

CARTON 5:37

STRONG IN THE STRUGGLE

JACK TAR HOTEL CASE

1968-1971

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Dig It?

prepared by
**BLACK WORKERS
LEAGUE**



THREE INSTANCES OF RACIST UNION-COMPANY CONNIVANCE AGAINST BLACK WORKERS

Local 265, Chauffers (Teamsters)

Brother was arrested at his home and charged with assault, released on bail pending trial. San Francisco Police Department revoked his permit to operate a vehicle (in San Francisco, all workers in the taxicab industry need this permit to work). Yellow Cab Company took the brother off the job since his permit was cancelled. Local 265, Chauffers refused to appear before the Police Commission in the Brother's behalf to point out 1) the alleged offense did not occur on the job nor in public, but at the Brother's home, 2) that he had not been convicted of any crime at that point since no trial had been held.

When the Brother finally went to trial, he was acquitted but due to the racist and do-nothing attitude of the union, he was denied work in his occupation. Instead of raising the question of the legality of such police regulations which rob all workers of their right to earn a living, Local 265 was content to turn their backs on the Black Brother, yet almost 40% of its membership is Black.

Local 110 Miscellaneous Culinary Employees, Hotel and Restaurant Employees-Bartenders Int.

Brother employed at the Jack Tar Hotel and a shop steward on the job. This Brother consistently fought against the bad working conditions for the Black and Brown employees, especially the treatment accorded the Black sisters employed as maids. This Brother was fired from his job for allegedly

coming to work "drunk". (It was not explained why he was not sent home at that time and not allowed to work the entire shift) This Brother was fired because he dared to speak up and oppose the racist capitalist management and so charged in the press. He pointed out the racist attitude on the part of the hotel capitalists and the rotten conditions which the Black sisters especially, were forced to work under.

But what was the attitude of the yellow union? The Business Agent told the press "... there is no question of conditions here" and that the "... racial issue is not present. In order to fool the press and mislead public opinion away from the hotel owners, he stated that "... he would defend the Brother anyway."

Facts have now shown that this was a mere tactic on the part of the sell-out union to stifle interest in the case and prepare for upholding of the firing of the Brother.

Local 892, Electrical Workers

Brother was fired from his job, charged with being a member of the "Black Panther Party". Using this as a pretext, the Department of Employment denied his claim for Unemployment Insurance on the charge of "misconduct." Brother asked his union for assistance pointing out the political reasons for his discharge, and

filed a grievance to expose the avaricious capitalist employer.

The fool Business Agent who could not even sign his own name refuse to even ask for a meeting with the capitalist employer but he told the Brother "the union agrees with the employer's" reason for discharge.

This flunky claimed that there was "nothing he could do" and that "the International" who was his boss, had "made the decision". This halfwit also told the Department of Employment "the company was justified" in discharging the Brother.

At this point some Black Community organizations protested the obvious political nature of the firing somewhat shaking up the avaricious capitalist whose labor lieutenant suggested arbitration* as a way out.

The yellowbelly International representative of the union thereupon refused this offer on the grounds that it "would cost the union money".

Thus with the complete blessing of the renegade union, the Brothers discharge was upheld.

*Arbitration: A process designed to give the appearance of "impartiality" before a third party who theoretically renders a decision based on the "evidence" submitted by both sides. In practice, however, these so-called "arbitrators" are not impartial, but are in tune with the interests of the avaricious capitalists as a class. These sessions become mere "bargaining" tools designed to render "unpleasant" decisions which neither the exploiting capitalists or union bureaucrats find expedient to make.



I see you haven't heard of the Black Workers League, yet?

NEED TO ORGANIZE... TO TAKE CARE OF BUSINESS!

The three cases involving racism against Black workers on jobs by business and the business-unions, could only occur where so-called labor unions are more interested in appeasing business than in looking after their members interests. This can take place because both parties are in agreement in the exploitation of labor which leads them both to disregard totally, the interests of Black people on the job. We need to organize in order to take care of business and this means the phoney unions too. support the Black Workers League

SERVING THE PEOPLE, THROUGH A BLACK WORKERS LEAGUE

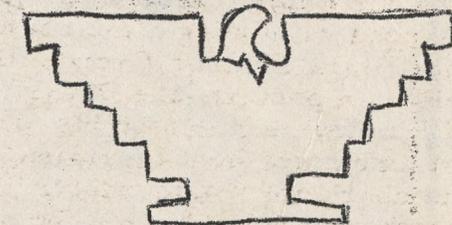
Our first departure is one of serving the people. This is accomplished by our being prepared to perform those services for Black people on the jobs or in the racist unions which they need or desire.

We intend to inform the Black community to what is happening to black people on these jobs and when they have problems which they need support on, ask the community to support them.

We wish to organize directly and immediately into the BWL, those Brothers and sisters who see clearly what is taking place both on the job and within the union; who want to change this situation as well as fight for better conditions for all black people.

Past experience has shown, working people generally have had no organization which understood their problems or capable of dealing exclusively with them once presented. Black Workers League will attempt to remedy this situation

SUPPORT THE FARMWORKERS



Boycott Safeway

BART DENIES JOBS TO BLACKS

Bay Area Rapid Transit is actively recruiting whites from as far away as the state of Utah to drive dirt removal rigs, while they ignore Black people here in the Bay Area.

It is reported that at the Davis St. station complex alone, dirt removal will amount to some \$8 million.

Some Black owner-operators of rigs have staged a "drive-in" at city hall to protest the racist practices of BART and to demand that more Black rig operators be given a share of this work.

REAGAN SOCKS IT TO UNEMPLOYED

It is reported that the Reagan government has removed the 13 week extension for unemploy-

ed. working people. This means that after 26 weeks, all benefits under Unemployed Insurance will be exhausted for most.

Black Workers League calls for a minimum of 39 weeks of benefits for unemployed and free food and shelter fit for human beings be provided the unemployed.

HOTEL INDUSTRY OPPRESSES MAIDS & BREAK OWN AGREEMENT

The San Francisco hotel association back in the early 60's put on paper a promise to the Black Community to eliminate racist practices in hiring. Now nearly 10 years later, facts show the hotel capitalists to be recruiting workers from as far away as central America while keeping many areas in these establishments lily-white. Black maids are among the worst treated emp-

Fighting for the rights of Black people to more and better jobs

Against company and union racism, scab working conditions and do-nothing unions.

For a revolutionary program for all working people.

I can dig it!

Brothers:

- I would like to join
 I would like information
 Put me on mail list.

BLACK WORKERS LEAGUE

NAME

ADDRESS

City

State

Zip Code

PRESENT LOCAL UNION NO.

Unemployed Phone

P.O. Box 16191

San Francisco, CA 94116

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 ADDRESS
 City State Zip Code
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 Unemployed Phone
 P.O. Box 16191
 San Francisco, CA 94116

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AN OPEN APPEAL

TO THE BROTHERS AND SISTERS OF THE HOTEL AND
RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL
UNIONS - LOCALS 110 and 283

ANOTHER BLACK BROTHER HAS BEEN UNJUSTLY FIRED AND
NOTHING IS BEING DONE TO GET THE BROTHER BACK ON
THE JOB

Brother Lee Brown of Local 110 (Miscellaneous Culinary Employees) was
fired by the Jack Tar Hotel for alleged drunkenness on the job. Al-
though the brother worked the full 8 hours the day he was supposed to
have been drunk and was not fired until after the end of the shift.

The Arbitration Board (including the Union representative on the Board) has refused to go to bat for Brown's reinstatement on the job and chooses to overlook the fact that Brother Brown was the shop steward on the job and constantly pressuring the Jack Tar management for better working conditions for all of the union members - which, in fact, is the real reason for Brown's discharge.

Now is the time to act against such arbitrary firings and to
revive real trade union job security and working conditions
in the hotel and restaurant industry.

If you are ready to join with other Black and Brown brothers
and sisters of the union in building a rank and file caucus to:

1. End all discrimination against all Black and Brown members in the hotel and restaurant industry.
2. Stop the mistreatment and unfair discharges of maids in the Housekeeping Department.
3. Organize all Hotel and Restaurant Workers into Unions.
4. Advocate free meal tickets for Maids throughout all the hotels.
5. Share equal leadership in the Union where Black and Brown people are members.
6. Set up a democratic grievance committee to handle all the grievances where workers are involved.
7. Educate all workers on Trade Union Issues so we can build a stronger labor union.
8. Open up all job categories to minority workers and to fight for the reinstatement of Brother Brown.

COME TO A MEETING AT 911 FILLMORE ST. (upstairs)

TUESDAY NIGHT, JULY 8 at 7:30 P.M.

Rank and Filers for a Rank and File Caucus in the Hotel and Restaurant
Employees Union in the San Francisco Bay Area

(labor donated)



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1095 MARKET STREET, ROOM 701
SAN FRANCISCO, CALIFORNIA 94103
TELEPHONE (415) 556-0260

July 12, 1971

CERTIFIED MAIL NO. 769341

Mr. Lee Brown
2606 3rd Street
San Francisco, California 94107

Re: Lee Brown vs Jack Tar San Francisco, Inc.
YSFO-014 and
Miscellaneous Culinary Employees Union,
Local 110

Dear Mr. Brown:

We have investigated and reviewed your complaint of employment discrimination by the Respondent listed above.

