

employee, or prospective employee, who does not have a work referral from the Respondent.¹¹

The Respondent having committed unfair labor practices which resulted in the termination of Vowell's employment, it will be recommended that the Respondent make him whole for losses suffered by reason of the Respondent's unlawful conduct,¹² by payment to him of a sum of money equal to the amount he normally would have earned as wages from January 3, 1951, the date of his release from employment, to 5 days after the date when the Respondent notifies Sesco in writing that it has no objection to his being employed without a referral, less Vowell's net earnings, if any, during such period, computed on a quarterly basis in the manner established in the *Woolworth* case.¹³

Upon the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Sesco Contractors is, and at all times material herein was, an employer within the meaning of Section 2 (2) of the Act, and engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. The Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 621, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By causing Sesco Contractors to discharge and refuse thereafter to reemploy Thomas K. Vowell because he did not have a work referral from the Respondent in violation of Section 8 (a) (3), the Respondent has engaged in unfair labor practices within the meaning of Section 8 (b) (2) and 8 (b) (1) 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.

[Recommendations omitted from publication in this volume.]

¹¹ There is no recommendation herein that the agreement between Sesco and the Knoxville Building Trades Council be invalidated, as neither Sesco nor the Council are parties in this proceeding. *Consolidated Edison Co.*, 305 U. S. 197.

¹² The nonjoinder of the Employer as a respondent herein does not in any way lessen the liability of Local 621. *National Union of Marine Cooks and Stewards, C. I. O. and George C. Quinley*, 92 NLRB 877.

¹³ *F. W. Woolworth Company*, 90 NLRB 289.

CASHMAN AUTO COMPANY *and* LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND LODGE 1898 OF DISTRICT 38 OF INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

RED CAB COMPANY *and* LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND LODGE 1898 OF DISTRICT 38 OF INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. *Cases Nos. 1-CA-875 and 1-CA-876. March 26, 1952*

Decision and Order

On September 10, 1951, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that 98 NLRB No. 134.

the Respondents had engaged in and were engaging in certain unfair labor practices in violation of the Act, and recommending that the Respondents cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report.¹

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

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

1. The Trial Examiner found, and we agree, that the Respondents are joint employers engaged in commerce within the meaning of the Act. The record shows clearly that the Respondents, although separate corporations, constitute a single employer by virtue of their common ownership and control, their integration of operation and organization through interchange and mutual use of work, equipment, and personnel, and their use of common supervision, offices, and clerical personnel, among other factors.² It is contended that Respondent Red Cab is not engaged in commerce within the meaning of the Act either individually or together with Respondent Cashman Auto Company.³ We do not agree. Respondent Red Cab, the record shows, transports passengers to and from railway stations, airports, and bus terminals. The Board has recently held that operations of this type constitute an essential link in services performed by instrumentalities of commerce and that it will effectuate the policies of the Act to assert jurisdiction over such enterprises.⁴ Accordingly, we find that Respondents Red Cab and Cashman Auto Company constitute a single employer, that they are engaged both separately and jointly in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction over these companies.

¹ The Respondents' request for oral argument is hereby denied, as the record and the exceptions adequately present the facts, issues, and positions of the parties.

² See *The McMahon Transportation Company, Inc.*, 89 NLRB 1652.

³ The Respondents stipulated that the Cashman Auto Company is engaged in commerce within the meaning of the Act. See *Aedris Baxter and Ben Baxter, d/b/a Baxter Bros.*, 91 NLRB 1480.

⁴ See *Rate Rate Cab Company*, 95 NLRB 571; *Red Cab, Inc.*, 92 NLRB 175; *Skyview Transportation Company*, 92 NLRB 1664; and *W. C. King, d/b/a Local Transit Lines*, 91 NLRB 623.

