

Ontario Cemetery Association d/b/a Bellevue Memorial Park and Southern California District Council of Laborers and its affiliated Local 783, AFL-CIO. Case 31-CA-18952

October 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

This case¹ presents issues of whether the Respondent unilaterally modified its existing policy for the sale of memorial flower easels in violation of Section 8(a)(5) of the Act, and discharged an employee pursuant to the disputed policy in violation of Section 8(a)(5), (3), and (1) of the Act. The judge found that the General Counsel failed to prove the alleged unfair labor practices. He therefore recommended dismissal of the entire complaint.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹On June 12, 1992, Administrative Law Judge James M. Kennedy issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed a brief in support of the judge's decision and an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

²The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Ann L. Weinman, for the General Counsel.

Russell J. Thomas and *H. Alan Arfken*, of Santa Ana, California, for the Respondent.

Ray Van der Nat, of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried before me in Los Angeles, California, on December 12 and 13, 1991,¹ on a complaint issued by the Acting Regional Director for Region 31 of the National Labor Relations Board on August 23. The complaint is based on a charge filed by Southern California District Council of La-

¹All dates are 1991 unless otherwise noted.

borers and its affiliated Local 783, AFL-CIO (the Union) on July 12. It alleges that Ontario Cemetery Association d/b/a Bellevue Memorial Park (Respondent) has committed certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

Issues

The principal issues to be decided are whether Respondent unlawfully modified a disciplinary rule which resulted in the discharge of its employee Tom Trakes. Alternatively, the complaint asserts that Respondent discharged Trakes because of his union activities. Respondent argues that the so-called change in the rule was no change at all, or if it was, it was not a substantial and material change. It also argues that the Union knew of the change and never requested bargaining over it and thereby waived its right to bargain over it. Finally, Respondent argues that the General Counsel has failed to prove that it discharged Trakes because of his union activities; instead the evidence shows that it discharged Trakes for theft. The General Counsel also contends Respondent breached the bargaining obligation by failing to abide by an agreement between the Union's representative and a first-line supervisor not to discipline Trakes. Respondent contends no such agreement was made or, if it was, the first-line supervisor had no authority to strike such an agreement and the union official knew it; therefore, the agreement, such as it was, could not bind Respondent.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. All parties have filed briefs which have been carefully considered. Based on the entire record of the case, as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits it is a California corporation which operates a cemetery in Ontario, California; it further admits its gross sales annually exceed \$500,000 and it annually purchases or receives goods and services valued in excess of \$50,000 directly from suppliers located outside California. Accordingly it also admits, and I find it to be, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Trakes' discharge, on June 12, occurred during the negotiation of the first contract the Union was seeking to obtain from Respondent. He had been hired in 1978 as a groundsman. At the time of his discharge, and for a period not shown in the record, he had served as Respondent's leadman.

Respondent's manager was Ernest A. "Bud" Christian. Christian had been hired in September 1989. He had overall

responsibility for the operation of the cemetery. A small office staff reported to him as well as the grounds employees. At the time he decided to discharge Trakes, there were six groundsmen, including Trakes and Foreman Bob Votruba. In January, Respondent had hired Harold R. "Butch" Moulton to be the grounds superintendent. Before that time Votruba had been regarded as the supervisor in the field. However, during the course of the representation process before the National Labor Relations Board, its Acting Regional Director had concluded that Votruba was not a statutory supervisor. Respondent wished to have a person with the authority which the statute recognized. To do that, it created the superintendent's position. As a result, Votruba, although nominally a foreman, was placed in the bargaining unit.

Respondent seems to have taken the organizing in stride. The record does not show when it actually began, but the Regional Director of the Board certified the Union as the exclusive collective-bargaining representative of a unit of groundsmen in December 1990 in Case 31-RC-18602. During the period of organizing and subsequently, Respondent was represented by Attorney Russell J. Thomas. Thomas handled both the representation case and the negotiation of the contract for it after the Union unanimously won the election. The union official in charge of organizing and the resultant negotiations was Enrique "Rick" Guillen. He testified that until Respondent fired Trakes, he regarded Respondent as bargaining in good faith. Indeed, both he and Thomas testified a contract was very close. Aside from Trakes' situation, the record is devoid of evidence demonstrating that Respondent harbors animus against the Union.

