The Terminal Taxi Company, d/b/a Yellow Cab Co. *and* John Trenchard. Case 1–CA–11320

May 13, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On December 7, 1976, Administrative Law Judge Karl H. Buschmann issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. The General Counsel has filed a brief in support of the Administrative Law Judge's Decision.

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[1] and to adopt his recommended Order, as modified herein.[2]

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 as modified below and hereby orders that the Respondent, The Terminal Taxi Company, d/b/a Yellow Cab Co., New Haven, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

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

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] The record shows and the Administrative Law Judge found that Mrs. Shirley Buckley, Respondent's president, told employees that the Company could not afford a union and would probably close down if the Union were voted in. Chairman Fanning and Member Jenkins find Buckley's remarks to be violative of Sec. 8(a)(1). *Starkville, Inc.*, 219 NLRB 595 (1975). Member Murphy notes that what Buckley actually said was "that, if a union ever came in and they went on strike, and we could not pay our insurance every month, then we would probably have to close down." She also notes that the Respondent presented financial records to support her prediction. Nevertheless, like the Administrative Law Judge, Member Murphy finds Buckley's remarks to be violative of Sec. 8(a)(1) when considered in the context of other violations of the Act.

[2] In par. 1(b) of his recommended Order, the Administrative Law Judge inadvertently omitted the broad injunctive language "in any other manner" which the Board traditionally provides in cases involving serious 8(a)(3) violations. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4, 1941). Accordingly, we shall modify his recommended Order and notice to provide such language.

APPENDIX

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

The National Labor Relations Act gives all our employees these rights:

To organize themselves
To form, join, or help unions
To bargain as a group through representatives they choose
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 unlawfully discharge any of our employees because of their union affection or because they engage in union activities.

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

WE WILL offer John Trenchard his job or, if his job no longer exists, a substantially equivalent job.

WE WILL restore his seniority and pay him the backpay he lost because we discharged him.

All our employees are free to remain, or refrain from becoming or remaining, members of a labor organization.

THE TERMINAL TAXI
COMPANY, D/B/A
YELLOW CAB CO.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge: On March 16, 1976, a complaint issued pursuant to a charge filed December 31, 1975, by John Trenchard, an individual. The complaint alleges three unfair labor practices: that Terminal Taxi Company (herein the Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act by terminating taxi driver Trenchard's employment; that Respondent violated Section 8(a)(1) when Shirley Buckley, president of Terminal Taxi Company, threatened employees with loss of employment, closure of the terminal, and other economic retaliation if the Union was selected as the employees' bargaining representative; and, that Respondent violated Section 8(a)(1) when Daniel Cicarelli, Terminal Taxi's vice president, threatened employees with discharge because of their union activities. Numerous factual allegations, including the jurisdictional allegations

of the complaint have been admitted; the commission of the above unfair labor practices has been denied.

A hearing in this case[1] was held before me on June 7 and 8, 1976, in New Haven, Connecticut. Briefs have been received from both counsel for the General Counsel and counsel for the Respondent and have been given serious consideration.

Upon the entire record in this case, I make the following:

FINDINGS OF FACT

Respondent, the Terminal Taxi Company, d/b/a Yellow Cab Company, is a Connecticut corporation, engaged in the taxicab service business at its terminal in New Haven, Connecticut. The complaint alleges, the answer admits, and I find that, at all times material, the Terminal Taxi Company has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Teamsters Local 443, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

According to the record, Terminal Taxi was a nonunion company prior to the present year. In the fall of 1975, after having been contacted by several of Respondent's taxi drivers, Teamsters Local 443 conducted an organizational campaign at Terminal Taxi. Respondent became aware of the union activity, since company officers discussed the prospect of a union with their employees. A petition for election was filed with the Board on December 8, 1975, in Case 1-RC-14171.[2]

In the latter part of 1975, Shirley Buckley, president and major stockholder of Terminal Taxi, talked to her employees in the dispatching room about the Union. Mentioning high insurance costs, she said "that, if a union ever came in and they went on strike, and we could not pay our insurance every month, then we would probably have to close down."

