of the union hall, Peg Lukacs and Helen Maxey, who were passing out "vote yes" literature, called her nasty names, told her she was a "little whore" for passing out literature against the vote, pushed her up against a brick wall, took some of her literature away from her, and told approaching members her literature was a "bunch of shit" and they should not listen to the "little bitch."¹¹

When the balloting was completed on December 4, spectators were required to remain in the corridor outside the meeting room until the ballots were counted. When it became known that the vote was against a dues increase, Business Agent Dennis Tapp came from the meeting room to the corridor where Trager, Pope, Harrington, Lukacs, Maxey, and others were standing and stated: "You cocksuckers, are you happy now."¹² Shortly after Tapp made his comment, Trager, Pope, and Harrington claim that Lukacs stated: "You mother fuckers, don't come back here expecting any help from us again."¹³

3. The Trager suspension and discharge

Erwin Trager was first hired by Respondent Employer on March 1, 1977. He quit 7 or 8 months later and was rehired on July 6, 1978. At the time of his discharge he was classified as a chef de partie. In that position, he worked all the stations in the La Fontaine Kitchen, i.e., sauce, vegetable, and broiler stations. Respondent Employer does not contend he was a poor employee.

¹⁰ While security guard Dennis Moore observed part of the altercation, he did not see who started it. I am convinced that Trager provoked Triplett and caused the latter to attempt to push him out the door and that Trager then retaliated by wrestling Triplett to the floor. Trager denied he spit in Triplett's face and the witnesses uniformly testified they did not see Triplett wipe anything from his face. I credit Trager's denial.

¹¹ Lukacs and Maxey denied that they engaged in the conduct described by Pope. Pope's testimony had the ring of truth. Lukacs and Maxey were not impressive witnesses. I credit Pope.

¹² Tapp admitted he uttered some curse words as he exited, but claims he said something like "fuck this shit." Trager, Pope, and Harrington uniformly attributed the remark set forth in the text above to Tapp. I credit the employees.

¹³ Lukacs and Jo Jacobs testified that Lukacs did not make the remark; that Jacobs merely made a comment to the effect that "how did they expect to be represented when there was no one to represent them." I credit the employees.

The record reveals that, during his tenure of employment at Respondent Employer, Trager filed grievances with the Union and when he felt the hotel was failing to abide by the collective-bargaining agreement. He prevailed on some of the grievances and did not prevail on others.¹⁴ The record fails to show that any management official harbored any resentment against the employee because he filed grievances.

Although Trager authored the literature distributed by CDU during 1979, and that literature urged Respondent Union to seek numerous benefits for Detroit Plaza employees during contract negotiations which were to commence around January 15, 1980, no evidence was offered to show that Respondent Employer officials harbored resentment against the employee because of his or CDU's 1979 activities. As the time for negotiations approached, however, Trager prepared, and CDU members distributed, an additional leaflet urging Local 24 to keep employees advised of what the Union intended to demand for them during negotiations.¹⁵ Thereafter, CDU circulated petitions among Detroit Plaza employees in an attempt to cause Local 24 to list the contract demands presented to Respondent Employer.¹⁶

Although a significant number of Detroit Plaza employees executed the petitions circulated by CDU, Trager testified he did not forward the petitions to Local 24. Despite this, Local 24 scheduled a meeting at the Veterans Memorial Building for April 29, 1980, indicating that a Detroit Plaza contract offer would be discussed and voted on at the meeting. Prior to the meeting Trager and CDU members distributed another pamphlet which stated:¹⁷

VOTENO!!
FOR
NOTHING

A RATIFICATION MEETING WILL BE HELD ON TUESDAY, APRIL 29, 1980, AT THE VETERANS MEMORIAL BLDG., WOODWARD AND JEFF. AT 10:30 AM AND 4:00 P.M.

VOTING AT THE END OF EACH MEETING WILL TAKE PLACE TO DECIDE IF THE EMPLOYEES WILL ACCEPT THE HOTELS OFFER.

IT IS NOT A STRIKE VOTE.

THE HOTEL PROPOSES NO CHANGES!!!!!!!!!!!!!!

WAGES: \$.25/HR., ONCE A YEAR BEGINNING JANUARY 1, 1981

TIPPED EMPLOYEES: \$.15/HR.

NO COST OF LIVING ALLOWANCE

NO SICK DAYS

NO PERSONAL LEAVE DAYS

NO BLUE CROSS

NO NOTHING

¹⁴ See Resp. U. Exhs. 2-6.

¹⁵ See G.C. Exh. 12.

¹⁶ See G.C. Exh. 13. Inspection of the exhibit reveals some 132 employees signed the petition(s).

¹⁷ G.C. Exh. 14.

PREPARED BY: THE COMMITTEE FOR A DEMOCRATIC UNION

The contract offer made by Respondent Employer was rejected at the April 29 meeting. Immediately thereafter, CDU prepared and distributed another leaflet which stated:¹⁸

What happens next?

The Hotel can show good faith, keep negotiating, and come up with a decent offer. . . . This is what we hope they do.

Or, they could lock us out of the Hotel and refuse to bargain.

If nothing else works, we can vote for a strike.

Why the Hotel offer was rejected.

1. Wages; They do not meet the cost of living, and we're already behind.

2. Health Insurance; The program is inadequate: To insure a wife or husband and one child, will cost an employee \$1,000.00, \$567.00 more than under the Connecticut General Plan.

3. Other benefits, such as sick days, C.O.L.A., and holidays, are below other major industry standards.

We've shown the Hotel how we feel. We are the Union and we're making that Union process work. Progress is being made.

Therefore, we urge the officials of Local 24 to call a general meeting. Before the next ratification vote. So we can all get our heads together and draw up a plan of action. . . .

LET'S MAKE THIS THING WORK.

Prepared by: The Committee for a Democratic Union

April 28, 1980, was a Monday, and the Detroit Plaza paid its employees every Monday. Trager worked that day but did not pick up his check. On Tuesday, April 29, Trager went to the Detroit Plaza in the afternoon to pick up his paycheck. He took the day off to distribute CDU literature. He signed for his check at or around 1:30 p.m. The next day, Wednesday, April 30, MERC was conducting a "last offer" election at Respondent's premises. The election was to be spread over 2 days, i.e., April 30 and May 1. Trager appeared at the premises at approximately 3:30 p.m. and Michael Abella, Respondent Employer's assistant personnel director, approached him in the locker area and told him he wanted to see him in his office. Trager told him he would not go to his (Abella's) office to wait for him. Instead, he proceeded to Mum's cafeteria where he passed out copies of the leaflet last described above. Shortly thereafter, six or seven security guards came to the cafeteria and positioned themselves at the entrance to the cafeteria. An unidentified guard approached Trager and informed him he was wanted in the chef's office. Trager told him when he

clocked in at 4 p.m. he would go the chef's office. Trager's sous chef then came to him and informed Trager he had something for him. Trager invited him to give it to him and the sous chef, George Dragisity, told him he had to do it in the sous chef's office. Trager indicated he was off the clock and would come to the sous chef's office at 4 p.m. when he clocked in. Then an executive sous chef named Ory came up to him and asked him to please come into the office. Trager told Ory he would come to the office when he clocked in at 4 p.m. After talking to Ory, Trager spoke with Phyllis Ellis, a union steward who worked in the hotel. Ellis agreed to accompany Trager to the office at 4 p.m. After he clocked in, Trager went to the executive chef's office as requested. Ellis accompanied him. When they entered, Hud Hinton, the food and beverage director; Mikesell, Respondent Employer's attorney; and Beverage Director Fred Tait were present. Hinton then informed Trager he had been seen in the hotel during his off-duty hours and that he was being suspended pending review of his record. Trager was then given an employee warning notice which stated:¹⁹

On the above date [April 29, 1980] you were observed on hotel property on your day off. You have been warned about this in the past. You are now suspended 24 hrs. pending review of your file.

