

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local No. 133, UAW, AFL-CIO, is a labor organization within the contemplation of Section 2(5) of the Act.
3. Respondent is the recognized exclusive collective-bargaining agent in a unit which includes those employees involved in grievances numbered 62-79, 62-114, 62-161, and 62-187.
4. Respondent has fulfilled its statutory obligations under Section (a) of (5) of the Act.
5. Respondent's refusal to allow Local 133 to make an independent time study in connection with the grievances described in 3, above, does not constitute an unfair labor practice.

## RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and the entire record, it is recommended that the complaint be dismissed.

**Aristocrat Inns of America, Inc., and Essex Inn Corporation  
and Madie Roots**

**Aristocrat Inns of America, Inc., and Essex Inn Corporation  
and Odell Butler**

**Aristocrat Inns of America, Inc., and Ascot Motel Corporation  
and Lawrence I. Perry**

**Local No. 4, Building Service Employees International Union,  
AFL-CIO and Madie Roots. Cases Nos. 13-CA-5429-1, 13-CA-  
5429-2, 13-CA-5474, and 13-CB-1385-2. May 14, 1964**

## DECISION AND ORDER

On January 17, 1964, Trial Examiner Horace A. Ruckel issued his Decision in the above-entitled proceeding, finding that certain Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondents had not engaged in other unfair labor practices, and recommended that the allegations of the complaint pertaining thereto be dismissed. Thereafter, the General Counsel and the Respondent Employers filed exceptions to the Trial Examiner's Decision and supporting briefs, and Respondent Employers also filed a brief in opposition to certain of General Counsel's exceptions.

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

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

The Trial Examiner found that, by interrogating employees about their signing of Roots' decertification petition, and by obtaining their signatures to affidavits designed to defeat that petition, the Respondent Union and Respondent Employers have violated Section 8(b) (1) (A) and 8(a) (1) of the Act, respectively. Respondents filed no exceptions to the Trial Examiner's findings in this regard; we adopt them *pro forma*.

The General Counsel excepted to the Trial Examiner's failure to find certain alleged threats of reprisal and promises of benefit to be separate violations of the above-named section of the Act. However, the Respondents' representatives denied the statements attributed to them, and the Trial Examiner did not resolve the issues of credibility. We deem it unnecessary to pass upon these further alleged violations of the Act, as they would not affect the scope of our order in any event.

The General Counsel excepts to the Trial Examiner's failure to find that the Respondent Employer's joint participation with Respondent Union in the interrogation of employees was violative of Section 8(a) (2) of the Act. It further excepts to his failure to find that Respondent Employers also violated Section 8(a) (2) by discharging Roots for her decertification activities. We find merit in these exceptions. As we have found that Respondent Employers assisted Respondent Union in the unlawful restraint and coercion of employees in the exercise of their rights as guaranteed in Section 7 of the Act, we find that they also violated Section 8(a) (2) by discharging Roots because of her decertification activities.<sup>1</sup>

The Trial Examiner found that Respondent Employers violated Section 8(a) (3) of the Act by discharging Madie Roots. We agree. However, the General Counsel excepts to his recommendation that the allegations of the complaint with regard to Section 8(a) (4) be dismissed. We find merit in this exception. As we agree with the Trial Examiner's finding, supported by the record, that Roots was discharged for her decertification activities, including the filing of certain decertification petitions with the Board, we find, as alleged in the complaint, that her discharge also violated Section 8(a) (4) of the Act.<sup>2</sup>

<sup>1</sup> See *Precision Fittings, Inc.*, 141 NLRB 1034.

<sup>2</sup> *Precision Fittings, Inc.*, *supra*.

In conformity with our findings of further violations, we hereby make the following:

#### ADDITIONAL CONCLUSIONS OF LAW

1. By discharging Madie Roots for her decertification activities, Respondent Employers Aristocrat Inns of America, Inc., and Essex Inn Corporation have engaged in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

2. By discharging Madie Roots for filing decertification petitions with the Board, Respondent Employers Aristocrat Inns of America, Inc., and Essex Inn Corporation have engaged in unfair labor practices within the meaning of Section 8(a)(4) and (1) of the Act.

3. By participating with Respondent Union in the interrogation of their employees, Respondent Employers Aristocrat Inns of America, Inc., and Essex Inn Corporation have engaged in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. The Respondent Employers, Aristocrat Inns of America, Inc., and Essex Inn Corporation, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership of their employees in Respondent Union, Local No. 4, Building Service Employees International Union, AFL-CIO, or in any other labor organization, or discouraging activities with respect to the decertification of Respondent Union, by discriminating in regard to their hire, tenure, or any other terms or conditions of employment.

(b) Discharging or otherwise discriminating against any employee because he has filed charges or given testimony under the Act.