Trakes' union activities are limited. He asserted it was he who had first gone to the Union to seek representation, apparently sometime in the fall of 1990. He served as the Union's observer at the representation election and was quoted in the local newspaper announcing that Respondent's employees were the first cemetery employees in Southern California to choose union representation. However, in the 6 or 7 months thereafter, his union activities ceased. The employee representative who assisted Guillen at negotiations was Phil Lindgren, another groundsman. There is no suggestion that Respondent believed Trakes warranted special attention because of his union sentiments. He also says, after Moulton was hired, that he made several safety complaints to him. Trakes' concerns are unspecified and it appears that the safety issue was taken up by the Union as part of collective bargaining with some success, at least according to Thomas. There is no evidence that Trakes' safety interests caused Respondent to focus on him.

The complaint requires the scrutiny of two of Respondent's preexisting policies. The first is the question of how flower stand/easel sales are to be handled; the second is employee discipline as it relates to theft or conversion of Respondent's property.

It is undisputed that prior to the Union's appearance Respondent had in place a system, somewhat informal, of progressive discipline for most offenses. There were two behavior breaches which were considered to be much more serious and which brought immediate discharge. These were drug sales on the property and theft of company property. When negotiations began in March, Guillen wanted Respondent to advise it of what the disciplinary policies were, and Thomas described them. The parties agreed in March to leave the

policies in place even though they had not all been reduced to writing. Indeed, it was not until about a month after Trakes' discharge that the rules were put in writing as an appendix to the blossoming collective-bargaining contract. The appendix is dated July 19, and the Union agreed that it could be put into effect as written at about that time. It provided, among other things, that theft or conversion of company property was grounds for immediate discharge. Earlier, on April 24, as more fully described, *infra*, Moulton, at Christian's direction, had placed a handwritten notice in the lunchroom dealing with the removal of flower easels from the property and threatening to impose discharge on any employee who did so.

The flower stand policy is somewhat unique. The easels are those which remain after graveside services. They are part of flower arrangements left behind by mourners. Usually they have been professionally prepared by a florist. The company policy was to permit them to remain at the burial or entombment site for 3-5 days and then remove them to a service area. Often they were reusable when the spent flowers were stripped off. If so, florists would buy them back. Until 1989 the Company charged the florists only 35 cents per stand. At some point, prior to Christian's arrival, his predecessor had remedied a problem with the small amounts of cash which had been generated from the easel sales and which had been used to purchase coffee, soft drinks, snacks, pizzas, employee gifts, and the like. Occasionally, it had been used to provide small bonuses to the crew. There had been no control on that cash and it had been kept in a box in the mausoleum utility area. At some point, apparently because of pilferage, the previous manager ordered the cash deposited in a separate checking account. Votruba and the office manager were the only persons who had check signing authority on that account. In addition, the previous manager required the groundsman responsible for any sale to see to it that a receipt was generated, one copy for the florist and a second copy to be given to the office manager, together with the payment, so she could deposit it.

The money in the account continued to be used as before. Basically it became a kind of slush fund for the benefit of the employees. When Christian became the cemetery manager in late 1989, he continued to insist that easel sales be receipted and that the moneys be deposited to that account. However, he did permit the easel sale value to be increased from 35 cents each to \$1. Curiously, however, in 1990, there were only two deposits totaling \$186. This amount was substantially less than the amounts deposited in previous years at the lower price.

Even so, Respondent continued to provide its groundsmen with the same benefits which the fund had provided. Rather quickly after he was hired Christian began to forget about the fund as a source of money for coffee, pizza, etc., and purchased those items from the cemetery general fund. He testified that since the account did not appear in the Company's ledgers, he gave it little thought. He said he tried to provide both the office staff and the groundsmen with a roughly equal amount of food and drink and the best way to do that was to purchase it directly and distribute it to both groups at the same time. It was easiest to do that with general fund money since the checking account was not intended for the office staff. As a result, he neglected the account as a source of payment for the outside workmen.

