

**Associated Truck Lines, Inc. and Wendell Frost. Case  
7-CA-14607**

December 19, 1978

**DECISION AND ORDER**

BY MEMBERS JENKINS, MURPHY, AND PENELLO

On August 23, 1978, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order.

**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, Associated Truck Lines, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> In the first paragraph of sec. D, the Administrative Law Judge inadvertently substituted the name "Frost" for the name "Close." It is apparent that the witness referred to is Close and not Frost, who did not testify. Therefore, where the paragraph refers to Frost's testimony, it should be read Close's testimony.

**DECISION**

**STATEMENT OF THE CASE**

**MARVIN ROTH, Administrative Law Judge:** This case was heard at Detroit, Michigan, on May 3 and 4, 1978. The charge was filed on November 11, 1977, by Wendell Frost, an individual. The complaint, which issued on December 29, 1977, alleges that Associated Truck Lines, Inc. (herein the Company or Respondent), violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. The

gravamen of the complaint is that the Company allegedly refused to reinstate Frost to his former position of employment and conditioned his reinstatement on the resignation of one Richard Bate as union steward for Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein the Union). The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.

Upon the entire record in this case and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by the charging party and by Respondent,<sup>1</sup> I make the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

The Company, a Michigan corporation with its principal office and place of business in Grand Rapids, Michigan, is a common carrier of motor freight. The Company operates some 44 truck terminals in various states, including a terminal in Detroit, Michigan, which is the facility involved in the present case. In the course of its business, the Company annually performs services valued in excess of \$50,000 in States outside of Michigan, for various enterprises located outside of Michigan. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

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

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Background: The Company's Relations With Richard Bate and Wendell Frost**

The Company has collective-bargaining contracts with some 32 to 35 local Teamster unions, covering units of employees at most of its terminals. The Company's over-the-road and local cartage drivers based at the Detroit terminal are covered by a contract with the Union, which provides for grievance and arbitration, *inter alia*, of terminations of employees.

Richard Bate has been employed at the Detroit terminal since 1943, and since 1974 he has been shop steward for the over-the-road drivers at the Detroit terminal. Bate processes grievances, and in this capacity he has frequent contact with Jack Barens (pronounced "barns"), the Company's assistant vice president for labor relations, who handles grievances on behalf of the Company. Their relationship has been a stormy one. Bate is an aggressive stew-

<sup>1</sup> Counsel for General Counsel failed to submit a brief. His failure to do so will be discussed at a later point in this Decision.

ard. Bate testified that Barese once told him that he (Bate) never knew when he was beaten. Barese testified that he found Bate more difficult than any other steward in working out grievances. Further complicating their relationship was the fact that both men had a tendency to lose their tempers. Indeed, as evidenced by the testimony of both General Counsel and Company witnesses, both did so at the grievance session on August 22, 1977,<sup>2</sup> which is central to the disposition of this case. Having observed Barese on the witness stand, including his demeanor on cross-examination, I have further observed that he has a tendency to sometimes be short tempered.

Wendell Frost began working for the Company in February 1977 as an over-the-road driver, working out of the Detroit terminal. Normally, W. Michael O'Malley, the Company's assistant vice president for line-haul operations, hired road drivers. However, Barese personally made the decision to hire Frost. Barese testified that he hired Frost at the request of, and as a personal favor to, an officer of the Union. Barese understood that Frost had been discharged from another trucking company, possibly because he assaulted a dispatcher and that, absent the request, the Company probably would not have hired him. During his tenure with the Company, Frost had a poor attendance record. He missed 12 days of work. On May 31, Assistant Vice President O'Malley sent him a "final letter of warning," informing Frost that further absence would result in his discharge. However, Frost assured Barese that he would try to do better, and there is no evidence that between May 31 and August 19 the Company had any further complaints about his attendance.