(c) Assisting or supporting Local No. 4, Building Service Employees International Union, AFL-CIO, by unlawful interrogation of or reprisals against any employee for activity in opposition to it, or in any other manner assisting or supporting it, or any other labor organization.

(d) Coercively interrogating employees with respect to their union activities or sympathies.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities

for the purpose of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Offer Madie Roots immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy." Interest at the rate of 6 percent per annum shall be added to the backpay to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(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 Decision.

(c) Post in Essex Inn in Chicago, Illinois, copies of the attached notice marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by representatives of Respondent Employers, Aristocrat Inns of America, Inc., and Essex Inn Corporation, be posted immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Union's attached notice marked "Appendix B."

(e) Mail to the Regional Director for the Thirteenth Region signed copies of the attached notice marked "Appendix A," for posting by Respondent Union at its offices where notices to its members are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by representatives of Respondent Employers, Aristocrat Inns of America, Inc., and Essex Inn Corporation, be forthwith returned to the Regional Director for such posting.

<sup>3</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

(f) Notify the Regional Director for the Thirteenth Region, in writing, within 10 days from the date of this Order, what steps Respondent Employers, Aristocrat Inns of America, Inc., and Essex Inn Corporation, have taken to comply herewith.

B. The Respondent Union, Local No. 4, Building Service Employees International Union, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union activities or sympathies.

(b) Discouraging, or attempting to discourage, by coercive means, the employees of Aristocrat Inns of America, Inc., or Essex Inn Corporation from circulating or supporting the circulation of any petition or petitions which seek to decertify the above-named Union, or discouraging or attempting to discourage any other permissible activity in opposition to it or in support of any other labor organization.

(c) In any other manner restraining or coercing employees of Aristocrat Inns of America, Inc., or Essex Inn Corporation, in the exercise of their right to self-organization, to form, join, or assist labor organizations; to bargain collectively through representatives of their own free choice, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Post at its business offices and meeting halls in Chicago, Illinois, copies of the attached notice marked "Appendix B."<sup>4</sup> Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the Respondent Union's representative, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Post at the same places and under the same conditions as set forth in (a) above, and as soon as they are forwarded by the said Regional Director, copies of the attached notice marked "Appendix A" signed by representatives of Respondent Employers, Aristocrat Inns of America, Inc., and Essex Inn Corporation.

<sup>4</sup> See footnote 3, *supra*.

(c) Mail to the Regional Director for the Thirteenth Region signed copies of Appendix B for posting by the Respondent Employers, Aristocrat Inns of America, Inc., and Essex Inn Corporation. Copies of said notice, to be furnished by the said Regional Director, shall, after being signed by the Respondent Union's representative, be forthwith returned to the Regional Director for such posting.

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

IT IS FURTHER ORDERED that those allegations of the complaint alleging violations of Section 8(a) (1) of the Act not herein found, be, and they hereby are, dismissed.

#### APPENDIX

##### NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discharge or otherwise discriminate against any employee because of activity in support of any labor organization, or in opposition to Local No. 4, Building Service Employees International Union, AFL-CIO, or any other labor organization; or for soliciting or obtaining signatures to or filing with the National Labor Relations Board any petition for decertification of the above-named labor organization, or any other labor organization, or in order to discourage membership in any labor organization, or encourage membership in Local No. 4, Building Service Employees International Union, AFL-CIO, or in any other labor organization.

WE WILL NOT interrogate our employees regarding their union membership or activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choice, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement authorized by Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer Madie Roots immediate and full reinstatement to her former or a substantially equivalent position, without prej-

udice to her seniority or other rights or privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination practiced against her:

WE WILL NOT assist or support Local No. 4, Building Service Employees International Union, AFL-CIO, by reprisal against any employee for activity in opposition to it, or in any other manner assist or support it, or any other labor organization.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of Local No. 4, Building Service Employees International Union, AFL-CIO, or any other labor organization.

ARISTOCRAT INNS OF AMERICA, INC.,

AND ESSEX INN CORPORATION,

*Employers.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, Midland Building, 176 West Adams Street, Chicago, Illinois, Telephone No. Central 6-9660, if they have any question concerning this notice or compliance with its provisions.

#### APPENDIX B

##### NOTICE TO ALL MEMBERS OF LOCAL NO. 4, BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

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

WE WILL NOT interrogate the employees of Aristocrat Inns of America, Inc., or Essex Inn Corporation, as to their activities with respect to the circulation or support of any petition or petitions which seek to decertify the undersigned Union, nor in any other manner discourage or seek to discourage the said employees with respect to such activity.

