JD(SF)-22-06
Seattle, Washington

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

UNITED PARCEL SERVICE

and Case 19-CA-30041

NATE MADOULET, An Individual

Frank Morales, Esq., Seattle, WA,
for the General Counsel
Bruce Michael Cross, Esq., of Perkins Cole, LLP, Seattle, WA, for the Respondent

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Seattle, Washington on March 16, 2006. The charge in the captioned matter was filed by Nate Madoulet, an Individual, on October 21, 2005, and an amended charge was filed on December 27, 2005. Thereafter, on January 13, 2006, the Regional Director for Region 19 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging violations by United Parcel Service (Respondent or UPS) of Section 8(a)(3) and (4) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from Counsel for the General Counsel (General Counsel) and counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent is a New York corporation with an office and place of business in Seattle, Washington, where it is engaged in the business of providing package delivery services. In the course and conduct of its business operations the Respondent annually ships from its facilities within the State of Washington, goods and/or services valued in excess of $50,000 directly to customers outside the State of Washington. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

It is admitted, and I find, that Teamsters Local Union No 174, affiliated with the International Brotherhood of Teamsters (Union), is and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act,

III. Alleged Unfair Labor Practices

A. Issues

The principal issue in this proceeding is whether the Respondent has violated Section 8(a)(3) and (4) of the Act by issuing a one-day disciplinary suspension to employee Nate Madoulet.

B. Facts

Efrain Estrada is currently hub manager for the Seattle UPS facility during the twilight shift. He has been employed by UPS for 20 years and has held various positions including human resource representative. In October, 2005,[1] Estrada was hub manager for the night shift. Nate Madoulet, the Charging Party, worked on the night shift during Estrada's approximately two and one-half year tenure as night shift manager. The Respondent's employees are represented by the Union.

Estrada testified that in February there was an incident between Madoulet and a night-shift supervisor. Madoulet had uttered some inappropriate remarks to the supervisor. As a result, Madoulet was given a warning letter by Estrada, dated February 22, for unprofessional behavior, as follows:

> On February 14, 2005, your conduct was unprofessional towards a supervisor. You are fully aware of UPS's Workplace Violence Policy and your obligations under Article 37 of the NMUPS Agreement.
>
> Therefore, pursuant to Article 28 of the Western Region Supplemental Agreement, I find it necessary to officially warn you. Future infractions will result in more severe disciplinary action, up to and including discharge.

In August, Madoulet had a confrontation with a non-UPS security guard employed by a subcontractor. The security guard reported that during the confrontation Madoulet bumped him. Madoulet was sent home pending the results of the investigation. Estrada testified that his interview with Madoulet over the incident did not last very long, because Madoulet was uncooperative and would not answer most of the questions he was asked. Therefore the interview was concluded before Estrada could determine what had transpired. Because it was apparently a one-on-one situation with no witnesses, Madoulet was returned to work with no discipline issued.

In October 12, Estrada happened to observe that Madoulet was smoking in the building, a violation of company rules. Estrada instructed one of the supervisors to summon Madoulet to a room for a discussion about the matter. Madoulet did not come to the room when summoned. Because of this delay, Estrada reported the incident to Madoulet's union shop steward, Yem Negash, so that the steward could become involved and speak with Madoulet in

[1] All dates or time periods are within 2005 unless otherwise noted.

an effort to obtain his cooperation. Estrada also asked a loss prevention security supervisor, Michelle Santiago, whether she had had any past experience with such infractions, in order to insure that whatever steps he took would be consistent with past practice. After about half an hour Madoulet finally came into the designated room with the shop steward. Those present in the room were Madoulet, Negash, Santiago, and Estrada.