Ellis testified without contradiction that while Trager was reading his disciplinary notice she asked Hinton if she were seen at the premises on her day off would she be given a writeup and expect to see all the gentlemen present there to witness her signing it. Hinton said: "Of course not, but Erwin has been warned about this before." When Trager signed the document which had been handed to him, he was escorted to the locker room area by three security guards. Ellis, who remained at the office, asked Hinton why they needed all the security men to escort Trager out. Hinton replied, "Well, Erwin's life has been threatened before." Ellis then started to leave and Ling, the manager, invited her back in. Ling then told her that there were some problems with Erwin passing out literature on his day off and that this was the reason that they were taking such strict measures because the literature was not factual and it was causing some difficulties with the signing of the contract. Ellis replied that Trager was not against the hotel, he was just for a stronger union. Ling then said, "Well, we understand that, but still, his passing literature is causing the problem with the ratification because it's unfactual."²⁰

At 9 a.m. or shortly thereafter, on May 1, Trager went to the Ontario Exhibition Hall located on the third floor of Respondent Employer's hotel where the second day of balloting in the "last offer" election was being held. Trager spoke with Whittaker, the MERC representative

¹⁹ G.C. Exh. 16.

²⁰ Don Dooley, formerly a security guard at the hotel, testified that on April 27, 2 days before Trager came onto the property on his day off, his supervisor, Kosmowski, asked him immediately after he talked to someone on the telephone if he knew Trager. When Dooley said he did, Kosmowski told him to keep an eye out for him because he was a union radical and was causing problems.

¹⁸ G.C. Exh. 15.

who was supervising the balloting, and obtained permission to witness the count of ballots when the polls closed at 11:30 a.m. He then left the hotel premises. During the same morning, Kirsch spoke with security guard Gary Poluszny and informed him that Trager had been suspended for distributing literature in the hotel and she directed Poluszny to ask Trager to leave the premises after he voted if he appeared on the premises that day. Trager returned to the premises and the voting area shortly before the polls closed. Poluszny approached him and informed him he was to leave the premises after he voted. The employee voted and Poluszny then told him he would have to leave the premises. Trager indicated he wanted to talk to Whittaker first. He then engaged Whittaker in conversation. When it appeared to Poluszny that Trager had completed his conversation with Whittaker, Poluszny again told him he would have to leave. Trager indicated he had not completed his conversation with Whittaker and returned to talk to Whittaker further. While Trager and Whittaker were conversing, Kirsch approached Whittaker and asked Trager to leave the premises. Trager replied he did not intend to leave as he was going to observe the tally of ballots. Kirsch then explained to Whittaker that Trager had been suspended and that Respondent Employer's policy was that suspended employees were not allowed on the premises. Whittaker informed Kirsch that in his view the voting area was under the control of the State while he was conducting an election and only state police had jurisdiction over the area. Kirsch indicated she nevertheless wanted Trager to leave, and Whittaker indicated he did not have the power to stop her; that she could do as she chose. In the meantime, Poluszny had called his superior requesting two backup security guards. When she left Trager and Whittaker, Kirsch joined Ling, Respondent Employer's manager. After Poluszny's requested backup arrived, Ling signaled them to remove Trager. The three guards then approached Trager from the rear. As they approached, Trager laid a newspaper he was holding in his left hand on the floor. He retained his valise in his right hand. Markulike approached Trager and reached for Trager's left arm and told the employee he had to leave. Trager turned counterclockwise, raised his arms, and hit Poluszny near the left eye with his valise at the completion of his turn. The three guards then wrestled Trager to the floor. Trager put his hands inside the front of his pants and shouted that he did not have to leave, that this was state property, and that he was going to watch the vote count. The guards turned him over, handcuffed him, and physically removed him from the room.²¹ They took him to a substation maintained for the Detroit police in the building and told him to sit down in the hall. When he refused, Poluszny kicked his left foot out from under him. Poluszny subsequently filed assault charges against Trager but eventually dropped the charges.

On May 2, Trager was terminated by Respondent Employer. His termination notice stated:²²

²¹ Approximately 40 persons, including employees, members of management, union officials, and MERC personnel, witnessed the altercation.

²² See G.C. Exh. 17.

On May 1, 1980, you physically assaulted [sic] a Security Officer on the premises of the hotel. As fighting on the premises is a gross violation of hotel policy and subject to discharge, we have no choice but to terminate your employment with Detroit Plaza Hotel.

Kirsch indicated during her testimony that she and Ling made the decision to discharge Trager. She indicated they decided to terminate the employee because he was the aggressor in the May 1 altercation, and Respondent Employer's rules provide that "Fighting on hotel premises, including horseplay, regardless of how it started" constitutes a major infraction and cause for termination. Kirsch testified that Respondent Employer uniformly terminated employees caught fighting on the premises and through her testimony some seven employee warning notices documenting terminations of employees for fighting on the premises during the period September 8, 1979, through September 22, 1980, were placed in evidence.²³

4. The Pope suspension and discharge

Pope was hired by Respondent Employer on February 25, 1978, and worked as a cocktail server until she was terminated on November 8, 1980.

As indicated, *supra*, Pope was the secretary-treasurer of CDU and helped distribute various CDU documents and was cautioned by Ling and Kirsch against engaging in such activity on Respondent Employer's property in December 1979, when Ling observed her distributing literature on the service floor of the hotel.²⁴

During her testimony, Pope indicated that a third ratification vote on the contract negotiated by Respondent Union and Respondent Employer was held on the fifth floor of the hotel on May 6 and 7, 1980. According to Pope, she voted on May 6. On the same day, she indicated that union officials, as well as CDU members, distributed literature to voters as they appeared on the fifth floor to vote. Pope personally distributed copies of a leaflet prepared by CDU on the premises on May 6 and stated, without contradiction, that Ling and Kirsch observed such activity but said nothing to her.²⁵

In addition to engaging in CDU related activities, Pope claims she actively sought, while employed by Respondent Employer, to see that the hotel abided by its collective-bargaining agreement with the Union. Thus she testified that during September 1980 when Merica Jerky was the manager of the Inter Circle Lounge where she worked she complained to Shannon, the assistant manager, that Jerky ignored seniority when making assignments. As a result of her complaint, a meeting was arranged between employees of the Inter Circle and John Crews, director of the food and beverage department. In addition to Pope, the meeting was attended by employees Enrique Roosum, Edie Getch, Maria —, and a male employee whose name Pope could not recall.

²³ See Resp. E. Exhs. 3-9.

²⁴ The service floor houses the employees' locker room, Mum's cafeteria, and the cash-out room. Guests do not use the service floor.