WE WILL NOT in any other manner restrain or coerce employees of Aristocrat Inns of America, Inc., or Essex Inn Corporation, in the exercise of their right to self-organization, to form, join, or



Upon the record as a whole, and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

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

Aristocrat Inns is an Illinois corporation having its principal office and place of business in Chicago, Illinois, where, through Respondent Essex Inn Corporation, Respondent Ascot Motel Corporation, Avenue Motel, Inc., and Acres Motel Corporation, all wholly owned subsidiaries and Illinois corporations, it operates the Essex Inn, Ascot Motel, Avenue Motel, and Acres Motel. All these companies are affiliated businesses with common officers, ownership, directors, and operators, and constitute a single integrated business enterprise, and formulate and administer a common labor policy affecting employees of the several companies. The only motels with which this proceeding is directly concerned are Essex Inn and Ascot Motel.

During the year preceding the issuance of the complaint, Respondent Aristocrat Inns of America, Inc., in the course of its operation at the aforementioned motels, had gross revenue from these motels in excess of \$500,000, and each of the motels, in the conduct of its operations, had gross revenues in excess of \$500,000. Each of these motels, during the same period, had transient guests in excess of 25 percent of its capacity. The complaint alleges and the answer of Respondent Employers admits that Respondent Employers are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Local No. 4, Building Service Employees International Union, AFL-CIO, is a labor organization admitting employees of Respondent Employers to membership.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The discharges*

###### Background

Each of the motels operated by Aristocrat Inns of America, Inc., including Respondent's Essex Inn Corporation and Ascot Motel Corporation, has been for some time a party to a collective-bargaining contract with Respondent Union. The last contracts were due to expire on October 11, 1963, but were automatically renewed for 1 year in the absence of a 60-day notice of termination. During the latter part of December 1962, Madie Roots, a maid employed at Essex Inn, procured the names of 15 maids to a petition which stated that the signers wished "to dispose of" Respondent Union. This document was filed as a decertification petition with the Board's Regional Office, and a formal decertification petition signed by Roots as petitioner was filed on December 28, 1962, a copy of which was served on Respondent Essex Inn on December 31, 1962.<sup>1</sup> There is no evidence that Respondents had any knowledge of Roots' activity in the preparation of the petition before that date.

The petition filed by Roots on December 28, 1962, was later withdrawn. During the latter part of January and first part of February 1963, Roots circulated a similar petition and obtained the signatures of 33 maids and housemen employed at Essex Inn. Odell Butler, whose alleged discriminatory discharge is hereinafter discussed, was one of the maids who signed this petition. The petition was submitted to the Regional Office of the Board and a formal decertification petition was filed on February 19, 1963,<sup>2</sup> and a notice served on Respondent Essex Inn shortly thereafter. This petition was still pending at the time of the hearing in the instant case.

There is no evidence that any of Respondent Employers had knowledge of Roots' activity in the preparation of the first petition prior to December 31, 1962, when Respondent Essex Inn was served with a copy of it, signed by her as petitioner. Nor did any Respondent Employers have any knowledge of who the signers were to either of the two informal petitions circulated by Roots, until the hearing.

###### 1. The discharge of Madie Roots

Roots was employed as a maid at Essex Inn from December 12, 1961, until her discharge on February 16, 1963. During the last 5 months of her employment

<sup>1</sup> Case No. 13-RD-534.

<sup>2</sup> Case No. 13-RD-538. This was 3 days after Roots' discharge, hereinafter discussed.

she was regularly assigned to the eighth floor where she attended to odd numbered rooms 801 through 819. During this same period she substituted for Lucinda Wyatt as head linenroom girl every other Saturday and Sunday. On January 27, 1963, 3 weeks before her discharge, when Wyatt was off because of an injury, Roots took her place. As linenroom girl Roots received several cents an hour more than as maid.

The signatures to the decertification petition which Roots circulated were affixed in the linenroom when the maids reported for work in the morning. On December 31, 1962, the day that Respondent Essex Inn received notice of the filing of the first decertification petition by Roots, Eugene Heytow, vice president of each of Respondent Companies, came to the linenroom and asked Roots what the trouble was and if she had another union in mind. Roots replied that she did not like the way Local No. 4 was representing the employees and that they were going to get another union, although they did not have any particular one in mind. Heytow said this trouble had arisen once before and had cost Respondent a lot of money.