Estrada explained to Madoulet that he had been observed smoking in the building. Madoulet at first denied he had been smoking in the building, but when Estrada then said that he had personally witnessed this, Madoulet recanted and, according to Estrada, agreed that he had been smoking in the building. Then, Madoulet accused Estrada of harassing him. Estrada said he didn't feel that he was harassing him, but was simply doing his job by insuring that employees abide by the rules. At this point, according to Estrada, Madoulet "became very irritated, very loud, almost out of control," and started trembling. The shop steward tried to calm him down. Estrada attempted to simply explain that smoking in the building was not allowed. Madoulet continued to tremble and continued to be loud and "irrational," and the shop steward had to take him outside the room to calm him down. However, Madoulet continued to be loud outside the room as well.

When Madoulet and the steward returned to the room, Estrada and Santiago, who was taking notes of the interview, left the room and discussed Madoulet's behavior. Estrada was concerned with Madoulet's overreaction to the situation, and wanted to know whether his observations of Madoulet's behavior and demeanor coincided with Santiago's observations. They agreed that Madoulet appeared to be out of control and possibly exhibited behavior that was consistent with being under the influence of drugs. They contacted the security supervisor and reported their observations to him. As a result, it was agreed Madoulet should be given a "fitness for duty" test which requires a urinalysis.

Estrada and Santiago returned to the room, and advised Madoulet and the steward of their observations and stated that Madoulet would be taken to a local clinic for a fitness for duty test. The record does not reflect how Madoulet reacted when he was so advised. Madoulet was requested to sign an agreement form to take the test. He did so, and he was driven to the clinic. It is company policy that until the results of such a test are returned, the employee is considered "removed from service."

Both Estrada and Santiago filled out a form called a "Fitness -For-Duty Observation Form" which, according to its terms, is required to be submitted "each time an individual is suspected of abnormal actions, appearance or conduct which requires a fitness-for-duty evaluation." Both forms are dated October 12. The form contains behavioral elements that are to be circled. Estrada's form specifies that Madoulet's observed behavior included the following: rapid speech, excessive talkativeness, anxiety, moodiness, irritability, and tremors. Under the heading of "Other observed abnormal behavior, " Estrada notes: "Became anxious and agitated. Noticed very abnormal trembles throughout his entire body, especially his arms. Also became irritated after I spoke a few words regarding not smoking inside the building."

Estrada testified that in a two and one-half year period as night shift manager this was only the second time he had required an employee to submit to a drug test.

Santiago's similar report is as follows: rapid speech, excessive talkativeness, anxiety, moodiness, irritability and tremors. She notes: "Wanted to talk to him about his smoking in the building, he became unreasonably agitated and angry."

The Respondent received the results of the test one week later, apparently on October 19. The results were negative. Union Business Representative Eric Scog testified that he was advised of the results by Director of Labor Relations Murray Bourque on October 19. Apparently Madoulet also had been so advised,[2] and was scheduled to return to work that evening. Scog advised Bourque that the parties would discuss the situation that evening at a "center level" grievance meeting which, by coincidence, had previously been scheduled to discuss, among other unrelated grievances, a prior grievance filed in August by Madoulet. [3] A center level grievance meeting is the first step in the contractual grievance process.

Those attending the meeting were Union Representative Scog, Director of Labor Relations Bourque, Division Manager Randy Baker, Madoulet, and Estrada.

Bourque testified that among other duties he reviews all the grievances filed by the approximately 2600 employees who work for the Respondent in the Seattle, Washington area, and that customarily the Union files approximately 80 to 90 grievances each month, or about 1000 grievances yearly. Because of the large volume of grievances he is selective in whether he attends center level hearings for any given grievance.

Bourque decided to attend the October 19 meeting because he understood that a prior grievance filed in August by Madoulet was to be presented by Madoulet and/or Skog. This would give Bourque an opportunity to present and discuss, in turn, the Respondent's dissatisfaction with Madoulet's behavior toward supervision in general, and Madoulet's October 12 conduct in particular. Thus, Bourque had noticed that matters relating to Madoulet had crossed his desk with some frequency. He was familiar with the Respondent's February written reprimand of Madoulet for unprofessional behavior toward a supervisor, and Madoulet's August confrontation with a security guard. Further, he had discussed the situation surrounding the October 12 incident with Estrada and Baker, and was well aware of the details of Madoulet's behavior that caused Estrada and Santiago to impose the fitness-for-duty test.

