

**Armored Transport, Inc. and Armored Car Workers of America (Formerly known as Employees Committee of Armored Transport, Inc.). Case 20-CA-14909**

September 29, 1980

**DECISION AND ORDER**

**BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO**

On July 31, 1980, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,<sup>1</sup> and the General Counsel filed a brief in answer to Respondent's exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Armored Transport, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

<sup>2</sup> Member Jenkins would compute the interest due on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB No. 11 (1980).

**DECISION**

**STATEMENT OF THE CASE**

**JAMES M. KENNEDY**, Administrative Law Judge: This case was heard before me at San Francisco, California, on March 27, 1980, pursuant to a complaint issued by the Regional Director for Region 20,<sup>1</sup> and which was based on a charge filed by Employees Committee of Armored Transport, Inc., now known as Armored Car Workers of America<sup>2</sup> (herein called the Union), on October 10, and

<sup>1</sup> All dates herein refer to 1979 unless otherwise indicated.

<sup>2</sup> The Charging Party's name was amended to show the new name under which the Board has certified it as the collective-bargaining representative of Respondent's employees. In no other respect did the Charging Party change its identity.

amended on October 16. The complaint alleges that Armored Transport, Inc. (herein called Respondent), has engaged in certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (herein called the Act).

**Issues**

The issue is whether or not Respondent temporarily laid off 40 employees on October 10 in order to discourage them from engaging in conduct constituting mutual aid or protection as described in Section 7 of the Act.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of both the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent admits it is a California corporation engaged in the armored guard and messenger business and having offices located throughout California including a dispatching office in San Francisco. It further admits that during the past year, in the course and conduct of its business, it has sold services valued in excess of \$50,000 to customers within California who are directly engaged in interstate commerce. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

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

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Background and participants**

As noted above Respondent is engaged in the armored guard and messenger service business throughout California. Its headquarters are in Los Angeles, but it has offices in San Francisco and San Jose. Its San Jose employees are represented by a local of the Teamsters Union out of its San Francisco employees at the time of the incidents here in question were unrepresented. Prior to the October incidents to be described, Respondent's San Francisco manager was Jack Sherman. He reported directly to Robert G. Irvin, Respondent's president in Los Angeles. Sherman directed the work of approximately 40 drivers and messengers who serviced the San Francisco and Oakland/East Bay accounts.

Sometime in March the employees established the organization which later became the Union. After electing officers, they chose messenger-driver Walter Roberts as their spokesman to deal with Sherman. Beginning in late March and continuing sporadically throughout the

summer and fall Roberts and another employee, Brad Lovesy, met with Sherman to discuss working conditions. Topics which were covered included load times, merit increases, and timecards. Another topic was a wage increase which had been negotiated on behalf of the San Jose driver messengers by the Teamsters Union. At one point, according to Roberts, he asked Sherman to grant the same wage increase to the San Francisco employees which had been negotiated at San Jose. Roberts recalls Sherman saying he did not have the authority to do that, but would transmit the committee's request to President Irvin. Later, according to Roberts, Sherman reported Irvin would not deal with the Committee and had referred to it in belittling terms.

In early September two other employees, Thomas Lane and Chris Rose, met with Sherman to again ask for the 45-cent-per-hour increase which the San Jose employees had negotiated. They told Sherman they were upset and would go to extremes in order to get the increase. Sherman said he did not think the increase was likely because the San Francisco office was not making money. He did agree that he would discuss the request with President Irvin but doubted that the increase was feasible.<sup>3</sup> Those employees later told the others about Sherman's reaction.

Later, Roberts became the Committee's chairman. Sometime in September, after learning of President Irvin's opposition to their requested wage increase, Roberts and the other officers of the committee decided to cease reporting to work earlier than required. It appears from the undenied evidence that under Sherman's 2 years of management, though contrary to Respondent's practice elsewhere in the State, the San Francisco drivers had reported to work approximately 30 minutes before their departure time. Respondent's statewide policy was to have them report 15 minutes before departure, paying employees for that 15 minutes as the necessary "load time." When Sherman observed the change, he asked Roberts and others what they were doing. The response was relatively uniform: "Because you won't give us a wage increase, we are no longer going to give you the extra 'free' 15 minutes." Sherman's reaction to that response is not clear, but I have no doubt that he transmitted the employees' attitude to President Irvin in Los Angeles.

A few weeks went by during which Sherman posted a notice to the effect that President Irvin intended to conduct a safety meeting at the San Francisco Racquet Club on October 9; dinner was to be served.

The purpose of the Racquet Club dinner is unclear. The employees were requested to sign their names at the bottom of the notice to indicate their intention to attend. The number of signatures was for ordering the number of dinners required. Although it was styled as a "safety" meeting it seems that at least one of its purposes was to

honor an employee, Thomas Taylor, who had been wounded while foiling an attempted holdup. However, that purpose was not articulated. Thus, from the employees' standpoint it appeared simply to be a safety meeting. Consistent with their earlier decision to stop giving free load time to the Company, the employees, believing they were not to be paid for attending the meeting, decided not to do so. In fact, some of those who had originally signed the notice scratched off their names. By October 8 it became apparent to Sherman that no one intended to attend. Sherman asked Lane why and when Lane explained, Sherman responded, "But you can't do this to a man like Bob Irvin!"