In the afternoon of January 7 an informal meeting took place in the linenroom, at which there were present, in addition to Roots, Edith Murphy, housekeeper and Roots' supervisor, Beulah Price, an inspector, Sam Kraus, director of organization for Local No. 4, and James Walsh, another representative of Local No. 4. Kraus asked Roots what the "trouble" was and accused her of starting "all the trouble" by going to the Board. This obviously had reference to her filing the decertification petition on December 28. From January 27 through February 9, 1963, Roots substituted for Wyatt in the linenroom. She did not work from February 10 to 14, but was called back on February 15 to her regular assignment as eighth floor maid. During that morning Heytow, along with Holt Chater, assistant manager of the motel, came to the eighth floor and inspected one of the rooms in Roots' domain. While so engaged Murphy came in. Heytow declared that the area above the fluorescent light and the telephone were dirty, Chater complained that the floor under the beds was not clean. Roots denied that the light area and the telephone were dirty. She pointed out, and it is so conceded, that it was not her duty but that of the housemen to clean under the beds when to do so necessitated moving the beds, as it did here. The uncontradicted testimony of Roots, which I credit, is that on no previous occasion had Heytow or Chater inspected one of Roots' rooms, but that this duty was normally performed by Murphy or an inspector.

The further testimony of Roots is that when she punched out that evening at 4:30, Murphy, with reference to the criticisms of Heytow and Chater, asked her how she felt and that when she replied that she felt better, Murphy told her to "forget it." This conversation was confirmed by the testimony of Eldora Brooks, another maid, and not contradicted by Murphy. I credit it.

Murphy's testimony is that after the inspection of Roots' room Chater said that she would have to get rid of Roots, and told her to discharge her. Her further testimony, however, is that she did not consider this to be an order, and that the decision to discharge Roots was her own. There is, also, a conflict in the record as to when the discharge took place. Saturday, February 16, was Roots' day off and she was next scheduled to work on Sunday, the 17th. Her testimony is that when she punched out on February 15, at 4:30 p.m., she asked Murphy for the keys to the linenroom so that she could open up on Sunday morning, and Murphy gave them to her. Her further testimony is that Murphy telephoned her at her home on Saturday afternoon and told her not to come in on Sunday, that she was discharged. When Roots asked why, Murphy said, "You know," and told Roots that she hated to lose her. Roots reminded Murphy that she had the keys to the linen closet and Murphy told her to bring them when she came for her paycheck. According to Murphy's testimony, on the other hand, she told Roots at quitting time on Friday, at the timeclock, that Respondent could not use her any more, and that Roots said only, "All right."

I credit the testimony of Roots as to the time and circumstances of her discharge. I have previously found that Roots, when asked by Murphy how she felt about the inspection incident, said that she felt better and Murphy told her to forget it. This conversation took place at 4:30 p.m., at the timeclock in the linenroom, when Roots and Brooks were punching out. I find inconsistent with this Murphy's testimony that, at the same time and place, she told Roots that she was discharged. Moreover, Murphy did not deny Roots' account of receiving the linenroom keys from her, so that she could open up the linenroom when she came to work on Sunday. Obviously, Murphy would not have given Roots the keys if she were discharged. Roots' testimony that she was discharged by telephone on February 16, and not at the motel at the end of work on February 15, is further substantiated by the testimony of Lucinda Wyatt, head linenroom maid, who related that on Saturday

noon she observed Murphy sitting with her head in her hands, and that when Wyatt asked her what was wrong said that she had to telephone Roots to tell her she was discharged, a thing which she did not want to do. According to Wyatt, Murphy then went to the telephone and told Roots not to come in the next morning.

### Conclusions

In addition to the criticisms of Roots' work upon the occasion of her discharge, the testimony of Murphy is that beginning about Christmastime 1962 she began to receive complaints from the office as to her housekeeping. This time corresponds with the period during which Roots circulated the decertification petition filed on December 28. Murphy at this time inspected the rooms for which Roots was responsible and found in certain instances that a floor, or a bathroom, was dirty. Murphy did not testify that she spoke to Roots about these complaints. Roots' testimony is, that she did not, and that neither did Price, the inspector. Nor is it disputed that the first time that Roots' rooms were inspected by Heytow and Chater during her entire period of employment was the day of her discharge. The only testimony in the record that Roots was spoken to about her work is the testimony of William Hickey, manager of Essex Inn, that around the first part of 1963 he cautioned her about the care of his own suite of rooms, for which she was responsible. Thereafter, however, Roots was designated as regular substitute for the linenroom girl, and continued to be such until her discharge. This was more responsible work than that of a maid, and paid a higher wage.

