Airport Taxi Service, Inc. and Sea-Tac Taxi Service, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 763, Independent. Cases 19–CA–7617 and 19–CA–7720

July 22, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND MURPHY

On October 29, 1975, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, on April 26, 1977, Respondents filed exceptions and a supporting brief.[1]

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,[2] and conclusions 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 Respondents, Airport Taxi Service, Inc. and Sea-Tac Taxi Service, Inc., Seattle, Washington, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] On December 16, 1975, the Board adopted the findings, conclusions, and the recommended Order of the Administrative Law Judge in the absence of a proper statement of exceptions having been timely filed. Thereafter, on February 9, 1976, the Board applied to the United States Court of Appeals for the Ninth Circuit for entry of a summary judgment enforcing the Board's Order. On March 8, 1976, Respondents answered the Board's application and, on March 23, 1976, the court denied the Board's application. On April 15, 1976, the Board moved the court to reconsider the March 23, 1976, Order or, in the alternative, to remand the matter to the Board for consideration on the merits. The case is presently before the Board pursuant to an order of the court, dated May 5, 1976, remanding the proceeding to the Board for consideration on the merits. Thereafter, Respondents filed the instant exceptions to the Administrative Law Judge's Decision.

[2] The Respondents have 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 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

In finding that Respondents violated Sec. 8(a)(3) by discharging Ralph Snyder, the Administrative Law Judge relied in part on "Respondent's failure to give a reason for the discharge or to defend against it." We note that on June 9, 1975, in its response to the Board's Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted, Respondents did assert that Snyder was fired for "deliberate, willful damage to an engine of a 1973 Chevrolet." However, no evidence or testimony in support of this assertion was adduced at the hearing.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This matter was heard at Seattle, Washington, on September 30, 1975.[1]

On April 24 the Regional Director for Region 19 issued a complaint and notice of hearing in Case 19–CA–7617, alleging that Airport Taxi Service, Inc. (Respondent) has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. On May 21 the General Counsel filed with the Board in Washington, D.C., a Motion for Summary Judgment, submitting that Respondent failed to file an answer to the complaint. On May 30 the Board issued an order transferring proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On June 9 Respondent filed a response to the motion, denying, in substance, the allegations of the complaint and alleging financial inability to hire an attorney.

On May 15 said Regional Director issued a complaint and notice of hearing in Case 19–CA–7720, alleging that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act. On June 2 the General Counsel filed with the Board in Washington, D.C., a Motion for Summary Judgment, submitting, *inter alia,* that Respondent willfully defaulted in filing an answer to the complaint, as it defaulted in Case 19–CA–7617. On the same date General Counsel filed a motion for consolidation of cases, asserting that both cases involve identical parties and related unfair labor practice allegations.

On June 26 the Board denied the General Counsel's Motions for Summary Judgment in Cases 19–CA–7617 and 19–CA–7720 and remanded the proceedings to the Regional Director for appropriate action. The Board granted the General Counsel's motion for consolidation of Cases 19–CA–7617 and 19–CA–7720.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally and to file briefs. The filing of briefs was waived by General Counsel and Respondent.

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

[1] All dates hereinafter are within 1975, unless stated to be otherwise.

FINDINGS OF FACT

I. BUSINESS OF RESPONDENTS

Respondent Sea-Tac Taxi Service, Inc. (herein called Sea-Tac) and Respondent Airport Taxi Service, Inc. (herein called Airport) are, and at all times material herein have been, taxicab service enterprises engaging in transportation of passengers, primarily to and from Seattle-Tacoma International Airport.

Respondent Sea-Tac and Respondent Airport are State of Washington corporations having a common president and 95-percent shareholder in Eugene E. Sedille and a common manager of base operations in Mitchel DeFillips. The two Respondents share in common the following: a central business office, clerical and administrative personnel, dispatching personnel, public telephone number, dispatching base of operations near Seattle-Tacoma International Airport, and repair facility.

Cab driving employees operating vehicles owned by either Respondent Airport or Respondent Sea-Tac are paid by checks drawn on Respondent Airport's bank account and are regularly assigned by dispatchers to vehicles without regard to which corporation owns the assigned vehicle.

All matters and policies pertaining to hiring, firing, layoff, recall from layoff, wages, discipline, schedules, and other terms and conditions of employment of employees driving vehicles owned by either Respondent Airport or Respondent Sea-Tac are commonly determined and implemented.

By virtue of the foregoing, Respondent is and at all times material herein has been a single integrated taxicab enterprise and a single employer for purposes of the Act.

In the past calendar year, a representative period, Respondents Airport and Sea-Tac each have:

(a) Realized a gross business volume for the performance of retail services in excess of $500,000.