#### B. Frost's Termination

On Friday, August 19, Frost refused to pull a load from Coldwater, Mich. to Ligonier, Ind. because he allegedly did not have a sufficient number of driving hours available to complete the trip within Department of Transportation regulations. This finding is necessarily based on hearsay evidence, because neither Frost nor Company Supervisor Yoder, who terminated Frost, testified as a witness in this case. Whatever the circumstances, the Company decided to treat Frost's refusal as a voluntary quit and therefore took the position that he was no longer entitled to his job. In his unfair labor practice charge Frost alleged that the Company violated Section 8(a)(1) and (3) of the Act both by discharging him and by refusing to reinstate him. However, after investigation, the Regional Director declined to issue a complaint based on the discharge. The Regional Director based this disposition on his determination that there was insufficient evidence that Frost's termination was discriminatorily motivated and that in any event deferral was warranted under the doctrine of *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955). As indicated, the Regional Director did proceed on the allegation that the Company unlawfully conditioned Frost's reinstatement on the resignation of Bate as steward.

At the outset of this hearing, General Counsel took the position that it was not litigating the discharge of Frost. In

<sup>2</sup> All dates herein are in 1977 unless otherwise indicated.

his post-hearing brief, the Charging Party has similarly taken the position that "[t]he lawfulness of Frost's discharge is not an issue before the Board." At the hearing, the Company, over the objection of General Counsel, was permitted to introduce evidence concerning the circumstances of Frost's termination in support of its contention that such evidence tended to corroborate the Company's argument that it would not under any circumstances have voluntarily agreed to reinstate Frost. General Counsel also was permitted to, and did, present evidence concerning the circumstances of Frost's termination. In response to my inquiry concerning what such evidence would show, General Counsel argued that the evidence demonstrated that the Company set up Frost for discharge in order to get rid of Bate. If so, this would mean that General Counsel was in effect arguing that both the original discharge and the refusal to reinstate Frost were unlawful. In these circumstances, one might reasonably expect General Counsel to submit a brief in explication and support of its stated argument at the hearing. General Counsel's failure to submit a brief might well be deemed as an abandonment of that argument. However, the argument was made and both sides presented evidence concerning the termination in support of their respective positions. Therefore, I have considered these positions, and I will discuss my findings concerning those positions at a later point in this Decision.

#### C. Frost's Grievance and the Company's Position Regarding Reinstatement of Frost

Frost filed a grievance over his termination, and his grievance was taken up, together with other grievances, at a local-level meeting between the Company and the Union at the Detroit terminal on Monday, August 22. Grievances involving road drivers, including the Frost matter, were taken up in the morning, and grievances involving city drivers were taken up in the afternoon. Present at the morning session, in addition to Frost, were then Business Agent Richard Fitzsimmons, Steward Bate, and then-Alternate Steward Elmer Shelley for the Union and Barese, Terminal Manager William Stawowczyk, and Customer Relations Officer Don Worth for the Company. Shelley, in his capacity as alternate steward, sat in on grievance meetings and substituted for Bate when necessary. At the time of this hearing Fitzsimmons was no longer with the Union, having taken a position with a Teamsters joint council, and Shelley was no longer alternate steward, having transferred to local cartage. Bate and Shelley testified for General Counsel, and Barese and Stawowczyk testified for the Company. At the hearing company counsel represented that Worth was ill and therefore could not be presented as a witness. I accept that representation, and I have not drawn any adverse inference from the Company's failure to present Worth as a witness.

Frost's grievance was discussed intermittently during the morning session, without any change in the Company's position. Barese stated that Frost did not work there any more, that as far as Barese was concerned, Frost quit. Barese argued that Frost was not happy working for the Company and that it would not be a good idea to put him back to work. However, toward the end of the session he