2. The Respondents further contend that employees Shawcross, Pignato, and Marshall were discharged for cause. The record does not support this assertion. The testimony at the hearing was not clear as to whether or not the Respondents had determined, as of January 27, 1951, the date of the discharges, that a number of employees would have to be discharged in order to reduce costs.⁵ The record is clear, however, that whether or not such a decision might have been made, these three men were selected for discharge because of their activity on behalf of the Union. Their activity in organizing the employees was open and was known to the Respondents, both because of the admissions of the men, themselves, and because of interrogation by the Respondents. As the testimony conclusively shows that Marshall, Pignato, and Shawcross were discharged as the ultimate result of this activity and the knowledge thereof by the Respondents, we find, as did the Trial Examiner, that the Respondents thereby violated Section 8 (a) (3) and 8 (a) (1) of the Act.

3. We further find, as did the Trial Examiner, that the Respondents by interrogation and the making of implied threats of reprisal interfered with, restrained, and coerced their employees in violation of Section 8 (a) (1) of the Act.

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 Respondents, Cashman Auto Company and Red Cab Company, Brookline, Massachusetts, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Lodge 1898 of District 38 of International Association of Machinists, AFL, or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any manner in regard to their hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing their employees in the right to self-organization, to form labor organizations, to join or assist the above-named labor organizations or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted

⁵ The necessity for reduction of personnel because of economic reasons was the major defense relied upon by the Respondents. The Trial Examiner found, and we agree, that the other reasons cited for the discharge of these three men were not substantiated by the record and are patent afterthoughts.

activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of 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.

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

(a) Offer to Francis D. Marshall, Nunzio J. Pignato, and Glennon E. Shawcross immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights, and make them whole for any loss of wages suffered as a result of discrimination against them in the manner described in "The Remedy" section of the Intermediate Report.

(b) Post at their plants in Brookline, Massachusetts, the notice attached hereto marked "Appendix A."⁶ Copies of such notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondents' authorized representative, be posted by the Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

Appendix A

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, as amended, 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 LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND LODGE 1898 OF DISTRICT 38 OF INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, or any other labor organization, to bargain collectively through repre-

⁶ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

sentatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or 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 employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them:

Francis D. Marshall
Nunzio J. Pignato
Glennon E. Shawcross

All our employees are free to become or remain members of LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND LODGE 1898 OF DISTRICT 38 OF INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, or any other labor organization or to refrain from any such activity, 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 not 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.

CASHMAN AUTO COMPANY,
RED CAB COMPANY,
Employer.

By _____
(Representative) (Title)

Dated _____

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

Intermediate Report

STATEMENT OF THE CASE

Upon charges duly filed by Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of International Association of Machinists, A. F. L., collectively called the Union herein, the General Counsel of the National Labor Relations Board, respectively called herein the General Counsel and the Board, by the Regional Director for the First Region (Boston, Massachusetts), consolidated

the above-entitled cases by order dated June 21, 1951, and issued a complaint on the same date, against Cashman Auto Company and Red Cab Company, herein called Respondent Cashman and Respondent Red Cab, respectively, or at times referred to collectively as the Respondents, alleging that the Respondents have engaged in, and are engaging in, 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, 61 Stat. 136, herein called the Act.

With respect to the unfair labor practices, the complaint alleges that (1) Respondent Red Cab is a wholly owned subsidiary of Respondent Cashman, and is a joint employer with Respondent Cashman of the employees involved herein; (2) from on or about January 8, 1951, the Respondents engaged in certain acts of interference, restraint, and coercion; and (3) on or about January 27, 1951, the Respondents discharged Francis D. Marshall, Nunzio J. Pignato, and Glennon E. Shawcross, and thereafter failed and refused to reinstate them for the reason that they had joined or assisted the Union or had engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The Respondents filed separate answers in which they denied the jurisdictional allegations of the complaint and the commission of any unfair labor practices. Both answers also denied that Respondent Red Cab is a wholly owned subsidiary of, or a joint employer with, Respondent Cashman.