In early December 1975, Buckley discussed the Union specifically with Robert J. Kelley, a driver for the Company. Buckley told Kelly that she thought it unfair that he had become a union supporter. She stated that she considered it as "sort of backbiting" or evidence of disloyalty to the Company, particularly since he had been able to consult with her husband, an attorney free of charge, during the previous week. She admitted being angry and asked Kelley how he'd like it if she charged him $50 for her husband's time. Attempting to show him insurance accounts and gasoline bills she commented to Kelley that due to high gasoline and insurance bills the Company would close if a union came in.

On December 9, 1975, John Trenchard, a driver and the Charging Party, visited Buckley's office to discuss the "money situation." Buckley used the situation to talk about the Union. Referring to Trenchard as a union "big mouth," Buckley explained that Respondent could not afford a union. She offered him detailed information on insurance, maintenance, and repair costs. Trenchard examined the company books and received copies of financial statements for distribution to other drivers.

On December 13, 1975, Thomas Hacket, a taxi driver, was called into the terminal by Daniel Cicarelli, Respondent's vice president. Hacket was known by management to have been the prime organizer for the Union. Cicarelli first told Hacket that he had asked to see him because he might be able to help with a decision. He stated that the Company's insurance would be canceled if a union came in and there was a strike. He showed Hacket financial statements to indicate that Terminal Taxi could not afford a union. Finally, he directed Hacket's attention to the driving records of several employees, particularly referring to the records of Hacket, Richards, and that of John Trenchard. Both drivers, John Trenchard and Bobby Richards, had been longtime, good friends of Hacket's. Hacket noticed that Richards' driving record was the worst among the three and suggested that perhaps Cicarelli had a good case against Bobby Richards. Cicarelli ignored the mention of Richards and focused Hacket's attention on Trenchard's driving record, pointing to three previous accidents. Hacket countered that two of the accidents had been deemed nonpreventable. Cicarelli then proceeded to show Hacket a written statement of a complaint against Trenchard. Hacket noted that it was unusual that the statement had not yet been shown to Trenchard, and Hacket reminded Cicarelli that he, and not Trenchard, was the Union's prime organizer. But Cicarelli claimed that he had "heard differently." Hacket asked Cicarelli if any threats to discharge his friends were in retaliation for his own union activity. Cicarelli responded only that he could have "gotten Hacket" if he had wanted.

Hacket's uncontroverted testimony was that his driving record was almost flawless and that it would have been difficult for Cicarelli to justify terminating his employment. Hacket, who never before had been requested to help in making a management decision, felt that Cicarelli was after his friends because of his own involvement with the union organizational campaign.

During the same day, December 13, 1975, Bill Rosa, the Saturday night dispatcher, informed Trenchard that his name was on the "no-car" list. This meant that he was no longer permitted to drive, and that he had to seek permission from management to resume driving his taxi. Accordingly, Trenchard attempted to contact Cicarelli or the Buckleys on Sunday, December 14. They were unavailable and not at the terminal. On the morning of Monday, December 15, Trenchard inquired from Cicarelli why he was on the no-car list. Cicarelli responded that a Mrs. Torello had filed a complaint against him about an incident which occurred on Tuesday, December 9, and read her written statement to him. When Trenchard asked why he had not been notified of the complaint on Tuesday, the same day of the alleged incident, Cicarelli replied that he had not received the written statement until Saturday night. Trenchard then informed Cicarelli that he simply did not recall any incident on December 9. Cicarelli responded that he would have to review Trenchard's case. About 2 hours later, Trenchard returned to see Cicarelli who was

[1] General Counsel's unopposed motion to correct the transcript of the hearing is hereby granted.

[2] On May 10, 1976, the Board granted the petition.

out in the garage. Returning to the office, Cicarelli first asked Trenchard whether he remembered the name "Flood." Vividly recalling this conversation with Cicarelli, Trenchard testified as follows:

> I returned again about two hours later and he was out in the garage and I went out there and he says to me, he says, "Do you remember the name Flood?" I says, "No I don't." He says, "Well come up to the office," he says "I want to show you a similar incident." We proceed up to his office and he takes out this incident report and hands it to me and I'm reading along on a similar incident and then I look at the date and it's dated 1966, and I says well, "I can't recall this an incident that happened over nine years ago." He says, "Well," he says, "due to the fact that you got in two or three accidents in the last three or four months and this incident" he says, "I'm going to have to let you go," so I said to him, I says, "Well, the last three accidents," I says "two of them were considered non-preventable." I says "by the safety supervisor," so he turned around and said to me he says, "All accidents are preventable." I says, "Well, then, we don't have any rights at all then," so then I said to him, I says well, "Is that the story," I says "you're going to let me go," he says, "yes," I walked out.