Based upon a full investigation, the Commission has determined that the evidence does not support your claim of employment discrimination in violation of Title VII of the Civil Rights Act of 1964. The Commission's reasons are set forth in the enclosed decision.

If you have any questions regarding this decision, please contact the undersigned at the above address.

Sincerely,

JULES H. GORDON
District Director

by:

Chester F. Relyea
Chester F. Relyea
Regional Counsel

Enclosure



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Lee Brown
Charging Party

Case No. YSFO-014

v.

Jack Tar San Francisco, Inc.
San Francisco, California
and
Miscellaneous Culinary Employees
Union, Local 110, Hotel and
Restaurant Employees and Bartenders
International Union, AFL-CIO
San Francisco, California
Respondents

Date of alleged violation: January 26, 1969
Date of filing of charge: April 22, 1969
Date of service of charge: June 30, 1969

DECISION 71 2654

SUMMARY OF CHARGE

Charging Party alleges that Respondent Employer (hereinafter "Jack Tar") engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, by discharging him because of his race (Negro) and because his union activities were directed toward eliminating racial discrimination by Respondent Employer.

Charging Party alleges that Respondent Labor Organization (hereinafter "the Union") engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, by failing fairly to represent him because of his race.

JURISDICTION

Jack Tar is engaged in the operation of hotels and their attendant services in interstate commerce. At its San Francisco hotel, situs of the instant charge, it employs approximately 500 persons.

The Union is the bargaining agent for certain of Jack Tar's employees. It has over 2,000 members, and is a labor organization within the meaning of Section 701(d) and (e) of Title VII.

The Commission received the charge on February 12, 1969, and deferred it to the appropriate State agency on February 21, 1969. The charge was filed with the Commission on April 22, 1969, within the time prescribed by Section 706(b) and (d) of Title VII.

SUMMARY OF INVESTIGATION

Charging Party alleges that Jack Tar discharged him because he opposed its alleged discriminatory policies through his Union activities.

Jack Tar denies the charge and contends that Charging Party was discharged for drinking on the job.

Several disinterested witnesses credibly state that they saw Charging Party drinking on the job on the day of his discharge. Investigation also revealed that Jack Tar has discharged both Caucasian and Negro employees found drinking on the job.

There is no evidence of record indicating that Charging Party's discharge was related either to his Union activity or his race.

Charging Party alleges that the Union failed fairly to represent him in the matter of his discharge.

The evidence of record demonstrates that the Union invoked all remedial procedures under the collective bargaining agreement in Charging Party's behalf. In fact, it carried his grievance to arbitration, an expensive procedure not to be regarded as routine in such matters.

DECISION

Reasonable cause does not exist to believe that either Respondent Employer or Respondent Union engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as alleged.

JUN 25 1971
Date

For the Commission:
Marie D. Wilson
Marie D. Wilson, Secretary



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by:

Chester F. Relyea
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Regional Counsel

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RELYA
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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

COPY

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Charging Party

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Jack Tar denies the charge and contends that Charging Party was discharged for drinking on the job.

Several disinterested witnesses credibly state that they saw Charging Party drinking on the job on the day of his discharge. Investigation also revealed that Jack Tar has discharged both Caucasian and Negro employees found drinking on the job.

There is no evidence of record indicating that Charging Party's discharge was related either to his Union activity or his race.

Charging Party alleges that the Union failed fairly to represent him in the matter of his discharge.

The evidence of record demonstrates that the Union invoked all remedial procedures under the collective bargaining agreement in Charging Party's behalf. In fact, it carried his grievance to arbitration, an expensive procedure not to be regarded as routine in such matters.

DECISION

Reasonable cause does not exist to believe that either Respondent Employer or Respondent Union engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as alleged.

JUN 25 1971

Date

For the Commission:

Marie D. Wilson

Marie D. Wilson, Secretary

1 On April 14, 1969 a hearing was conducted before said arbitrator.

2 STATEMENT OF THE FACTS

3 Mr. Lee Brown, hereinafter referred to as the
4 dischargee, was employed by the Jack Tar Hotel, hereinafter
5 referred to as the respondent, approximately two years
6 ago as a dishwasher (Tr. p. 29). After a relatively short
7 period the dischargee was elected by his fellow workers to the
8 position of shop steward (Tr. pp. 30, 38). The dischargee's
9 status as shop steward brought him into frequent, abrasive
10 contact with representatives of respondent's management
11 regarding working conditions and the rights of his fellow
12 employees (Tr. p. 30).

13 On January 28, 1968, the dischargee was given
14 a written warning alleging that he had been "under the
15 influence of alcohol" while on the job (Employer Exhibit 1).
16 On this precise occasion Mr. Brown had submitted a complaint
17 to representatives of respondent's management (Tr. p. 31)
18 regarding the maids' working conditions in the hotel (Tr.
19 p. 32). The dischargee, of course, refused to sign this
20 spurious warning notice (Tr. p. 11) alleging that it was
21 untrue (Tr. p. 46). Respondent's admit that Mr. Brown received
22 no further written notices or warnings until the time of
23 his discharge.

24 Respondent attempted to allege that Mr. Brown
25 had been drinking on duty during the one year period separating
26 the warning from the discharge. However, respondent was forced
27 to admit that its evidence on this point was second and third
28 hand hearsay (Tr. pp. 11, 12). Although offered ample
29 opportunity to produce direct evidence on this fundamental
30 point, respondent failed to do so. Thus, it is apparent from
31 this record that Mr. Brown had a clear record for the 13 month
32 period separating the sole warning from the discharge.

1 On the morning of January 26, 1969, Mr. Brown
2 arrived at work at the proper time. Since Mr. Mitchell "went
3 to church" there was no responsible supervisor on duty in the
4 morning, there is dispute and confusion in the testimony
5 as to what occurred between the time Mr. Brown arrived
6 and his discharge on that day. Mr. Brown testified that
7 he arrived on the job in advance of the arrival of his
8 supervisor Mr. James Mitchell. Mr. Brown further stated
9 that there was alleged misconduct of a fellow employee,
10 "Jefferson," "down with the maids" and after Mr. Mitchell's
11 arrival, Mr. Mitchell requested that then Mr. Brown come
12 to see him and then Mr. Mitchell discharged Mr. Jefferson
13 and Mr. Brown for interfering (Tr. pp. 35-36). Mr. Mitchell
14 testifies that Mr. Brown approached him in his capacity of
15 union steward and requested that Mr. Jefferson not be discharged
16 and that he thereupon discharged Mr. Brown as well as Mr.
17 Jefferson (Tr. p. 14).

18 Mr. Brown denied that he was intoxicated during
19 his tour of duty on January 26 and denied that he had a
20 drink (Tr. p. 35) or even drank (Tr. p. 47) explaining
21 that his condition of high blood pressure and doctor's orders
22 precludes drinking (Tr. p. 35).

23 Two of Mr. Brown's fellow employees testified
24 that they smelled the odor of liquor in the same room where
25 Mr. Brown and Mr. Jefferson worked (Tr. pp. 21, 24). However,
26 another fellow employee testified that he stood next to MR.
27 Brown while the latter prepared for work at the start of
28 the shift and that he smelled no liquor on Mr. Brown's
29 breath and Mr. Brown appeared "normal" (Tr. p. 50). A
30 female acquaintance of Mr. Brown's testified she had been
31 with Mr. Brown the preceding evening and had accompanied Mr.
32 Brown to work stating she had not seen Mr. Brown take a

1 drink and he did not appear intoxicated (Tr. p. 47-48).
2 Of course, no one was able to testify they had seen Mr. Brown
3 take a drink on duty.

4 Mr. Brown and Mr. Jefferson worked off separate
5 and apart by themselves in a small dishwashing room where no
6 other employees were regularly stationed.

7 On January 26, 1969, Mr. Brown was informed that
8 he was being discharged for being drunk on duty and his
9 discharge was made effective immediately.

10 The sole question to be determined is whether
11 there exists sufficient evidence to show that Mr. Brown's
12 discharge for intoxication was justified in light of the
13 circumstances testified to at the hearing.

14 The parties collective bargaining agreement provides,
15 in relevant part, as follows:

16 Basic Agreement - Section 3. HIRING:

17 (h) An employee who feels he has been unjustly
18 discharged shall have the right to appeal to the
19 Adjustment Board as provided for in Section 10
20 of the Basic Agreement, provided he reports such
discharge to the Union within three (3) days of
the date of discharge, excluding Saturdays,
Sundays and holidays.

21 If, in the opinion of the Union, such discharge is
22 unjust, an attempt shall be made by the Union with
23 the hotel or the Association, to settle the case.
24 In the event no settlement can be reached between
25 the hotel or the Association and the Union, the
Union shall be free to file a complaint with the
Adjustment Board, provided such complaint is filed
within ten (10) days from the date of discharge,
excluding Saturdays, Sundays, and holidays.