October 9 began as usual although during that morning the drivers were advised either by telephone or radio that a mandatory employee meeting was to be conducted that evening. Lane says that while he was on his route a customer asked him if Respondent's drivers were striking. Puzzled, he called Sherman and asked him if the employees were going on strike. Sherman replied "no," Respondent was "locking the employees out" and told Lane not to pick up any deliveries which needed to be made the following day. Other drivers were also told not to pick up items which required delivery for the following day.

That afternoon what has been described as two meetings, and what was in reality one long meeting in which much was repeated, occurred. It was conducted by President Robert Irvin. While there is some dispute over what was said, there is no dispute over the fact that he gave Taylor the award and also told the employees that the San Francisco facility was to be shut down for a week. The employees testified that during the course of explaining the shutdown, he advised it was intended to serve as a "cooling off" period, for the employees had been "rebellious and hot-headed." He also advised them that he did not intend to give them the raise which they had sought. He does not deny the above, but adds that he told them the facility was suffering management problems and he was unhappy with the manner in which Sherman had been operating. He told them the San Francisco office had been losing money and changes were required. There is no reason to doubt his testimony here; in fact Sherman was relieved of his duties at that time. He was replaced by James Irvin, one of President Irvin's sons, though no announcement to that effect was made to the employees. President Irvin told employees that if they desired to resume working, to report on Friday for an "evaluation."

On Friday, October 12, all of the regular full-time employees appeared. President Irvin met the group at the first floor entry area and told them the paychecks had not yet arrived. He asked them to wait. A few moments later one of the drivers came downstairs with his paycheck and showed it to the others. President Irvin had temporarily absented himself to make a phone call. When he returned, Roberts, acting as the leader, asked for the remaining paychecks. Roberts recalls that Irvin responded, "When [you are] ready to come upstairs in an orderly manner and talk to [me] one at a time" Irvin would give them their checks. Roberts replied the group would

<sup>3</sup> It appears that the San Francisco employees were already receiving 5 cents per hour more than its two competitors, Loomis and Brinks, both of whose employees are union represented. It appears that the 45-cent San Jose increase merely raised the San Jose figures to something close to the San Francisco rates. In that circumstance it is not unreasonable for Sherman to have said that an additional 45 cents on top of Respondent's current San Francisco rate would be unreasonable.

not do that, but said if the employees could all punch in, Irvin could talk to them "on the clock" or else Irvin could talk to him as the committee representative. Irvin asked if he was Walter Roberts and when Roberts replied he was, Irvin told him to get out. Roberts did so, but the entire group followed him.

As the group was walking down the alley Irvin called, "Wait a minute, fellas. I don't want to get in a legal hassle. If you'll bring in your badges, your company weapons and your uniforms, I will give you your checks." Roberts told him he had not been told to bring them in before and did not have the transportation home to get them. Robert said Irvin told him to "shut up." Roberts replied that he did not have to listen to that, turned, and walked away; the rest of the group followed.

Irvin then decided he was obligated to deliver the paychecks and had them mailed (some by U.S. Postal Service, others by messenger). Each paycheck was accompanied by a letter offering "regret" over the "misunderstanding" that morning. In the letter Irvin asserted he had understood that those who did not wish to return to work were bringing in their identification credentials and uniforms. He said the group had insisted on getting the checks without turning in those items and would permit no discussion unless they punched the timeclock. He concluded by saying Respondent intended to reopen on October 16 and would take the action necessary to fill any vacant positions. The letter went on to say that those who wished to return to work should call on Monday, October 15, to be assigned starting times. He also said that those who did not wish to return could bring in their uniforms, credentials, and other property and receive their "final check."

Later that day two employees who had not arrived with the group, Michael Johnson and Leonard Henderson, arrived at the office. As they obtained their checks from Robert Irvin, he told them he had closed down the place because "there was a couple of hot-heads out there that were doing the whole show, show for all the employees; and as soon as this cooling-off period . . . was over, things would start working right and [employees] will start seeing his side of it."

As stated in the letter, work resumed on October 16, though full resumption was not reached for a few more days.<sup>4</sup>

#### IV. ANALYSIS AND CONCLUSIONS

Based on the foregoing facts, it is clear that the General Counsel has made out a *prima facie* case that President Robert Irvin decided to temporarily close the San Francisco office as a result of his disenchantment with the fact that the employees had banded together and had asserted collective rights. In addition, it seems that he thought the shutdown would serve as a "cooling-off period" which would result in the loss of some employees and also would give others time for their militancy to diminish.

Respondent, however, argues that it had been faced for some time with some business difficulties at San

Francisco, laying the blame at the feet of Manager Jack Sherman. It asserts, without specific factual support (though the General Counsel adduced no contrary evidence), that the facility was doing poorly, was losing money, and was being badly managed. It points out that Sherman was seeking accounts it could not service and was also antagonizing employees. While Sherman may have had his shortcomings and while Respondent may well have been experiencing financial difficulties with the operation, I am not persuaded by this defense.

