

In the Matter of SOUTH JERSEY COACH LINES and AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, A. F. OF L.

Case No. 4-CA-338.—Decided December 18, 1950

DECISION AND ORDER

On September 26, 1950, Trial Examiner Bertram G. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions.

The record in this case shows that at the time of the hearing in the earlier unfair labor practice case involving this Employer,² Healy was on vacation and that he actively participated in those proceedings. He not only testified therein in support of the complaint against the Respondent, but sat at the counsel table with the representative of the General Counsel for a substantial part of the proceedings. The record in the earlier case disclosed an expressed intention of the Employer to "find . . . the (Union) instigator . . . if he (had) to fire each one individually," and that the Respondent had in fact discriminatorily discharged two employees.

With this background in mind, the evidence surrounding Healy's discharge becomes highly significant. Upon return from his vacation, spent in part in assisting the General Counsel in his prosecution of the earlier case, Healy was, without convincing explanation, transferred from the desirable Atlantic City-Wilmington run to a less

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

² *South Jersey Coach Lines*, 89 NLRB 1260.

desirable position as alternate for other drivers on the Bridgeton-Millville run. Men junior to Healy remained on the Wilmington-Atlantic City run. When a sufficient number of drivers had returned from their vacation to obviate the necessity of a regularly employed relief driver on the Bridgeton run, Healy was discharged. The Respondent contends that Healy in fact quit. The Trial Examiner credits Healy's testimony that he was discharged. We see no reason for disturbing this finding. Our belief in this matter is buttressed by the fact that at the time of the termination of his employment by Respondent, Healy was given a week's severance pay, an action not consonant with the Respondent's contention that Healy had quit. As the Intermediate Report shows, there was admittedly sufficient work for Healy.

Under all the circumstances we conclude that the Respondent first transferred Healy from the Atlantic City-Wilmington run and then discharged him because of his testimony in the prior proceeding. Accordingly, we find that his transfer and subsequent discharge was in violation of Section 8 (a) (3) and (4) of the Act.³

The Remedy

As recommended by the Trial Examiner, we shall order the Respondent to offer to the discharged employee listed in our Order, reinstatement with back pay from the date of the discrimination against him. The Board has adopted a method of computing back pay different from that prescribed by the Trial Examiner.⁴ Consistent with that new policy, we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of reinstatement or a proper offer of reinstatement. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting, from a sum equal to that which this employee would normally have earned for each quarter or portion thereof, his net earnings,⁵ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

³ *Underwood Machinery Company*, 79 NLRB 1287; *Sandy Hill Iron and Brass Works*, 69 NLRB 355.

⁴ *F. W. Woolworth Company*, 90 NLRB 289.

⁵ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawful discrimination, and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

We shall also order, in accordance with the *Woolworth* decision, *supra*, that the Respondent, upon request, make available to the Board and its agents all pertinent records.

We expressly reserve the right to modify the back-pay and reinstatement provisions if made necessary by circumstances not now apparent.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, South Jersey Coach Lines, Bridgeton, New Jersey, a New Jersey corporation, its agents, officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., or in any other labor organization of its employees, by discharging, refusing to reinstate, or by discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., or any other organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from such activities, except to the extent that such right may be effected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

(a) Offer to John Healy, Jr., immediate and full reinstatement as a bus operator on the Atlantic City, New Jersey, to Wilmington, Delaware, route or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole in the manner set forth in the section entitled "The Remedy" for any loss of pay which he may have suffered by reason of the Respondent's discrimination against him;

(b) 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 necessary to analyze the amounts of back pay due and the right of reinstatement under the terms of the Order;

(c) Post at its office in Bridgeton, New Jersey, copies of the notice attached hereto marked Appendix.⁶ Copies of said notice, to be furnished by the Regional Director for the Fourth Region, after being signed by representatives of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Fourth Region in writing, within ten (10) days from the date of the receipt of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, A. F. OF L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL OFFER to the employee named below immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

John Healy, Jr.

All our employees are free to become or remain members of the afore-named union or any other labor organization. We will not

⁶ In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the notice before the words, "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SOUTH JERSEY COACH LINES,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

Julius Topal, Esq., for the General Counsel.