²⁵ The CDU leaflet opposed ratification. See G.C. Exh. 18.

Pope testified without contradiction that she complained during the meeting that Jerky did not consult with her when she scheduled a less senior employee to work certain hours; Jerky changed their schedule without giving them a week's notice as required; and that two employees who were being laid off were offered placement in a new restaurant on the premises before employees with more seniority were offered the positions.²⁶

Jerky was transferred out of the Inter Circle on October 4, 1980, and Cathy Chipukites was made manager at the time. Thereafter, Chipukites immediately went on vacation and Nan Kerber substituted for her until October 19. According to Pope, server Audrey Pace was written up by Kerber for failing to present a check to a customer while Chipukites was on vacation. When Chipukites returned, Pope, Pace, and Chipukites discussed the situation at the bar. Pope indicated that when Chipukites indicated she would let the writeup stand, she, in Chipukites' presence, advised Pace to file a grievance. When Pope produced a copy of the contract and searched it for the relevant section, Chipukites told her to put the contract away and get out on the floor. A short time later, on Monday, October 24, Pope claims she and employee Pace were irritated with Chipukites because she assigned a less senior server to tables and Pace to booths which do not fill up until late in the evening. Pope indicated she again advised Pace to grieve in Chipukites' presence. Chipukites reacted by telling the employees she did not want to hear any more, that they should go to the floor. At closing time that night, Chipukites asked Pope to stay. When they were alone, Chipukites told Pope, "I just want you to quit making me look bad in front of other people." Pope claims she asked what Chipukites meant and the reply was "you heard what I said. You just listen to what I say."²⁷ The next day, October 25, Pope was assigned to work booths. She complained to Chipukites because less senior employees were assigned to work tables.

According to Pope, Chipukites wrote up server Terry Moore at the end of October because she reported for work late. Pope indicated Moore protested the writeup, claiming she had called the Cafe Renaissance to report she would be late before the Inter Circle opened at 5 p.m. When Chipukites informed the employees they had to call the Inter Circle in such situations, Pope claims she protested that the practice had always been to call the Cafe Renaissance and that she, in Chipukites' presence, advised Moore to contact Dan Spinks and file a grievance.

On November 4, Pope learned that server Edie Getch, who was less senior, had been given a new day off and a 4.30 p.m. reporting time. Pope testified without contradiction that she objected to Chipukites, indicating that she and server Yvonne Gloria were more senior. Pope indicated she advised Gloria, who was more senior than she was, to file a grievance in Chipukites' presence. When Gloria said she did not want the day off obtained by Getch, Pope stated she would file a grievance if Chi-

²⁶ On cross-examination, Pope admitted that the other employees attending also voiced complaints.

²⁷ Chipukites testified she could not recall the conversation. Pope was an impressive witness, and I credit her testimony.

pukites did not give it to her (Pope). Thereafter, Pope claims she told Chipukites she was violating the contract by making such schedule changes and that Chipukites asked her to step out in the hall where she told her, *inter alia*, that she was a problem at work, always complaining, saying she was going to go to the Union, and if she did not like her job she might as well as quit.

After the scheduling episode, on November 5 Chipukites sent two servers home as business was slow and Pope and Cheryl Carr remained to serve customers in the Inter Circle. Chipukites then went on break, leaving on a napkin a number at which she could be reached. According to Pope, the room filled up around 10 p.m. and she and Carr had more business than they could comfortably handle but they had lost the napkin and could not call Chipukites for help. When Chipukites returned just before last call, she started to process the server checks. Those involving charges to guest rooms were inspected by Chipukites, and she informed Pope she had to call a guest to confirm information on one of her checks. A short time later, Chipukites came to the booth where Pope was waiting for her checks and handed her a suspension notice and asked her to sign it. The notice stated, *inter alia*:²⁸

On this date Ms. Pope served a guest J.D. Pollack Room 2119 cocktails in the Inter circle his bill came to \$7.28. Mr. Pollack signed his check for above amount. He left 1.00 gratuity on the table for waitress. At 11:45 p.m. I began posting the check to the room. At this time I called to reconfirm the 2.00 tip on Bill. Mr. Pollack assured [sic] me he did not leave a 2.00 tip on his bill. This is against hotel policy for anyone to add anything on a guest check.

This is a suspension pending termination upon review. Check # 193927.²⁹

Pope claims Chipukites told her she had given her the notice because she deliberately put a tip on a guest's check without asking her supervisor's permission and she stated the matter would be investigated further and she did not want any more discussion on the matter.

On November 6, Pope composed a letter protesting her suspension and thereafter delivered copies to Local 24 and Respondent Employer officials Andy Seamen, John Cruz, Cathy Chipukites, and Lynn Kirsch. The body of the letter stated:³⁰

On Nov. 5th, 1980, I received a warning notice informing me I was suspended pending termination. I've enclosed a copy.

On the write-up Miss Chipukits [sic] said that she spoke over the phone to Mr. Pollack, a customer of

²⁸ See G.C. Exh. 19.

²⁹ The Pollack check was placed in evidence as Resp. Emp. Exh. 16. The total on the check was \$7.28 and it was signed J.D. Pollack No. 2119. Below the machine printed total in different handwriting appears the figure "2.00" which is underlined and the figure "9.28." A stub containing Pollack's signature and the figure "7.28" is attached by staples. Chipukites credibly testified she found the stub crumpled in a corner in the cash-out room.

³⁰ See G.C. Exh. 20.

mine. She told me that he said he did not leave a \$2.00 tip on his bill. I think I've been accused of breaking a hotel policy by adding a tip to a guest check without the guest's permission. Though I'm not sure, the write-up simply states that this had been done but not by whom.

I received a suspension before any discussion with my manager regarding this check. After receiving the write-up I went downstairs to cash out, knowing that a customer had asked me to include a \$2.00 tip on a busy night. After looking through the charge checks I found I did not have another \$2.00 tip on a charge check besides Mr. Pollack's check. I could not remember if this was the check that I was told to put a \$2.00 tip on. I did not deliberately break hotel policy nor try to cheat a customer.

In the past I have spoken out about management's treatment of the waitresses. This particular day I complained about schedule changes that were made by my manager, Miss Chipukits. I informed her she was breaking the contract by giving a lower seniority waitress a new schedule before I was informed of a schedule change.

The conversation was witnessed by other employees.

I feel I being [sic] discriminated against because of my outspokenness on the union contract and management's responsibility to that contract. In the past I have filed four or five grievances and have never been informed of their outcome. Therefore I'm requesting a quick reply stating a time and a date for a meeting with my union representative and a subsequent meeting with hotel management.

The same day, Pope prepared a note addressed to Pollack which stated she apologized if she had erroneously added a \$2 gratuity to his check and she sent it and \$2 to Pollack's room via a messenger. Thereafter, on November 7, Pollack sent Chipukites a note which stated:³¹

I have seen copy of my bill, and I can say that it is not my handwriting [the \$2 charge] nor did I authorize such charge. My bill was \$7.28, charged to my room. I left \$1.00 cash for Kim Pope.

Last evening I received the enclosed note (under door) and \$2.00. Since you credited my account I enclose the money—I'm generally satisfied. Thank you for your interest and *attention*.

