

The Petitioner contends that the Employer, without bargaining with the Union, had no right in any event to take these employees out of the bargaining unit by giving them supervisory duties, and that the work of the assistant district gaugers has remained primarily the same.

The assignment of particular duties has been recognized by the Board as a prerogative of management. The only question for determination is whether such supervisory duties have in fact been conferred upon the individuals concerned.<sup>2</sup>

Although there appears to be an unusually large number of supervisors in proportion to men supervised, the situation is explained by the fact that the great distances between the Employer's operations necessitate decentralized responsibility. Accordingly, because it is clear that the assistant district gaugers have in fact been clothed with the supervisory powers outlined above, we find that they are supervisors within the meaning of the Act.<sup>3</sup>

As it appears that the Employer does not question the majority status of the Petitioner and that neither party desires an election, we find that no 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. Accordingly, we shall dismiss the petition.<sup>4</sup>

[The Board dismissed the petition.]

<sup>2</sup>See American Finishing Company, 86 NLRB 412; The Baltimore Transit Company, 92 NLRB 1260.

<sup>3</sup>Continental Pipe Line Co., 78 NLRB 379.

<sup>4</sup>W K.B.H, Inc , 81 NLRB 63; see also Lake Tankers Corporation, 79 NLRB 442; Houston Terminal Warehouse et als., 107 NLRB 290

SOUTHERN OXYGEN COMPANY, INC. *and* TRUCK DRIVERS AND HELPERS, LOCAL 355, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL. Case No. 5-CA-693. January 20, 1954

### DECISION AND ORDER

On August 11, 1953, Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging 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. The Trial Examiner found further that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of those allegations of

the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by 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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification:<sup>1</sup>

In agreement with the Trial Examiner, and for the reasons detailed in the Intermediate Report, we find that the Respondent's conduct in discharging four drivers on February 11, 1953, was in violation of Section 8 (a) (1) of the Act. However, we find it unnecessary to decide whether or not this conduct was also violative of Section 8 (a) (3) of the Act inasmuch as the remedy necessary to effectuate the policies of the Act is identical in either case.<sup>2</sup>

### ORDER

Upon the entire record in this case, pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Southern Oxygen Company, Inc., Bladensburg, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees for presenting grievances or otherwise engaging in concerted activities for mutual aid or protection.

(b) In any other manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form or join labor organizations, 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 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 James Cammarata, Henry J. Nebel, Joseph Owen, and William Wild immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

<sup>1</sup>The request of the Respondent for oral argument is hereby denied, as the record, including the brief and the exceptions, adequately presents the issues and the positions of the parties.

<sup>2</sup>Cowles Publishing Company, 106 NLRB 801.

(b) Make whole the aforesaid four employees for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section entitled "The Remedy" in the Intermediate Report herein.

(c) 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 records necessary to determine the amounts of back pay due.

(d) Post at its plant at Bladensburg, Maryland, copies of the notice attached hereto, marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent or its representative, 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.

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

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges a violation of Section 8 (a) (3) of the Act and the commission of acts of interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act, other than those acts specifically found hereinabove to be violative of the Act.

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<sup>3</sup> 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."

## 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, we hereby notify our employees that:

WE WILL NOT discharge or otherwise discriminate against our employees for presenting grievances or otherwise engaging in concerted activities for mutual aid and protection.

WE WILL NOT in any other 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 any 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 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.

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.

James Cammarata  
Henry J. Nebel  
Joseph Owen  
William Wild

All our employees are free to become or remain members of any labor organization. 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 labor organization.

SOUTHERN OXYGEN COMPANY, INC.,  
Employer.

Dated ..... By.....  
(Representative) (Title)

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 and Recommended Order**

**STATEMENT OF THE CASE**

Upon a charge filed by Truck Drivers and Helpers, Local 355, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein referred to as the Union, the General Counsel of the National Labor Relations Board<sup>1</sup> by the Regional Director for the Fifth Region (Baltimore, Maryland), on March 20, 1953, issued a complaint against Southern Oxygen Company, Inc, herein referred to as the Respondent or the Company, alleging that the Respondent had engaged in and was engaging in unfair labor practices 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. Copies of the charge, complaint, and notice of hearing were served upon the parties.