Pursuant to notice, a hearing was held at Boston, Massachusetts, from July 16 to 20, 1951, inclusive, before the undersigned Trial Examiner. The General Counsel and the Respondents 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. At the start of the hearing, counsel for the Respondents moved to sever the case against Respondent Red Cab from that against Respondent Cashman. The motion was denied. The Respondents renewed the motion to sever at the close of the hearing. Ruling on the motion was reserved. The motion to sever is hereby denied. The General Counsel moved to conform the pleadings to the proof, as to names, dates, and other minor variances. The motion was granted without objection. The General Counsel and Respondents have filed briefs with the Trial Examiner after the close of the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

A. *Cashman Auto Company*

Respondent Cashman is a Massachusetts corporation with its office and place of business in Brookline, Massachusetts. It is a franchised dealer of Chrysler-Plymouth automobiles, and also deals in used automobiles.

During the calendar year 1950, its gross sales amounted to \$731,116.16. The cost to Respondent Cashman of the goods sold during said period amounted to \$662,516.42.

It was stipulated at the hearing that Respondent Cashman is engaged in interstate commerce within the meaning of the Act.

B. *Red Cab Company*

Respondent Red Cab is a Massachusetts corporation with its principal office and place of business in Brookline, Massachusetts. It is engaged in the trans-

portation of passengers by taxicab to and from various locations within Massachusetts, principally in or near Brookline, including bus terminals, railroad stations, and the Logan International Airport at East Boston.

During the calendar year 1950, its gross receipts amounted to \$610,423.78. All of its taxicabs, parts, gasoline, and various other items used in the conduct of its business are purchased through Respondent Cashman. It appears that such purchases for the most part are made either at cost or at a nominal profit to Respondent Cashman. Respondent Red Cab leases its tires from the B. F. Goodrich Tire Company, of Akron, Ohio. Tires which are on the taxicabs when purchased are removed and stored "in reserve" on the premises of Respondent Cashman.

C. Corporate and business connections of the Respondents

Edward F. Cashman is the president, treasurer, and a director of both Respondents. Through a trust, he either owns or controls about 100 percent of the stock of Respondent Cashman, and about 90 percent of the stock of Respondent Red Cab. He actively manages and determines the business affairs of both Respondents, including personnel and labor relations. Cashman's sister, Florence Cashman, also is a director of both Respondents.

William Macdonald is a supervisory employee, within the meaning of the Act, of Respondent Red Cab; and he is a director of Respondent Cashman. He receives a weekly salary from each Respondent. The evidence also indicates that Macdonald acted as the "General Manager" for both Respondents.¹

Both Respondents occupy a common office in Brookline and have the same office manager and clerical force. Each have telephones in this office.

Respondent Cashman's premises consist of two adjacent buildings, where it has its repair and body shops and parts department. Respondent Red Cab's repair shop and drivers' room also are located on these premises under a rental agreement. Respondent Red Cab also stores its equipment on this property. Arthur Bradford is the "night service manager" of both Respondents.

The evidence discloses an interchange of employees and integration of the work of both Respondents. Employees at times were transferred from the payroll of one Respondent to that of the other. In at least one instance, a mechanic of Respondent Cashman was assigned temporarily to the repair shop of Respondent Red Cab; and he remained on Respondent Cashman's payroll during that time. When he first was hired by Macdonald, employee Shawcross was assigned to work in the repair shop of Respondent Red Cab by the foreman of Respondent Cashman's repair shop. Employees of Respondent Cashman frequently performed work on the cabs of Respondent Red Cab. It appears that no specific charge was made to Respondent Red Cab on much of this work as it was not covered by "job tickets."

Accordingly, from all of the evidence I find that the Respondents are joint employers as alleged in the complaint.² I further find that the Respondents are engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and Lodge 1898 of District 38 of the

¹ The Respondents contend that Macdonald was not the general manager. However, the testimony discloses that Macdonald gave orders to supervisors and employees of both Respondents; and that when he answered the telephone, he identified himself as the general manager. The employees, including Benjamin Tileston, who formerly was the office manager for both Respondents, considered Macdonald to be the general manager.

² *Clarksburg Paper Co.*, 80 NLRB 1304; *Mission Oil Co.*, 88 NLRB 743.