In my opinion the complaints as to Roots' work as a maid are trivial and served only as a pretext for her discharge. They originated in the office about the time that Roots began the circulation of the first decertification filed by her on December 28, 1962. On the day that the Respondents received notice of its filing, Heytow, vice president, asked Roots what the trouble was, stating that the matter was going to cost Respondents a lot of money. That Respondents were opposed to Roots' attempt to obtain another bargaining representative is further demonstrated by the meeting on January 7, in the linenroom, attended by representatives of the Union and by Murphy and Price, where the union officials asked Roots, as Heytow had done the week before, what the "trouble" was, and accused her of starting "all the trouble" by filing the petition. I conclude and find that Respondents discharged Roots not for legitimate business reasons but for her activity in circulating and filing with the Board a petition seeking to decertify Respondent Union. In so doing Respondents violated Section 8(a)(1) and (3) of the Act.<sup>3</sup>

### 2. The discharge of Odell Butler

Odell Butler was employed as a maid at the Essex Inn from October 1961 to her discharge on February 16, 1963, along with Roots. She was 1 of 15 employees who in December 1962 signed the first decertification petitions circulated by Roots and 1 of 33 who signed the second, filed 3 days after her discharge. As has been found, the names on these petitions did not become known to Respondents prior to the hearing. The signing of these petitions was the sum total of Butler's collective activity. On the evening of January 2 and 3 as she was checking out, Murphy spoke to her and two other maids, Barbara Charles and Louanna Walton. Butler's account of this conversation, critical to her case, is as follows:

Q. Will you tell us what was said in that conversation?

A. Mrs. Murphy asked the three of us together. She said, "Girls, I want to know from you all, did you sign the petition that Madie Roots had? . . . and I said "Why." She said, "I want to know if you signed it."

Q. Who is she?

A. Mrs. Murphy, our housekeeper. "If you signed it, you will lose your job. And if you didn't sign it, you will keep your jobs." And I said, "I signed it." So, she said, "That is all right, I want you to be truthful about it." And I said, "I signed it." And the other two maids, Louanna and Barbara, they didn't say anything." [Emphasis supplied.]

<sup>3</sup> The complaint alleges that Respondents also violated Section 8(a)(4) of the Act in discharging Roots because she filed a petition with the Board. I disagree. Section 8(a)(4) of the Act makes it an unfair labor practice to discharge or otherwise discriminate against an employee "because he has filed charges or gave testimony under this Act." A petition in a representation proceeding is not a charge of unfair labor practices and Roots at no time testified in any Board proceeding prior to the instant case. It is hereinafter recommended that the complaint be dismissed in this respect.

Murphy, though called as a witness, did not testify as to this conversation, and a finding that she told Butler that she would be discharged if she signed the petition, and that Butler in the face of this threat told Murphy that she had in fact signed it, might be justified. I do not, however, credit Butler's testimony further than to find that Murphy did ask Butler if she signed Roots' petition. Both Charles and Walton testified to this effect and several other witnesses testified credibly that on other occasions Murphy made similar inquires of them.

Butler signed three separate pretrial statements for the Regional Office, dated March 8, 15, and 20, 1963. It is conceded that in none of these statements did she mention the threat which she testified was made by Murphy. She testified that when she thought of something she had not related in a prior statement she went to the Regional Office and made another statement, and that she did mention the threat to a Board agent when she made one of her three statements, but that the agent neglected to include it in the statement.

Charles and Walton were called by the General Counsel as witnesses later in the proceeding and testified that Murphy asked the three maids only if they had signed Roots' petition, and that they said they had not, but could not remember what Butler had said. They impressed me as truthful witnesses.

The General Counsel elicited from Charles and Walton the statement that they left Murphy's presence together, but thought that Butler may have remained behind. The inference sought to be drawn that Murphy might have threatened Butler after Charles and Walton had left, is contrary to the account of Butler herself, who testified that Murphy "asked the three of us together" if they had signed Roots' petition, and, with no break in continuity, told them that if they had done so they would lose their jobs.

#### Conclusions

I do not credit Butler's testimony that Murphy, 2 weeks before her discharge, told her together with Charles and Walton that if they signed Roots' decertification petition they would lose their jobs, and that Butler then told Murphy that she had in fact signed it. There remains no evidence whatever the Respondents knew, prior to the hearing, of Butler's collective activity in signing two decertification petitions along with numerous other employees.

The General Counsel in his brief, advanced another theory as to Butler's discharge, namely, that she was discharged as a "cover up" for Roots' discharge. This theory, of course, requires that Butler be considered not as an employee engaged in collective activity, but on the contrary as one not interested in such activity, and the more uninterested the better, so that she might be contrasted the more forcibly with Roots. Respondents, such a theory runs, discharged an employee who it is apparent was *not* interested in acting collectively with other employees, so that she might be pointed to, along with Roots, as one discharged for legitimate business reasons. The trouble with this contention is not only that it flatly contradicts the first, but that there is no evidence whatever to support it. Nor do I find any evidence to support the more conventional concept that Butler was discharged for signing the decertification petition, since there is no credible evidence that Respondents had any knowledge of it prior to her discharge. This being the case, I do not find it necessary to consider the reasons which Respondents assign for her termination.