26 Section 7. DISCRIMINATION:

27 There shall be no discrimination against any employee
28 on account of membership in, or activity on behalf
of the Union.

29 General Rules - Section 13: SHOP STEWARDS:

30 Shop Stewards shall report to the Union violation
31 of contract and complaints by members of the Unions.
32 Said Shop Stewards shall not interfere with the
management of the business or substitute for the
Business Agents of the Union in handling complaints.

1 Shop Stewards shall not be discharged for performance
2 of their duties provided such activity does not
interfere with his regular duties as an employee.

3 ARGUMENT

4 The employer has stated his position that Mr. Lee
5 Brown was discharged from his position as a dishwasher
6 "...for being drunk while on duty." (Tr. p. 4). Since
7 there is no allegation that Mr. Brown was otherwise insubordinate,
8 defiant or remiss in the performance of his duties, the
9 employer's substantiation that there existed "just cause"
10 for Mr. Brown's discharge within the requirements of the
11 parties' collective bargaining agreements must rest on
12 its allegation of intoxication while on duty.

13 Mr. Brown's immediate supervisor, Mr. James Mitchell,
14 testified that when he (Mitchell) finally got back to work
15 he was notified by Mr. Brown that another employee, Mr. Jefferson,
16 was acting improperly around the maids (Tr. pp. 9-10). Mr.
17 Mitchell testified that he formed the conclusion that Mr. Brown
18 was intoxicated because he smelled "liquor" on Mr. Brown's
19 breath and saw him "staggering" (Tr. p. 10). Mr. Mitchell
20 admitted that he had not seen Mr. Brown take a drink or
21 have alcoholic beverages in his possession (Tr. p. 15).

22 Mr. James Lacy, a fellow dishwasher at the Jack
23 Tar Hotel, testified at the hearing admittedly at Mr. Mitchell's
24 request (Tr. p. 21). Mr. Lacy initially testified that Mr.
25 Brown had liquor on his breath but on cross-examination
26 admitted that Mr. Brown acted normal stating that Mr. Brown's
27 conversation was normal and that he didn't notice anything
28 out of the ordinary about Mr. Brown (Tr. pp. 20-21).

29 Notably, Mr. Lacy testified that Mr. Jefferson,
30 whose discharge for drunkenness is not in question in this
31 proceeding, was in the same room as Mr. Brown and at the
32 time Mr. Lacy allegedly smelled the odor of liquor. When

1 so asked, Mr. Lacy testified that the smell of liquor could
2 have come either from Mr. Brown or Mr. Jefferson (Tr. p.
3 21).

4 Mr. Charles Smith, a cook at the Jack Tar Hotel,
5 testified that on the day of Mr. Brown's discharge, he
6 smelled liquor on Mr. Brown's breath (Tr. p. 24). Mr. Smith
7 also testified that Mr. Jefferson was in the same dressing
8 room as Mr. Brown about 20-30 feet away when he allegedly
9 smelled the liquor on Mr. Brown's breath (Tr. p. 24).

10 In direct opposition to the hazy and indefinite
11 testimony of respondent's witnesses, the grievant and his
12 witnesses not only gave credible testimony refuting each
13 major statement of respondent's witness, but also established
14 a possible and entirely probable explanation for the events
15 of the morning in question.

16 Mr. Brown, the dischargee, testified that he
17 had had nothing to drink the previous day, evening or on
18 the day of the discharge (Tr. pp. 34-35). In fact, Mr. Brown
19 testified that his present physical condition of high blood
20 pressure precludes his consumption of liquor (Tr. p. 35).

21 Mrs. Grace Oliver, an acquaintance of the dischargee
22 for some eight years (Tr. p. 48) testified that not only
23 did she not see Mr. Brown take a drink the evening before
24 reporting for duty, but she had never seen him take a drink
25 in the eight years she had known him. It was Mrs. Oliver's
26 direct opinion that Mr. Brown was "sober" when she left
27 him on his way to work the morning of January 26, 1969
28 (Tr. p. 47).

29 Mr. Walter Robinson, a cook at the Jack Tar Hotel,
30 testified that he encountered Mr. Brown in the Jack Tar's
31 dressing room before their work commenced and that Mr. Brown
32 did not appear to have been drinking (Tr. p. 50). Under

1 cross-examination, Mr. Robinson explained further that Mr.
2 Brown appeared "normal" and that he smelled no liquor on Mr.
3 Brown's breath (Tr. p. 50).

4 In this discharge case, as in any discharge arbitration,
5 the employer has the clear burden of proof as to the justification
6 for the discharge. T-K Roofing Mgf. Co., 44 LA 577; DuMont
7 Laboratories, 44 LA 1143; Warren Board of Education, 50
8 LA 813.

9 This burden of proof is clearly applicable in
10 discharges premised upon alleged "intoxication" on the
11 job. Continental Conveyor and Equipment Co., 46 LA 109;
12 Holland Die Casting and Plating Co., Inc. 48 LA 567.

13 A similar allegation to that herein was made
14 in Holland Die Casting and Plating Co., Inc., supra, p.
15 110. In his decision, the arbitrator remarked:

16 "Being under the influence" is not synonymous
17 with having had a drink or two, nor with having
18 a smell on the breath.

19 In discharges involving allegations involving
20 offenses or acts involving moral turpitude, the employer's
21 burden of proof is by proof "beyond a reasonable doubt."
22 St. Joseph Lead Company, 29 LA 781; U.S. Steel Corporation,
23 29 LA 272; Cannon Electric Co., 28 LA 879; Aladdin Industries,
24 Inc., 27 LA 463; Martin Rockwell Corp., 24 LA 728; General
25 Refractories Co., 24 LA 470; American Saw and Tool Co.,
26 23 LA 534; Fruehauf Trailer Co., 21 LA 832; Amelia Earhart
27 Luggage, 11 LA 301; Atlas Freight Lines, 39 LA 352; Skaggs-
28 Stone Inc., 40 LA 1273.

29 An allegation of intoxication just as an allegation
30 of theft involves moral turpitude because it connotes habitual
31 intemperance and low moral character and because public
32 drunkenness is also a violation of the State Penal Code

1 (Section 647 Cal. Pen. Code). Therefore, not only does
2 the employer have the burden of proof in this instance,
3 but his burden is a most significant one. Plainly, the
4 employer has here failed to meet the burden of proof.

5 In fact, the employer has shown only that three
6 employees, including the employee who discharged Mr. Brown,
7 believed that they smelled liquor on or near Mr. Brown.
8 Two of these three even suggest that the odor may have
9 come from another employee, whose discharge for intoxication
10 is not in question. The only additional offer of proof
11 of an intoxicated condition is Mr. Mitchell's uncorroborated
12 and denied statement that Mr. Brown "staggered" once in
13 the mensroom.

14 There is no showing that Mr. Brown either drank
15 on duty or consumed alcoholic beverages before coming to
16 work. Respondent has failed to show that Mr. Brown's work
17 performance was diminished, that his physical presence
18 was indicative of intoxication or that Mr. Brown showed
19 any of the signs or attributes of intoxication.

20 The respondent's proof by way of "witnesses"
21 testimony falls far short of a preponderance of the necessary
22 evidence much less evidence beyond a reasonable doubt of
23 the dischargee's intoxication.

24 A mere suggestion that an employee has liquor
25 on his breath in circumstances showing the proximity of
26 another intoxicated employee and the lack of other attributes
27 and signs of intoxication of the dischargee does not meet
28 the employer's burden of proving the discharge was for
29 just cause.

30 In addition to showing that the respondent has
31 failed to meet his burden of proof, the evidence goes one
32 step further and establishes a likely explanation for

1 the respondent's willingness to get rid of Mr. Brown as quickly
2 as possible.

3 Mr. Brown's own testimony (Tr. pp. 31-33) coupled
4 with that of Mr. Brown's supervisor, Mr. Mitchell (Tr.
5 p. 13) establishes that Mr. Brown had quickly been elected
6 to the position of shop steward and because of his position
7 he was often involved in conflicts with management over
8 working conditions, meals, etc. (Tr. pp. 31-32). In fact,
9 a recent complaint to management by Mr. Brown regarding
10 meals was followed by temporary improvements in meals (Tr.
11 p. 32) as well as an admonishment to "lay-off" complaints
12 (Tr. p. 33). Moreover, Mr. Mitchell had testified that
13 he knew Mr. Brown was an advocate of black militancy. (Tr. p. 13)

14 Q. [by Mr. Bowe] Now, Mr. Brown was the union
15 steward on the job. Is that correct?

16 A. [by Mr. Mitchell] Yes sir.

17 Q. And you also knew that Mr. Brown was very
18 active in connection with the Black Militant
Movement?

19 A. Yes, I did.

20 Q. On occasion he wore a button?

21 A. Yes sir.

22 Q. And he passed out literature?

23 A. Yes sir.

24 Q. And he complained in his position as union
25 steward concerning the food that was being served
the dishwashers?

26 A. Yes.

27 Thus, the testimony quite plainly indicates that Mr.
28 Brown was an outspoken advocate of black peoples' immediate
29 progress and improved working conditions, whose outspoken
30 views and complaints were causing uneasiness on the part of
31 the employe.. Mere disagreement with ones' political views
32 or ones' attempts to improve working conditions does not

1 justify the discharge of that individual based upon a flimsy
2 unsupported allegation of intoxication.