International Association of Machinists, A. F. L., are labor organizations which admit to membership employees of the Respondents.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events; interference, restraint, and coercion*

During the early part of January 1951, Glenn Shawcross, a mechanic in the repair shop of Respondent Red Cab, secured union-authorization cards from a representative of the Union.³ A committee of three was formed for the purpose of organizing the Respondents' employees. Shawcross, Frank Marshall, and Nunzio Pignato, employees of Respondent Cashman, were the members of this committee; and thereafter they spoke to other employees about the Union and solicited them to sign union cards.

On January 18, 1951, General Manager Macdonald questioned Herbert Norton, an employee of Respondent Cashman, as to what he knew about the Union. It is found that Macdonald's interrogation of Norton constitutes interference, restraint, and coercion.

After the above conversation and at about 5:30 p. m. that same day, Macdonald had a conversation with Shawcross and James Lannigan, an employee of Respondent Cashman. Macdonald said to Shawcross, "I have just heard the shop is 70 percent union. Do you know anything about it?" Lannigan said that Marshall had told him that fact when he (Marshall) asked him to join the Union. Macdonald then related a story about the union organization of Respondent Red Cab's drivers and stated, "We hunted and hunted and never found the instigator to this day. That is what we are looking for now. We want to find the instigator." Macdonald asked Shawcross if he was a "union man"; and Shawcross replied that he had been a member of the Union for a number of years. Norton and employee McGovern then joined the group. Concerning the ensuing conversation, Norton testified credibly as follows:

This time Shawcross was in there, and this time both McGovern and I went inside. The first thing I got inside the door Macdonald came over to me and asked what was this about 70 percent of the shop being Union. . . . About 70 percent of the shop being Union. So I didn't know what was going on or anything, and I didn't want to get in trouble; so I just told him that I didn't know anything about it. I just let them talk a bit so I could catch on to what they was talking about, and then he started talking to Glenn Shawcross, and he told Glenn that they didn't need the Union in the shop there, that Mr. Cashman had always been willing to help out anybody that needed any help and that Mr. Cashman had always helped out, you know; and he cited several cases where Mr. Cashman had helped out people that needed help, people that was down and out. And all the time Mr. Macdonald kept repeating he wanted to get at the bottom; he wanted to get at the instigator. He said this several times, probably half a dozen, at least.

So we started in to go home, and we got outside the door of the drivers' room, and Bill Macdonald asked me if I belonged to the Union, . . .

Shawcross told Bill Macdonald I had joined the Union when I worked at Fay's, so naturally I had been a Union man. So then we started in to go, and Macdonald said, "Well, if you hear anything, I want to know. I want to get at the bottom of this. I want the instigator."

³ At the hearing the General Counsel stated for the record that the Respondent's employees "were joining that local—that joint committee of that local of the Teamsters and the IAM. They were joining both organizations."

From the above remarks of Macdonald, it is clear that he was interrogating the employees concerning their union membership and sympathies and that he was making implied threats of reprisal. Accordingly, it is found that by such statements the Respondents interfered with, restrained, and coerced their employees.

During the morning of January 19, Shawcross approached Macdonald and told him that he was "the instigator" of the union movement. Macdonald then took Shawcross to the office and talked to him for more than an hour about the Union. During this conversation, Macdonald questioned Shawcross as to why he had started the Union in the plant and concerning the number of employees who were adherents of the Union. He stated that no employee would be discharged because of union activity and that he did not understand why "Pignato should be dissatisfied." It is found that Macdonald's interrogation of Shawcross constitutes interference.

On January 23, Macdonald spoke to Fred Healy, a mechanic in Respondent Cashman's repair shop. Macdonald asked Healy what he thought about the Union and if he was a member. When Healy told him that he had not joined the Union, Macdonald said, "We will find out who started this . . . and nip it in the bud before it gets started." It is found that Macdonald's statements to Healy constitute interference.

On January 26, Marshall, Edwin Gorman, foreman of Respondent Cashman's repair shop, and employee Fagan met in a tavern after working hours. During a discussion of the Union, Gorman stated that "they have known right along" that Marshall was "a hundred per cent union man."