Trenchard began working for Terminal Taxi in July 1966, and prior to his discharge on December 15 has been continuously employed there for 9 years. He had been regularly complimented by several of Respondent's officers as being an asset to the Company. Testimony indicated that he was regarded as a "high booker," a driver who turns in large proceeds. In November 1975, Trenchard signed a union authorization card. He was active in the organizational campaign, attending several union meetings. Also he was a longtime friend of Hacket, prime organizer for the Union. Testimony shows that Respondent was aware of Trenchard's union involvement and his close friendship with Hacket.

Of the three accidents in the 5-month period, Trenchard admitted being at fault in the first accident which occurred on August 21, 1975, at the intersection of Chapel and Winthrop. The second accident which occurred September 20, 1975, at the intersection of Frank and West was determined "nonpreventable" by David Hendrickson, Respondent's safety supervisor. Cicarelli who had gone to observe the scene of the accident had tried in vain to persuade Hendrickson and convince him that the accident was preventable. Nevertheless, in connection with this incident, Trenchard had signed a statement to the effect that involvement in future "preventable" intersection accidents could be grounds for dismissal. At the bottom of this statement, Hendrickson had noted that "possible negligence is doubtful." The third accident, which occurred December 10, 1975, on Chapel, was also considered "nonpreventable" and Trenchard was not suspended for the accident.

On December 9, 1975, 1 day prior to the third accident, a Dorothy Torello complained that Trenchard went through a red light and almost hit her on Whitney Avenue. Terminal Taxi requested that Torello file a written complaint. Because of Torello's age, a company representative went to her home and took her statement on December 12, 1975. Trenchard's meter card shows that he was in the area at the time, but it also indicates that Trenchard probably made a u-turn one block short of the intersection at which Torello was standing.

Analysis

1. *The alleged unlawful discharge:* The contention of the General Counsel is that Trenchard's discharge was motivated by his union support and his longstanding friendship with Hacket, the main union organizer at Respondent's facilities, in violation of Section 8(a)(1) and (3) of the Act. Respondent argues that Trenchard was fired solely for a legitimate business reason, his poor driving record. I find that the General Counsel has shown by a preponderance of the evidence that antiunion motivation triggered Trenchard's discharge. See *N.L.R.B.* v. *Great Dane Trailers, Inc.*, 388 U.S. 26 (1967).

Trenchard was active in the Union's organizational campaign during the autumn of 1975. He had signed a union card in November, attended several of the Local's meetings, and discussed the advantages of a union with other Terminal Taxi employees. Respondent was well aware of Trenchard's union activity. In early December, Buckley referred to him as a union "big mouth" because he had talked with other drivers about the Union. And Cicarelli's remark that he "heard differently" when Hacket informed him that Trenchard was not the organizer illustrates Respondent's suspicions about Trenchard's union support. In addition, it was known that Trenchard and Hacket, the Union's prime organizer at the terminal, were close personal friends.

It was no secret that Respondent was opposed to the Union and its efforts to organize the employees at Terminal Taxi. Buckley candidly admitted that the idea of a union coming into the Company made her angry. In her conversation with Kelley she made it clear that to her mind union support meant disloyalty to the Company. Furthermore, in his conversation with Hacket 2 days prior to Trenchard's discharge, Cicarelli threatened to fire employees for union activity. The discharge of Trenchard followed the filing of an election petition by exactly 1 week.