3 The testimony of respondent's witnesses is not
4 beyond challenge. Mr. Lacy and Mr. Smith were both testifying
5 in the presence of their supervisor and the vice president
6 of the Hotel (Tr. p. 21). Mr. Lacy admitted that he was
7 testifying at Mr. Mitchell's request (Tr. p. 21) and when
8 asked whether he had smelled liquor on Mr. Brown's breath,
9 he did not reply verbally, as he had in response to other
10 questions, but only "nodded" his head.

11 Q. (By Mr. Mark Sullivan) Did you notice anything
12 peculiar about Mr. Brown?

13 A. Like I say, I didn't notice anything. He
14 talk that way all the time.

15 Q. Did you smell liquor on his breath?

16 A. I could smell liquor.

17 Q. You could smell liquor on his breath?

18 A. (Nodding affirmatively.)

19 MR. MARK SULLIVAN: I have no further questions.

20 THE CHAIRMAN: All right.

21 Mr. Smith evidenced his innate hostility towards
22 the dischargee by his hostile reply to dischargee's counsel's
23 questions (Tr. pp. 23-24).

24 Respondent's vice president and general manager
25 Mr. Edward Sequeira testified that Mr. Brown had been given
26 a prior written warning for being intoxicated on the job
27 (Tr. p. 26, Employer Exhibit 1). However, this warning
28 was not signed by Mr. Brown (Tr. pp. 45-46). Additionally,
29 Mr. Brown denied its truth (Tr. p. 46) and there was no
30 direct evidence adduced that anyone had ever actually seen

31 Mr. Brown intoxicated on the job. Mr. Sequeira stated
32 that he felt Mr. Brown had a drinking problem but apparently
he had no personal knowledge of its existence and was

1 assured that Mr. Mitchell could "straighten him out" (Tr.
2 p. 26).

3 Given Mr. Sequeira's predisposition towards the
4 belief that Mr. Brown had a drinking problem and Mr. Mitchell's
5 expressed opinion that Mr. Brown was drunk on January 26,
6 1969, the employer sought to discharge Mr. Brown, an activist
7 and outspoken advocate of employees, and black peoples' rights.

8 Mr. Edward Sequeira testified that Mr. Brown
9 went to his office to request his job back on the day of
10 his discharge (Tr. p. 26). It must be assumed that Mr. Sequeira
11 had the opportunity to observe and smell the person and
12 appearance of an intoxicated person; yet Mr. Sequeira was
13 asked nothing on direct examination, and, of course, offered
14 nothing regarding Mr. Brown's physical condition on that
15 occasion. Certainly, if Mr. Sequeira had observed an intoxicated
16 condition he could and should have been called to testify
17 regarding such a condition. It is unrealistic that respondent
18 would rely on the testimony of fellow employees, hurriedly
19 preparing for work, to testify regarding the dischargee's
20 conduct and not discuss the same point with the respondent's
21 vice president to whom Mr. Brown admittedly went to see
22 regarding his just prior discharge for "intoxication".

23 Such inconsistencies and ambiguities as those
24 outlined above clearly indicate that Mr. Brown was not
25 popular with management because of his outspoken beliefs
26 and unpopular activities. The respondent unquestionably knew
27 that it could not openly discharge a man for his unpopular
28 beliefs and protected expressions. Thus, it becomes especially
29

30 significant that the respondent was not more careful to attempt
31 to substantiate Mr. Brown's alleged intoxication than by
32 the testimony of two interested members of management and
only two fellow employees (out of a much larger number

1 of employees on duty on the day of discharge). The testimony
2 of all respondent's witnesses is , at the least, inconclusive.

3 Critically important in this case is the actual
4 protection that is or is not to be given the job of a Black
5 Union Steward. This Union Steward has become the Union
6 representative most directly responsible for the protection of
7 the other culinary employees' interest. More than with any
8 other employee the employer must demonstrate with meticulous
9 care that it has not discriminated against shop stewards.

10 From the earliest days of reported awards, arbitrators
11 have been firm on this point. For example, in the matter of
12 John Deere Tractor Co., 12 LA 302, 303, Arbitrator Clarence
13 Updegraff laid down some basic guide lines on this issue which
14 have since been followed by other arbitrators. In that case
15 the arbitrator stated:

16 ...Even unintentional indirect pressures which
17 might discourage men from accepting union
18 representation duties should be avoided lest
19 in their cumulative effect they undermine
20 and effectually discourage collective bargaining or
21 any of its established, proper consequences.

22 In Bendix-Westinghouse Corp., 30 LA 621, Arbitrator
23 John J. Sembower quoted with approval from the John Deere
24 opinion, supra, and significantly noted that: "Malice, on
25 the part of mangement is not an indispensable ingredient in an
26 instance such as this." (p. 622).

27 Thus, even if it could be argued in the present
28 case that the employer acted without intent or malice, which
29 is plainly not the case, nevertheless there plainly was not
30 that "meticulous care" nor the avoidance of "unintentional
31 indirect pressure" to discourage acceptance of "union
32 representation duties" found by arbitrators to be necessary
in handling such situations. Other illustrations of the
doctrine of extreme vigilance in reviewing allegations of

DEPARTMENT OF INDUSTRIAL RELATIONS

FAIR EMPLOYMENT PRACTICE COMMISSION

455 GOLDEN GATE AVENUE, SAN FRANCISCO 557-2000

Address reply to: FEPC, P.O. Box 603, San Francisco, Calif. 94101



PIER A. GHERINI

Chairman

GEORGE C. BOND

C. I. DELLUMS

MARK GUERRA

CATHERINE L. MONTGOMERY

STELLA C. SANDOVAL

J. M. STUCHEN

PAUL A. MEANEY

Executive Officer

July 16, 1969

Mr. Lee Brown
2606 Third Street
San Francisco, California

FEP68-69 A4298e BROWN/Jack Tar Hotel

Dear Mr. Brown:

Will you please call me on Friday, July 18, regarding your wish to appeal the decision made by Commissioner Gherini in the above-named case. My telephone number is 557-2005.

Sincerely,

Samuel Osman

Samuel Osman
Consultant

SO/cn

In the Matter of a Controversy

between

SAN FRANCISCO LOCAL JOINT EXECUTIVE BOARD
OF THE HOTEL AND RESTAURANT EMPLOYEES and
BARTENDERS INTERNATIONAL UNION, AFL-CIO,
on behalf of MISCELLANEOUS CULINARY EM-
PLOYEES UNION, LOCAL NO. 110,

Complainant,

and

HOTEL EMPLOYERS ASSOCIATION OF SAN FRANCISCO,
on behalf of JACK TAY HOTEL,

Respondent

Complaint No. 1969-2

OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL, Chairman

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Executive Board

Joe Belardi
~~PHILIP M. FOLEY~~, Appointed by Local Joint
Executive Board

JOSEPH D. SULLIVAN, Appointed by Association

JOHN B. GALLO, Appointed by Association

San Francisco, California

June 2, 1969

ISSUE:

"Whether or not Lee Brown was discharged for just cause?"

The relief sought by the Union is reinstatement and back pay with 7% interest.

BASIS FOR DISCHARGE:

Mr. Lee Brown was discharged from his employment at the Jack Tar Hotel on January 26, 1969 by the Chief Steward for being drunk on the job.

PRIOR RECORD:

On January 23, 1968 Mr. Brown was given a written warning which stated that he was "under the influence of alcohol while on duty." At that time the Union Business Agent was called in and a discussion was had with the Personnel Manager of the hotel concerning Mr. Brown. Mr. Brown was told that the next time he came on the job drunk that he could be fired.

(Tr. pp. 7, 8)

According to Chief Steward Mitchell, after the written warning, he had to warn Mr. Brown on a number of occasions for drinking on the job; that once he sent Mr. Brown home to avoid firing him; that he did this in order to give Mr. Brown another chance to rehabilitate himself. (Tr. p. 8)

THE INCIDENT OF JANUARY 26, 1969:

On that date, a Sunday, according to Mr. Mitchell, Mr. Brown was in the morning acting kind of strange; that Mr.

Mitchell left the hotel at 10:20 to go to church; that upon returning from church about 12:45 or 1:00 p.m., he observed Mr. Brown and another then employee, Mr. Jefferson, in an uproar; that they were talking loud and acting strange; that he, Mr. Mitchell, could smell alcohol on Mr. Brown's breath and on Mr. Jefferson's breath; that later a telephone operator called him (Mitchell) downstairs and said that Mr. Jefferson is downstairs acting strange as if he had been drinking; that Mr. Brown met Mr. Mitchell at the elevator and stated he wanted Mr. Jefferson fired; that he didn't want to work with him any more; that Mr. Mitchell then informed Mr. Brown that he was going to fire him (Brown) too "...because you are drunk." (Tr. p. 10) According to Mr. Mitchell, Mr. Brown stated that he was not drunk, but according to Mr. Mitchell, Mr. Brown was staggering and he concluded that Mr. Brown was in fact drunk; that Mr. Brown told him he was "sick", but Mr. Mitchell claimed that he could smell alcohol on Mr. Brown's breath.