When leaving a copy of her November 6 letter at Local 24 for the business agent of the Detroit Plaza, Dan Spinks, Pope was advised by Spinks that he would put her letter in grievance form and contact her. When she had not been contacted by November 7, she went to the union hall to see him. He told her he was busy and would get back to her Monday (November 10). Thereafter, on Saturday, November 8, she contacted Chipukites to ask if she was to come in for a meeting. Chipukites told her to come to the hotel and wait for her at security. In the meantime, Chipukites had discussed Pope's situation with Kirsch and they had mutually decided that

Pope committed a dischargeable offense as she had violated the company rule prohibiting "Adding a service charge or gratuity to guest check or account without permission of supervisor."³² Consequently, when Pope arrived at the hotel, Chipukites handed her an employee warning notice, the body of which stated:³³

Discharge Notice

Kim Pope added a \$2.00 gratuity onto a guest check. This is a major infraction of Hotel policy resulting in discharge.

While Pope testified she was unaware of the fact that adding a gratuity to a guest's check without the permission of her supervisor was a violation of company rules, the record reveals employees were given copies of the rules when they were hired. Kirsch and Chipukites both testified that the addition of an unauthorized gratuity to a guest's check by mistake subjected an employee to discharge just as intentional addition of a gratuity would subject an employee to such penalty. Additionally, Kirsch testified that during her tenure, all employees who were caught adding unauthorized gratuities to checks of guests were terminated. In support of her claim, she testified that five employees had been terminated for adding unauthorized gratuities or charges to guest checks or to American Express charges during the the period extending from October 1979 to July 1981.³⁴ One of the employees so terminated was Mary McVeigh Williams, a union steward. Kirsch and Chipukites denied that Pope's CDU or union activities caused them to decide to terminate the employee. Chipukites testified that Pope did not complain any more than the other cocktail servers, and Kirsch testified that, while she was aware that Trager and Twila Harrington were active on behalf of CDU, she was unaware that Pope had any affiliation with CDU.

5. Pope's termination grievance

After Pope was terminated by Respondent Employer on Saturday, November 8, she called Business Agent Spinks on Monday, November 11, and informed him she had been terminated. He informed her he would set up a meeting with management and get back to her in 4-5 days. After talking to Spinks, Pope mailed him a long letter which indicated her feeling that Respondent Employer had failed to afford her adequate opportunity to defend herself before she was discharged and her belief that she was terminated for engaging in union activities.

On November 17, Spinks informed Pope he had met with Detroit Plaza management and had gotten nowhere. He then told her he was going to recommend that her case be taken to arbitration because the punishment did not fit the crime.

Local 24's arbitration panel met on November 24 and Pope was invited to attend the session. While Pope recalled that Spinks, Greenwell, Maxey, and Roosevelt

³² See Resp. Exh. 1, p. 20.

³³ See G.C. Exh. 21.

³⁴ See G.C. Exh. 22.

³¹ See Resp. Exh. 17.

Luster were on the grievance panel, Greenwell indicated that the standing members of the panel are Spinks, Normal Anselmi, Hairston, Helen Maxey, and himself. Spinks testified he was not a voting member of the panel when Pope's situation was considered because the business agent representing the grievant presents the grievant's case and makes a recommendation, but does not vote. Spinks further indicated that Pope was erroneous in her belief that Luster was a member of the panel as he had left Respondent Union's employ in July 1980. Thus it appears the voting members of the panel were Anselmi, Hairston, Maxey, and Greenwell.

Pope, Spinks, Greenwell, and Maxey each described what occurred at that portion of the November 24 arbitration panel meeting which concerned Pope. Thus the record reveals that Spinks had copies of the suspension notice, the discharge notice, Pope's letter dated November 6, the letter Pope sent to Spinks which was dated November 22, and the Detroit Plaza's rules. Spinks read the grievance, the November 6 letter, summarized the November 22 letter, let the panel members look at the documents in his file, and invited Pope to speak. Pope informed the panel members that she had been busy on November 5 and had added a \$2 gratuity to the Pollack check by mistake and that she sent a letter of apology and \$2 to Pollack on November 6. She further indicated that she had a good record at the hotel. After she had completed her remarks, Pope was asked to go out into the hall while the panel considered her situation. Shortly thereafter, Greenwell asked her back in and told her they had decided to think about the matter for several days and indicated they would be back in touch with her.

By letter dated December 4, 1980, Spinks informed Pope that the panel had concluded her case would not be submitted to arbitration. While the record reveals that Spinks recommended that the panel decide to take the case to arbitration because he felt the punishment did not fit the crime, Greenwell and Maxey testified that the panel decided not to go to arbitration on the matter as Pope had admitted adding a \$2 gratuity to the Pollack check and, under Respondent Employer's rules, such conduct justified Respondent Employer's termination of the employee. While Greenwell admitted he knew that Pope was an active CDU member at the time of the dues increase balloting, he indicated her CDU activities did not influence the way he voted on the arbitration matter.³⁵ Maxey claimed she did not recognize Pope when she appeared before the arbitration panel and she denied that Pope's CDU activities had anything to do with her decision to vote against taking Pope's case to arbitration. Maxey further indicated that she voted against taking the case to arbitration because most employees who add unauthorized gratuities to guest checks claim they did it by mistake and she felt they could not win before an arbitrator.

³⁵ Greenwell further indicated that a dues increase was approved at a later election and that CDU did not oppose the increase at the second election.

6. The extra steady banquet servers situation

Respondent Employer has approximately 16 banquet rooms in its hotel. In July 1980, it employed approximately 30 regular banquet servers to handle the tasks associated with service of drinks and hors d'oeuvres at receptions and food dinners. In addition, it then had some 30 so-called extra steady banquet servers on the payroll. The extra steady servers were utilized when the scheduled banquets could not be handled by its regular banquet servers. When the press of business was such that the regular banquet servers and the extra steady banquet servers could not perform all the work required, Respondent Employer would call Local 24 and the Union would refer casual servers who were paid when the function was over. Such employees were not carried by Respondent Employer on its payroll thereafter.

At the time under discussion, the parties' collective-bargaining agreement provided that Respondent Employer was to schedule given numbers of banquet servers to various types of functions. Thus, one server was to be assigned for every 15 guests at a dinner function; one server was to be assigned for every 50 guests at receptions which involved the service of drinks and food; and one server was to be assigned for each 100 guests at receptions at which drinks but no food was to be served. The record reveals, however, that prior to the end of July 1980, Respondent Employer adhered to the contractual formula when assigning servers to dinner functions, but ignored the formula when receptions were involved. Thus, its practice was to assign all servers to a given function without indicating which servers would handle the reception and dinner and/or which servers would work the dinner only.³⁶ For example, if a reception with drinks and food were scheduled with a dinner for 150 guests, the contract dictated that 3 servers be assigned to the reception (ratio of 1 server to 50 guests) and that 10 servers be assigned to the dinner portion of the function (ratio of 1 server to 15 guests). Rather than just have three servers report 1-1/2 hours before the reception was to begin so they could make the necessary preparations, Respondent Employer assigned all banquet servers to work the entire function and they all reported 1-1/2 hours before the reception was to begin. Thereafter, while all servers were supposed to work the reception and the dinner, what actually occurred was that most of the servers would set up the tables for the dinner and they would then leave the work area and remain away until time for the dinner to be served.