B. Trakes' Discharge

As previously noted, Moulton had become grounds superintendent on January 28. He took on tasks which had previously been performed by Votruba. He says it took him a month or two to begin to understand the way the cemetery operated. I think it is fair to say that flower easels and the way they were being disposed of was not a principal concern to him in the beginning. Eventually he learned about the fund from the men and became aware that the stands were the source of money for that account. They were normally stored in a service area and from time time they would be gone. No witness was able to testify definitively regarding how many easels per week or month were actually left behind to be sold, but the number is substantial over a year's time. It depends in large part on the number of burial services and the amount the mourners choose to spend on flower arrangements. Even so, periodically as many 100 stands would be stored and made ready for sale to the florists.

It is not clear which of the groundsmen was responsible for arranging the sales. It seems that it was usually Votruba, principally because he was the foreman and had access to the checking account. Others may also have done so, particularly Trakes, because he was so senior and, as leadman, would act when Votruba was not present. Over the years, many groundsmen have participated in the sale of flower stands to florists.

In late April, Moulton noticed that a large number of easels awaiting sale had disappeared. When he went to examine the checkbook he found that no deposit had been made and the receipt book showed no receipt had been generated. He advised Christian of what he had learned and Christian told him to warn the men against theft of easels and to post a notice reminding them that theft would result in their discharge. On April 24, Moulton met with the grounds staff who were on duty. He told them he was aware that flower stands were disappearing and that no receipts were being written or deposits being made. He says the men replied they would discuss it among themselves. On the same day, he also posted a notice on the lunchroom bulletin board. The notice, dated April 24 and in his handwriting, says:

From this Date, Anyone caught Taking Easels From this property or in their Vehicles will be terminated Immediately. No second Chance!

/s/ H.R. Moulton

This includes Environmental Care or any other Contractor on this property.

The lunchroom was also the location where Thomas, Christian, and Moulton were negotiating with Guillen. On April 30, during a negotiation session, Guillen saw the notice and commented that he wished the Company had spoken with Thomas before putting it up because he thought the language was poorly worded, but he said nothing further about it. Guillen agreed that the document simply amounted to a directive to employees that they not steal. He also believes he asked Thomas that all policies be brought to the bargaining table before being given out to the employees. He recalls Thomas saying he would.

Guillen did not ask that the notice be removed nor did he suggest that the policy it described was anything different

from what he understood the rule against theft to be. Furthermore, it is undisputed that the notice remained on the lunchroom board at least up through the time Trakes was discharged in June. During that time Respondent and the Union conducted several more bargaining sessions in that very room. Guillen did not seek to discuss either the notice or the disciplinary rules during that period of time, concentrating instead on other topics. As noted, however, after Trakes was fired, the rules once again became a topic of negotiations, in July finally resulting in a formal rule providing that theft was grounds for immediate discharge.

In early June, according to Moulton and Christian, they had a discussion about the easel fund. Christian decided it was superfluous and its rules were not being honored anyway, in the sense that deposits were not being made to the account and receipts were not being written to florists. He believed the fund was unnecessary because he was now providing all the food and snack items which were needed directly from the cemetery accounts. Accordingly, he decided to dissolve the fund and distribute the money to the grounds crew.

Before work on Wednesday, June 5, Moulton told the men of Christian's decision. He also said that the account would be distributed to all six groundsmen on Friday, June 7, after the account had been settled at the bank. That treatment was consistent with the "small bonuses" which had sometimes been paid in the past, well before Christian became manager. He also announced that in the future, all easels were to be sold only through the front office and that the grounds crew was no longer to be involved in those sales.

Trakes testified about what happened after Moulton left that morning:

After he left, we all kicked around the issue about [sic] wondering how they could do it, and we all, more or less the whole grounds crew said, "Well, we will negotiate this when we get to negotiations."