(b) Purchased in excess of $10,000 worth of materials, including gas, tires, and auto parts, which originated outside the State of Washington.

(c) Received in excess of $50,000 from airline passengers traveling through Seattle-Tacoma International Airport en route to or from points outside the State of Washington.

I find that both Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 763, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Alleged 8(a)(1) Assault*

Paragraph 9 of the complaint in Case 19–CA–7720 alleges that, on or about May 1, Sedille[2] physically assaulted and threatened to kill an employee because that employee had engaged in union or other protected activities.

Ralph Snyder testified as follows: he was employed by Respondent as a driver from February 1972 until he was fired March 12, 1975, except for the period from May 1974 until about November 1974. He was active in union organizational efforts at Respondent's place of business, and participated in union meetings and union authorization card distribution. He learned through conversations that Sedille was unalterably opposed to unionization of Respondent. On May 1 Snyder was distributing union information at Seattle-Tacoma Airport, and at other places in the vicinity of the Airport where Respondent's cabs customarily are parked. Snyder placed a union brochure under the windshield wiper of Sedille's car. Thereafter, Sedille followed in his car as Snyder left the parking lot where Sedille's car had been, and when the two cars stopped at a signal light, Sedille "came up to the car and started swinging, throwing punches in through the window, saying stay away from my drivers or I'll kill you." Sedille struck at Snyder five or six times and hit Snyder once, drawing blood on the left side of his lip. Snyder filed a criminal assault charge against Sedille the following morning, and the charge is pending.

Snyder was firm on cross-examination, and his testimony was neither contradicted nor seriously challenged. He is credited. No defense to the allegation was offered by Respondent.

It is found that this allegation of the complaint is proved.

B. *Alleged 8(a)(1) Violations of March 10*

Snyder testified that he met with Sedille and his manager of operations at Airport Taxi after work on March 10. Paragraphs 9(a) through (h) of the complaint in Case 19–CA–7617 allege violations by Sedille and DeFillips at that meeting. Respondent admits the allegations of paragraphs 9(a), (c), (d), and (g).

General Counsel introduced no evidence in support of paragraphs 9(e) and (h) of the complaint.

DeFillips acknowledged in his testimony that he told Snyder during the March 10 meeting that he (Snyder) could get fired for "trying to start a union on the port." It is found, therefore, that paragraph 9(b) of the complaint is proved.

Snyder testified that, during the meeting of March 10, Sedille said he would fire anyone caught engaging in union activity. That testimony was not challenged or contradicted. Snyder is credited. It is found that paragraph 9(f) of the complaint is proved.

[2] Admitted by Respondent to be president of Respondent.

C. *Alleged 8(a)(1) Violations of March 12*

General Counsel introduced no evidence in support of paragraph 9(i) of the complaint.

Snyder testified that, on March 12, Solberg[3] told him he (Snyder) had been fired for union activities, but that, upon finding out such was not permissible, Respondent rehired Snyder and tried to find another reason for discharge. That testimony was not challenged or contradicted. Snyder is credited. It is found that paragraph 9(j) of the complaint is proved.

D. *Alleged 8(a)(1) Violations of March 13*

DeFillips testified that, between March 10 and 15, "all around in that period. . . [he] had a conversation with quite a few employees . . . because [he] felt it was [his] job to know what's going on," and that he asked specifically about union activities and which employees wanted the Union. Further, Robert Farrish, a driver for Respondent, credibly testified that, on March 13, DeFillips asked him if he had signed a union card and when Farrish said he had not, DeFillips replied that was good, he did not want Farrish to be one of the parties who had signed.

It is found that paragraph 9(k) of the complaint is proved.

Farrish credibly testified he had a conversation with Robert Bowman[4] March 13, during which time DeFillips joined them and stated "he had heard two dispatchers had signed the union cards . . . and wanted to know if Mr. Bowman had signed one." Bowman said he hadn't, and DeFillips replied, "that was good."

It is found that paragraph 9(l) of the complaint is proved. It is also found that the foregoing statements made by DeFillips on March 13 constituted a threat, and that the allegations of paragraph 9(m) of the complaint were proved.

E. *Alleged Discharge of Snyder in Violation of Section 8(a)(3)*

Paragraph 10 of the complaint alleges that, on or about March 12, Respondent discharged Snyder because of his union activity.

Snyder's discharge on March 12 is acknowledged by Respondent, but Respondent denies that the reason was Snyder's union activity.

DeFillips testified that he was told by Sedille to fire Snyder, and that DeFillips left a note on the bulletin board for the dispatcher to notify Snyder that he was fired. DeFillips said that, so far as he knows, Sedille did not know about union activities on the premises prior to March 10. DeFillips acknowledged that he made extensive interrogations among employees about the Union, and he also acknowledged in his testimony that he told Snyder during the March 10 meeting that Snyder could get fired for "trying to start a union on the port."