Witness Lacy, a dishwasher and a member of Local 110, testified that on the day Mr. Brown was discharged that he, Mr. Lacy, was working supplies and that he smelled liquor on Mr. Brown's breath, and on Mr. Jefferson's breath. (Tr. p. 22)

Witness Smith, a cook at the hotel and a member of Local 44, testified that he talked to Mr. Brown at about 1:45

p.m., when he (Smith) was checking out and that he smelled liquor on Mr. Brown's breath. (Tr. p. 23)

Mr. Brown testified that he had nothing to drink on the Saturday night prior to reporting for work on the Sunday in question; that he rode on the bus that morning with Mrs. Oliver; that he had nothing to drink on the bus coming to work; that he had nothing to drink in the locker room before he went to work; that he did not see Mr. Mitchell until 5:00 p.m. on the afternoon in question and that it was Mr. Mitchell who called him and told him that he (Mitchell) had trouble with Mr. Jefferson who Mr. Mitchell claimed was drunk and that he wanted to fire Mr. Jefferson; that Mr. Brown said that he didn't think that Mr. Mitchell had the right to fire Mr. Jefferson; that then Mr. Mitchell stated "I'm going to fire you too, I'm going to fire both of you." Mr. Brown claims that he had nothing to drink at all on the Sunday in question; and that in fact he does not drink alcoholic beverages, because of health problems.

Mrs. Oliver testified that she was with Mr. Brown at a gathering on the Saturday night before the discharge and that as far as she could tell he had nothing to drink on Saturday night; that on Sunday morning she rode part way to work with him; that this was between 6:00 and 7:00 a.m., and that she did not observe him drinking; that in her opinion Mr. Brown

was sober; that she had known Mr. Brown for eight years and that she had never seen him take a drink.

Mr. Walter Robinson, Sr., who was employed as a cook at the hotel stated that he came to work shortly before 7:00 a.m.; that Mr. Brown was in the dressing room and that in his opinion Mr. Brown had not been drinking at that time; that he did not see Mr. Brown later in the day.

Brown's claim as to Reason for Discharge:

Mr. Brown contends that he was discharged because he was a Union Steward and that he brought certain complaints to management concerning the serving of food to employees and other matters.

SUMMARY:

On January 28, 1968 Mr. Brown was warned in writing for being under the influence of alcohol while on duty. He made no appeal of this warning through the grievance procedure. Therefore, it is entitled to weight as a prior warning.

The testimony of Mr. Mitchell that subsequent oral warnings as to drinking on the job by Mr. Brown followed stands uncontradicted in the record.

During the day of January 26, 1969 the evidence of Mr. Mitchell, Mr. Lacy and Mr. Smith, establishes clearly that Mr. Brown had been drinking on the job. Mr. Brown denies this, but his witness Mrs. Oliver was with him between 6:00 and 7:00 a.m., and therefore what occurred at the hotel after

Mr. Brown reported for work is not reflected in her testimony. The testimony of Mr. Robinson, Sr., is not entitled to any weight since his testimony is that he was with Mr. Brown at approximately 7:00 a.m. for about five minutes.

The evidence does establish that Mr. Brown reported to work on January 26, 1969 not having had any alcoholic drinks. But the evidence of three fellow workers on the job establishes that he had imbibed alcoholic drinks while on the job. The testimony of these fellow workers must be believed over the denial made by Mr. Brown. And Mr. Mitchell's testimony that Mr. Brown was in fact drunk on the job must be accepted.

This testimony taken together with the prior written warning which related to drinking on the job establishes that the Employer was justified in discharging Mr. Brown on January 26, 1969. He had been told that further conduct of this type could result in his discharge.

The claim that the discharge of Mr. Brown was related to his activities as Union Steward is not sustained in any regard. Similarly, the claim that the discharge was because of Mr. Brown's outspoken views concerning black militancy were not sustained by anything in the record at the hearing. The fact that Brown was a Union Steward requires of him an even higher standard of conduct than might be required of an employee who was not a Union Steward.

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San Francisco, California

June 2, 1969

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The claim that the discharge of Mr. Brown was related to his activities as Union Steward is not sustained in any regard. Similarly, the claim that the discharge was because of Mr. Brown's outspoken views concerning black militancy were not sustained by anything in the record at the hearing. The fact that Brown was a Union Steward requires of him an even higher standard of conduct than might be required of an employee who was not a Union Steward.

The Union suggests that having drunk of alcohol, as

opposed to being actively drunk so that job performance was impaired, does not justify discharge. Given the nature of Mr. Brown's employment in the food service industry with its requirement of protection for the public, as well as Mr. Brown's own safety, the Employer is justified in requiring its employees be sober prior to reporting to the job and not to drink on the job.

It must be assumed that Mr. Brown was well aware of the fact that an employee could not work while under the influence of alcohol or having drunk any alcoholic beverages while on the job. Since Mr. Brown had already been warned concerning such conduct once before, he was on clear notice that such conduct was not acceptable to the Employer. And as a Union Steward he certainly must have been aware that employees could not be retained on the job after having taken alcoholic drinks.

DECISION:

The discharge of Lee Brown was for just cause.

BOARD OF ARBITRATION:

	<u>Sam Kagel</u> Chairman	
→ <u>Joe Belardi</u> Union Member	<u>We Dissent</u> Concur/Dissent	<u>6-2-69</u> Date
<u>Elias Kelley</u> Union Member	<u>We Dissent</u> Concur/Dissent	<u>6-2-69</u> Date
<u>J. DeLo</u> Employer Member	<u>Concur</u> Concur/Dissent	<u>6-2-69</u> Date
<u>H. Murray</u> Employer Member	<u>Concur</u> Concur/Dissent	<u>6-2-69</u> Date

Miscellaneous Culinary Employees' Union, #110, A.F.I.C.I.O.

HOTEL AND RESTAURANT EMPLOYEES

AND

BAR TENDERS INTERNATIONAL UNION, A.F.I.C.I.O.

2040-16TH STREET

LABOR TEMPLE - SUITE 218

SAN FRANCISCO, CALIFORNIA 94103

AFFILIATED WITH

CALIFORNIA LABOR FEDERATION
SAN FRANCISCO LABOR COUNCIL

January 16, 1963

General Manager &
Chief Steward
Jack Tar Hotel
San Francisco, California

Gentlemen:

This is to inform you that brother Lee Brown a member of the Miscellaneous Culinary Employees' Union, Local #110 has been elected by the crew of the Jack Tar Hotel shop steward.

Every consideration you may give Mr. Brown will be highly appreciated.

Respectfully yours,

Frank N. Miller
Frank N. Miller, President

FHM:lhl-ops-afl-cio-3

Be Sure to Register . . . Then Vote

In the Matter of a Controversy

between

SAN FRANCISCO LOCAL JOINT EXECUTIVE BOARD
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Witness Lacy, a dishwasher and a member of Local 110, testified that on the day Mr. Brown was discharged that he, Mr. Lacy, was working supplies and that he smelled liquor on Mr. Brown's breath, and on Mr. Jefferson's breath. (Tr. p. 22)

Witness Smith, a cook at the hotel and a member of Local 44, testified that he talked to Mr. Brown at about 1:45

p.m., when he (Smith) was checking out and that he smelled liquor on Mr. Brown's breath. (Tr. p. 23)

Mr. Brown testified that he had nothing to drink on the Saturday night prior to reporting for work on the Sunday in question; that he rode on the bus that morning with Mrs. Oliver; that he had nothing to drink on the bus coming to work; that he had nothing to drink in the locker room before he went to work; that he did not see Mr. Mitchell until 5:00 p.m. on the afternoon in question and that it was Mr. Mitchell who called him and told him that he (Mitchell) had trouble with Mr. Jefferson who Mr. Mitchell claimed was drunk and that he wanted to fire Mr. Jefferson; that Mr. Brown said that he didn't think that Mr. Mitchell had the right to fire Mr. Jefferson; that then Mr. Mitchell stated "I'm going to fire you too, I'm going to fire both of you." Mr. Brown claims that he had nothing to drink at all on the Sunday in question; and that in fact he does not drink alcoholic beverages, because of health problems.

Mrs. Oliver testified that she was with Mr. Brown at a gathering on the Saturday night before the discharge and that as far as she could tell he had nothing to drink on Saturday night; that on Sunday morning she rode part way to work with him; that this was between 6:00 and 7:00 a.m., and that she did not observe him drinking; that in her opinion Mr. Brown

was sober; that she had known Mr. Brown for eight years and that she had never seen him take a drink.

Mr. Walter Robinson, Sr., who was employed as a cook at the hotel stated that he came to work shortly before 7:00 a.m.; that Mr. Brown was in the dressing room and that in his opinion Mr. Brown had not been drinking at that time; that he did not see Mr. Brown later in the day.

Brown's claim as to Reason for Discharge:

Mr. Brown contends that he was discharged because he was a Union Steward and that he brought certain complaints to management concerning the serving of food to employees and other matters.