Thus Bourque had learned from Estrada that on October 12, Estrada had given Madoulet an instruction and Madoulet became combative and angry; that it took "many, many, many instructions" to even get Madoulet to come to the office; that it finally took the intervention of a steward to even get him to start cooperating; that when asked questions Madoulet repeatedly refused to answer, and would either remain silent or would make his own accusatory statements, or would go off on a "tirade where they couldn't get him to stop talking and then really with elevated voice, screaming and yelling to the point where his own steward took him out and tried to calm him down."

It had been decided by Bourque, following discussions with Estrada and Baker, that Madoulet's behavior on that occasion was unacceptable and was clearly in noncompliance with Article 37 of the contract which requires employees to treat supervisors with dignity and respect. Bourque understood Estrada's primary concern was Madoulet's attitude toward

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[2] Madoulet had phoned Bourque during the week he was off and inquired about the results of the test. Bourque told Madoulet that he would be immediately advised when the results were received from the clinic.

[3] Apparently Skog understood that Madoulet intended to present a new grievance that evening alleging harassment by Estrada for having accused him of smoking in the building and requiring him to take the fitness for duty test. However Bourque did not know this, and believed the grievance meeting would involve an earlier grievance alleging harassment by Estrada that had occurred in August or earlier.

supervision, exhibited by his defensiveness and reluctance to immediately comply with instructions; behavior of this nature is clearly contrary to the Respondent's requirement that employees are to immediately comply with any reasonable instructions, and grieve the matter later if they feel the instruction was improper. In this regard, prior to the October 19 grievance meeting, it had been decided that absent some acknowledgment or assurance by Madoulet that he would thereafter attempt to comply with instructions and control his temperament and treat his supervisors and managers with respect, he would be disciplined for his October 12 uncooperative and unprofessional behavior.

Bourque testified: "Bar any meeting I would've just issued the discipline."

As noted, Bourque was familiar with the situation and believed that his involvement would be beneficial. At the meeting, before Madoulet had even arrived, he told Business Representative Scog that it had been determined that discipline would be appropriate and was being considered; however he was hoping not to have to impose discipline and requested that Skog meet with Madoulet before the meeting began. Then again, prior to the meeting, after Madoulet arrived, he said the same thing in Madoulet's presence. Thus, according to Madoulet, prior to the grievance discussion Bourque said to Madoulet and Skog that "he was considering discipline regarding the October 12 incident but hoping to resolve the matter." And on cross-examination, Madoulet agreed that Bourque mentioned the possibility of discipline, and said "he was hopeful of being able to avoid that if things could be worked out and you [Madoulet] could move forward in a… more cooperative fashion…or words to that effect."

Scog, characterizing this latter discussion as an "informal meeting, " testified Bourque stated that he found Madoulet's behavior during the October 12 incident to be "unacceptable, that he needed to basically grow up, words to that effect." However, according to Scog, Bourque said that he had considered issuing discipline for that incident but had decided not to. [4]

Bourque, believing that discipline would simply inflame the situation, wanted to demonstrate to Madoulet during the grievance hearing that no one had targeted him for harassment or had any malice toward him and that a simple handshake and agreement to move forward and wipe the slate clean would be the best thing for everyone. Before even beginning to discuss Madoulet's grievances he related his concern that Madoulet's name had come up concerning some "pretty serious allegations." They began discussing the October 12 incident before Estrada had entered the meeting room. Madoulet began to explain that he was not smoking in the building but was smoking outside the building leaning against a truck. However, when Estrada entered the room and Madoulet apparently realized that his denial would be contradicted by Estrada, he admitted that he might have been smoking in the doorway of the building. According to Bourque, whether on not Madoulet was smoking in the building was of minor significance. Then Bourque raised the issue of Madoulet's February confrontation with the security guard. Madoulet denied that he had engaged in physical contact with the guard. He kept insisting that he was being harassed and singled out by Estrada and others. Bourque reminded him that the security guard was not even a UPS employee and would have had no reason to single him out.