Snyder testified that Sedille told him during the March 10 meeting that he would fire anyone caught engaging in union activity, and that Solberg first told him March 12 that he was fired for engaging in union activity, but later told him that such a reason was not permissible and that another reason would be found.

DeFillips testified that he and Sedille talked about union activities between the March 10 meeting and the time Snyder was fired.

Respondent offered no reason for firing Snyder. Sedille, who gave the order to discharge, did not appear or testify. No defense to the charge was offered.

In view of the statements made by DeFillips and Sedille on March 10 and later concerning union activities, as found above, the obvious union animus of Respondent, and the failure to give a reason for the discharge or to defend against it, the conclusion is inevitable that Snyder was fired for union activity.

It is found that this allegation of the complaint is proved.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, 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.

It has been found that Respondent unilaterally discharged Ralph Snyder on March 12, 1975. I will, therefore, recommend that Respondent offer said individual his former job, or, if that job no longer exists, a substantially equivalent job, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings suffered by reason of the discrimination against him, by payment to him of sums of money equal to that which he normally would have earned, absent the discrimination, less net earnings during such period, with backpay computed on a quarterly basis in the manner established in *F. W. Woolworth Company,* 90 NLRB 289 (1950), plus interest at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962). It will be further recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

Upon the basis of the foregoing findings of fact, and upon the entire record, I hereby make the following:

[3] Dennis Solberg, a dispatcher for Respondent, admitted by Respondent to be its agent and supervisor.

[4] Bowman is a dispatcher for Respondent, and admitted by Respondent to be its agent and supervisor.

CONCLUSIONS OF LAW

1. Airport Taxi Service, Inc. and Sea-Tac Taxi Service, Inc., are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 763, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following words and acts, Respondents interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed to them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act: physically assaulted and threatened to kill an employee; interrogated employees; told an employee he could be terminated for union activities; told an employee that if Respondent became unionized the business would be closed; told an employee that, if drivers became unionized, part of the business would be closed and transferred; told an employee that anyone engaging in union activities would be fired; threatened to break union efforts; told employees an employee had been fired for union activities; created the impression of surveillance; and threatened employees.

4. By discharging Ralph Snyder March 12, 1975, Respondents discriminated against its employees in violation of Section 8(a)(3) and 8(a)(1) of the Act.

5. Respondents did not, through alleged conduct, violate Section 8(a)(1) of the Act by its actions alleged in paragraphs 9(3), (h), and (i) of the complaint in Case 19–CA–7617.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[5]

The Respondent, Airport Taxi Service, Inc. and Sea-Tac Taxi Service, Inc., Seattle, Washington, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing their employees in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act, in violation of Section 8(a)(1) of the Act, by the following conduct: physically assaulting and threatening to kill employees; interrogating employees; telling employees they can be terminated for union activities; telling employees that, if Respondent becomes unionized, part of the business will be closed and transferred; telling employees that anyone engaging in union activities will be fired; threatening to break union efforts; telling employees other employees have been fired for union activities; creating the impression of surveillance; and threatening employees.

(b) Discriminating against their employees in violation of Section 8(a)(3) and (1) of the Act by termination of employment.

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

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Offer to Ralph Snyder, who was discharged March 12, 1975, full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for his loss of earnings in the manner set forth in the section of this decision entitled "The Remedy."

(b) Post at its place of business in Seattle, Washington, copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the allegations in paragraphs 9(e), (h) and (i) be dismissed in their entirety.

[5] 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.

[6] 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 sides had a chance to give evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice. We intend to carry out the Order of the Board, the judgment of any court, and to abide by the following:

The Act gives all employees these rights:

To organize themselves
To form, join, or help unions
To bargain collectively through representatives of their own choosing
To act together for collective bargaining or other mutual aid or protection
To refuse to do any or all of these things.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act, in violation of Section 8(a)(1) of the Act, by the following conduct: physically assaulting and threatening to kill employees; interrogating employees, telling employees they can be terminated for union activities; telling employees that, if Respondent becomes unionized, the business will be closed; telling employees that, if drivers become unionized, part of the business will be closed and transferred; telling employees that anyone engaging in union activities will be fired; threatening to break union efforts; telling employees other employees have been fired for union activities; creating the impression of surveillance; and threatening employees.

WE WILL NOT discriminate against our employees in violation of Section 8(a)(3) and (1) of the Act by termination of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer to Ralph Snyder, who was discharged March 12, 1975, full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for his loss of earnings.

AIRPORT TAXI SERVICE, INC. AND SEA-TAC TAXI SERVICE, INC.