said that he would think about it. The principal topic of discussion during the morning session was a grievance involving work performed at the Company's Coldwater terminal. The matter had long been a topic of discussion between Bate and Barensen. The drivers were given one-half hour's pay for performing certain nondriving functions, including writing up defects in equipment. Bate argued that one-half hour was not a sufficient period of time to perform these functions and vigorously pressed the grievants' position. There was, in Bate's words, a "heated discussion." Barensen testified that he accused Bate of trying to run the Company's business. Stawowczyk testified that both Bate and Barensen raised their voices. Fitzsimmons told them to calm down. None of the pending grievances were resolved at this session. (At the time of this hearing, the Coldwater matter was under study by both sides). The witnesses were generally in agreement as to the overall course of the morning session. However, their testimony differed in two significant respects. Barensen testified that he closed the morning session by saying that it would not do them any good to discuss any more grievances that day. Bate and Shelley testified, in sum, that Fitzsimmons indicated that he would discuss the Frost matter privately with Barensen and would let him know the result. Barensen testified that during the argument over the Coldwater grievance, he told Bate that he was not representing his people and should resign as steward. Stawowczyk corroborated this testimony. Barensen further testified that this was the only time he made such a statement. Shelley and Bate testified that Barensen did not make such a statement at the meeting. Before discussing my resolution of these credibility issues, I shall proceed to take up testimony concerning subsequent conversations and meetings, as the later ones are of particular significance in that resolution.

After the morning session, Bate, Shelley, and Frost went to lunch at a restaurant about four blocks from the Detroit terminal. Shelley testified that after lunch, he telephoned Stawowczyk's office (where the afternoon session was being held) to check with Fitzsimmons about the Frost matter. Fitzsimmons told him that Barensen was meeting with another company official and that Shelley should call back in 15 minutes. Shelley testified that he did so, but that this time Stawowczyk's secretary put Barensen on the phone. Barensen asked who he was with, and Shelley told him. According to Shelley, Barensen said "you tell Mr. Bate if he resigns as union steward, I'll put Mr. Frost back to work." Shelley incredulously asked Barensen to repeat what he said, and Barensen did so. Shelley reported the conversation to Bate, and they returned to the terminal. Bate testified that he went to see Barensen, who confirmed what he had said to Shelley. According to Bate, he told Barensen that he would have to think about it and that if he agreed, the Union would have to have an election within 5 days, but if the members still wanted him, he would have to serve. Barensen responded that "that was it." Shelley further testified that later that afternoon, in the terminal parking lot, he asked Barensen if he would reconsider the Frost case. According to Shelley, Barensen answered: "The only way I'll reconsider it is just the way I told you. Talk to Bate about resigning as steward. Otherwise, we don't have anything to talk about."

Barensen, in his testimony, denied the testimony of Shelley and Bate. Stawowczyk testified that to his knowledge, Barensen did not receive any telephone calls during the afternoon session. Barensen testified that after the morning session he had no contact with Bate, Shelley, or Frost until he met Shelley and Frost in the parking lot that afternoon. According to Barensen, they asked him to put Frost back to work and Barensen said he would discuss it with Assistant Vice President O'Malley when Barensen returned to Grand Rapids. Barensen testified that he did consult with O'Malley, who indicated that because of Frost's absenteeism and short duration of employment, they should not reconsider their position. O'Malley corroborated this testimony.

Bate testified that about a week after the grievance session, Barensen telephoned him and asked if he was going to resign. Bate said he would, but that if the members wanted to return him he would stay on. Barensen answered, "Then I have nothing more to say to you." According to Bate, Frost was not mentioned in this conversation. Barensen testified that they had a telephone conversation in which he told Bate that he had discussed the "problem" with O'Malley and that Frost would be left as a voluntary quit. According to Barensen, Bate said that he was not going to resign as union steward, and Barensen answered that that was his business. Barensen's version of this conversation poses, and leaves open, the question of why Bate would couple an inquiry about Frost with a statement that he (Bate) would not resign as steward. As will be discussed herein, the same paradox appears again in Barensen's testimony concerning a conversation which took place nearly 3 months later.