Harry Adler, Esq., of Bridgeton, N. J., for Respondent.

Mr. Charles D. Cicchino and *Mr. Ellwyn McGirr*, for the Petitioner, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L.

STATEMENT OF THE CASE

Upon a charge duly filed by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., herein called the Union, the General Counsel of the National Labor Relations Board, respectively called herein the General Counsel and the Board, by the Regional Director of the Fourth Region (Philadelphia, Pennsylvania), issued a complaint dated May 11, 1950, against South Jersey Coach Lines, herein called the Respondent, alleging that the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (4), and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

With respect to the unfair labor practices, the complaint alleges that the Respondent (1) did on or about November 12, 1949, discriminate against John Healy, Jr., employed in its bus operations by transferring him to less desirable work and by decreasing the amount of his pay; and (2) did on or about December 25, 1949, discharge John Healy and failed and refused to reinstate him for the reason that he gave testimony under the National Labor Relations Act and that he joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The Respondent filed an answer in which it denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Bridgeton, New Jersey, July 5, 1950, before the undersigned Trial Examiner. The General Counsel and the Respondent were represented by counsel, and the Union by its representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. The General Counsel offered a mimeographed copy of the Board's Decision and Order in Case No. 4-CA-168 in evidence which was admitted without objection. At the close of the whole case the General Counsel moved to conform the pleadings to the proof, as to names, dates, and minor variances. The motion was granted. Counsel for Respondent moved to dismiss the complaint at the close of the

General Counsel's case and again moved at the close of the whole case on the grounds that the General Counsel had failed to establish a *prima facie* case. These motions were denied.

The General Counsel and the Respondent waived oral argument before the Trial Examiner at the close of the hearing. Though all parties were afforded an opportunity to file briefs or proposed findings of fact and conclusions of law, or both, with the Trial Examiner, Counsel did not avail themselves of this opportunity.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New Jersey corporation, with its principal office and place of business at Bridgeton, New Jersey. It is engaged in the transportation of passengers and baggage for hire; maintaining a scheduled routine of busses to and from points in the State of New Jersey with terminals at Atlantic City in the State of New Jersey and Wilmington in the State of Delaware. It also charters busses in New Jersey for passengers seeking to travel to points and places in other States.

During the year 1949, the total approximate revenue of the Respondent from its operations was \$75,000. Of this amount, approximately \$45,000 was obtained from interstate bus operations between Wilmington, Delaware, and Atlantic City, New Jersey, and \$15,000 was obtained from bus operations from the State of New Jersey to and through other States of the United States.

During the same year the Respondent paid bridge and ferry tolls from and to the State of New Jersey amounting in value to approximately \$9,000 and expended the sum of approximately \$15,000 for fuel, principally gasoline, which originated outside the State of New Jersey. The Respondent concedes that it is engaged in interstate commerce.¹

The Trial Examiner finds that Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The surrounding facts and circumstances*

On November 8, 9, and 10, 1949, a hearing was held at Bridgeton, New Jersey, by the Board in which the parties in this case were also the charging party and Respondent respectively. The Board thereafter and on May 15, 1950, adopted the findings, conclusions, and recommendations of the Trial Examiner who found that Respondent had violated *inter alia*, rights of employees guaranteed in Section 7 of the Act in engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

¹ *South Jersey Coach Lines, et al.*, 89 NLRB 1260, 4-CA-338. The Board on May 15, 1950, adopted a Trial Examiner's Report and found *inter alia* that Respondent is engaged in commerce and that its operations affect commerce within the meaning of the Act.

John Healy, Jr., the dischargee herein, an employee of Respondent, was on vacation at the time when that hearing was held and attended all the sessions. He was called as a witness by the General Counsel on two different days. He was consulted by the General Counsel during the course of the hearing and made suggestions to him of questions to be asked of Respondent's witnesses.

Healy had been employed as a bus operator on Respondent's Atlantic City, New Jersey, to Wilmington, Delaware, route, from the date of his first employment by Respondent in September 1946 to November 12, 1949, the expiration of his vacation.