Trenchard had been employed for 9 years by Terminal Taxi at the time of his discharge. Prior to the 5-month period in question, he had a good driving record with only few accidents. Respondent regarded Trenchard as a high "booker" and an asset to the Company for which the Company's officers had complimented him regularly during his tenure. With such a record, his sudden discharge, 1 week after the election petition, was too abrupt to be unrelated to the Union. Although Trenchard admitted fault in the first accident in August, both, the second accident in September and the third in December, were considered nonpreventable. After the second accident Trenchard was warned that another *intersection* accident *could* be grounds for dismissal. The third accident could hardly justify dismissal; it was not an intersection accident, it was nonpreventable and Trenchard was not given any time off for it. Finally, the handling of the complaint by Torello was not according to the usual routine and,

therefore, suspect. Four persons testified that, once a complaint is lodged, the driver is ordinarily called into the office to fill out a report. The driver is usually given the option of confronting the accuser. Trenchard was not notified of the complaint until almost a week later, and 3 days after the written statement was received. He was not able to confront Torello and was not allowed to read her statement.

General Counsel argues that Torello could not have recognized Trenchard because his driving records indicate that he was not at that intersection at the time in question. Torello could have been mistaken, but I have no reason to doubt Torello's credibility as a witness and her conviction that Trenchard almost hit her as she attempted to cross an intersection. Her testimony, as a deponent prior to the hearing, was unshakable and her demeanor forthright. However, I find Respondent's reaction to the Torello report exaggerated and incongruent with its customary procedure.

Respondent claims that Trenchard was fired for failure to abide by company rules. Yet, Respondent admits that it has no firm rules governing discharges for safety reasons. Accident frequency and intersection accidents do not necessarily lead to discharge. To be sure, several drivers were discharged after one accident, but they had been with the Company only a short time. Several drivers were not discharged, even though they had been in more than three intersection accidents. For example, Bobby Richards, whose driving record was poor and far worse than Trenchard's, was not discharged. Another employee, Patricia Sutherland, was involved in two intersection accidents and one rear end collision in a 3-month period and was not discharged, even though the reports indicate that she was negligent in both intersection accidents. Marianne Davis was not discharged until after she had accumulated a record of five accidents within a period of 5 months. Frank Raucci was not fired after four accidents. Only his failure to report an accident finally prompted his discharge. And Brian Lawler was involved in three accidents during a 3-month period and suspected of having been drinking on the job. Yet, he was merely suspended during the pendency of an accident investigation and finally left his employment rather than accept the suspension.

Im my opinion, Trenchard was singled out to serve as an example to other union supporters, particularly his friend Hacket, the main union organizer. Trenchard clearly received disparate treatment which indicates that but for his union activity he would not have been discharged. Even if Respondent had succeeded in establishing a good reason for the discharge, General Counsel has shown that his union support and his close friendship with the main union organizer was at least partially a reason for Respondent's action against him. The Board has held: Where the discharge of an employee is motivated in any part whatsoever by the purpose to discourage legitimate union or concerted activity, the existence of contemporaneous, legitimate grounds for such discharge affords no defense to a finding of an unfair labor practice on the part of the employer. *Hugh H. Wilson Corporation,* 171 NLRB 1040 (1968), enfd. 414 F.2d 1345 (C.A. 3, 1969); *N.L.R.B.* v. *Whitefield Pickle Company,* 374 F.2d 576 (C.A. 5, 1967); *N.L.R.B.* v. *Barberton Plastics Products, Inc.,* 354 F.2d 66 (C.A. 6, 1965). Thus, the discharge by Terminal Taxi of Trenchard, which was motivated by his union activities, was a violation of Section 8(a)(1) and (3) of the Act.

2. *Alleged 8(a)(1) threats by Shirley Buckley:* Buckley, president of Terminal Taxi, candidly stated that she was angry about her employees' union support. She considered it unfair, in the nature of "backbiting," and evidence of disloyalty for the employees to vote for the Union. She unequivocally stated to her employees, especially Trenchard and Kelley, that the Company could not afford a union and would probably close down if the Union were voted in. She offered and, in certain instances, did support her statements with documents showing the Company's predicament with the insurance company and the high cost of gasoline.

Her testimony was forthright, perfectly candid, and credible. And if I were to examine her conduct separate and apart from the other allegations in the complaint, I might have concluded that no violation of Section 8(a)(1) was shown. An employer is free to communicate to her employees her general views about unionism and specifically indicate her preference as long as no threats of reprisals or force or promise of a benefit is made. Even her statements, to the effect that the Company would have to close down if the Union came in and a strike were called, can be considered a prediction of economic realities, particularly where, as here, such predictions are accompanied by a revelation of the Company's financial records. In short, the question here is exceedingly narrow as to whether Respondent's president uttered threats or mere factual predictions intertwined with expressions of personal preferences.