On November 8, Frost's grievance came up for an arbitration hearing before the Michigan Joint State Cartage and Over-The-Road Arbitration Committee. The committee ruled that "based on the facts presented, the termination of Wendell Frost is upheld." General Counsel concedes that as set forth by the Regional Director in his refusal to issue a complaint based on Frost's termination, "the hearing was fair and regular and . . . the Committee's decision is not repugnant to the purposes and policies of the Act," under the guidelines set forth in *Spielberg Manufacturing Co., supra*. The committee declined to consider Bate's argument that the Company had conditioned reinstatement of Frost on Bate's resignation as steward.

At the same committee meeting, a grievance over the discharge of road driver Allen Close, allegedly for a major chargeable accident, was resolved when the Company agreed to reduce his discharge to a disciplinary time off. Close returned to work a few days later, and he was still working for the Company at the time of this hearing. After Close returned to work, he and Elmer Shelley asked Barensen to put Frost back to work. Shelley testified that Barensen said that he was always open to talk, but that they would have to have an election for steward, because he could not talk to Bate, who was always hollering and yelling. Close, who was also presented as a witness for General Counsel, partially corroborated the testimony of Shelley. According to Close, Barensen said that his door was always open, but that he could not discuss it with Bate, who was "uncontrollable," but would discuss it with them. Barensen testified that when Shelley and Close asked him to recon-

sider the Frost case, he answered that his door was always open. However, Barese conceded that he never said this to Bate. Barese also failed to explain why he would answer that his "door is always open" on the Frost matter if, as testified by Barese and O'Malley, they had already decided not to reconsider their position on the Frost matter and had so informed Bate. Barese also admitted, on cross-examination, that he discussed "stewards" with Shelley and Close. Although General Counsel did not permit Barese to explain his answer, Company counsel, on redirect examination, could have afforded Barese an opportunity to do so. However, he did not. The paradox is again presented, i.e., that Barese, by his own admission, once again linked the matter of Frost to Bate's position as steward.

#### D. Concluding Findings

I credit the testimony of Shelley, Frost, and Bate. Shelley and Frost may fairly be characterized as disinterested witnesses, and therefore their testimony is entitled to great weight. At the time of this hearing both were still employed by the Company, and neither held any position with the Union. Moreover, Close was in the position of having regained his job because the Company agreed to downgrade his discharge to a disciplinary layoff. In these circumstances, it is unlikely that Shelley, and even more so Frost, would knowingly testify falsely against the Company. Moreover, as indicated, Barese's testimony is internally inconsistent and in some crucial respects tends to corroborate that of General Counsel's witnesses. Thus, by his own admission, discussion of Frost was continually paired with Bate's status as steward, and Barese left the door open to Shelley and Close while closing it in Bate's face, allegedly on the basis of a final decision not to reinstate Frost.

I find, as alleged in the complaint, that the Company, by Barese, conditioned reinstatement of Frost on the resignation of Bate as union steward. Specifically, Barese flatly informed the Union that if Bate resigned as steward, he would put Frost back to work. The Company thereby violated Section 8(a)(1) and (3) of the Act. The rights of employees and their union to be represented by persons of their choice "cannot be diluted in the absence of compelling evidence of legitimate considerations." *Dravo Corporation*, 228 NLRB 872, 874 (1977). No such considerations are present in this case. As the Company concedes in its brief, an employer cannot be justified in discriminating against one employee because of the union activities of another employee or employees. See *Associated Truck Lines, Inc.*, 188 NLRB 313, 316 (1971), and *Hoffman Beverage Company and Hoffman Beverage Company, Debtor In Possession*, 163 NLRB 981, 987 (1967), cited by the Company. Even if the Company had a legitimate excuse for refusing to deal with Bate, the Company could not lawfully hold Frost hostage to its demands. Frost was not a union officer or steward, and he was not responsible for the manner in which Bate presented the Union's position. The Company could not lawfully condition Frost's reinstatement on Bate's resignation any more than an employer could refuse to reinstate a striking employee because of picket line misconduct by another employee. Moreover,