Marshall, Pignato, and Shawcross were discharged on January 27, 1951. Gorman discharged Marshall and Pignato, telling them that he was acting upon instructions from Bradford, the night service manager. Frank Poskus, foreman of Respondent Red Cab's repair shop, similarly notified Shawcross of his discharge. No reasons for the discharges were given at the time.

On January 30, Macdonald again spoke to Healy and asked him if he had heard anything further about the Union. It is found that Macdonald's interrogation of Healy constitutes interference, restraint, and coercion.

B. *The discharge*

Marshall was employed by Respondent Cashman as a mechanic in its repair shop since about July 1948. It appears from the record that he was one of the most experienced and highest paid mechanics in that shop. He performed almost all of the automatic transmission work of Respondent Cashman. There were two or three of such jobs in the shop each week, on the average. During the summer of 1950, when Marshall was on his vacation, Healy worked on an automatic transmission but was unable to complete it. Marshall was called back from his vacation to perform the work. For an undisclosed period of time after Marshall's discharge, Respondent Cashman sent its automatic transmission work to another company. Thereafter, it appears that employee Lannigan performed most of such work. As related above, Gorman was the foreman in Respondent Cashman's repair shop.

Pignato first was employed as a mechanic's helper by Respondent Cashman during about 1946. At the time of his discharge, he was "assistant parts man." It appears that this job for the most part required Pignato to go to various concerns in or near Brookline or Boston in order to obtain parts for Respondent Cashman's parts department. He also operated a towing truck, which involved making service calls for both Respondent Cashman and Respondent Red Cab. After Pignato's discharge, his duties were absorbed by other employees of the Respondents, one of whom was a cab inspector of Respondent Red Cab,

Shawcross was employed as a mechanic in the repair shop of Respondent Red Cab. He was hired about September 1950, or at about the same time as his foreman, Poskus. It is undisputed that Shawcross was an experienced mechanic and that he taught Poskus how to use some of the machinery and equipment in the shop.

In substance, the Respondents contend that because of "a serious decline in business" during 1950 it became necessary to reduce personnel; that Marshall "had been guilty of excessive absenteeism"; that with respect to Pignato, it was decided that the employment of "a special employee" for operation of a "pickup truck" was not warranted; and that Shawcross was "the last person hired [as a mechanic] and therefore, ranked last in seniority" Respondents' witnesses, including Edward Cashman, testified to the effect that the Respondents lost money during the calendar year of 1950; and that insofar as the loss of Respondent Cashman was concerned, it mainly was attributable to the repair shop. Copies of tax returns for the Commonwealth of Massachusetts were received in evidence. These returns purport to show that during the calendar year 1950 Respondent Cashman sustained a loss of \$11,466.26; and that Respondent Red Cab lost \$1,377.43.⁴

There is no claim by the Respondents that there was a lack of work in the repair shops. In fact, the evidence conclusively shows otherwise. Before and after the discharges, Respondent Cashman employed part-time mechanics for holiday, Sunday, and night work. The regular workweek of the employees in the repair shops was 54 hours, except for Marshall who worked only 50 hours since he did not work on Saturdays. The evidence discloses that the employees performed considerable overtime work for which they were paid time and a half. Pignato worked about 60 hours per week.

Cashman testified to the effect that at sometime during January he decided to reduce personnel upon the advice of the "experts"; that he conferred with Gorman and Poskus and told them that they would have to discharge some men; and that he left the selection of the men to be discharged to their discretion. Eileen Driscoll testified that she conferred with Cashman at sometime during January; that at about that time and after reviewing "statements" which had been prepared by Respondents' auditors, she came to the conclusion that the repair shop of Respondent Cashman was overstaffed; and that as of the date of her testimony her conclusions with respect to Respondent Red Cab were not completed.⁵

As found above, at the time of the discharges, Gorman and Poskus told the employees that orders for the terminations had come to them through Bradford, the night service manager. Marshall also testified credibly that at the time Gorman told him, "I was told to let you go. I had nothing to do with it"; and that about a month after his discharge he spoke to Bradford who told him that the night before the discharges Cashman told him (Bradford) to direct the day supervisors to discharge the employees.⁶ Cashman testified "I don't remember" when questioned as to whether he had given Bradford the names of

⁴ These exhibits were received over the objection of the General Counsel. Eileen Driscoll, an efficiency expert whose firm had been retained by the Respondents for some months before the hearing, testified, in substance, that she had not prepared the original returns, that the figures on the exhibits were copied by her from the originals; and that she checked the figures thereon with the original records of the Respondents.