With respect to unfair labor practices, the complaint alleges in substance that on or about February 11, 1953, the Respondent discharged four employees, James Cammarata,

<sup>1</sup>The term General Counsel, as used herein, includes the attorney representing the General Counsel at the hearing. The National Labor Relations Board is referred to as the Board.

Henry J. Nebel, Joseph Owen, and William Wild, and thereafter failed and refused to reinstate them, because of their union and concerted activities, by these and certain other activities, the Respondent has interfered, restrained, and coerced its employees in the exercise of the rights guaranteed in the exercise of the rights guaranteed in the Act.

The Respondent in its answer, dated March 26, 1953, admits certain jurisdictional allegations, admits the discharge of the four employees named in the complaint, denies the commission of any unfair labor practices, and affirmatively asserts that these individuals were discharged pursuant to a plan of reorganization and decentralization in which they were selected for discharge as the least desirable employees in their employment category.

Pursuant to notice a hearing was held at Washington, D. C., before the undersigned Trial Examiner. All parties were represented at the hearing and were afforded full opportunity to be heard and to examine and cross-examine witnesses. At the conclusion of the hearing, the General Counsel moved to conform the pleadings to the proof as to formal matters. This motion was granted as to all pleadings without objection. The General Counsel and the Respondent then presented oral argument. An opportunity was also afforded for the filing of briefs and/or proposed findings of fact or conclusions of law or both. None were submitted.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Delaware corporation with an office and place of business in Bladensburg, Maryland. It is engaged in the manufacture of compressed gas and certain welding equipment for industrial and medical accounts. Operations are conducted at 4 main producing plants, and approximately 12 district offices and 50 branches.

The Bladensburg plant, where the alleged unfair labor practices occurred, is a main producing plant. Respondent in the normal course of its business at that plant uses raw materials valued in excess of \$250,000 annually, of which it causes and has continuously caused more than 75 percent annually to be purchased, transported, and delivered in interstate commerce from and through States of the United States, other than the State of Maryland, to its Bladensburg plant, and has manufactured, sold, and distributed finished products valued in excess of \$1,000,000 annually, of which it causes and has continuously caused more than 75 percent annually to be supplied, transported, and delivered in interstate commerce to and through States of the United States, other than the State of Maryland, from its Bladensburg plant.

The Respondent concedes that at all times here relevant it has been engaged in commerce within the meaning of the Act and the undersigned so finds.

### II. THE LABOR ORGANIZATION INVOLVED

Truck Drivers and Helpers, Local 355, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, is a labor organization within the meaning of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. The discharges

##### 1. The background

The Bladensburg plant is a main producing plant serving certain district and branch offices. Prior to February 11, 1953, over-the-road delivery operations were centered at Bladensburg. That is, a group of drivers from this central headquarters made deliveries to company offices in Virginia and other States. These district offices and branches, in turn, had their own staffs and equipment to make local or city deliveries. City drivers were also employed at Bladensburg to make deliveries in the Washington, D. C., area. There were 10 over-the-road drivers stationed at Bladensburg in the period relevant here. They were assigned truck and trailer units for their long-distance hauling. The 4 discharges were in this group.

The chief company officials were President Swope, Robert P. McMillan, vice president and general manager in charge of all operations, Robert C. Harris, Jr., manager of personnel and traffic, and J. C. Bell, supervisor of the shipping department. The drivers received their orders and were responsible to Bell (who had died before the beginning of the hearing). Bell was responsible to Harris, who, in turn, reported to McMillan.

Since October or November 1952, the Respondent had given consideration to a possible program of decentralizing its long-haul operations at Bladensburg by assigning trailer units to district offices rather than operating a central pool. At a meeting in the latter part of November 1952, district managers had urged this change contending it would lead to increased efficiency and economy of operations. This recommendation was not implemented in any way, prior to February 10, 1953.