#### 3. The discharge of Lawrence Perry

Perry was employed as a maintenance man at the Ascot Motel on the 4 p.m. to mid-night shift, from May 1962 until March 9, 1963, when he was discharged. His immediate supervisor was Tony Bucci, chief engineer. He was not a member of Respondent Union, though eligible. In August 1962, at two meetings of maintenance employees convened by Marcel Lutwak, Respondent's executive director, Perry expressed his opposition to Local No. 4, as he did on one or two subsequent occasions.<sup>4</sup> On March 1, 1963, in the lobby of the Ascot Motel, Walsh, a representative of Local No. 4, in the presence of Kraus, another union official, asked Perry if he had signed a Blue Cross and Blue Shield application and Perry told him that he had not and

<sup>4</sup> Perry's lack of interest in Local No. 4 was apparently due to the fact that he was receiving a substantially higher wage rate than he thought would be provided for in a union contract. He testified that he told Lutwak that the maintenance men did not want to belong to Local No. 4 and were "satisfied with the arrangements under the management." About a week before his discharge Perry circulated a petition to "dispose of Local No. 4," similar to that circulated by Roots, among the maids at Ascot and obtained several signatures. When other maids refused to sign Perry destroyed the petition. There is no credible evidence that this came to the attention of any of Respondent's supervisors.

would not do so until he saw a union contract covering maintenance men and engineers. Walsh asked Perry if he was going to join the Union and Perry said he was not, stating his reasons. Heytow approached the group and asked what the trouble was. Upon being told, he stated, according to the uncontradicted testimony of Perry, that Perry would have to join Local No. 4 or Respondents would have to let him go. Perry replied that he was not going to join a union which offered him no benefits, and walked away. Heytow called after him, "You quit?" and Perry replied in the negative, adding: "You are going to have to fire me."

Perry's discharge followed on March 9 under the following circumstances. About 12:30 a.m. on March 8, a half hour after Perry's March 7 shift had ended, Raymond Tress, assistant manager of Ascot, saw Perry in the back hallway near a vending machine in the act of "bringing a bottle away from his mouth, and putting it towards his pocket." Tress asked him what was going on and Perry replied equivocally that it was on his own time, to which Tress replied that drinking by employees was not allowed on the premises at any time. Perry's testimony is that he had found a bottle on the premises with a little liquor in it which he was taking with him. He had placed it on the vending machine while he adjusted his tie in the mirror, and was removing the bottle from the machine and was putting it in his pocket when Tress spotted him. Tress reported the incident to Buccì who said he would speak to Perry on the next day.

Perry, however, did not report to work on the following evening, assertedly because of a toothache. He testified that he attempted to call Ascot Inn several times to report that he would not be in, but was unable to reach the Ascot Inn switchboard and that he then telephoned Michael Estroda, engineer at Essex Inn, to ask him to cover his job at Ascot, but Estroda was not able to do so. Records of Illinois Bell Telephone Company show, and I find, that the telephone at Ascot Inn was reported to the repair department at 4:20 p.m. to be out of order, and that no calls could be received until 6 p.m. The record does not disclose at what precise time the telephone went out of order, only the time it was reported. About 7 p.m. Lutwak came into the boiler room and asked Buccì why he was still there and Buccì told him that Perry was "late again" and that Tress had caught him drinking the night before. Lutwak "suggested" to Buccì that he let Perry go and Buccì said he would do so the following day. Later, Lutwak checked with Tress who told him he had caught Perry drinking on the premises.

When Perry reported for work the following afternoon Buccì told him that he was discharged on the order of Lutwak for drinking on the premises and for not calling in the previous evening. Perry said that he had called in but that the telephone was out of order. Later, Buccì asked the switchboard operator if there had been any calls for him and was told there had not been, but did not ask if the line had been out of order. Perry's testimony was that Buccì, when discharging him, told him that Lutwak said that there were various ways of getting rid of employees who did not join the Union. Buccì's testimony was that he simply told Perry the reasons for his discharge. I credit Buccì's account.

#### Conclusions

While Perry was not a member of Local No. 4, and had made it plain to Respondents that he had little use for it, he did not, like Roots, file a decertification petition. Heytow's statement to Perry on March 1, little more than a week before his termination, that he would have to join Local No. 4 or be let go, raises a suspicion that the reasons advanced for his discharge on March 9 were a pretext. But, as has many times been remarked in decisions of the Board, suspicion is not enough. The record discloses that Perry had on various previous occasions been reproved by Buccì for being late for work, and that several times Buccì had reported this to Joe Skidmore and Raymond Tress, respectively manager and assistant manager of Ascot. When on March 8, at the end of the last shift that Perry worked before his discharge, Tress found Perry apparently in the act of drinking on the premises in violation of the rules, and when on the following evening Perry did not report for work or get in touch with his supervisor on the telephone, as required, Respondent Ascot was justified in believing that the two violations were connected. In any event, at 7 p.m. on March 8, 3 hours after Perry should have reported for work Lutwak found that he had not done so and had not communicated with Buccì to explain his absence. He recommended to Buccì that he discharge Perry when he next reported for work. When Lutwak made this recommendation and when Buccì acted upon it the following afternoon, neither man had knowledge that the telephone at the motel had been out of order. Perry did tell Buccì that he had tried to reach him but that the telephone was out of order, and Buccì checked this statement only to

the extent of satisfying himself that no calls were listed for him. His failure to inquire if the telephone had been out of order the previous evening was not, I find, because of any wish to incriminate Perry.