Healy at the end of his vacation on November 12 and after the close of the hearing on November 10, reported for work and was assigned by Johnson, coowner with his wife of Respondent, to the Bridgeton-Millville route. Johnson gave him no reason for his transfer from the Atlantic City-Wilmington route. The route was a comparatively short one requiring only 1 hour for a round trip, while the Atlantic City-Wilmington route was scheduled for 1 round trip a day. Some of the schedules on the Atlantic City route consumed only 7 hours for the round trip while others required 8, 9, and 10 hours. The Atlantic City-Wilmington drivers rotated on these schedules so that each had the benefit of shorter hours on certain of the trips when his turn came. The operators were paid at the rate of \$7.84 a round trip and had the further advantage throughout the summer of making additional trips, while the operators on the Bridgeton-Millville route had to complete 10 round trips of 1 hour each to receive \$7.84 for the day's work. Healy was kept on after the Board hearing in November 1949 as an operator during the vacations of the Bridgeton-Millville operators until December 25, at which time the vacations came to an end. At the November hearing held by the Board in Case No. 4-CA-168, Healy testified credibly as follows: "Well he asked me what we was trying to do to him; asked me if I joined the Union. I said 'No.' He said: 'Well, did you sign the card?' I said 'No I didn't see no cards around there.' . . . He says he will get to the bottom and find out who the instigator is if he has to fire each one individually."²

B. *The discharge of John Healy*

On Sunday, Christmas day, 1949, Healy reported for work at the usual morning hour and spoke to Johnson as to Monday's assignment, as he knew that the vacations were then over. He testified as follows:

A. Day after, on a Monday, he (Johnson) said he didn't know. He said, "Stop back in at two o'clock when you get done work"; which I did.

Q. (By Mr. TOPAL.) Tell us what conversation you had with Mr. Johnson at two o'clock that afternoon?

A. He says he didn't have nothing for me. He says he didn't know what I was going to do. He says "I understand that you got another job that you are going to which I told him it wasn't the truth, because I had nothing in view or looked for anything." He says, "Well, I don't know what you are going to do, I haven't got nothing for you and you had better look for another job." So I says, "What does that mean, I am finished?" He says, "That is about the size of it." I asked him if he wanted me to turn my tickets in now. He says "Wait until Tuesday morning when the office is open."

Q. Do you recall what day of the week that was?

A. A Sunday.

² *South Jersey Coach Lines, et al.*, 89 NLRB 1260, May 15, 1950.

On Tuesday morning Healy went to the office of Respondent and spoke to Mrs. Johnson. He testified as to that conversation as follows:

A. I said good morning to her and she said good morning, and I handed her in my tickets, all my cash earnings and she checked me out for them, to make sure everything was right, and I asked her, I said, "Do you know why I am getting fired," and she says "No, I don't." I didn't know nothing about it until Edwin and I was discussing it the other night about changing drivers around and he told me he let you go.

I said, "Well, if you don't know I will inform you." Due to the fact that I testified for the Government at the hearing. She says, "Well, I don't know nothing about it." She says, "I am sorry." I asked her to pay me off for the three days' work that I did. She asked me if I had my pay slip ready and I said, "Yes." She says, "Do you want the money now or do you want to wait until Saturday?" I said, "No, I may as well take it now because I don't know where I will be Saturday." She gave it to me. Then I said to her, "Isn't it customary to give a person a week's notice when you are going to let him go for no reason at all or to pay him for that week?" She said she didn't know. She said she would have to see Edwin, and she went over to the garage and talked to Edwin and gave me a week's notice pay.

Respondent's contention was threefold: (a) In that it had withdrawn one of the busses on the Atlantic City-Wilmington line and for that reason there was no further need for Healy's services after the vacation period was over; (b) that he had intended to quit and had accepted a job elsewhere; (c) and that he had no right to assume that he had been discharged by reason of any talk which he had with Johnson on Christmas day but on the other hand he had left of his own volition and did not report for work on the following day.