## 2. The change in expense account allowances

Prior to January 23, 1953, it was the Respondent's policy to reimburse drivers for their actual expenses while engaged in company business. Witnesses for the Respondent testified that the amounts requested for expense reimbursement were increasing and that management was concerned over this problem and felt that the amounts requested were excessive and, in some cases, falsified. On January 23, 1953, Harris issued an interoffice communication addressed to "Tractor Trailer Drivers" in which he stated there had been a complete review of allowable expenses to tractor-trailer long-haul drivers, such expenses must be set upon a basis fair and equitable to the Company and the drivers, and that certain changes were being made, effective immediately. The memorandum listed restrictions on the number of meals which would be allowed on certain trips, and listed maximum amounts which would be allowed for meals.

## 3. Protests against the change in expense allowances

The change in expense allowances did not meet with the hearty approval of the long-haul drivers. The same day that the policy was announced these drivers went as a group to see McMillan. He was unable to see them then and Harris arranged for a meeting the next day, Saturday, January 24. Almost all the trailer drivers were present. McMillan testified that the 4 discharges complained they could not get along on the new allowance. McMillan explained that the Company had to control these allowances and asked their cooperation. The meeting broke up with the drivers still unenthusiastic over the change and, according to McMillan, the 4 discharges gave him the impression that they were not interested in the Company's situation.

On Saturday, February 7, a regular monthly meeting of the drivers took place. McMillan was ill and Harris was in charge. Harris discussed the Company's position with the men, but reported to McMillan the following Monday, February 9, that he had not been successful and that the men were still dissatisfied, particularly the four discharges.

## 4. Union activity

In the week beginning February 2, the long-haul drivers took steps to affiliate with the Union. After discussion among themselves, James Cammarata, one of the discharges and a former member of the Union, was authorized to make contact with it. He went to Baltimore on Wednesday, February 4. He spoke with Harold Miller, a representative of the Union, received application cards, and arranged for Miller to meet with the drivers the following Saturday, February 7, at a restaurant near the plant, the Dixie Pig. On Friday, February 6, 9 or 10 of the long-haul drivers met and signed application cards. Word also was spread among the approximately 15 city or local drivers of the union meeting.

On Saturday afternoon, February 7, when drivers began to arrive at the Dixie Pig for the meeting, they noticed that Bell, their supervisor, was seated there. They decided to move the meeting to another restaurant, Romano's, and left the Dixie Pig after posting one of the men to refer other drivers to the new place of meeting. The men met with Miller at Romano's, discussed their problems with him, some signed application cards, and it was agreed that the next move would be left to the Union.

Towards the end of the meeting when most of the drivers had left, Bell entered with his wife and they seated themselves at a table in another part of the restaurant. Bell waved to the men and sent beers over to some of them.

It was agreed that it was the custom of the men, including Bell, to get together at the Dixie Pig and Romano's, which were nearby restaurants, on Saturday afternoons. Further, all witnesses agreed that Bell was friendly with the men. Under these circumstances the undersigned concludes that there was no surveillance by Bell of the union meeting. Also, while Bell could have deduced from what he saw that something out of the ordinary was taking place, the undersigned is reluctant to make such a finding in the circumstances herein, namely, the lack of opportunity to hear the testimony of Bell and observe his demeanor while testifying. Both McMillan and Harris denied that they had any knowledge of union activity among the men until after the discharges. The undersigned concludes that it has not been established that the Respondent had knowledge of union activity among the drivers prior to the four discharges.

#### 5. The meeting of February 10

When Harris reported to McMillan on Monday, February 9, that he had made no progress in his meeting with the drivers the preceding Saturday, McMillan, according to his testimony, decided to put the decentralization plan into effect. However, he "... felt the only fair thing to do would be to give these drivers one good, solid last opportunity to explain to me, as man to man why they could not go along with the Company on this expense matter." Accordingly, he ordered the calling of another meeting for the afternoon of the following day. All drivers, both local and long-haul, were summoned to this meeting.

McMillan started the meeting by outlining the history of the Company, its problems, the requirement that its stockholders receive a just return, and the need to control expenses. He concluded by stating that if it could be shown that the allowed amounts were insufficient he would be glad to review the matter. He expressed regret that President Swope was ill and unable to attend the meeting.<sup>2</sup> McMillan then asked the men what other "troubles" there were. Wild complained of the condition of the chains on his truck. Cammarata asked why plant workers received overtime pay after 8 hours a week while the drivers were paid overtime after 40 hours. McMillan gave him an explanation. Nebel then told McMillan that the new expense allowance system took \$44 a month out of his pocket, Cammarata also complained that there would be a \$40 cut in pay. Owen asked why city drivers in New Jersey received more than trailer drivers. McMillan promised to look into this problem.