I do not find that the General Counsel has met his burden of proof with respect to Perry's discharge, and it will be hereinafter recommended that the complaint be dismissed as to him.

*B. The joint interrogation of employees by Respondent Employers and Respondent Union*

It has previously been found that Madie Roots obtained the signatures of 33 maids and housemen employed at Essex Inn which she submitted to the Regional Office of the Board in support of the formal petition for decertification filed on February 19, 1963. To counteract the effect of his activity, obviously inimical to Local No. 4, and to lay the ground for an attack on the sufficiency of the Roots' petition, Sam Kraus and another representative of Local No. 4 prepared an affidavit in the following form:

STATE OF ILLINOIS  
County of Cook, ss:

In the matter of  
ARISTOCRAT INNS OF AMERICA

NATIONAL LABOR RELATIONS BOARD  
Case No. 13-RD 538

AFFIDAVIT

The undersigned, being first duly sworn, on oath deposes and says as follows:

I am an employee of -----  
which I understand is affiliated with the Aristocrat Inns of America. I am employed as a ----- I have not within the past six months signed any petition or form addressed to the National Labor Relations Board, nor have I signed any request that Local 4, Building Service Employees' International Union be decertified as my exclusive collective bargaining representative. I have not given any authority to Madie Roots to file any decertification petition with the National Labor Relations Board on my behalf and I have not during the past six months signed any document whatever which was submitted to me by Madie Roots.

-----  
On March 8 Kraus and Walsh, another union representative, together with a notary public, came to Essex Inn to obtain the execution of the affidavits by the Essex maids. Hickey, manager of the Inn, running across Kraus in the halls, offered him the use of his apartment and Kraus accepted. Heytow, informed of this event, gave Hickey permission to bring the maids in separately so that Kraus might question them, and Hickey proceeded to do so. Hickey and Heytow were in and out of the apartment while Kraus conducted the interrogation. Kraus testified that Hickey and Heytow between them talked to most of the maids and Heytow admitted while testifying that he may have asked certain maids if they had signed the Roots' petition. The testimony of other witnesses removes the matter from doubt and reveals also that some of the maids were asked to sign Local No. 4's affidavit not only by Kraus but by Heytow and Hickey as well. Typically, Kraus would ask if the employee had signed the Roots' petition, saying that if she had not then she should sign the affidavit. On occasion Heytow or Hickey interjected to say that she should sign, or to say that if she had signed the petition she should not sign the affidavit. In one or two instances, at least, when a maid demonstrated reluctance Heytow or Hickey, or both, asked her why she did not want to sign, saying that it was "the right thing" to do, or stating that all the others had signed, or that Local No. 4 was "their union." In at least one instance, a maid, Nettie James, told Kraus that she had signed the Roots' petition but Kraus, notwithstanding, asked her to sign the affidavit. There is evidence that others were not asked whether they had signed the Roots' petition before signing the affidavit, and that still others executed it without an opportunity to read it through. Indeed the impression left by this record is that as the representatives of Respondent Union and Respondent Employer warmed to their task,<sup>5</sup> it became a contest to obtain as many affidavits as possible, without regard to whether the affiants had previously signed the Roots' petition. Such a solicitation of maids in the private suite of Respondent Essex's manager, in the presence of Hickey or Heytow, Respondent Essex's most responsible supervisory

<sup>5</sup> Local No. 4's campaign to get affidavits continued until March 13 in the manner above described.

personnel, and two of Respondent Union's representatives, complete with notary public and seal, was calculated to induce, and in fact did induce in some instances, execution of the affidavits regardless of whether the affiants had already signed the Roots' petition.<sup>6</sup> This is particularly reprehensible since the affidavit states unequivocally: "I have not during the past six months signed any document whatever which was submitted to me by Madie Roots," and Respondents' representatives must have known that in certain instances the affiants were swearing falsely when they signed.

