and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of the National Labor Relations Act.

2. Textile Workers Union of America, CIO, is a labor organization admitting to membership employees of the Respondent.

3. Upon a consideration of the entire record,[2] the Board in agreement with the Trial Examiner finds that the evidence here, though raising a strong suspicion of discriminatory motivation,[3] fails to constitute the preponderance necessary to establish that the Respondent was illegally motivated in terminating the employment of and in refusing to reemploy Mary Gabrish and Dorothy Gingery. We shall therefore dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

[2] In reaching its conclusions herein, the Board has taken administrative notice of its Decision and Order in Western Fishing Lines Co., 103 NLRB 1408, in which the Respondent was found to have engaged in conduct violative of Section 8 (a) (1), (2), and (3) of the Act. Accordingly, the motion of the General Counsel to remand the instant case to the Trial Examiner for such purpose is denied. See Mission Oil Company, 93 NLRB 1215.

[3] The Board has held that suspicion alone is not sufficient evidence on which to base a finding of illegal discrimination. Strachan Shipping Company, 87 NLRB 431.

McALLISTER TRANSFER, INC., Petitioner *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, GENERAL DRIVERS AND HELPERS LOCAL NO. 554, AFL, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL NO. 608, AFL, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, TRUCK DRIVERS AND HELPERS LOCAL NO. 784, AFL. Case No. 17-RM-70. June 25, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Martin Sacks, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to

a three-member panel [Members Houston, Styles, and Peterson].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The Employer, operating from its home terminal in York, Nebraska, is engaged in the trucking business, and derives most of its revenue from the interlining of interstate freight shipped to and from Omaha and Lincoln, Nebraska.

On February 4, 1953, the Unions sought recognition from the Employer as bargaining representatives of its employees, which the Employer denied. At the hearing, the Unions disclaimed majority representation, stating that they did so because the Employer had dissipated their majority status by alleged unfair labor practices.[1]

The Employer contends that the Unions' disclaimer did not eliminate the question concerning representation because the Unions were concurrently pursuing conduct inconsistent with a disclaimer. Over the objection of the Unions, the Employer testified, in substance, that when the Unions first sought recognition they admitted they did not represent any of its employees but stated that if the Employer did not sign a contract with them in a week or so, its interline freight would be cut off; that it has not recognized or signed a contract with the Unions; and that since February 13, 1953, and up to the time of the hearing, members of the Unions employed at the Omaha and Lincoln, Nebraska, terminals, under instructions from the Unions, have refused to load or unload freight for the Employer's trucks.[2] The Unions did not controvert this testimony and their motion to strike it was denied by the hearing officer. This they contend was error, on the ground that evidence of alleged unfair labor practices is inadmissible in a representation case. We reject this contention and uphold the hearing officer's ruling, as the disputed testimony was elicited not to prove unfair labor practices on the part of the Unions but to show conduct rendering their alleged disclaimer ineffective to remove the question concerning representation.[3]

[1] Shortly after the hearing, on March 23, 1953, the Unions filed charges against the Employer in Case No. 17-CA-639 On April 16, 1953, the Regional Director approved a settlement agreement in which the Unions would not join, and no appeal was taken from his refusal to issue a complaint.

[2] In this connection, on March 9, 1953, in Case No. 17-CC-18, the Employer filed charges against the Unions alleging an unlawful boycott which charges it waived as an objection to the election sought herein. A complaint was authorized on April 7, 1953, and a decree for an injunction under Section 10 (1) of the Act was entered by the United States District Court for the District of Nebraska, Lincoln Division, on April 22, 1953.

[3] Cf. Morganton Full Fashioned Hosiery Company, etc , 102 NLRB 134

A disclaimer of representation must be clear and equivocal. When a union engages in conduct inconsistent with its express disclaimer, the Board holds such disclaimer to be equivocal and therefore ineffective to remove the question concerning representation in an employer petition.[4] Accordingly, as it appears in the instant case that the Unions' activity in cutting off the Employer's interline freight business was due to, and remained an affirmation of, their original demand for recognition, we find their alleged disclaimer ineffective.[5] The Unions' motion to dismiss the petition on the ground of their disclaimer is therefore denied.

4. We find that all over-the-road truckdrivers, city drivers, and helpers, and dockmen and helpers employed by the Employer at its York, Nebraska, terminal, excluding clerical employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining.[6]

[Text of Direction of Election omitted from publication.]

[4] Kimel Shoe Company, 97 NLRB 127, and cases cited therein.
[5] Cf. Coca-Cola Bottling Co. of Walla Walla, Washington, 80 NLRB 1063.
[6] This is the unit set forth in the petition. The Unions took no position as to the appropriate unit.

HOWARD-COOPER CORPORATION[1] *and* GARAGE EMPLOYEES UNION LOCAL NO. 44, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F. of L., Petitioner. Case No. 19-RC-1297. June 25, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Donald D. McFeely, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

[1] Name appears as amended at the hearing.