But since the easel money was going to be ours as until Friday, we all—got together and said, "Well, why don't we get the remaining easels that we did have in [and] around the rooms and from the mausoleum and sell them and get the money for them that, you know, so that we would have the extra money when they distributed all the money out Friday."²

Although Trakes declines responsibility for initiating what happened next, all the flower stands which the employees could find were gathered up. He says the four employees involved were himself, Lindgren, Votruba, and Hodges. The other two groundsmen, Art Motor and John Lamb, were not involved. Those 4 stripped 60 easels of flowers, wire, and styrofoam and stacked them 10 deep outside the breakroom. This location was far more visible to other staff members than their usual presale location and Moulton did notice them there.

²Mike Hodges goes much further than Trakes. He contends Moulton told the assembled employees "[T]he easels belong to you guys until Friday." He either would not or could not distinguish between the easels themselves and the easel fund. I cannot credit Hodges on the point. He is the only one who so describes Moulton's announcement.

It is not clear how long all this took, but the creditable evidence shows that at some point, probably Thursday, Hodges, at Trakes' request found a florist to buy the stands. Trakes sold them later that day. He collected \$60 cash from the florist but did not direct the florist to the office for a receipt. Nor did he take the money to the office manager to be placed with the easel account checkbook. Instead, he distributed \$10 to each coworker, although two, Motor and Lamb were not present that day and Hodges had gone home. The others agreed to take their share of the money to them. The record does not show what Trakes did after that, but it seems he left for the day.

Also not present that day was Christian. Moulton, however, noticed the stacked easels were missing and somewhere between 4 and 4:30 p.m. asked Votruba what he knew about it. Votruba, falsely, denied any knowledge of the situation, even though he had his share in his pocket. Moulton, upset, then asked Lindgren what he knew. Lindgren told him Trakes had sold the easels and had distributed the money to the men. Votruba was standing nearby but said nothing. According to Lindgren, Moulton, angry, said, "That's it. That's it. He's had it."

As Moulton blustered with the two employees about Trakes, the disappearance of the flower stands and the distribution of the money, the Union's representative Guillen appeared on the scene. It is not clear why he arrived at that very moment, but, learning of the problem from Lindgren, he proceeded to calm Moulton down.

Guillen testified that after learning about the problem, he told Moulton, "Look, I think I have a solution to this. Let's drop the matter, and I will have a stern talking-to to Tom Trakes." He says Moulton replied, "Okay, fine," and they shook hands. Moulton's testimony is a little different. He says Guillen seemed to already know there was a problem.³ He says he listened to Lindgren explain his side of it to Guillen and then he responded, telling Guillen what he knew of it. Moulton says when Votruba overheard Lindgren he then acknowledged to Moulton that he did know about Trakes selling the flower stands. Moulton testified the discussion ended as follows:

Well, the discussion ended—it was closing time, and I couldn't talk to Mr. Christian at all, and Mr. Guillen had—you know, he told me he would handle the men and straighten things out, and I just—you know, I took that to mean, well, he would straighten it out as far as that went. But I just told him, "Well, let's just lock up and go," and then we shook hands as usual and walked away.

Moulton denied ever agreeing with Guillen to take no further action with respect to Trakes. In fact, on Friday, when Christian returned, Moulton discussed the situation with him. Christian testified he realized the matter was serious enough to discuss with his attorney before taking any further steps. Also that day Guillen appeared at the cemetery and offered to return the \$60. He had apparently gone to Trakes and Trakes had gathered the money back. Christian told Guillen the money was not the issue and declined to accept it until

³ Guillen had been informed by the employees that the easel fund was being discontinued. Whether he knew more than that is unclear.

he had had an opportunity to discuss the matter with Thomas.