Bate did not engage in any misconduct which might warrant employer refusal to deal with him. The Company's objection to Bate was based solely on Barese's animus toward him because he was an aggressive advocate. This is not a legitimate reason for refusing to deal with a union steward. *N.L.R.B. v. Gates Rubber Company*, 493 F.2d 249 (6th Cir. 1974). By conditioning the reinstatement of Frost upon the resignation of Bate, the Company discriminated against Frost because of Bate's union activity and interfered with the statutory rights of Bate by attempting to intimidate him in the performance of his responsibilities as union steward. Such conduct has a predictable tendency to discourage employees from serving and conscientiously performing their duties as stewards, from seeking union assistance in obtaining redress of their grievances, and generally from supporting their union. Compare *Dravo Corp.*, *supra*, 228 NLRB at 874.

Barese's position was not, as suggested by the Company, taken in an emotional outburst during a heated grievance session. Rather, Barese conveyed the Company's position to Shelley after he had full opportunity to deliberate and consult with other company officials. The Company adhered to that position even after the arbitration panel rejected Frost's grievance. Therefore, it is evident that the Company made a careful and calculated determination to tie the Frost matter to Bate's resignation. After Bate refused to resign, Barese intimated to Shelley and Close that the membership could get rid of him. Barese had hired Frost as a favor to the Union, and by tying the Frost matter to Bate's status, he saw an opportunity to create divisiveness within the Union and potentially to remove his antagonist Bate as steward or at least to tame him. However, I am not persuaded that Barese formulated this policy at the time of Frost's termination. On the evidence contained in this record, that argument never rises above the level of suspicion. As indicated, the evidence concerning the circumstances of Frost's termination is inconclusive, because the principal figures involved, i.e., Frost and Supervisor Yoder, were not presented as witnesses, and the evidence which did go into the record substantially consisted of hearsay. General Counsel introduced into evidence a determination by the Michigan State Employment Security Commission that Frost was entitled to unemployment compensation because he had not engaged in any misconduct, voluntary quit, or refusal of work which would disqualify him from receiving such benefits. However, the present record fails to indicate whether the Company contested Frost's claim. Therefore, the determination is not entitled to evidentiary weight in the present case. In these circumstances, it is not possible for me to find, as General Counsel would have me find (or, at least, as General Counsel argued at one point in this proceeding), that Frost was terminated for a pretextual reason and that the real reason related to Bate's status as steward. On the other hand, I am not persuaded that the evidence demonstrates, as the Company would have me find, that the Company would not have retained or reinstated Frost under any circumstances. On the contrary, Barese made clear to Shelley and Close, even after the arbitration hearing, that his door was still open on the Frost matter. The fact that Assistant Vice President O'Malley may have been opposed to reinstating

Frost does not establish that the Company would not have reinstated him. Although O'Malley normally hired road drivers, Barese made the original decision to hire Frost, and he could also have decided to reinstate him. Barese was the Company's spokesman at the grievance and arbitration hearings (O'Malley not even being present), and he presumably had authority to adjust grievances. In fact, Barese did offer to reinstate Frost, subject only to the unlawful condition that Bate resign as steward.