After the meeting, McMillan summoned Bell and Harris to his office and told them that he was ready to proceed with the decentralization plan. Then, according to both McMillan and Harris, there was a discussion as to how the plan was to be put in operation. It was decided to proceed with a partial decentralization. It was then determined that 4 truck-trailer units would be based in 3 district offices. After a review of the records of all the long-haul drivers, the 4 dischargees were selected for discharge. The next day, February 11, notices were issued to each of them that effective immediately their services were no longer required. They were not offered positions in the district offices nor had their successors been hired at the time they were released. Eventually, by transfer and new hirings at the district offices, the replacements were made.

McMillan testified that in deciding which drivers to release he took into account the records of all the drivers. These four were selected, he asserted, because there had been constant complaint by district managers concerning them. He also took into account the fact that every time there was a meeting, these men were constantly voicing their disapproval of company policies. He further testified that if there had been no decentralization he would not have discharged the four men at that time because the Company needed drivers, but that sooner or later they would have been discharged because they continually voiced dissatisfaction as employees of the Company.

Harris substantially corroborated McMillan. He testified that the decision to decentralize was reached after the meeting on February 10. This decision, according to Harris, was

<sup>2</sup> The summary of the meeting is based primarily upon the testimony of McMillan. The one significant conflict in testimony which developed was whether McMillan stated in substance that if the men went "through with this thing" it would "break the old man's heart and show him [McMillan] to be a bad manager." The testimony of the four dischargees to this effect was denied by McMillan. His denial was supported by Donald Taylor, one of the city drivers who did not join the Union. The dischargees were not clear at what point McMillan made the alleged remarks, but they agreed that McMillan made no further explanation. The undersigned, from his observation of the witnesses, credits McMillan's denial.

based on "the lack of interest on the part of the drivers to go along with us on the expenses and help to curtail the cost of operation of our fleet." The four dischargees he testified, were least cooperative on the expense account problem. That, plus their records, led to their selection for discharge

#### 6. The records of the dischargees

Detailed evidence was submitted by the Respondent in amplification of its contention that the dischargees had poor work records. This evidence, to which there was no rebuttal is as follows:

##### a. James Cammarata

James Cammarata was employed from April 28, 1948, until his discharge on February 11, 1953. He was first employed as a city driver and then was advanced to the position of trailer driver and later, tractor-trailer driver. He received progressive increases in pay during these years. He was third or fourth in the order of seniority in his employee group.

On January 28, 1953, Frank Ramsey, manager of the Richmond Branch, sent a written report to McMillan complaining of Cammarata's critical attitude of local operations during an incident which occurred that day.

Harris also testified that the manager of the Norfolk district office complained to him in November 1952, that Cammarata was arriving late. Harris also asserted that he checked the daily logsheets of all the drivers in the period from the end of November 1952 to January 1953 and that in his opinion, Cammarata took too long to complete his assignment in 12 instances.

In the fall of 1951, Cammarata, according to Harris, was placed on probation for taking driving keys out of local trucks in the Richmond office in order to make sure that men would be available to help unload his truck. Lawrence Thomason, then manager at Richmond, testified as to this incident and identified a written protest he addressed to McMillan on August 31, 1952.

Austin Sachs, of Respondent's Hagerstown branch, testified that in December 1952 or January 1953 Cammarata told him he padded his meal tickets with the help of waitresses.

C. H. Adams, manager of the Baltimore branch, was requested by Harris to make periodic checks when drivers left Baltimore for Bladensburg. He testified that he found one instance where Cammarata misstated his time of leaving Baltimore by 2½ hours. This occurred in December 1952 and was the sole violation Adams found over a 3-month period. He reported this instance to Harris approximately 3 weeks later.