Having received his advice over the weekend, on Monday June 10, Christian began conducting an investigation. He interviewed Trakes in Moulton's presence. Trakes admitted he knew of the Company policy concerning obtaining receipts for the sale of the easels, admitted he had heard Moulton in April reiterate that easels were not to be sold without receipts, and that he was aware of Moulton's handwritten admonition against their "disappearance." Trakes said he was aware that the fund was to be cancelled and the money to be distributed, explaining that he did not see there was any real difference between the self-distribution which he had made and the upcoming distribution the Cemetery was to make. Christian advised Trakes that he was suspended with pay pending further investigation.

Christian also discussed the facts with Votruba, Lindgren and Hodges. Hodges, he says, told him Trakes was the "mastermind" behind the whole thing. Hodges denies using that term but concedes that Trakes is a "manipulator." I have earlier noted that Hodges's testimony could not be fully accepted on another matter. Similarly, I find that Christian must be credited over him, to the extent that the words "mastermind" and "manipulator" differ. In fact, either version suggests Hodges told Christian Trakes was the leader of the incident.

After these meetings concluded, Christian says he evaluated the facts. He concluded that Trakes knew the rule regarding receipts, knew the rule against theft, was aware of the oral and written warnings issued by Moulton and that Trakes was the person who had instigated the sale. He was also aware that Votruba had at first tried to conceal his knowledge of the incident, suggesting that the entire matter was originally intended to be carried out in secret. Whether that is entirely true is open to debate, for the easels had been openly stacked. Even so, the sale occurred while Christian was away for the day, Moulton had not been previously advised and the florist had come and gone without being observed. These facts were not lost on Christian. As a result he decided action needed to be taken against Trakes. He had concluded Trakes had breached the Company rule against theft of its property.

On Wednesday, June 11, he called Trakes back to the office. He told Trakes of his decision to terminate him but gave Trakes the option of resigning rather than being fired. Christian also told him that the Company would not stand in the way of any unemployment claim which Trakes might pursue. Trakes refused to resign and Christian then told him he was discharged.

Trakes contacted Guillen who arranged for a meeting with Christian and Thomas that afternoon. Guillen appears to have conceded that Trakes had made a mistake and urged Respondent to reconsider the decision to discharge him, noting his long service. Christian agreed, saying he would notify Guillen shortly. A negotiation session had been scheduled for a few days later. At that meeting Thomas advised Guillen that the Company had reconsidered the matter, but the decision to discharge Trakes would stand.

IV. ANALYSIS AND CONCLUSIONS

Preliminarily, it should be noted that neither the easels nor the easel fund ever "belonged" to the men insofar as any

concept of ownership is concerned. The easels had been abandoned to the Cemetery by the mourners. The Company created the fund from that relinquishment for the use of the men only upon Company approval. Even when the fund consisted of a box in the mausoleum, it was only to be used with the approval of the supervisor. All the men knew that. Trakes certainly knew it. His description of the men's discussion about what to do with the 60 stands on June 5 suggests all the men knew that the easels really were the property of the Cemetery. They knew the money from the fund was coming to them on Friday as something akin to the bonuses which had been given from it in the past. If it was a bonus, it clearly wasn't something which they personally owned. With that in mind, I proceed to the complaint allegations.

Counsel for the General Counsel argues that Trakes is the victim of an unlawfully imposed rule change regarding the handling of easel sale money. Specifically, she argues that the theft rule and the handwritten rule against "disappearances" of easels issued on April 24 are not the same. Second, she argues that Moulton had agreed with Guillen on Thursday June 6 not to discipline Trakes and to drop the matter; an agreement which she says Christian reneged upon. Finally, she argues that Respondent discharged Trakes for his past union activities, noting that he was the most visible union activist, having served as the Union's observer at the election and having been quoted in the newspaper.

I am unable to concur with any of the General Counsel's contentions. First, the outstanding rule against theft as a grounds for discharge is not in dispute. It existed prior to the Union's appearance on the scene, was accepted by the Union in early bargaining as a rule which could be enforced, and has now been accepted as part of the written rules which the Union later agreed upon. Moulton's memo of April 24 did not change that rule one whit. He orally observed to the crew that there was a likelihood that theft was occurring since no deposits were being made but easels were disappearing, and warned them that if it continued they would be subject to discharge for theft. The memo was a bit unprofessional, but its meaning was clear: When you sell the easels, issue a receipt. A receipt would show that they had not "disappeared." Therefore, Respondent did not breach Section 8(a)(5) of the Act by issuing the memo. It was only a reminder of the previous rule against theft and the expected punishment for its breach.