[4] I do not credit this testimony of Scog as it is not only contradicted both by Madoulet and Bourque but, further, the General Counsel does not rely on Scog's testimony in this regard.

Then, according to Bourque, Madoulet's various grievances were discussed. Although Madoulet believed he was being harassed, he did not present any evidence to substantiate this belief.[5] Bourque asked him why everyone would lie and falsely accuse him of doing things he didn't do. Madoulet said he didn't know why, but continued to repeat that he was being harassed and singled out. Further, when repeatedly asked by Bourque what remedy he was proposing to resolve his grievances, Madoulet had no answer.

Bourque then proposed that both Madoulet and Estrada agree to abide by Article 37 of the contract requiring employees and supervisors to treat each other with dignity and respect, in a spirit of cooperation. Bourque turned to Estrada and asked Estrada whether he would agree to treat Madoulet with dignity and respect. Estrada said yes. Bourque then turned to Madoulet and asked him the same thing. Madoulet testified that he did not directly answer but replied, "I've already been treating everyone with dignity and respect."[6] Then he threatened to file another Board charge.[7] Bourque, according to Madoulet, said that he wasn't "scared" of the Board, that apparently Madoulet had been "coached" into filing a Board charge, and that the worst that could happen was a Board notice posting.[8] Then, according to Madoulet, Bourque said, "I was gonna be disciplined for the October 12th incident."

On the following day, October 20, Madoulet received the following letter signed by Estrada but prepared by Bourque for Estrada's signature:

> Dear Nate,
>
> On October 12, 2005, during a discussion with your manager, you became overly excited, irrational, and uncooperative. Your actions were a clear display of lack of courtesy and respect. Your actions were so extreme, that they prompted a fitness for duty examination due to concerns about your ability to function safely in the workplace.
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> Prior to a local level hearing on October 19th, Labor Manager Murray Bourque had conversation (sic) with you regarding the fact that our goal as a management team was to enjoy good working relationships with our people. You expressed concerns and Murray expressed his concerns over a few incidents that you were involved in. Murray further explained that he had spoke (sic) with your business agent about the fact that we were considering discipline, but instead that he wanted to talk with you to let you know that you would have to check your conduct and that we could move on and work together.

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[5] Apparently Scog did not object to Bourque's discussions with Madoulet , and was content to be present as an observer while Madoulet had discussions with Bourque and presented his own grievances,

[6] I do not credit this assertion of Madoulet. No other witnesses corroborated this testimony. According to Bourque, Madoulet was "unresponsive," said that he had done nothing wrong, and implied that agreeing to Bourque's proposed resolution would be tantamount to agreeing that he in fact had not treated Estrada with dignity and respect. Scog testified that Madoulet said Bourque's proposal "was unacceptable, he wanted a panel decision." A panel decision is the next step in the grievance process.

[7] Madoulet had filed a prior Board charge that had been withdrawn or dismissed.

[8] Bourque denied that he said he was not "scared" of a Board charge, but did state that "I don't care if you file a Board charge…it has nothing to do with the issue." I credit Bourque's testimony.

> Later that evening, we heard a grievance you filed. It was filed that same day. It was proposed that we would agree to a settlement that would state in part ". . . the parties agree to abide by Article 37." That was unacceptable to you. You did not know what remedy you wanted nor did your BA Eric Skog. You displayed agitation that was not supported by facts. You stated frequently that you "feel" that you are being harassed, but were never able to qualify that claim. You threatened renewed NLRB charges.
>
> Given the fact that have received prior disciplines for unprofessional conduct that have not had an impact on your behavior, and the fact that only (sic) flatly denied every allegation against you, Murray explained that official discipline would be forthcoming. There was no reason to believe that you were interested in accepting responsibility for your actions resulting in corrected behavior. The talk-with was not going to effect any change.
>
> Therefore, pursuant to Article 28 of the Western Region Supplemental Agreement, I find it necessary to suspend you one (I) day. [9] Future infractions will result in more severe disciplinary action up to and including discharge.