##### b. Henry J. Nebel

Henry J. Nebel worked for the Respondent from March 1938 to February 1942, November 1945 to September 1947, and from October 1950 until his discharge on February 11, 1953. In his last period of employment he worked as a trailer driver and tractor-trailer driver. He received pay increases during this period. He was fifth in seniority among the long-haul drivers.

In November 1952, according to Harris, a complaint was received from the Norfolk office that Nebel was arriving late.

Harris also maintained that in 10 instances in the period November 1952--January 1953, Nebel took too long to complete his assignments.

##### c. Joseph Owen

Joseph Owen was employed from September 1946 until February 11, 1953. He progressed from the ranks of city driver to trailer driver and tractor-trailer driver with pay increases over the years. He was senior man among the long-haul drivers.

Harris testified that when the expense account of the drivers was checked he received reports that Owen was obtaining receipts in excess of the amounts he actually spent.

The Respondent produced a letter from one of its customers, dated October 30, 1952, complaining of Owen's refusal to unload his truck when the customer was unable to furnish the customary assistance in unloading. A covering memorandum from F. E. Ramsey

of the Richmond branch to Harris noted that Owen was finally authorized to employ a helper and stated that he should have been more cooperative.

Hopewell, the district manager at Norfolk, in November 1952 complained to Harris that Owen was not cooperative.

Harris further asserted that Owen, in his opinion, took excess time to complete trips in 9 cases during a 2-month period.

In the spring of 1952 Owen was put on probation when Owen helped another driver clear a weighing station by carrying merchandise for him in his truck.

Robert Emdly, branch manager at Waynesboro and Hagerstown, testified that approximately 3 or 4 weeks before February 1953, Owen told him he padded his expense account. Emdly reported this conversation to Roberts, the sales manager of the Company.

Paul V. Hareford, a foreman for a company distributing the Respondent's products in Waynesboro, testified that Owen also told him in January 1953 of padding his meal check receipts. Hareford reported this to Emdly.

Owen made a similar admission to Austin Sachs, an office manager at the Hagerstown branch, according to Sachs.

McMillan admitted that he had written a letter in June 1950 praising Owen as an outstanding employee. Owen's record was good up to that time, according to McMillan.

#### d William Wild

William Wild began working as a city driver on September 8, 1947. He later was transferred to long-haul work and received the standard increases paid to the other drivers in his group. He was third in seniority in his group.

Harris testified that he received reports that Wild was obtaining improper receipts for his expenditures.

The Respondent produced a written report sent by L. N. Thomason of its Richmond branch on January 13, 1953, to Harris complaining that Wild had blocked the driveway with his truck and when reprimanded for this had replied that Thomason was not his boss and did not care what the latter thought of his judgment.

Harris claimed that Wild took excess time to complete his trip on 12 days in a 2-month period.

Thomason testified that he complained by telephone on the morning of February 10, 1953, to McMillan about Wild using profane language in the Richmond office, that McMillan told him " . . . they were considering disciplining of the four drivers, and Mr. Buck Wild was one of them, and he would appreciate it if I would make my report and put it in the mail that morning." Thomason did so. Thomason also testified that while McMillan did not name the four drivers he had in mind, Thomason understood he was referring to the discharges because they were the ones generally complained of at management meetings.

Paul Efeson, manager of the York branch, testified that he complained to McMillan about Wild using profanity. He detailed a particular occasion in September 1951. He further related an instance in July 1952 when Wild was not cooperative, in his opinion, and Efeson had to secure Bell's cooperation in seeing to it that Wild made a special local delivery.

The 4 discharges were not the only drivers from whom there were complaints. Harris testified that in the 18 months he occupied the post of personnel and traffic manager, the staff of drivers had expanded from 19 to 25, but that a total of 35 to 40 men had been carried on the company roster at various times during that period. There had been a heavy turnover because of difficulty in securing competent help. The work of the drivers was checked and men received individual reprimands when necessary. In addition, there were monthly meetings at which such matters as slowness in completing trips, the need to cooperate with branch offices, and the necessity to refrain from too much talking at local offices were brought to the attention of the men as a group. Harris did not give any individual reprimands to Nebel or Wild or Cammarata. He maintained that Owen was spoken to several times for lack of cooperation and talking too much.