The record reveals that Respondent Employer's banquet business was brisk during the first half of 1980. Consequently, it utilized the extra steady banquet services on a regular basis. On many occasions, regular or steady banquet servers and extra steady banquet servers were assigned to work the same function. Under the system utilized, since all servers were simply assigned to work the function rather than being assigned to work the reception and/or the dinner only, they all received the

³⁶ As the receptions preceded the dinners, servers assigned to work a reception also worked the dinner.

same function pay,³⁷ and all shared in the gratuities obtained from the reception as well as the dinner portions of the functions.

On July 28, 1980, Respondent Employer's extra steady banquet servers met with Business Agent Spinks, Hairston, and union steward Ella Crawford at the Local 24 hall. The meeting was called because the extra steady banquet servers, who had previously had seniority rights for promotion purposes (to steady or regular banquet server positions), had previously met and voted to release Respondent Employer from its contractual obligation to follow seniority when promoting extra steady employees and the extra steadies had decided among themselves that they wanted seniority for promotion purposes again.³⁸ Several extra steady servers, including Brenda McCabe, Fred Williams, Jr., and Ingrid Tumbore described what occurred during the meeting. In essence, they testified that, at some point in the meeting, Williams asked how many people a server was to handle at a reception and something in Williams' question disturbed union steward Crawford. She informed them they (extra steadies) were not actually entitled to work receptions under the contract and were only able to work them because the steadies had given it to them. At that point, extra steady server Leroy Moore accused Crawford of failing to represent extra steadies and asked if they could have their own steward. Spinks indicated they could not because it was too expensive. Moore then voiced the opinion that Crawford might not be elected again. Crawford then indicated that she would fix them; that she would go back and cause the steady banquet servers to vote and the extra steadies would not have receptions any more because they would go by the book (contract). She also indicated that extra steady employees had not been permitted to vote prior to the last steward election and she would take care of that matter too.

It is undisputed that Spinks and Crawford met at the Detroit Plaza with steady banquet servers the following day, July 29, 1980. At that meeting, the steady servers voted in favor of requiring Respondent Employer to schedule receptions and dinners in accordance with the ratios set forth in the collective-bargaining agreement. It is undisputed that Spinks then informed Detroit Plaza management that henceforth they were to schedule banquet servers to reception and dinner functions in accordance with the contract.

Respondent Employer's assistant banquet manager, Richard Morse, explained during his testimony that, prior to late July 1980, all employees scheduled to work a reception-dinner function were told to report 1-1/2 hours prior to the time the reception was to start and they were all supposed to set up for the reception as well as the dinner. When that system was used, all the serv-

ers, whether steadies or extra steadies, received a proportionate share of the gratuity flowing from the reception, a proportionate share of the gratuity flowing from the dinner, and a single function pay of \$14.03. He indicated that seniority was not considered in determining who would be assigned to any given function, but that the steady server board was exhausted before extra steady servers were assigned to a function. Morse explained that when Spinks insisted that the banquet server ratios set forth in the contract be complied with, the requisite number of servers were thereafter assigned separately to the receptions and the dinners. Those assigned to work a reception reported 1-1/2 hours before the reception and those assigned to work the dinner reported 1-1/2 hours before the dinner was to begin. All employees working the function (reception and dinner constituted the function) would receive a function pay (\$14.03 in normal circumstances) and all would receive their proportionate share of the gratuity flowing from the dinner portion of the function. Those servers who had reported 1-1/2 hours earlier than the others to work the reception received their proportionate share of the gratuity flowing from the reception also. The servers assigned to work the dinner only received none of the reception gratuity.

B. Analysis and Conclusions

1. The alleged 8(b)(1)(A) conduct during the dues increase election

As indicated, *supra*, the complaint in Case 7-CA-4803 alleges, in substance, that Respondent Union violated Section 8(b)(1)(A) of the Act on December 3 and 4, 1979, by: assaulting Trager because he opposed a proposed dues increase; restraining and coercing employee members while they sought to distribute anti-dues increase literature; and restraining and coercing employee members by informing them they would not be represented in the future because they opposed the dues increase proposal.

Respondent Union's principal defense is a contention that I should credit its witnesses rather than those presented by the General Counsel. Additionally, it claims that I should refrain from finding that it violated the Act through union steward Virginia Washington's actions as she was not shown to be its agent. I find both defenses to be without merit.

a. The alleged assault

Having, in main, credited Trager's version of his December 3 altercation with Triplett, I find that Triplett assaulted Trager as alleged on December 3 when he sought to push him out the door of the union hall because he had come into the hall with anti-dues increase literature. Patently, such conduct tends to restrain and coerce employees in the exercise of their Section 7 rights. Accordingly, I find that, through Triplett's conduct, Respondent Union violated Section 8(b)(1)(A) as alleged.

³⁷ If sponsored by a single group or entity, a reception followed by a dinner constituted one function. If a reception was sponsored by one group or entity and the dinner which followed was sponsored by a different group or entity, the affair was treated as two functions but servers were paid for only 1-1/2 functions.

³⁸ They had purportedly voted away such seniority rights because an older male employee was the senior steady extra server and less senior steady extra servers felt they were not being promoted to regular or steady server positions because management did not want to promote the senior extra steady server.

b. *The alleged interference with literature distribution*

Turning to the contention that Respondent Union sought through its agents to impede CDU members in their attempt to distribute literature outside the union hall, the record reveals, and I have found, that stewards Washington and Maxey and Business Agent Lukacs took literature from the hands of employees who had accepted literature from Trager (Washington) or Pope (Maxey and Lukacs) and that Maxey and Lukacs verbally and physically harassed Pope when she attempted to pass literature at the entrance to the union hall. As Maxey and Lukacs were admitted to be agents of Respondent Union, it must be held responsible for their acts. With respect to Washington, the record reveals that she is an elected official of the Union and she was specifically instructed to distribute pro-dues increase literature outside the union hall by Business Agent Spinks. In the circumstances, revealed, I find that when Washington opposed the effort of CDU participant Trager to gain no votes on the dues increase proposed, Washington was acting within the general scope of the authority conferred upon her, and that Respondent Union is responsible for her acts.³⁹ Accordingly, I find that Respondent Union, through the acts and conduct of Washington, restrained and coerced an employee (Trager) by removing literature from the hands of employee members of the Union. Although not alleged as a violation, I further find that, through the acts and conduct of Maxey and Lukacs, Respondent Union restrained and coerced an employee (Pope) by taking anti-dues increase literature from the hands of employee members and by physically and verbally harassing Pope while she was distributing such literature. In both instances, the described conduct violated Section 8(b)(1)(A) of the Act.⁴⁰

c. *The alleged threat of no representation*

Having found, *supra*, that Lukacs stated, in effect, on December 4, 1979, that Trager, Pope, and Harrington should not look to the Union for representation after the dues increase election, I find that through such utterance Respondent Union violated Section 8(b)(1)(A) as alleged.