It is undisputed that one of the schedules on the Atlantic City-Wilmington route had been discontinued for the winter. The following quoted testimony of Johnson:

Q. Well, if you—did you intend to dismiss him?

A. No, sir.

Q. Did you intend to keep him?

A. Yes.

Q. Did you intend to put him on the Atlantic City run, if necessary?

A. Yes.

Q. Would you have found a place for him?

A. Yes, I would have found a place for him.

and that of Mrs. Johnson:

Q. So there were no further drivers for him to fill in after that week?

A. There was still busses to be greased in the garage; there was still busses to be worked on; there was plenty of work.

Q. There was plenty of work?

A. There was work that he could have done.

leads to the conclusion that Healy's discharge was not occasioned by the withdrawal of a bus schedule.

Conclusions

The Trial Examiner finds by credible substantial evidence that John Healy, Jr., was discriminatorily discharged as an employee of Respondent by Edwin Johnson, president and coowner of Respondent on Christmas day, 1949, by

reason of the fact that he had appeared and was examined as a witness on behalf of the National Labor Relations Board in the matter of South Jersey Coach Lines and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., Case No. 4-CA-338, at a hearing held by said Board from November 8 to 10, 1949, inclusive at Bridgeton, New Jersey. Healy took an active part thereat in assisting and advising the General Counsel while conducting the hearing into alleged violations of the provisions of the Act.

The Trial Examiner believes and finds that Healy is an honest and believable witness and his version of the conversations had with Johnson on the day of his discharge is to be credited. His narration of the circumstances of his discharge are in many respects confirmed and supported by the testimony of Mr. and Mrs. Johnson. He was given a week's pay after his discharge by Mrs. Johnson which was authorized by Johnson. Such a payment is rather unusual to be made to an employee who quits employment voluntarily.

The act of Johnson in assigning Healy to the Bridgeton-Millville route on his return from his vacation several days after the hearing in Case No. 4-CA-338, was, in the Trial Examiner's opinion, done by Johnson to retaliate against Healy for his activities as a witness and advisor to the General Counsel in the preparation and prosecution of the complaint against the Respondent for its alleged violations of the Act.

The questionable or possible contention of Respondent that Healy had taken or was about to take another job seems unreasonable and hardly merits consideration. Healy denies any such contention. The Trial Examiner finds that there is no believable evidence supporting such contention of Respondent. He never told Johnson that he was going to resign. He had no other job in sight. He had told and discussed with fellow employees at various times his desire to sell his furniture so that he could get out of debt and return with his family to his father's home some 10 miles from Bridgeton. His rent in Bridgeton was \$60 per month. After his discharge he got in touch with Mr. McGirr and Mr. Reed of the Union. He was out of work for a period of 9 weeks following his discharge. The charge dated January 5, 1950, was made by the Union within a short space of time after his discharge.

The Trial Examiner has not discussed in detail the testimony of Respondent's witnesses Georges, Moore, Craner, De John, and Eller as he is of the opinion that it is of no materiality either in the refutation of the dischargee's claim of his discriminatory discharge by the Respondent or in confirmation of the testimony of Johnson and his wife at the time of Healy's discharge.

There is substantial evidence in the record which preponderates in favor of Healy that he was discharged by Respondent because of his appearance as a witness and took an active part in the presentation of grievances against Respondent at a hearing held by the Board. The transfer of Healy to the Bridgeton-Millville route and his discharge by Respondent on Christmas day, 1949, were unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (a) (3), and (a) (4), and Section 2 (6) and (7) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation 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 the Respondent has engaged in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Respondent's fixed intention to defeat its employees' efforts toward self-organization, as manifested by the discharge of John Healy, Jr., after he had appeared and testified at a hearing conducted by the Board, thereof indicates such a disregard of its employees' rights under the Act as to convince the Trial Examiner that there exists a danger of the repetition of like violations in the future and of the commission of other unfair labor practices proscribed by the Act. Unless the recommended order is coextensive with the threat, the preventative purposes of the Act will be thwarted. Accordingly, in order to effectuate the policies of the Act, to make more effective the interdependent guarantees of Section 7, and to deter the Respondent from future violations of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

As to the discriminatorily discharged employee, it will be recommended that the Respondent offer him immediate and full reinstatement as a bus operator on the Atlantic City, New Jersey, to Wilmington, Delaware, route or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the Respondent's offer of reinstatement, less his net earnings during said period.

Upon the basis of the above findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of John Healy, Jr., thereby discouraging membership in Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (4) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume.]