#### Contentions of the Parties, Conclusions

The Respondent, denying any knowledge of the union activities of the discharges, contends that they were discharged because of the decision to decentralize long-haul operations at the Bladensburg plant and that these employees were discharged because they were the least desirable. The General Counsel contends that the discharges were made because of the Union or concerted activities of the men involved.

The undersigned has found the evidence is insufficient to establish that the Respondent had knowledge of the union activity among its employees prior to the discharges. However, this is not dispositive of all the issues. As provided in Section 7 of the Act ". . . Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." The long-haul drivers, in their unanimous protest to McMillan and Harris at meetings at which the change in expense allowances was discussed, were engaging in protected concerted activities. Employees have the right to present grievances and objections to changes in working conditions.<sup>3</sup> Under the Act, they are protected against reprisal for engaging in such concerted activity. Yet it was their opposition to the change in expense allowance, expressed in a form of concerted activity, which was the basic reason for the decision to proceed with the decentralization plan. Until their protest, there had been discussion of the desirability of decentralizing long-haul operations, but no definite action had been taken. It was only after Harris reported to McMillan on February 9 that the drivers in a meeting on February 7 still opposed the change, that McMillan decided to proceed with the decentralization. Before proceeding, he gave the drivers one last chance to persuade him in a meeting of the validity of their opposition or, presumably, to indicate their acceptance of the plan. When the men still voiced their opposition, McMillan took action. Under these circumstances, McMillan's conduct was an act of reprisal against all the long-haul drivers for their engaging in concerted activities by opposing a change in working conditions.<sup>4</sup>

As to the immediate discharges, it is clear from McMillan's testimony that there would have been no discharges on February 11, 1953, if the decision to decentralize had not been made. The Respondent presented extensive testimony as to the poor work records of the dischargees. While no evidence was presented in specific rebuttal to this testimony, it is undisputed that the dischargees were senior drivers, had each worked for a substantial period of time during which the Respondent had discharged unsatisfactory employees, and the complaints against their work had been filed over a long period of time without McMillan or Harris taking final action. Significantly, both McMillan and Harris identified the dischargees as being most vocal of all the employees in their opposition to the changes in allowances. While the Respondent denies any connection between the decision to decentralize initially to the extent of 4 trailers and drivers and the activities of the 4 dischargees at staff meetings, the undersigned concludes that there was a direct relationship. No specific reason was supplied for proceeding with the dismissal of 4 drivers rather than any other number except that there was general discussion of the possibilities by McMillan, Harris, and Bell. The evidence of the Respondent's annoyance with the continued opposition to the change in allowances plus other background factors which have been outlined establishes that the concerted activities of the dischargees were at the very least a substantially contributing cause to the decision to release them and that they would not have been released on February 11, 1953, if they had not engaged in those activities.<sup>5</sup> Therefore, it is further concluded that these dischargees were violative of the Act.

## B. Other acts of unfair and alleged unfair labor practices

The parties stipulated that on February 12, 1953, employees at the Bladensburg plant struck because of the discharges on the previous day. The complaint alleges that this strike was caused and prolonged by the Respondent's unfair labor practices. The undersigned finds that this allegation has been proved.

The complaint alleges further specific acts of interference, restraint, and coercion, i.e., threatening and warning employees against engaging in union or concerted activities,

<sup>3</sup> The Ohio Oil Company, 92 NLRB 1597; N L R. B. v. Schwartz, 146 F. 2d 773 (C. A. 5), 55 NLRB 798. See also N L R. B. v. J. I. Case Co., 198 F. 2d 919 (C. A. 8), 95 NLRB 47; N L R. B. v. Kennametal, Inc., 182 F. 2d 817 (C. A. 3), 80 NLRB 1481; Modern Motors, Inc v. N L R B., 198 F. 2d 925 (C. A. 8), 96 NLRB 964; Salt River Valley Water Users Association, 99 NLRB 849.

<sup>4</sup> It should be noted that the change in expense allowances went into effect on January 23 and, as far as the record shows, the new instructions were obeyed.

<sup>5</sup> The true character of these discharges is also evidenced by McMillan's statement to Thomason, manager of the Richmond branch, on the morning of February 10, that the "disciplining" of the four drivers was being considered.

urging and warning employees by threats or promise of benefit to refrain from engaging in union or concerted activities. There has been a failure of proof of these allegations and it will be recommended that the complaint be dismissed to that extent.