2. *The alleged 8(a)(1) and (3) violations by Respondent Employer involving Trager*

As noted, *supra*, the complaint in Case 7-CA-17967 alleges that Respondent Employer violated the Act by: threatening to terminate Trager because he engaged in protected concerted activity; interfering with the employee's right to witness the count of ballots after a last offer election; and by suspending and subsequently terminating Trager because he engaged in protected concerted activities.

a. *The threat to terminate*

With respect to the alleged threat to terminate the employee, the record merely reveals that some unidentified

³⁹ See *Teamsters Local 886 (Lee Way Motor Freight)*, 229 NLRB 832, 833 (1977), and *Teamsters Local 748 (J. R. Wood, Inc.)*, 246 NLRB 758 (1979).

⁴⁰ Although the conduct of Maxey and Lukacs was not alleged to be violative, the matter was fully litigated.

female, wearing what witness Don Dooley described as a management name plate, stated to James Moore, manager of the Fontaine Kitchen in March 1980, that they had "better get Trager out of here before the shit hits the fan." As the record fails to reveal the identity or the duties of the unidentified person who made the described statement, I find that the General Counsel has offered insufficient evidence to prove the allegation and I recommend that it be dismissed.

b. *The April 29 suspension*

While Respondent Employer contends it suspended Trager on April 30, 1980, because he entered the hotel on April 29, 1980, in violation of company rules, the record belies such contention. According to Trager, he entered the hotel on April 29, his day off, to pick up his paycheck. The record fails to reveal that he distributed any literature on the premises that day. Significantly, Personnel Manager Kirsch admitted that employees could enter the hotel during their off-duty time to obtain their paycheck without violating Respondent Employer's rule. While she added that in such situations the employee was to obtain the permission of his or her supervisor, the record fails to reveal that any employee was ever disciplined by Respondent Employer for failing to obtain the permission of a supervisor before entering the hotel on his or her day off to obtain their paycheck. Finally, through union steward Ellis, the General Counsel established that Detroit Plaza Manager Ling informed her on the day Trager was suspended (April 30) that they were taking such strict measures against Trager because "his passing out literature is causing problems with the ratification because it's unfactual."

In sum, as it appears, employees were uniformly permitted to enter the hotel on their day off to obtain their paycheck. Ling's comment to Ellis reveals that Respondent Employer was motivated to take strict measures against Trager because he was opposing ratification of the contract which had been negotiated by the Detroit Plaza and Local 24. I find that the reason assigned by Respondent Employer for its decision to suspend Trager on April 30, 1980, is a pretext to mask an unlawful motive for the suspension, i.e., his opposition to ratification of the contract. Accordingly, I find, as alleged, that Trager was suspended on April 30, 1980, in violation of Section 8(a)(1) of the Act.

c. *The discharge*

The parties correctly observe that the causation test spelled out in *Wright Line*, 251 NLRB 1083 (1980), is to be used to determine whether Erwin Trager was discharged in violation of the Act. There the Board stated (at 1089):

First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

During the presentation of his case, the General Counsel established that Trager and others formed CDU in March 1979 and that Trager thereafter authored and distributed numerous leaflets which attacked Local 24. The record reveals that Respondent Employer officials were aware of Trager's activities, which were conducted, in main, in the hotel. While Respondent Employer's management did nothing during 1979 to indicate dissatisfaction with Trager or CDU, witness Dooley, formerly a security guard at the hotel, indicated that his supervisor, Kosmowski, told him on April 27, 1980, to keep an eye out for Trager because he was a union radical and was causing problems. At that time, Trager was distributing copies of a leaflet urging employees to reject any contract reached by the Detroit Plaza and Local 24. On April 29, Local 24 met with the employees of the Detroit Plaza at the Veterans Memorial Building to explain a tentative agreement reached with Respondent Employer. Trager took the day off to campaign against the agreement and went to the hotel at midday to get his paycheck. The employees voted to reject the agreement and the next day, April 30, Trager was suspended by Respondent Employer for 24 hours, allegedly because he had entered the hotel without his supervisor's permission the previous day to obtain his paycheck. In fact, the Ellis testimony reveals Trager was really suspended because he was campaigning against ratification of the contract. Subsequently, on May 1, a last offer election was held at the hotel under the supervision of MERC. Trager was permitted to enter the hotel to vote, but was then instructed to leave by a security guard and by Kirsch. Trager refused to leave, indicating that the MERC representative had advised him that portion of the premises was under state control and that Trager could observe the count of the ballots. Management decided to remove Trager and three security guards approached him and one touched his left arm. Trager then pivoted and struck a security guard below the eye with a valise he was carrying. He was wrestled to the ground, handcuffed, and forcibly removed from the balloting area by the security guards. Respondent Employer terminated Trager the next day, indicating it was taking the action because he struck the security guard.

In sum, the record reveals that Trager strenuously sought immediately prior to May 1, 1980, to cause his fellow employees to reject the contract negotiated by Respondent Employer and Local 24; that Detroit Plaza management labeled him a union radical and unlawfully suspended him on April 30; that it ignored the MERC representative's representation on May 1 that the balloting area was under state control; that it forcibly removed Trager from the balloting area in the presence of some 40 individuals who were present to witness the count of the ballots; and that it terminated Trager on May 2 because he struck a security guard while he was being forcibly removed from the balloting area at Manager Ling's request. In my view, the General Counsel has established, *prima facie*, that Trager was terminated because he opposed the ratification of the contract under discussion.

Respondent Employer defends its decision to terminate Trager by claiming: (1) He was lawfully suspended on

April 30; (2) Its rules forbid suspended employees from coming in or remaining on the premises without a supervisor's permission; (3) Trager was asked to leave the premises on May 1; (4) Trager attacked a security guard when asked to leave the premises; and (5) Respondent Employer uniformly terminates employees who participate in fights on the premises. For the reasons set forth below, I find that Respondent Employer's defense is without merit.

In the first instance, having found that Trager was unlawfully suspended because he campaigned against acceptance of Respondent Employer's last offer, I conclude he should have been permitted to vote in the election and thereafter witness the ballot count just as the other 40 individuals in the balloting area were permitted to do on May 1.⁴¹ Instead, ignoring the MERC representative's indication that the balloting area was under his control, Respondent Employer chose to evict Trager in the presence of employees and others in the area at the time. Second, while Respondent Employer sought to show that Trager assaulted a security guard without provocation, I am unable to reach such a conclusion on the instant record. The record clearly reveals that three security guards approached Trager from the rear and that one of them was reaching for or had touched Trager's left arm when Trager swung around and struck Poluszny near the eye with his valise. Immediately thereafter, Trager went to the floor and became noncombative by placing his hands inside the front of his pants. In the circumstances, I find the great likelihood is that Trager inadvertently struck Poluszny when the employee turned around to face the security guards. Finally, I attach little significance to Kirsch's testimony that employees caught fighting on the premises are uniformly discharged or to the seven employer warning notices offered to support her testimony. Kirsch admitted during her testimony that a claim of self-defense is considered before an employee is terminated for fighting and the situations depicted by the employee warning notices placed in evidence fail to reveal that any of the seven employees were terminated for becoming involved in an altercation with a security guard under circumstances wherein the guard was improperly attempting to remove an employee from the premises.

In sum, I conclude that Respondent Employer has failed to prove that it would have terminated Erwin Trager on May 2, 1980, even in the absence of his participation in protected concerted activities. I find, as alleged, that he was terminated in violation of Section 8(a)(1) of the Act.