SUMMARY:

On January 28, 1968 Mr. Brown was warned in writing for being under the influence of alcohol while on duty. He made no appeal of this warning through the grievance procedure. Therefore, it is entitled to weight as a prior warning.

The testimony of Mr. Mitchell that subsequent oral warnings as to drinking on the job by Mr. Brown followed stands uncontradicted in the record.

During the day of January 26, 1969 the evidence of Mr. Mitchell, Mr. Lacy and Mr. Smith, establishes clearly that Mr. Brown had been drinking on the job. Mr. Brown denies this, but his witness Mrs. Oliver was with him between 6:00 and 7:00 a.m., and therefore what occurred at the hotel after

Mr. Brown reported for work is not reflected in her testimony. The testimony of Mr. Robinson, Sr., is not entitled to any weight since his testimony is that he was with Mr. Brown at approximately 7:00 a.m. for about five minutes.

The evidence does establish that Mr. Brown reported to work on January 26, 1969 not having had any alcoholic drinks. But the evidence of three fellow workers on the job establishes that he had imbibed alcoholic drinks while on the job. The testimony of these fellow workers must be believed over the denial made by Mr. Brown. And Mr. Mitchell's testimony that Mr. Brown was in fact drunk on the job must be accepted.

This testimony taken together with the prior written warning which related to drinking on the job establishes that the Employer was justified in discharging Mr. Brown on January 26, 1969. He had been told that further conduct of this type could result in his discharge.

The claim that the discharge of Mr. Brown was related to his activities as Union Steward is not sustained in any regard. Similarly, the claim that the discharge was because of Mr. Brown's outspoken views concerning black militancy were not sustained by anything in the record at the hearing. The fact that Brown was a Union Steward requires of him an even higher standard of conduct than might be required of an employee who was not a Union Steward.

The Union suggests that having drunk of alcohol, as

opposed to being actively drunk so that job performance was impaired, does not justify discharge. Given the nature of Mr. Brown's employment in the food service industry with its requirement of protection for the public, as well as Mr. Brown's own safety, the Employer is justified in requiring its employees be sober prior to reporting to the job and not to drink on the job.

It must be assumed that Mr. Brown was well aware of the fact that an employee could not work while under the influence of alcohol or having drunk any alcoholic beverages while on the job. Since Mr. Brown had already been warned concerning such conduct once before, he was on clear notice that such conduct was not acceptable to the Employer. And as a Union Steward he certainly must have been aware that employees could not be retained on the job after having taken alcoholic drinks.

DECISION:

The discharge of Lee Brown was for just cause.

BOARD OF ARBITRATION:

Sam Kagel
Chairman

→ <u>Joe Belardi</u> Union Member	<u>Concur</u> Concur/Dissent	<u>6-2-69</u> Date
<u>Eugene Kelly</u> Union Member	<u>Concur</u> Concur/Dissent	<u>6-2-69</u> Date
<u>B. Reels</u> Employer Member	<u>Concur</u> Concur/Dissent	<u>6-2-69</u> Date
<u>H. Sullivan</u> Employer Member	<u>Concur</u> Concur/Dissent	<u>6-2-69</u> Date

In the Matter of a Controversy

between

SAN FRANCISCO LOCAL JOINT EXECUTIVE BOARD
OF THE HOTEL AND RESTAURANT EMPLOYEES and
BARTENDERS INTERNATIONAL UNION, AFL-CIO,
on behalf of MISCELLANEOUS CULINARY EM-
PLOYEES UNION, LOCAL NO. 110,

Complainant,

and

HOTEL EMPLOYERS ASSOCIATION OF SAN FRANCISCO,
on behalf of JACK TAR HOTEL,

Respondent

Complaint No. 1969-2

OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL, Chairman

ELIZABETH HELLEY, Appointed by Local Joint
Executive Board

Joe Belardi
~~PHILIP H. FOLEY~~, Appointed by Local Joint
Executive Board

JOSEPH D. SULLIVAN, Appointed by Association

JOHN B. GALLO, Appointed by Association

San Francisco, California

June 2, 1969

ISSUE:

"Whether or not Lee Brown was discharged for just cause?"

The relief sought by the Union is reinstatement and back pay with 7% interest.

BASIS FOR DISCHARGE:

Mr. Lee Brown was discharged from his employment at the Jack Tar Hotel on January 26, 1969 by the Chief Steward for being drunk on the job.

PRIOR RECORD:

On January 28, 1968 Mr. Brown was given a written warning which stated that he was "under the influence of alcohol while on duty." At that time the Union Business Agent was called in and a discussion was had with the Personnel Manager of the hotel concerning Mr. Brown. Mr. Brown was told that the next time he came on the job drunk that he could be fired.

(Tr. pp. 7, 8)

According to Chief Steward Mitchell, after the written warning, he had to warn Mr. Brown on a number of occasions for drinking on the job; that once he sent Mr. Brown home to avoid firing him; that he did this in order to give Mr. Brown another chance to rehabilitate himself. (Tr. p. 8)

THE INCIDENT OF JANUARY 26, 1969:

On that date, a Sunday, according to Mr. Mitchell, Mr. Brown was in the morning acting kind of strange; that Mr.

Mitchell left the hotel at 10:20 to go to church; that upon returning from church about 12:45 or 1:00 p.m., he observed Mr. Brown and another then employee, Mr. Jefferson, in an uproar; that they were talking loud and acting strange; that he, Mr. Mitchell, could smell alcohol on Mr. Brown's breath and on Mr. Jefferson's breath; that later a telephone operator called him (Mitchell) downstairs and said that Mr. Jefferson is downstairs acting strange as if he had been drinking; that Mr. Brown met Mr. Mitchell at the elevator and stated he wanted Mr. Jefferson fired; that he didn't want to work with him any more; that Mr. Mitchell then informed Mr. Brown that he was going to fire him (Brown) too "...because you are drunk." (Tr. p. 10) According to Mr. Mitchell, Mr. Brown stated that he was not drunk, but according to Mr. Mitchell, Mr. Brown was staggering and he concluded that Mr. Brown was in fact drunk; that Mr. Brown told him he was "sick", but Mr. Mitchell claimed that he could smell alcohol on Mr. Brown's breath.

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CONFIDENTIAL

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The Union suggests that having drunk of alcohol, as

Jack Tar Army



BAYVIEW - HUNTERS POINT JOINT HOUSING COMMITTEE
201 Southridge Road
San Francisco, California 94124
(415) 648-7793

Mrs. Lillian Woods, Chairman
Mrs. Marcelee Cashmere, Vice Chairman

February 24, 1969

Local Joint Executive Board of
Culinary Workers, Bartenders and
Hotel, Motel and Club Service Workers
870 Market Street
San Francisco, California.

Attention: Joseph Belardi

Gentlemen:

The Labor and Industry Committee of the Joint Housing Committee do hereby request that a date be set for the hearing of Lee Brown's firing from his job at the Jack Tar Hotel and that this Committee be informed as to when and where the above mentioned is to be held.

It is apparent that several other Black brothers and sisters are going to be involved in the jobs opened to the people of this community and it is necessary that the Labor and Industry Committee of the Joint Housing Committee take a stand now for complete equal opportunity of our people.

If the unions wish to gain our confidence, we need to sit on the Union Boards, Union-Management Decision Boards and Appeals Boards for the final true acceptance of our people.

The Labor and Industry Committee of the Joint Housing Committee do hereby request that the unions submit a letter to us showing their breakdown of Black people participating in the present jobs cleared through their offices directly or indirectly. This will alleviate the task of relying upon the newspapers and other sources of news media for such statistics.

An immediate reply would be appreciated.

Sincerely yours,

Reuel S. Brady, Chairman
Joint Housing Labor and
Industry Committee

RSB:RW:del

Telephone 776-8200
Area Code 415

Teletype 415-393-9672

JACK TAR HOTEL

San Francisco, California

94101

JACK TAR SQUARE
CATHEDRAL HILL

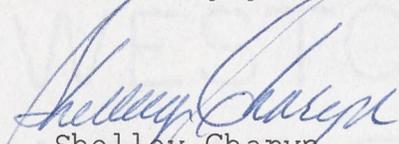
February 24, 1969

Mr. Lee Brown
2606 - 3rd St.
San Francisco, Calif. 94107

Dear Lee,

As you requested, enclosed please find a photocopy of your Notice of Termination.