It seems unlikely that a shutdown of any length would be an efficient way to end the losses which Respondent says it was then incurring. A more likely response would be to continue operation simultaneously modifying routes and other cost items.

Moreover, there is the testimony that Sherman told one employee the shutdown was a "lockout"—though that might simply be the remark of a disgruntled manager in the process of being removed. However, I doubt that possibility since one of Respondent's customers, the manager of the Pleasant Hill Standard Brands Paint Co., store during the shutdown telephoned Respondent's office to find out why his receipts had not been picked up. That individual, George Hooper, said he asked for the person in charge, though he does not believe a name was mentioned, and the person to whom he spoke told him there would be no money pickups because of "a labor dispute." These two references—lockout and labor dispute—clearly undercut Respondent's defense that the shutdown was to give itself the opportunity to straighten out managerial snafus.

Respondent's action here does not have the appearance of a business decision and I do not believe that it was. Instead it was as the General Counsel alleges, an attempt to deter employees from exercising their Section 7 right to bend together for their mutual aid and protection by forming their own independent union. Certainly Robert Irvin's treatment of Union Chairman Roberts was backhanded and rude and can easily be seen as an attempt to disparage the union leader.

Accordingly, I conclude that the General Counsel has proven that Respondent's decision to shut down its facility as of October 10, 1979, for a period of approximately 2 weeks was motivated by reasons prohibited by Section 8(a)(3) and (1) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by laying off its entire work force for a period of approximately 2 weeks, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The affirmative action shall include an order requiring Respondent to immediately make whole its employees for loss of earnings as a result of its discriminatory decision to temporarily close the San Francisco office. Interest on that backpay shall be computed as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1950).

<sup>4</sup> Even during the shutdown some contracts were honored. The record does not show who performed that work.

Based on the foregoing findings of fact, and the record as a whole, I hereby make the following:

#### CONCLUSIONS OF LAW

1. Respondent Armored Transport, Inc., is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Armored Car Workers of America (formerly known as Employees Committee of Armored Transport, Inc.) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent as of October 10, 1979, violated Section 8(a)(3) and (1) of the Act by temporarily laying off the following employees:

Wayne Berger	Brian McGill
Kevin Bouey	Bill Pendleton
Isaac Brouch	Michael Roberts
Jerry Buckley	Walt Roberts
Alvin Chu	Chris Rose
Michael Cissell	Rodney Schroeder
Jim Clancy	Richard Shepard
Kenneth Farris	Pete Sikora
Tom Gallegos	Dan Simone
Larry Giovacchini	Michael Smith
Leonard Henderson	Williard Smith
Neal Hewitt	Mark Stokes
Rex Ingram	Thomas Taylor
Michael Johnson	Ray Tomasello
John Joy	Barvo Torres
Mark Kastilahn	Robert Van Dis
Alan Kazarian	Gary Walkley
Jim Keller	Mike Winslow
Thomas Lane	Jon Yee
Vernon Malden	Charles Zielke

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>5</sup>

The Respondent, Armored Transport, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off employees because they choose to exercise their Section 7 right to engage in organizing themselves and forming a labor union for the purpose of bargaining as a group and acting collectively for their mutual aid or protection.

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

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

<sup>5</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Immediately make whole those employees listed in paragraph 3 of the conclusions of law for lost earnings in the manner set forth in the section of this Decision entitled "The Remedy."

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

(c) Post at its San Francisco, California, facility, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by its representative, shall be posted immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

<sup>6</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

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

After a hearing at which all parties had an opportunity to present evidence, the National Labor Relations has found that we violated the National Labor Relations Act and we have been ordered to post this notice.

The Act gives all employees the following rights:

- To organize themselves
- To form, join, or support unions
- To bargain as a group through representatives of their own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all such activity, except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

WE WILL NOT lay off employees because they choose to exercise the rights recited above, including organizing themselves and forming a union such as the Armored Car Workers of America or otherwise acting collectively for their mutual aid or protection.

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

WE WILL make whole the following employees for the work they lost due to our October 1979 layoff, including interest.

Wayne Berger	Brian McGill
Kevin Bouey	Bill Pendleton
Issac Brouch	Michael Roberts
Jerry Buckley	Walt Roberts
Alvin Chu	Chris Rose
Michael Cissell	Rodney Schroeder
Jim Clancy	Richard Sheppard
Kenneth Farris	Pete Sikora

Tom Gallegos	Dan Simone
Larry Giovacchini	Michael Smith
Leonard Henderson	Williard Smith
Neal Hewitt	Mark Stokes
Rex Ingram	Thomas Taylor
Michael Johnson	Ray Tomasello
John Joy	Barvo Torres
Mark Kastilahn	Robert Van Dis
Alan Kazarian	Gary Walkley
Jim Keller	Mike Winslow
Thomas Lane	Jon Yee
Vernon Malden	Charles Zielke

ARMORED TRANSPORT, INC.