3. The Pope suspension and termination

The complaint in Case 7-CA-18500 alleges that Kim Pope was suspended and thereafter discharged in violation of Section 8(a)(1) and (3) on November 5 and 8, 1981, respectively. For the reasons set forth below, I find that the General Counsel has offered insufficient evidence to prove the violations alleged.

⁴¹ I find, as alleged, that by evicting him Respondent Employer violated Sec. 8(a)(1) of the Act.

As indicated, *supra*, Pope was suspended by her manager, Cathy Chipukites, on November 5 after Chipukites had contacted hotel guest Pollack and had learned that an unauthorized gratuity of \$2 had been added to Pollack's check on the evening of November 5. While Pope claimed that one of her customers told her to add a \$2 tip to a check, Pope testified she looked at all her checks after she had been suspended and she could not find any other than the Pollack check which contained a \$2 tip. At the trial, Pope denied that she intentionally added an unauthorized gratuity to Pollack's check.⁴² She testified she sought to remedy the situation on November 6 by sending a note of apology to Pollack and enclosing \$2 in the envelope. Respondent Employer's work rules reveal that adding a gratuity to a guest's check without permission from a supervisor is a dischargeable offense. Kirsch testified that violation of the rule in question invariably leads to discharge and some five employee warning notices issued to employees who were terminated for adding unauthorized gratuities to guests' checks or American Express slips were placed in evidence by Respondent Employer.⁴³

Despite the fact that Respondent Employer clearly had good cause to terminate Pope, the General Counsel contends Respondent Employer was motivated to terminate her by her participation in CDU and union related activities. I find the contention to be without merit.

With regard to Pope's CDU related activities, the record reveals she joined CDU in March 1979 and thereafter distributed CDU literature until May 1980. While the record reveals that Respondent Employer officials Ling and Kirsch were aware of Pope's 1979 and 1980 CDU activities,⁴⁴ the record is barren of evidence which would reveal that Pope engaged in any CDU-related activities subsequent to May 6, 1980, until she was suspended on November 5, 1980. I am constrained to credit Kirsch's and Chipukites' denials that Pope's CDU activities were considered at the time of her suspension and termination. Such a conclusion is bolstered by the fact that the record fails to reveal that Chipukites was even aware of Pope's CDU activities at the time of her suspension.

While Pope only worked under the supervision of Chipukites for approximately 3 weeks (October 19 to November 5, 1980), the General Counsel caused Pope to describe four situations in which she claimed she accused Chipukites of depriving herself or others of their contract rights during the 3-week period. Thus, she claims that in Chipukites' presence she advised employee Pace

⁴² While Pope was, generally speaking, an impressive witness, she became very emotional when testifying concerning the Pollack check. Pope's demeanor and the circumstances surrounding the incident, excluding the absence of another check with a \$2 gratuity and the fact that Chipukites found the stub of the check in a corner of the cashout room after Pope had checked out, cause me to strongly suspect that Pope intentionally added the unauthorized gratuity to Pollack's check.

⁴³ Kirsch testified Respondent Employer does not distinguish mistaken addition of unauthorized gratuities situations from intentional additions of an unauthorized tip.

⁴⁴ Such officials failed to deny Pope's testimony concerning the December 1979 confrontation while she was distributing CDU literature in the hotel while on layoff, or her claim that she was observed distributing CDU literature at the last offer election held in the hotel on May 6 and 7, 1980.

to file a grievance in late October; that when she complained on October 24 because Chipukites assigned a less senior server to tables, Chipukites asked her to go to the hall where she told Pope, "I just want you to quit making me look bad in front of other people"; that in late October she, in Chipukites' presence, advised Terry Moore to grieve because Chipukites told her she had to call the Inter Circle rather than the Cafe Renaissance to indicate she would report to work late; and that, on November 4 when she complained because a less senior server was given a preferential shift assignment, Chipukites told her she was a problem at work, always complaining, saying she was going to go to the Union and if she did not like her job, she might as well quit.

Chipukites and Kirsch both denied that Pope's union-related activities were considered when the decision to discharge the employee was made. While Chipukites acknowledged that Pope had complained to her concerning job-related matters, she testified that Pope did not complain any more than the other servers working under her supervision.

Accepting as factual Pope's description of her encounters with Chipukites during the 3-week period she worked for Chipukites, I am constrained to conclude that such evidence demonstrates nothing more than the possibility that Chipukites was happy that Pope committed a dischargeable offense which permitted her to I recommend her termination. I find that Pope was discharged for cause and I recommend that the allegations that she was suspended and subsequently terminated in violation of Section 8(a)(1) and (3) of the Act be dismissed.

4. The allegation of failure to fairly represent an employee

The complaint in Case 7-CB-5004 alleges that Respondent Union has failed to fairly represent Kim Pope since November 6, 1980.

As revealed, *supra*, the union business agent for the Detroit Plaza employees, Spinks, prepared a grievance for Pope following her termination and he met with Respondent Employer management on several occasions but they rejected the grievance and refused to reinstate the employee. Approximately 2-1/2 weeks after the discharge, Local 24's arbitration panel, consisting of Anselmi, Hairston, Maxey, and Greenwell, met to decide whether to take Pope's grievance to arbitration. Spinks recommended that the grievance be taken to arbitration but the panel members decided not to proceed to arbitration on the grievance, allegedly because they felt the hotel had terminated Pope for just cause and they did not feel they could prevail in an arbitration proceeding.

Consideration of the evidence relating to the Union's processing of Pope's grievances convinces me that her grievance was processed in timely fashion, that she was permitted to participate in the arbitration panel meeting, and that the decision to not proceed to arbitration was not based on unfair or invidious considerations. Accordingly, I recommend that the allegation be dismissed.

5. The alleged discrimination against extra steady banquet servers

The complaint in Case 7-CB-5022 alleges that Respondent Union violated Section 8(b)(1)(A) of the Act on July 28 and 30, 1980, respectively by: threatening steady extra banquet servers with unspecified loss of employment benefits and privileges because they complained their steward was not fairly representing them; and by polling steady banquet servers on July 30 to ascertain whether they preferred to limit job assignments to and gratuities from predinner hors d'oeuvres service at banquet functions only to steady banquet employees. Additionally, that complaint alleges that Respondent Union violated Section 8(b)(1)(A) and (2) on August 1, 1980, by entering an agreement with the Detroit Plaza whereby the hotel would thereafter follow a practice whereby the distribution of gratuities for predinner hors d'oeuvres service is limited to steady banquet employees.

The complaint in Case 7-CA-18758 alleges that Respondent Employer violated Section 8(a)(1) of the Act on August 1, 1980, by polling steady banquet employees to determine the accuracy of the poll conducted by Respondent Union on July 29, 1980, and it alleges that Respondent Employer has violated Section 8(a)(3) of the Act since August 1, 1980, by entering into and maintaining since said date a practice whereby the distribution of gratuities for predinner hors d'oeuvres services is limited to steady banquet employees.

a. *The alleged 8(b)(1)(A) and (2) conduct of Local 24*

Summarized, the situation under discussion is one wherein the subsisting collective-bargaining agreement contains provisions regulating the assignment of servers to both the reception and the dinner portion of banquet functions. Prior to August 1, 1980, Respondent Employer ignored the contractual provisions and simply assigned a given number of servers to work a banquet, thus entitling all servers to share in the gratuity flowing from both the reception and the dinner. When the extra steady servers complained on July 28, 1980, that union steward Crawford was not adequately representing them, and threatened to vote her out, she indicated she would "fix" them by causing the steady servers to insist that Respondent Employer follow the contract when assigning servers to receptions. Crawford took the action she had threatened to take, and the steady servers voted to require Respondent Employer to schedule servers to work banquets in accordance with the contract.