Sincerely yours,


Shelley Charyn
Personnel Manager

Encl:

SC/hs

GRAND BAHAMA HOTEL & COUNTRY CLUB,
West End, Grand Bahama Island, Bahamas
JACK TAR GROVE PARK INN, Asheville, North Carolina
JACK TAR DURHAM, Durham, North Carolina
JACK TAR POINSETT, Greenville, South Carolina
JACK TAR FRANCIS MARION, Charleston, South Carolina
JACK TAR HOTEL, Clearwater, Florida

JACK TAR BEACH HOUSE, Destin, Florida
JACK TAR HOTEL, Lansing, Michigan
JACK TAR KEYS MOTOR LODGE, Marathon Shores, Florida
JACK TAR HOTEL, Orange, Texas
JACK TAR HOTEL, Galveston, Texas
JACK TAR CAPITOL HOUSE, Baton Rouge, Louisiana
JACK TAR HOTEL, San Francisco, California



CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. _____

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) Mr. Lee Brown Phone Number none
Street Address ^{indicate} 2606 - 3rd Street
City San Francisco State California Zip Code 94107

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)
Race or Color Religious Creed National Origin Sex

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name Jack Tar Hotel
Street Address Van Ness Avenue and Geary Telephone No.: PR 6-8200
City San Francisco State California Zip Code _____
AND (other parties if any) Miscellaneous Culinary Employees Union, Local 110
3016 - 16th Street
San Francisco, Calif. Telephone No.: 621-3692

4 Have you filed this charge with a state or local government agency? Yes No When _____
MONTH DAY YEAR

5 If your charge is against a company or a union, how many employees or members? Over 25 Over 50

6 The most recent date on which this discrimination took place: Month January Day 26 Year 1969

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary).

I was terminated by the hotel because of my union activities in attempting to eliminate racial discrimination.

I also believe I was terminated because of my race (Negro).

I further believe the hotel discriminates against all Negroes.

The union has refused to help Negro members.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date February 12, 1969 Lee Brown

Subscribed and sworn to before me this 12th day of February 1969
Edward Valenzuela (Name) Equal Employment Office (Title)

difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you form sworn to.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Lee Brown
Charging Party

Case No. YSFO-014

v.

Jack Tar San Francisco, Inc.
San Francisco, California
and
Miscellaneous Culinary Employees
Union, Local 110, Hotel and
Restaurant Employees and Bartenders
International Union, AFL-CIO
San Francisco, California
Respondents

Date of alleged violation: January 26, 1969
Date of filing of charge: April 22, 1969
Date of service of charge: June 30, 1969

DECISION 71 2654

SUMMARY OF CHARGE

Charging Party alleges that Respondent Employer (hereinafter "Jack Tar") engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, by discharging him because of his race (Negro) and because his union activities were directed toward eliminating racial discrimination by Respondent Employer.

Charging Party alleges that Respondent Labor Organization (hereinafter "the Union") engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, by failing fairly to represent him because of his race.

JURISDICTION

Jack Tar is engaged in the operation of hotels and their attendant services in interstate commerce. At its San Francisco hotel, situs of the instant charge, it employs approximately 500 persons.

The Union is the bargaining agent for certain of Jack Tar's employees. It has over 2,000 members, and is a labor organization within the meaning of Section 701(d) and (e) of Title VII.

The Commission received the charge on February 12, 1969, and deferred it to the appropriate State agency on February 21, 1969. The charge was filed with the Commission on April 22, 1969, within the time prescribed by Section 706(b) and (d) of Title VII.

SUMMARY OF INVESTIGATION

Charging Party alleges that Jack Tar discharged him because he opposed its alleged discriminatory policies through his Union activities.

Jack Tar denies the charge and contends that Charging Party was discharged for drinking on the job.

Several disinterested witnesses credibly state that they saw Charging Party drinking on the job on the day of his discharge. Investigation also revealed that Jack Tar has discharged both Caucasian and Negro employees found drinking on the job.

There is no evidence of record indicating that Charging Party's discharge was related either to his Union activity or his race.

Charging Party alleges that the Union failed fairly to represent him in the matter of his discharge.

The evidence of record demonstrates that the Union invoked all remedial procedures under the collective bargaining agreement in Charging Party's behalf. In fact, it carried his grievance to arbitration, an expensive procedure not to be regarded as routine in such matters.

DECISION

Reasonable cause does not exist to believe that either Respondent Employer or Respondent Union engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as alleged.

JUN 25 1977
Date

For the Commission:
Marie D. Wilson
Marie D. Wilson, Secretary

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place.

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Subscribed and sworn to before me this 12th day of February 1969
Edward Valenzuela (Name) Equal Employment Officer (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

COPY

HOTEL INDUSTRY
ADJUSTMENT BOARD

COMPLAINT

January 31, 1969

Name of Employer: Jack Tar Hotel, Van Ness & Geary

Name of Employee: Lee Brown

Name of Union: Miscellaneous Culinary Employees Union, Local 110

The above named employee was discharged from his employment at the above named Hotel on January 26, 1969. The Union complains against said Hotel that the aforesaid discharge was unjust and, pursuant to Sub-section (h) of Section 3 of the basic agreement between the parties, said discharge is hereby appealed to the Adjustment Board.

The Adjustment Board is requested to find that Lee Brown was unjustly discharged by the Jack Tar Hotel and to order that said employee be reinstated to his former employment at said Hotel with full pay, plus 7% interest, for all time lost as a result of his unjust discharge.

LOCAL JOINT EXECUTIVE BOARD OF
CULINARY WORKERS, BARTENDERS AND
HOTEL, MOTEL & CLUB SERVICE WORKERS

Joseph Belardi

Joseph Belardi, Executive Secretary

JB:bmr
OPE-3-AFL-CIO 51



WESTERN ADDITION BLACK SECURITY GUARDS, INC.

1266 McAllister Street, San Francisco, California 94115 — Telephone: (415) 567-1289

SULTAN N. A. SHABAZZ
President

ROBERT POTTER
Secretary-Treasurer

Board of Directors

JAMES PHILLIPS

LORENZO COLLINS

JEMMIE LOU DAVID

ROBERT POTTER

SULTAN N. A. SHABAZZ

January 28, 1969

RE: The termination of Mr. Lee Brown.

The Jack Tar Hotel has made the allegations that I, "Reported to work drunk." I was consequently terminated, on 1-26-69.

Respectfully submitted by

Lee Brown, Minister of
Labor of the AD NIP Party

DLP



WESTERN ADDITION BLACK SECURITY GUARDS, INC.

1266 McAllister Street, San Francisco, California 94115 — Telephone: (415) 567-1289

January 29, 1969

AL SULTAN N. A. SHABAZZ
President

ROBERT POTTER
Secretary-Treasurer

Board of Directors

JAMES PHILLIPS
LORENZO COLLINS
JEMMIE LOU DAVID

ROBERT POTTER

AL SULTAN N. A. SHABAZZ

RE: A personal statement from Mr. Lee Brown regarding his terminations from the Fairmont Hotel and the Jack Tar Hotel.

I became employed at the Fairmont Hotel in 1960. I was employed there for One (1) year and was elected Union Shop Steward.

While working there I became aware of some of the working conditions, which were very poor. While working there, it was similar to working in a Non-Union House. Personally I felt compelled to attempt to straighten up some of the discrepancies and conditions at the hotel. I alone began to voice some of my personal greivances in order to make conditions better for everyone. I was the first Black Steward to be elected for Shop Steward due to the fact that conditions were so bad. As a result of my opinons and oppositions that I submitted to my superiors, the hotel representatives began to harass and make trouble for me. They began to make false accusation, in order to keep their union activities quiet. Consequently I was soon discharged from my job, because of my union activities and my efforts to rectify hotel and union conditions.



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LORENZO COLLINS

EMIL E. LOU DAVID

ROBERT POTTER

SUSTAN N. A. SHABAZZ

After being discharged I went to Mr. S. Daniels, Business Agent of Union Local 110. Upon explaining the situation to Mr. Daniel, he went to talk with representatives of the Fairmont Hotel to question my dismissal. I was not present at the confrontation between Mr. Daniel and the Fairmont. After the meeting, I asked Mr. Daniel to file action with the Adjustment Board. My request was denied. I felt as if he was more-or-less correlating with the hotel and union.

Shortly after that incident, I became employed by the Jack Tar Hotel. There, also I became elected Union Shop Steward. The working conditions there were as equally as bad. There too I began voice my opposition against conditions. They also were opposed to my union activities and threatened to dismissed me. They did not want to hear my greivances, therefore my oppositions were ignored.

I also opposed the employee's food and eating conditions. Once again I was told to mind my own business or else I would be dismissed. Mr. Mictchell, the executive Steward of the hotel, stated that the chef and manager, plus others wanted me fired. This also was because of my union activities. Rather than being fired for incompetence, I was fired for my activities.



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President
ROBERT POTTER
Secretary-Treasurer

Board of Directors
JAMES PHILLIPS
LORENZO COLLINS
EMULE LOU DAVID
ROBERT POTTER
SULTAN N. A. SHABAZZ

To both hotels involved I voiced the fact that there was obvious discrimination within the private hotels and unions. Below, I have listed a few things that need immediate attention:

1. Unions should be put back in the hands of union Rank and File.
2. Trade-Union Democracy with the colony workers union.
3. I will call upon the black community to aid in this important and necessary struggle.

Respectfully submitted by

Lee Brown, Minister of Labor
AD NIP Party, Labor Dept.

dlp



WESTERN ADDITION BLACK SECURITY GUARDS, INC.