⁵ Office Manager Tileston testified that he had no knowledge of any efficiency experts or any other such persons examining Respondents' books and records at any time until shortly before he resigned his position in March. Driscoll at first testified that she started her work for the Respondents on about March 16.

⁶ Bradford did not appear at the hearing as a witness.

the employees to be discharged. Poskus testified "I don't recall" when asked if Bradford had told him to discharge Shawcross.

Gorman testified that Marshall frequently was absent from work without authorization. He also testified that Pignato took too much time when he was away from the shop after parts. Poskus testified concerning an alleged incident when Shawcross threw down his tools in anger. Their testimony in this connection apparently was offered to show the reasons why they allegedly selected Marshall, Pignato, and Shawcross for discharge. However, it is clear from the credible evidence, and I find, that Bradford told Gorman and Poskus which employees were to be discharged. Further, it is apparent from the credible evidence that these alleged reasons for discharge were afterthoughts or pretexts.⁷

In my opinion the General Counsel made a *prima facie* case of discrimination against the three employees involved. The Respondents failed to meet this with substantial evidence. Accordingly, I find that by discharging Marshall, Pignato, and Shawcross on January 27, 1951, the Respondents violated Section 8 (a) (3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Respondents 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 Respondents have engaged in unfair labor practices, the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondents on January 27, 1951, discriminatorily discharged Francis D. Marshall, Nunzio J. Pignato, and Glennon E. Shawcross. At the hearing on July 18, 1951, the Respondents offered the three employees immediate and full reinstatement. Notwithstanding such offer, it will be recommended that the Respondents offer each of the said employees immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges. It will be further recommended that the Respondents make whole each of the said employees for any loss of pay he may have suffered by reason of the Respondents' discrimination by payment of a sum of money equal to that which each would have earned as wages from the date of the discrimination to July 18, 1951, the date of Respondents' offer of reinstatement at the hearing less his net earnings during said period. Loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondents' discriminatory action to the date of a proper offer of reinstatement. The quarterly periods, hereincalled 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 which he would normally have earned for each such quarter or portion thereof, his net earnings, if any, in other employment during that period. Earnings in

⁷ Healy testified that during 1950 he was absent from work without authorization at least four times. He was still in the employ of Respondent Cashman at the time of the hearing. Shawcross admitted getting angry upon occasion, but denied throwing his tools on the floor. His denial is credited.

one particular quarter shall have no effect upon the back-pay liability for any other quarter. In accordance with the *Woolworth* decision,⁸ it will be recommended that Respondents, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay.

It also has been found that the Respondents engaged in certain acts of interference, restraint, and coercion. The unfair labor practices found reveal on the part of the Respondents such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated. The preventive purposes of the Act may be frustrated unless the Respondents are required to take some affirmative action to dispel the threat. It will be recommended, therefore, that the Respondents cease and desist from in any manner interfering with, restraining, or coercing their employees in the exercise of rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. Local 841, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L. and Lodge 1898 of District 38 of International Association of Machinists, A. F. L., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees named above, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) 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.

[Recommendations omitted from publication in this volume.]

⁸ *F. W. Woolworth Co.*, 90 NLRB 289.

CALVINE COTTON MILLS, INC., PLANT No. 2 and TEXTILE WORKERS UNION OF AMERICA, CIO, PETITIONER. *Case No. 34-RC-314. March 27, 1952*

Decision and Order

On May 24, 1951, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Fifth Region, among employees in the stipulated unit. Upon the completion of the election, a tally of ballots was furnished to the parties. The tally reveals that of approximately 125 eligible voters, 116 valid