The balance of Respondent's practices swing in favor of prohibited conduct when all surrounding circumstances are considered. First and foremost in this consideration is Respondent's unlawful conduct of discriminatorily discharging Trenchard. This discharge must have created the intended effect on the employees, particularly to Hacket, the main union organizer and friend of Trenchard. Second, the record shows that the Company had no firm and predictable rules. Under such a system, employees feel relatively more insecure and are inclined to view their employer's statements with more suspicion and apprehension. Third, the statements under scrutiny were made by Respondent's president and major stockholder which may have indicated to the employees that these statements were not meant as idle conversation but meaningful remarks with obvious design.

For these reasons, I find that Buckley's conduct violated Section 8(a)(1) of the Act. *N.L.R.B.* v. *Gissel Packing Co., Inc.,* 395 U.S. 575, 618 (1969), rehearing denied 396 U.S. 869.

3. *Alleged 8(a)(1) threats by Daniel Cicarelli:* General Counsel contends that Respondent, through its vice president, Daniel Cicarelli, threatened employees with discharge because of their union activities. The record shows that Cicarelli conferred with driver Hacket on December 13, 1975, about the possible discharge of Trenchard and the consequences of any organizational

attempts by the employees. Cicarelli began the conversation with a discussion of the Company's insurance costs and the financial consequences if a union were selected as the bargaining representative for the employees. Cicarelli, disclosing financial statements to Hacket, attempted to convince him that the Company could not afford a union. The conversation then turned to driving records, and Cicarelli ignored Hacket's remarks about the poor driving record of Bobby Richards. Instead, Cicarelli focused attention on Trenchard's record of three accidents. While Hacket argued that two of those accidents were regarded as nonpreventable, Cicarelli merely responded that all accidents are preventable and simply refused to discuss the details of Trenchard's driving records any further. When Hacket reminded him that he, Hacket, and not Trenchard, was the union organizer, Cicarelli said he had "heard differently."

The record further discloses that Hacket had otherwise never been consulted on a management decision as to whether an employee should be discharged on the basis of a bad driving record. Clearly, since Hacket was both the Union's prime organizer and Trenchard's good friend, Cicarelli applied subtle pressure to convince Hacket to discontinue his efforts on behalf of the Union. The discharge of Trenchard was solely within the control of the employer and the remarks about Trenchard's driving record, the statements about the Company's inability to afford a union, and the veiled threat against Trenchard, were threats within the meaning of *Gissel, supra,* and in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, the Terminal Taxi Company, is an employer within the meaning of Section 2(2) of the Act and engaged in commerce within the meaning of Section 2(6) of the Act.
2. The Union, Local 443, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. By unlawfully discharging John Trenchard on December 15, 1975, Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.
4. Respondent, by its president, Shirley Buckley, and its vice president, Daniel Cicarelli, violated Section 8(a)(1) of the Act by interfering with, restraining, or coercing several of its employees because of their efforts to form, join, or assist a labor organization.

THE REMEDY

Having found that Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I recommend that Respondent be ordered to cease and desist from its unlawful practices. I further recommend that Respondent be ordered to post an appropriate notice and take affirmative action in order to effectuate the policies of the Act.

In addition, I recommend that John Trenchard be offered full and immediate reinstatement with backpay, computed as provided in *F. W. Woolworth Company,* 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I recommend the issuance of the following recommended:

ORDER[3]

The Respondent, The Terminal Taxi Company, d/b/a Yellow Cab Co., New Haven, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in any labor organization by discriminatorily discharging any of its employees or discriminating in any other manner with respect to their hire or tenure of employment or any term or condition of employment in violation of Section 8(a)(3) of the Act.

(b) Unlawfully interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Offer John Trenchard immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, and make him whole for any loss of pay that he may have suffered by reason of the Respondent's discrimination against him in accordance with the recommendations set forth herein under "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 under the terms of this recommended Order.

(c) Post at its New Haven, Connecticut, terminal copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 1, 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 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 1, in writing within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[3] 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.

[4] In the event the Board's Order is enforced by a Judgment of the 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."