1266 McAllister Street, San Francisco, California 94115 — Telephone: (415) 567-1289

January 29, 1969

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ROBERT POTTER
Secretary-Treasurer

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2. Trade-Union Democracy with the colonial workers union.
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Respectfully submitted by

Lee Brown, Minister of Labor
AD NIP Party, Labor Dept.

alp



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COPY

A F F I D A V I T

STATE OF California)
) ss.
 COUNTY OF San Francisco)

I, Lee Brown, after being duly sworn,
 upon my oath depose and say:.

I am 47 years of age and live at 2606 - 3rd Street
San Francisco, City of San Francisco County of
San Francisco, State of California.

My telephone number none, my Social Security
 Number is 466-10-9205.

Since March 15, 1967 I have been employed by the Jack Tar Hotel
 in San Francisco located at Van Ness Avenue and Geary, as a
 dishwasher in the Steward Department. My last supervisor was
 M. Mitchell and I was paid \$18.85 per day. My entrance rate of
 pay was \$16.70 per day.

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 there for one (1) year and was elected union shop steward.

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1. Unions should be put back in thehands of union rank and file.
2. Trade union democracy with the culinary workers union.
3. I will call upon the black community to aid in this important and necessary struggle.

I believe I was terminated because of my race (Negro) and my union activities to eliminate racial discrimination. The union has refused to help Negroes.

I have read the above statement consisting of 3 pages,
and swear to the best of my knowledge and belief that it is
true.

Signed _____

Subscribed and sworn to before me at _____
CITY

STATE

on the _____ day of _____, 196__.

Field Representative

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Miscellaneous Culinary Employees' Union, #110, AFI-CIO

HOTEL AND RESTAURANT EMPLOYEES
AND
BARTENDERS INTERNATIONAL UNION, AFL-CIO

2040 NORTH STREET
LABOR TEMPLE - SUITE 210
SAN FRANCISCO, CALIFORNIA 94108

AFFILIATED WITH
CALIFORNIA LABOR FEDERATION
SAN FRANCISCO LABOR COUNCIL

January 16, 1963

General Manager &
Chief Steward
Jack Tar Hotel
San Francisco, California

Gentlemen:

This is to inform you that brother Lee Brown a member of the Miscellaneous Culinary Employees' Union, Local #110 has been elected by the crew of the Jack Tar Hotel shop steward.

Every consideration you may give Mr. Brown will be highly appreciated.

Respectfully yours,

Frank N. Miller
Frank N. Miller, President

FHM:lhl-ope-afl-cio-3

Be Sure to Register . . . Then Vote

COPY



Miscellaneous Culinary Employees' Union, #110, AFL-CIO

HOTEL AND RESTAURANT EMPLOYEES
AND
BARTENDERS INTERNATIONAL UNION, AFL-CIO

2940-16TH STREET
LABOR TEMPLE • SUITE 218
SAN FRANCISCO, CALIFORNIA 94103

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FHM:lhl-ope-afl-cio-3

PHONE: 621-3692

MEETS FIRST AND THIRD WEDNESDAYS

COPY

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Dispute Over Firing At Jack Tarr Hotel

Lee Brown has been in the trade union movement for 30 years. Through the years he has endeavored to improve working conditions for black people in the hotel industry, and openly criticized discrimination against blacks. His particular concern has been for culinary workers and maids, who, he says, "are often harassed and intimidated by the hotel management. I'm not going to stand by and watch people get hurt," he said.

Brown's most recent job was at the Jack Tarr Hotel, where he was elected Union Shop Steward. On January 26 he was fired from his job on the grounds that he "reported to work drunk." Brown denies this allegation, believing he was fired because of his union activities and because he "voiced opposition to poor working conditions." The management, he said, "did not want to hear my grievances and I was told to mind my own business."

A list of demands, drawn up by Brown, include the following points: Stop mistreatment and unfair discharges of maids; free meal tickets for maids in all hotels; organize hotel and restaurant workers throughout the nation into unions; and end all



discrimination against black people in the hotel and restaurant industries.

The executive steward of the Jack Tarr, a Mr. Mitchell, has refused to comment on the Brown firing. "I'm not allowed to tell anyone about it," he said. "You'll have to talk to the union."

Sam Daniels, the business agent of local 110, the culinary workers union of which Brown is a member, stated that the matter will be heard by the Adjustment Board. "I will defend Brown," Daniels said, "but discrimination and working condi-

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The date for the hearing has not been determined yet. Meanwhile, Brown said, he intends to seek support for his position from the black community. Brown, the Minister of Labor for the Ad Nip Party, said he "hopes to set up an investigating committee to see what's really happening in the hotels."

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SAN FRANCISCO — Labor arbitrator Sam Kagel cast the deciding vote June 2 that ousted a militant black shop steward from a downtown hotel.

When the case of Lee Brown, formerly employed at the Jack Tar hotel, came up for arbitration, the two union representatives on the adjustment board agreed he had been fired unjustly.

The two company representatives upheld the firing. Kagel made the decision that cost Brown his job and the hotel's union employees their steward.

Brown was fired from the Jack Tar Jan. 26 for alleged drunkenness. He contends he was fired because of his frequent complaints over the working conditions for hotel employees, particularly the maids.

Evidence presented against

Brown at the arbitration hearing consisted of the testimony of two management representatives and two other employees. The employees' appearance before the board was at the request of management and they testified they smelled alcohol on Brown's breath.

Brown is a member of Local 110, Miscellaneous Culinary Employees Union. Atty. Philip Paul Bowe appeared for the union on Brown's behalf.

Bowe argued before the arbitrators that various "inconsistencies and ambiguities" in the management testimony "indicate that Mr. Brown was not popular with management because of his outspoken beliefs and unpopular activities."

But, said Bowe management "knew that it could not openly discharge a man for his unpop-

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"Critically important in this case is the actual protection that is or is not to be given the job of a black union steward," said Bowe.

"This union steward has become the union representative most directly responsible for the protection of other culinary employees' interest . . .

. . . The effect on other employees of the removal of an active union steward may be even more significant than the effect on the steward himself."

Testimony in the hearing revealed management was aware Brown is labor minister of the African Descendant Nationalist Independence Partition party.

Brown is reported to have been popular as shop steward

at the Jack Tar. Under provisions of the union constitution a shop can acquire a steward through petition, the way Brown became steward. In April, narrowly missed being elected to the local's executive committee.

The militant rank and file said this week the union plans for taking action beyond the arbitration board.

A basic issue in the Brown controversy is the question of the industry. He said there were no maids in the city. He said, "I don't know them or don't know their system."

Lee Brown

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A basic issue in the dispute, Brown contends, is the operation of the stewards in the industry. He said at one time there were close to 300 stewards in the city's hotels. Today, he said, "I doubt you can count them on one hand. They just don't want to have a steward system in the hotels," Brown said. "That's what this whole thing is all about."

Lee Brown

Article from "People's World":

AFTER SHERATON-PALACE:racism lingers on

SAN FRANCISCO---The people who brought the hotels of this city to the bargaining table by seizing one of them in 1964 have moved on and probably don't think much about how black people are making out with the city' plush hotels. Many of these activists probably assume discrimination in them is over.

Not so, says Lee Brown, and as a black worker in the hotel industry he ought to know.

Brown says there are many parts of the hotels' operations that don't have any black workers, restaurants in particular. What's more, he says, the blacks who have been hired are treated to crass discrimination on the job.

Brown is at present immersed in a difficult struggle with the hotel management and says he is also having a bit of trouble with his union.

The story goes back a while, for since the Sheraton Palace demonstrations Brown has waged a constant battle as a trade unionist on the job.

On Jan. 26 Brown was fired from the Jack Tar Hotel, allegedly for reporting to work intoxicated. In 1967, he was fired from the Fairmont under similar circumstances. He was shop steward in both places at the time of the firings.

Brown has a different story about why he was discharged.

The black culinary worker says he was fired for his union activities and because he voiced opposition to poor working conditions.

"The things I've seen in the hotels I wouldn't have believed myself if someone had told me," Brown said last week. "I would have said, 'Man, that's rot what's going on!'"

Brown says the management objected to his activities mainly because he voiced concern over the treatment of people on the job, particularly the maids who he said are treated with contempt, insulted and given poor food.

Just as he was charged with being drunk, Brown said, women maids who object to the way they are treated are discharged for alleged stealing.

Some of the maids, Brown says, "are afraid to go to the union."

Because he feels Local 110 of the Culinary Workers' Union has not acted sufficiently to protect and defend hotel workers on the job, Brown's complaints are directed at the union as well.

He has drawn up his own program, the demands of which include: (1) Stop mistreatment of and unfair charges against maids; (2) Free meal tickets for maids in hotels; (3) Organize hotel and restaurant workers throughout the country; (4) End all discrimination against black people in the hotel and restaurant industry.

Brown has taken his case both to the union and the community. He himself is labor minister of the African Descendant Nationalist Independence Partition party. His case has been taken up by the Hunters Point Labor and Industrial Committee.

With the support of the union, Brown's case is scheduled to go to and before arbitrator Sam Kagel soon, although no date has been set.

The militant rank-and-filer narrowly missed last week being elected to the local union's executive committee.

Brown says he hopes the black community will "set up an in-

vestigation committee to see what's really happening in the hotels."