By interrogating employees about their signing a petition protesting representation by Respondent Union and by obtaining their signatures to affidavits designed to assist Respondent Local No. 4 in defeating a decertification petition, Respondent Local No. 4 restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) thereof. Respondent Employer, by jointly participating in the interrogation, interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 within the meaning of Section 8(a)(1) of the Act.<sup>7</sup>

### C. The checkoff of dues

The contract between Respondent Employers and Respondent Union contains a union-security clause and provides for the checkoff of union dues upon the execution by an employee of a written assignment authorizing Employer to make such a deduction. The assignment is made irrevocable for a period of 1 year. The complaint alleges that during the period from August 19, 1962, to February 19, 1963, when the first charge herein was filed, Respondent Employers deducted union dues of employees although they had not authorized Respondent Employers to do so. This is said to be an unfair labor practice violative of Section 8(a)(1) and (2) of the Act.

As to 82 employees said by the General Counsel in his more definite statement of complaint to have had their dues deducted "without authorization," Respondent Employers produced 79 cards<sup>8</sup> signed by employees authorizing such deductions. Of these 79 cards, 10 were dated subsequent to the date of the first deduction of dues. Four other cards refer to the signer's place of employment as a motel other than any of those involved in this proceeding. I do not find that this error, at the most merely a misdescription of the place of employment, affects the validity of the assignment since these cards were in fact executed while the signers were employed by one of Respondent Employers and were delivered to Respondent Union and by it to Respondent Employers with the knowledge of the signers.

### Conclusion

The decision of the Board in *Salant and Salant, Inc.*,<sup>9</sup> is to the effect that an unauthorized deduction of union dues is not *per se* a violation of Section 8(a)(1) of the Act. Nor did the Board, on the basis of the facts in that case, find a violation of Section 8(a)(2). Nor do I here. I have heretofore found that Respondent Employers violated this section by jointly with Respondent Union interrogating employees concerning their attitude toward Respondent Union, in effect urging them to retain their allegiance to it. This took place, however, several months subsequent to the time when most of the wage deduction authorizations were executed. I see no connection between these events. There is no evidence prior to the filing by Roots of the first decertification petition on December 28, 1962, that Respondent Employers were concerned with what bargaining representative represented their employees. Moreover, Respondents had signed authorization cards from all but three of those employees whose names were mentioned by the General Counsel. I accept as credible Respondent Employers' explanation that the absence of cards for these three employees was due to careless bookkeeping. I shall recommend that the complaint be dismissed in this respect.

<sup>6</sup> Heytow's testimony is to the effect that he instructed Hickey to tell the maids that Respondent did not care whether they signed the affidavits and Hickey's testimony is that he carried out these instructions. Hickey may well have done so in some instances. But such a statement becomes *pro forma* and of little effect in the light of other statements found to have been made by both Heytow and Hickey.

<sup>7</sup> See *Stokely-Van Camp, Inc. and Bordo Products Co., d/b/a Stokely-Bordo*, 130 NLRB 869.

<sup>8</sup> The cards are membership application cards which include language authorizing dues deductions.

<sup>9</sup> 88 NLRB 816.

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

The activities of Respondents set forth in section III, above, occurring in connection with the operations of the Respondent Companies described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent Employers Aristocrat and Essex, and Respondent Union, Local No. 4, have engaged in certain of the unfair labor practices alleged in the complaint, I will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that these Respondent Employers discriminately discharged Madie Roots on February 16, 1963, I will recommend that they offer her full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered by reason of Respondents' discrimination against her, by payment to her of a sum of money equal to that which she would normally have received as wages from the date of the discrimination against her to the date of offer of reinstatement, less net earnings during said period, in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. It will be further recommended that Respondent Companies 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 and useful to determine the amount of backpay due and the rights of reinstatement under the terms of this recommendation. It will also be recommended that Respondent Companies and Respondent Union cease and desist from coercively interrogating employees concerning their union activities or sympathies.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

## CONCLUSIONS OF LAW

1. Respondent Companies are engaged in commerce within the meaning of the Act.
2. Local No. 4, Building Service Employees International Union, AFL-CIO, is a labor organization within the meaning of the Act.
3. By discriminating in regard to the hire and tenure of employment of Madie Roots, Respondent Employers Aristocrat and Essex have engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. By interrogating employees concerning their union activities and sympathies, thus interfering with, restraining, and coercing them in the exercise of the rights guaranteed in Section 7 of the Act, these Respondent Companies have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, and Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.
5. Respondent Companies have not, by deducting union dues from the wages of their employees, violated the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

**International Printing Pressmen and Assistants' Union of North America, AFL-CIO; Memphis Newspaper Printing Pressmen's Union, Local No. 24; and Their Agent, Frazier Moore and Kelley & Jamison, Inc.** *Case No. 26-CD-15. May 14, 1964.*

## DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act, following a charge filed by Kelley & Jamison, Inc., herein called the Company, al-  
146 NLRB No. 186.