Patently, Section 7 of the Act accords employees the right to complain that their union is not representing them adequately. Just as clearly, Section 8(b)(1)(A) of the Act prohibits a union from engaging in reprisals against employees because they exercise their right to complain that they are not being adequately represented. As the instant record reveals that Crawford, in the presence of Spinks and Hairston, threatened and thereafter perfected reprisals against extra steady employees because they complained she was not adequately representing them, I find that Respondent Union violated Section 8(b)(1)(A) as alleged when Crawford made her threat on

July 28, 1980, and when she and Spinks polled Respondent Employer's steady employees on July 29, 1980.

With respect to the claim that Respondent Union violated Section 8(b)(2) by insisting on or around August 1, 1980, that Respondent Employer thereafter schedule servers to work banquets in accordance with the subsisting bargaining agreement, I note that the record reveals that extra steady servers were receiving assignments to and gratuities prior to August 1, 1980, because Respondent Employer was failing to schedule employees to work banquets in accordance with the contract. Crawford and her fellow steady servers requested at the July 29 meeting that Respondent Union require the Detroit Plaza to abide by the contract. In the circumstances described, Respondent Union had a legitimate interest in protecting the interests of its regular employees as its failure to require Respondent Employer to abide by valid contractual provisions would have resulted in a situation in which the extra steady employees would have continued to receive assignments to receptions which they were not contractually entitled to receive, while regular or steady servers would have been deprived of additional earnings which they were contractually entitled to receive.

In sum, I find that by demanding that Respondent Employer assign servers to banquets in accordance with the contract on August 1, 1980, Respondent Union was merely fulfilling its obligations as the bargaining representative of all the employees in the bargaining unit. Accordingly, I find it did not by such action violate Section 8(b)(2) of the Act as alleged. *Ryder Truck Lines*, 234 NLRB 218 (1978); *Carpenters Local 1102 (Planet Corp.)*, 144 NLRB 798 (1963).

b. *The alleged violations of Section 8(a)(1) and (3) by Respondent Employer*

While the complaint alleges that Respondent Employer violated the Act by polling its steady banquet servers to ascertain whether a previous poll conducted by Local 24 was accurate, no evidence was offered to prove the allegation. Accordingly, I recommend the allegation be dismissed.

With respect to the claim that Respondent Employer violated Section 8(a)(3) by altering the method of scheduling employees to banquet functions on or about August 1, 1980, the record reveals that Spinks met with Banquet Manager Jaskula and his assistant, Richard Morris, around August 1, 1980, and informed them that the steady servers had complained that according to the contract too many persons were being assigned to receptions and a lot were hiding and failing to work so the contract would have to be abided by in the future. The General Counsel's witnesses, Brenda McCabe and Fred Williams, testified that Jaskula thereafter met with the extra steady servers and informed them that the steadies had met and voted to take receptions away from them and they would no longer receive gratuities from receptions. Additionally, the employees indicated Jaskula told them he would try to get reception work back for them but as extra steadies they had no rights.

In sum, it appears that Respondent Employer's representatives were unaware when Spinks informed them on or near August 1, 1980, that they would be expected to abide by the contract when scheduling servers to work banquets that Crawford had instigated the change to punish extra steady servers for claiming she had not adequately represented them. On the occasion in question, Respondent Employer was merely told that due to employee complaints it would be expected to abide by the contract thereafter, and it apparently did just that. I find that the General Counsel has offered insufficient evidence to prove the allegations contained in the complaint issued in Case 7-CA-18758 and I recommend that the complaint be dismissed.

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent Employer violated Section 8(a)(1) of the Act by: suspending Erwin Trager because he engaged in protected concerted activity; preventing an employee from participating fully in a last offer election; and discharging Erwin Trager because he engaged in protected concerted activity.⁴⁵
4. Respondent Union violated Section 8(b)(1)(A) of the Act by: assaulting an employee because he distributed literature opposing a union dues increase; restraining and coercing employees while they were engaged in the distribution of anti-dues increase literature; and threatening that it would not represent employee members because they had opposed a dues increase.
5. Respondent Employer and Respondent Union have not engaged in any conduct which violates the Act other than that specifically found to be violative herein.

REMEDY

Having found that Respondent Employer and Respondent Union have violated the Act in certain respects, I shall recommend that they be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

Respondent Employer will be required to offer Erwin Trager reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, dismissing, if necessary, anyone who may have been hired to perform the work which he had been performing. Additionally, Respondent Employer will be ordered to make this employee whole for any loss of earnings he may have suffered by reason of his unlawful suspension and termination with backpay to be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid in accordance with the Board's decision in *F. W.*

⁴⁵ While the General Counsel alleged that Trager was suspended and discharged in violation of Sec. 8(a)(3) of the Act, I refrain from resolving those issues as the remedy would be the same.

Woolworth Co., 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).⁴⁶

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER⁴⁷

A. Respondent Western Renaissance Corporation d/b/a Detroit Plaza Hotel, n/k/a Westin Hotel, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Preventing employees from participating fully in last offer elections by refusing to permit them to observe the tally of ballots at the conclusion of such elections.

(b) Suspending or discharging employees because they oppose contract offers the hotel makes to their collective-bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Offer Erwin Trager immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights previously enjoyed, and make him whole for any loss of pay or other benefits suffered by reason of the discrimination against him in the manner described above in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Expunge and physically remove from its records and files any reference concerning the suspension of Erwin Trager on April 30, 1980.

(d) Post at its Detroit, Michigan facility copies of the attached notice marked "Appendix A."⁴⁸ Copies of said notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Employer's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that said notices are not altered, defaced, or covered by any other material.

⁴⁶ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

⁴⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴⁸ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

B. Respondent Local 24, Hotel, Motel, Restaurant Employees, Cooks, and Bartenders International Union, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Assaulting employees because they distribute literature opposing an increase in monthly union dues.

(b) Restraining and coercing employees in the distribution of anti-dues increase literature by taking their literature from the hands of employees and cursing or physically abusing them while they are distributing such literature.

(c) Threatening that they will not represent employee members because they opposed a dues increase.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Post at its Detroit, Michigan union hall copies of the attached notice marked "Appendix B."⁴⁹ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices

are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order, what steps it has taken to comply.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT assault employees because they distribute literature opposing an increase in monthly union dues.

WE WILL NOT restrain and coerce employees in the distribution of anti-dues increase literature by taking their literature from the hands of employees and cursing or physically abusing them while they are distributing such literature.

WE WILL NOT threaten that we will not represent employee members because they opposed a dues increase.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

**LOCAL 24, HOTEL, MOTEL, RESTAURANT
EMPLOYEES, COOKS, AND BARTENDERS
INTERNATIONAL UNION, AFL-CIO**

⁴⁹ See fn. 48, *supra*.