#### 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 such of them as have been found to be unfair labor practices, 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 and is engaging in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent discriminatorily discharged James Cammarata, Henry J. Nebel, Joseph Owen, and William Wild. These discharges constituted violations of Section 8 (a) (1) (as an interference with the right of employees to engage in concerted activities) and Section 8 (a) (3) (as a discrimination against employees for the purpose of discouraging membership in a labor organization--the group formed by the drivers to protest the change in their working conditions).<sup>6</sup> Whether the discharges be regarded as a violation of Section 8 (a) (1) or of Section 8 (a) (3), or both, the undersigned finds that the following relief will be necessary in order to effectuate the policies of the Act. It will be recommended that the Respondent offer the dischargees immediate and full reinstatement to their former, or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of pay he may have suffered by payment of a sum of money equal to that which he normally would have earned as wages from the date of his discriminatory discharge to the date of the Respondent's offer of reinstatement, less his net earnings during said period (Crossett Lumber Company, 8 NLRB 440, 497-8), said back pay to be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289. The Respondent, upon request, shall make available to the Board, payroll and other records to facilitate the determination of the amounts due.<sup>7</sup>

The character and scope of the unfair labor practices engaged in, indicate an intent to defeat self-organization of employees and goes to the heart of the Act. It will be recommended that the Respondent cease and desist from such acts and from in any other manner interfering with, coercing, or restraining its employees in the exercise by them of the right to engage in concerted activities for the purpose of mutual aid or protection guaranteed them in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following.

#### CONCLUSIONS OF LAW

1. The Respondent, Southern Oxygen Company, Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Employees of the Respondent by acting concertedly for purposes of collective bargaining and other mutual aid and protection, had formed a labor organization within the meaning of Section 2 (5) of the Act.

3. By discharging James Cammarata, Henry J. Nebel, Joseph Owen, and William Wild, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

<sup>6</sup>Smith Victory Corporation, 190 F. 2d 56 (C. A. 2), 90 NLRB 2089; Dofflemeyer Bros., 101 NLRB 205; Ace Handle Corporation, 100 NLRB 1279; Nemec Combustion Engineers, 100 NLRB 1118.

<sup>7</sup>While detailed evidence of unsatisfactory work by the dischargees was submitted by the Respondent, the undersigned has found that the work records of the dischargees was not the basic reason for their discharge. An employer is at all times free to discharge any employee for dishonesty or for any other nondiscriminatory reason so long as that is the true reason for the discharge. Editorial "El Imparcial" Inc., 92 NLRB 1795; Wilson & Co., Inc., 77 NLRB 959.

4. By such discrimination and causing a strike in protest against it, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

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RENE BENVENUTTI AND BERNARDO RIVERA, CO-PARTNERS d/b/a FABRICA DE MUEBLES PUERTO RICO *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO. Case No. 24-CA-422. January 20, 1954

### DECISION AND ORDER

On August 5, 1953, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they 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.

The Board has reviewed the rulings made by 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 Respondents' exceptions, and the entire record in this case.

As indicated in the Intermediate Report, in 1951, Confederacion General de Trabajadores de Puerto Rico, CIO, and its local affiliate, Union de Trabajadores la Fabrica de Muebles Puerto Rico in Yauco, Puerto Rico, acting jointly, executed a collective-bargaining agreement with the Respondents covering the Respondents' employees. The 1951 contract was to be effective until August 23, 1952, and for yearly periods thereafter unless terminated by appropriate notice. No such notice was given in 1952.

In late 1952, the Respondents' employees, dissatisfied with the representation they were receiving, signed a petition authorizing the Union (United Packinghouse Workers of America, CIO) to represent them. The Union then filed a representation petition, and, after a consent election, was certified by the Board.

In January 1953, the Union presented a proposal to the Respondents with respect to a bargaining contract. After several bargaining meetings the Respondents informed the Union that the 1951 contract would remain in force until August 23, 1953, and consequently that the Respondents would not, in the meanwhile, deal further with the Union with respect to a new contract. The Respondents stated, however,