As noted, Bourque prepared the October 20 disciplinary letter. Bourque testified he wanted to memorialize what had transpired and utilized the letter to set forth a summary of the discussions because he very much believed Madoulet intended to file another Board charge. What he put in the letter was simply a summary of the evening's events. He was lenient with Madoulet by imposing only a one-day suspension, the minimum discipline possible under the circumstances in accordance with the progressive disciplinary procedure in the contract

Bourque testified that whenever possible the Respondent attempts to affect a change in behavior through mutual cooperation rather than progressive discipline. At the October 19 meeting, Madoulet was asked to agree to be cooperative and move forward in the spirit of cooperation and try to just wipe the slate clean, and was told he didn't have to agree that his past behavior was unacceptable. However, Madoulet did not exhibit any willingness to cooperate with his managers or supervisors. Accordingly he was disciplined for his October 12 unprofessional conduct and refusal to follow management instructions. Employee discipline for violating Article 37 of the contract is not uncommon, and Madoulet would have been disciplined for this conduct had he not filed any grievances and had he not threatened to file a Board charge.

On November 8, Scog wrote to the Respondent as follows regarding both of Madoulet's grievances:

> Please accept this letter as confirmation to the settlement of the above referenced grievance(s): In a center level hearing held October 19, 2005…the company offered the settlement "Both parties agree to abide by Article 37." That settlement offer is accepted.
>
> We consider this matter settled unless we hear from you in writing within the next five (5) days.

[9] Madoulet has not yet been required to serve his one-day suspension.

C. Analysis and Conclusions

Madoulet was removed from service on October 12, pending the results of his drug testing. His first day back on the job was October 19. Thus, October 19, was the Respondent's first opportunity to meet with Madoulet regarding his unacceptable behavior.

The General Counsel argues the October 19 grievance meeting involved only Madoulet's grievances against the Respondent and nothing more. Further, since Bourque stated he intended to discipline Madoulet immediately after Madoulet not only refused to agree to Bourque's proposed resolution of the grievances but also threatened to file another Board charge, it is the General Counsel's theory of the case that the discipline must have been imposed because of Bourque's pique with Madoulet for not agreeing to this proposed resolution and/or because of Madoulet's threat to file a Board charge.

It is clear that the General Counsel simply disregards Bourque's abundant and detailed testimony regarding the parties' October 19 discussions. Bourque impressed me as a highly credible witness with a clear and detailed recollection of the events in question. His thorough account of the October 19 meeting, as compared with the highly attenuated testimony of General Counsel's witnesses, stands unrebutted in the record.[10] Accordingly, I credit Bourque's account of the meeting and find that what happened at the meeting occurred as described by Bourque.

From the outset, even before the commencement of the meeting, Bourque strongly suggested that Business Representative Scog get together with Madoulet and attempt to work out some way to avoid the discipline that the Respondent intended to impose for Madoulet's unprofessional behavior during the October 12 incident. Skog did not testify that he ever attempted to discuss the matter with Madoulet in order to avoid Madoulet's imminent discipline. Then, again before Madoulet's grievances were discussed, Bourque said the same thing to both Scog *and* Madoulet together. Thus, Madoulet testified that Bourque said, "he was considering discipline regarding the October 12 incident but hoping to resolve the matter…" and " was hopeful of being able to avoid that if things could be worked out and you [Madoulet] could move forward in a…more cooperative fashion…" And according to Scog, Bourque stated that he found Madoulet's behavior during the October 12 incident to be "unacceptable, that he needed to basically grow up, words to that effect."[11] Scog and Madoulet were unresponsive to Bourque's entreaties, and made no effort to even attempt to resolve the issue in order to avoid the discipline that Bourque pointedly said would be forthcoming.