Second, I think it is abundantly clear, not only from the testimony, but from his limited bargaining authority,⁴ that Moulton did not have the authority to make the deal the General Counsel claims he made with Guillen on June 6. Even without that, Guillen's testimony, allowing for honest memory variance, is not significantly different from Moulton's. Guillen says he told Moulton he would give Trakes a strong talking-to; Moulton recalls it as "taking care of the problem." Guillen's additional reference to "dropping" the matter came from him and can reasonably have been perceived by Moulton, as he said, to call it quits for the day. After all, from Moulton's point of view, Christian

⁴Clearly Thomas was the person in full charge of negotiations. Christian was his primary assistant. It is not totally clear, but it seems likely that Moulton's presence was so the other two could consult with him about factual matters. He was never a spokesman and, even as superintendent, had circumscribed authority.

were gone and nothing could have been done anyway. "Dropping" the matter seems to be most ambiguous in the circumstances. I therefore conclude that Guillen and Moulton reached no agreement regarding what to do with Trakes that afternoon. Since no agreement had been reached, Respondent did not breach it when it continued to pursue the matter the following day.⁵ Accordingly, that theory is rejected.

Finally, the General Counsel's 8(a)(3) theory must also be rejected. First, although there is no doubt that Trakes had been a principal union organizer and Respondent knew it, there is no evidence of union animus and the timing of his discharge is not connected to anything other than the missing easels. Respondent is not alleged to have committed any independent 8(a)(1) acts of interference, restraint, or coercion of the employees. Its employees had unanimously chosen the Union as their collective-bargaining representative in an unremarkable election. Trakes was not part of the Union's bargaining team; Lindgren was. It is true that he made some safety complaints to Moulton early on, but there is no showing that Moulton became exercised over them. Indeed, those issues were taken to the table where they were addressed in a thoughtful manner. Trakes would not have been considered a threat to Respondent's well-being and therefore was not an employee who warranted special attention because of his 6-month-old union activities.

The General Counsel also argues that Respondent treated Trakes more harshly than it did Votruba who had lied, momentarily, about his involvement in the sale of the easels. Trakes was fired; Votruba was orally admonished at best. From those separate treatments, the General Counsel argues that I should infer animus and unlawful motive. I am unable to do so. It is true that Trakes was treated more harshly than Votruba, and both were longterm employees. Even so, Christian had evidence causing him to believe that Trakes had "masterminded" the matter and had done so secretly. Votruba came clean almost immediately and the evidence did not point to him as being the leader of the activity. Their difference in the level of participation is clear. That difference is a valid explanation for their being treated differently.

Finally, it is clear to me that Christian reasonably concluded that Trakes had decided to sell the easels secretly without the proceeds going to the fund so management could control its distribution. It is no defense that Trakes and the others would have gotten their fair share upon distribution of the fund. It was not for him to say what was a fair distribution. His decision deprived the Company of even knowing what the proper amount to be distributed was. Moreover, Moulton's observation that easels were disappearing without receipts being written appears accurate. He believed theft had been occurring in the past; Trakes' conduct only proved his belief to be correct. The complaint will be dismissed.

Based on the foregoing findings of fact, I make the following

⁵I am not certain that even if an agreement had been made that afternoon and broken the next day, that it would have breached the good-faith bargaining obligation as defined by Sec. 8(d). Not every broken agreement between a union and an employer is a breach of Sec. 8(a)(5).

CONCLUSIONS OF LAW

1. Respondent, Ontario Cemetery Association d/b/a Bellevue Memorial Park is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Southern California District Council of Laborers and its affiliated Local 783, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel has failed to prove by a preponderance of the evidence that Respondent has committed any violations of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The complaint is dismissed in its entirety.

⁶If 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.