In sum, the evidence is inconclusive as to whether, absent the unlawful condition, the Company would or might have reinstated Frost. In these circumstances, Frost is entitled to the conventional remedy of reinstatement, together with backpay from August 22, the date of the Company's unlawful proposal. Where, as here, an employer offers an employee a job or promotion but couples the offer with an unlawful condition, the appropriate remedy is to place the employee in the position he would have been in but for the unlawful conduct, i.e., had the unlawful condition not been attached to the offer. *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 187-189 (1941); *Allis-Chalmers Corporation*, 231 NLRB 1207 (1977). Moreover, in cases where a respondent union or employer has engaged in misconduct which might have prevented an employee from obtaining or regaining a job, but the evidence is inconclusive on this point, the Board will normally resolve the doubt against the wrongdoer rather than against the wronged employee. Thus, where a union has violated its duty of fair representation in failing to process a grievance on behalf of an employee which, if successful, would have resulted in a promotion or retention of a job, the Board has directed such union to reimburse the employee as if the grievance were meritorious. *Laborers International Union of North America, Local 324, AFL-CIO (Centex Homes of California, Incorporated)*, 367, 234 NLRB (1978); *Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO (Federal Electric Corporation)*, 218 NLRB 396, 397 (1975). Likewise, where an employer has interfered with employees' right to have union representation during an interview with potential disciplinary consequences, the Board will normally direct the employer to rescind the discipline imposed and to make the employees whole for any losses they may have suffered by reason of the imposition of such discipline. *Certified Grocers of California, Ltd.*, 227 NLRB 1211, 1215 (1977); *Southwestern Bell Telephone Company*, 227 NLRB 1223, fn. 1 (1977); *Alfred M. Lewis, Inc.*, 229 NLRB 757, 759 (1977). The Board, in *Southwestern Bell* and *Lewis, supra*, referred to restoration of the "status quo ante." However, this was not the sole predicate for the Board's remedial orders in those cases. Indeed, restoration of the status quo ante in *Phelps Dodge*, *Centrex*, and *Federal Electric, supra*, would have left the employees involved without any affirmative relief.<sup>3</sup> Rather, as the Supreme Court made clear in *Phelps Dodge* and the Board made clear in *Federal*

*Electric*, anything less than reinstatement and restitution of losses would constitute an inadequate remedy which would fall short of effectuating the policies of the Act. In the present case, a prohibitive order and the posting of a notice, without more, would amount to little more than a slap on the wrist. The discrimination against Frost would remain unremedied, and Bate and his fellow employees would be left subject to the lingering effects of the Company's unlawful conduct, previously discussed. Therefore, reinstatement with backpay is warranted to provide an adequate remedy and to effectuate the policies of the Act.

#### CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By conditioning the reinstatement of Wendell Frost on the resignation of employee Richard Bate as union steward, the Company has violated and is violating Section 8(a)(1) and (3) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Company has committed violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Company discriminatorily conditioned reinstatement of Wendell Frost on the resignation of Richard Bate as union steward, it will be recommended, for the reasons heretofore discussed, that the Company be ordered to offer Frost immediate and full reinstatement to his former job or, if it no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings that he may have suffered from the time of his discharge to the date of the Company's offer of reinstatement. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner and amount prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>4</sup> It will also be recommended that the Company be required to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of backpay due. As the present case involves serious 8(a)(3) discriminatory conduct, I shall recommend that the Company be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act. See *Allis-Chalmers Corporation, supra*, 231 NLRB 1207, fn.3.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section

<sup>3</sup> "Status quo" has been judicially defined as "the last uncontested status which preceded the pending controversy." *Minnesota Mining and Manufacturing Company v. Meier*, 385 F.2d 265, 273 (8th Cir. 1967). Applying this test, restoration of the status quo in *Phelps Dodge*, would have left the employees in question (Curtis and Daugherty) as job applicants, the employee in *Federal Electric* without a retroactive promotion, and the employee in *Centrex* without a job.

<sup>4</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716, 717-721 (1962).

10(c) of the Act, I hereby issue the following recommended:

ORDER <sup>5</sup>

The Respondent, Associated Truck Lines, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Conditioning the reinstatement of Wendell Frost or any other employee on the resignation of Richard Bate or any other person as union steward.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

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

(a) Offer Wendell Frost immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights, and make him whole for losses he suffered by reason of the discrimination against him as 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, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(c) Post at its terminal in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for

<sup>5</sup> In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and 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.

<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."

Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it 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 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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 sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and to carry out its provisions.

WE WILL NOT condition the reinstatement of Wendell Frost or any other employee on the resignation of Richard Bate or any other person as union steward.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act, including the right to bargain collectively through representatives of their own choosing.

WE WILL offer Wendell Frost immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights, and make him whole for losses he suffered by reason of the discrimination against him.

ASSOCIATED TRUCK LINES, INC.