Then, during the grievance meeting, again before Madoulet began presenting his grievances, Bourque continued his efforts to convince Madoulet that the Respondent had significant concerns about his past behavior. It is clear that Bourque considered the October 19 meeting a forum to resolve not only Madoulet's grievances with management, but, more

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[10] As noted, however, Madoulet filed two grievances. I credit Bourque and find that the grievances were discussed in chronological order and that Bourque announced that he intended to discipline Madoulet only after, inter alia, both of Madoulet's grievances had been discussed. This sequence of the meeting differs from that of Scog and Madoulet who testified that Madoulet's second grievance was discussed first and immediately thereafter, before even discussing the first grievance, Bourque advised Madoulet and Scog that he intended to discipline Madoulet.

[11] As noted above, I have discredited Scog's testimony that Bourque said he did not intend to discipline Madoulet for his behavior during the October 12 incident.

importantly, Respondent's problems with Madoulet. He characterized his discussions with Madoulet as a "talk-with," and began the October 20 suspension letter by recounting Madoulet's unacceptable October 12 behavior as follows:

> On October 12, 2005, during a discussion with your manager, you became overly excited, irrational, and uncooperative. Your actions were a clear display of lack of courtesy and respect. Your actions were so extreme, that they prompted a fitness for duty examination due to concerns about your ability to function safely in the workplace.

Further, he goes on to state his belief that, because Madoulet was non-responsive to his overtures, "[t]he talk-with was not going to effect any change" in Madoulet's behavior.

Again, at no time did either Scog or Madoulet indicate any interest whatsoever in attempting to resolve Respondent's problems with Madoulet in order to avoid discipline, despite the fact that they clearly understood discipline would be imposed absent such a resolution. Agreeing to abide by Article 37 would not have compromised Madoulet's rights under the contract's grievance machinery. Before, during, or even after the grievance hearing, Madoulet had the opportunity to agree to conform his future conduct to the language of Article 37, while, at the same time, insisting that his harassment grievances be heard and/or taken to the next level of the grievance procedure. These two choices are not mutually exclusive, and there is no showing that this would not have been satisfactory to Bourque. Madoulet simply remained unresponsive or noncommittal and made no effort to agree to anything. This is what Bourque pointed out in his letter, and this, I find, led Bourque to reasonably believe that Madoulet had no intention of modifying his future behavior in a manner consistent with Article 37.

On the basis of the foregoing, it is clear that Bourque decided to impose discipline because Madoulet remained unresponsive to repeated attempts to resolve Respondent's problems with Madoulet in any other way. Accordingly, I conclude that the discipline was imposed not because Madoulet refused to settle his grievances, but because Madoulet was unwilling to modify his behavior toward supervision.

Moreover, I credit Bourque and find the Respondent has abundantly demonstrated Madoulet would have received precisely the same discipline even if there had been no grievance meeting.

Further, I find that even if Bourque, in part, had in fact disciplined Madoulet because he would not agree to Bourque's proposed resolution of Madoulet's grievances, Madoulet would have been given precisely the same discipline in any event for the legitimate reasons articulated by Bourque and abundantly established in the record. See *Wright Line*. [12]

The General Counsel, citing *Felix Industries, Inc.*, [13] argues that a *Wright Line* analysis is not appropriate under the circumstances of this case. I do not agree. In *Felix Industries* an employee was terminated for intemperate language during a phone call between the employee and his supervisor regarding the employee's rights under a collective bargaining agreement. The Board, finding a violation of the Act, determined that since the language was not sufficiently opprobrious to lose the protection of the Act, it therefore did not matter whether the employee would have been discharged for the same conduct in a different context not intertwined with protected activity. Accordingly, the Board found that in such circumstances a *Wright Line*

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[12] 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).
[13] 331 NLRB 144 (2000),

analysis is inappropriate. In the instant matter, however, absent some positive response to Bourque's entreaties, Madoulet would have been disciplined in any event --not for conduct occurring at the October 19 grievance hearing, but for his unacceptable behavior a week earlier.

Accordingly, for the foregoing reasons, I shall dismiss the complaint in its entirety.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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

3. The Respondent has not violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law, I issue the following recommended:

ORDER[14]

The complaint is dismissed in its entirety.

Dated: May 12, 2006.

Gerald A. Wacknov
Administrative Law Judge

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